(9:15 a.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: Good morning everybody. We're a bit delayed getting started because I think we were trying to distribute these undertakings that, I guess, came in overnight. Good morning, Mr. Anthony.

MR. ANTHONY: Good morning.

MR. SAUNDERS, PRESIDING CHAIRMAN: Any preliminary matters, Ms. Newman?

MS. NEWMAN: There is, in fact, overnight we did receive an email from Mike Kehoe in follow-up to his testimony. There should be a copy of a two page document, with Barbara Thistle on the top there.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I see that.

MS. NEWMAN: And I think we should call that Consent No. 4.

MR. SAUNDERS, PRESIDING CHAIRMAN: Does everybody have that? It's an email dated yesterday, sent ...

MR. WHALEN, Q.C.: I don't think I have it, Mr. Chairman, it may be here somewhere. I didn't see it. Thank you very much.

MR. SAUNDERS, PRESIDING CHAIRMAN: What label are putting on it again, Ms. Newman?

MS. NEWMAN: Consent No. 4.

MR. SAUNDERS, PRESIDING CHAIRMAN: Consent 4, okay.

EXHIBIT CONSENT 4 ENTERED

MS. NEWMAN: Alright, and we have also received responses to the undertakings, so we have a response to undertaking six, seven, nine, ten, and eleven.

MR. SAUNDERS, PRESIDING CHAIRMAN: Did you say seven?

MS. NEWMAN: Yes.

MR. SAUNDERS, PRESIDING CHAIRMAN: Six, seven, nine, ten, and eleven.

MS. NEWMAN: Yeah.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MS. NEWMAN: And I think in the package, they should all be in order in the packages provided to people. Number six is the agency broker contract. Number seven is the servicing carrier.

MR. SAUNDERS, PRESIDING CHAIRMAN: Just a second now, just let me get this labelled here. Undertaking number six is the contract.

MS. NEWMAN: Agency/broker contract.

MR. SAUNDERS, PRESIDING CHAIRMAN: Agency/broker, yeah.

MS. NEWMAN: Number seven is the Facility Association servicing carrier contract.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MS. NEWMAN: Number nine is the minutes of the board of directors, number nine and ten are both minutes of the board of directors, actually.

MR. SAUNDERS, PRESIDING CHAIRMAN: Nine and ten, yes. Would number nine be started off ...

MS. NEWMAN: Review and approval of rate program, it's August 28th, 2002.

MR. SAUNDERS, PRESIDING CHAIRMAN: No, I don't have that. Oh, that's this one. I'm sorry, that was labelled ten, I don't know why.

MS. NEWMAN: Yeah.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MS. NEWMAN: Yeah, there is a big ten on the top right hand corner.

MR. SAUNDERS, PRESIDING CHAIRMAN: So that's undertaking nine.

MS. NEWMAN: Nine, yeah, and undertaking ten is the minutes of the board of directors of FA, dated September 11th, 2002.

MR. SAUNDERS, PRESIDING CHAIRMAN: And what does that document look like?

MS. NEWMAN: That's, it should be probably attached to that same one.

MR. SAUNDERS, PRESIDING CHAIRMAN: Attached to it.

MS. NEWMAN: It may be attached to number nine because mine is only on one page.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MS. NEWMAN: So September 11th, 2002, and that's a two page document, the second page being October 9th, 2002.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MS. NEWMAN: Response to undertaking number eleven is in two parts, one for Nova Scotia and one for New Brunswick, and that's two charts for the year 2001, and that should be it. There is, in fact, an undertaking remaining outstanding, I believe, from Winston Morris. I don't know if the Consumer Advocate has any knowledge of the status of that.

MR. O'FLAHERTY: I do not.

MS. NEWMAN: Okay, and there is also two undertakings remaining outstanding from Jennifer Power, and the Board will undertake to follow up with Jennifer Power. Mr. Chairman, I thought it might also be useful if we now established the process for the closing argument.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, by all means.

MS. NEWMAN: We have discussed, I believe, having a written argument and then a subsequent oral argument. I have discussed some dates with the parties and while we had originally thought the 4th and 7th would be acceptable, there has been some suggestion now that we, that might be a little bit of a tight schedule, so if we could perhaps move that off with a filing of the written on the 6th and argument of the oral on the 11th.

MR. SAUNDERS, PRESIDING CHAIRMAN: Is the 11th okay with everybody? The 6th wouldn't matter because that's for written argument.

MS. NEWMAN: The 6th and the 11th.

MR. O'FLAHERTY: That's fine, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: And that's 9:00 in the morning?

MS. NEWMAN: At 9:00 a.m.. I don't know if the parties have any comment on whether it's necessary to set time limits. I don't see it as necessary unless there's (inaudible) but other people, or the panel may wish to address that.

MR. SAUNDERS, PRESIDING CHAIRMAN: Everything has gone pretty expeditiously so far, I wouldn't think that the argument is going to be any different in terms of its expeditiousness.

MR. WHALEN, Q.C.: We wouldn't expect it to be lengthy, Mr. Chairman, so whatever you wish.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MS. NEWMAN: And if we start at 9:00 we certainly should have plenty of time to get it finished that day.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, the order, has that been established for everyone's information, the order of argument?

MS. NEWMAN: I guess it would follow the usual argument. The FA, Consumer ...

MR. SAUNDERS, PRESIDING CHAIRMAN: The Applicant would go last.

MS. NEWMAN: Well, no, the Applicant would start first and have an opportunity to reply.

MR. SAUNDERS, PRESIDING CHAIRMAN: The Applicant, yes, I'm sorry, and he would have final rebuttal.

MS. NEWMAN: Yeah.

MR. STAMP, Q.C.: Perhaps we could just clarify, Mr. Chairman, not only would we file by a certain time, I guess, and we should identify the time perhaps so we can have that straightened away, but to also be exchanged as well with other parties.

MR. SAUNDERS, PRESIDING CHAIRMAN: That's right, filed and exchanged.

MR. STAMP, Q.C.: Yes.

MS. NEWMAN: I think that's probably, I don't have a copy of the rules with me but ...

MR. STAMP, Q.C.: It may well be covered off there.

MS. NEWMAN: But 3:00 is the usual filing time and you are obliged to exchange ...

MR. STAMP, Q.C.: So we would file and exchange by that time on that date, the 6th or whatever it was. I just want to speak to one point which was the undertakings that we have just identified for this morning, and particularly undertaking nine and ten, and this is a series of minutes both of the board of directors of Facility, and I think of the executive committee at times. In any event, as I understood it, it was, this was going into evidence, I thought on the issue of the timing of the several decisions that are associated with this. One is to, I guess, the selection of rates, and the other separate decision being the arrangements for the distribution of assessments for members. Now the minutes do, of course, obviously confirm the timing. There is, I note, a minor variation in the indicated and proposed rates from the 28 August board minutes. I've spoken to Mr. Simpson, he contacted me about this when he was locating this material and explained that, I think this actually is what Mr. Pelly was referring to when he talked about the minor adjustments had to be made after they had the approval initially and so the final numbers are as set out in the actual filing. They differ to a minor degree with what was dealt with by the board on the 28th of August. Mr. Simpson has suggested that if there is any concern, he's perfectly satisfied, of course, that the board has authorized this, but if there's any concern, the board of directors of Facility, I believe, is meeting on the 12th of February, and if necessary they can provide a, you know, confirmatory resolution, if that's considered to be required.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, I understand. Thank you, Mr. Stamp. Anything further?

MR. STAMP, Q.C.: Just, I guess, we should have some indication as to whether the Consumer Advocate will be speaking to Mr. Morris, his witness, to provide the material that's identified in the undertaking that's outstanding.

MR. O'FLAHERTY: There is a representative here from the Government Services and Lands, and I've ask that he contact Mr. Morris by telephone and we can hopefully update the Board and counsel this morning as to the status of that particular undertaking. I believe that's where he's gone right now actually.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, so we should know that in a few minutes then?

MR. O'FLAHERTY: Yes, hopefully, Mr. Chairman. Do you want, do you want me to check on the status of it?

MR. SAUNDERS, PRESIDING CHAIRMAN: Well, I guess Mr. Stamp's concern is to have it before you're finished.

MR. STAMP, Q.C.: Just some understanding before we leave or something.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yeah, okay. Anything further? No? Nothing else? And then we're back to you.

MS. NEWMAN: Good morning, Mr. Anthony.

MR. ANTHONY: Good morning.

MS. NEWMAN: I guess I wanted to start off today with something that we had put off till today yesterday, and that was the mechanism of the premium tax and the health levy.

MR. ANTHONY: Yes.

MS. NEWMAN: And I wonder if you could speak to how that works in terms of the payment of that with the servicing carrier and FA.

MR. ANTHONY: Okay, I can confirm that both the premium tax and the health levy are paid by the member companies in their own right.

MS. NEWMAN: Okay.

MR. ANTHONY: ... i.e., it is not paid by Facility Association, nor is it paid by the servicing carrier. The premium tax is taken as a product of the participation report that's received monthly. We get the gross premiums in that, we do a calculation to determine the four percent premium tax and we remit that in our own right as a member company, okay. The health levy, we receive an actual invoice from the provincial government addressed to the member company. Included in that invoice shows our share of the vehicle count for Newfoundland and our share of the Facility Association vehicle count for Newfoundland and we pay both as a member company.

MS. NEWMAN: Okay, and then to be ... are you ... is the servicing carrier or the member company reimbursed for those?

MR. ANTHONY: No, that's our cost.

MS. NEWMAN: That's your cost and therefore would have to be recouped out of the commission that is ...

MR. ANTHONY: Well, the member company, it's part of the cost of Facility Association, it's part of the, you know, we book ... as I said yesterday, we book premiums, we book losses, this is a cost, the same as those. It's just a cost to the company, part of the operation. I was giving some thought to this morning as to why, because I know Commissioner Powell sort of questioned why the accounting, and the only thing I can add is that these are assessments to insurance companies. Of course, Facility Association is not an insurance company and I suspect that's the reason. It's more of a technical matter, but these are, are payments to be made by licensed insurers and, of course, Facility Association in its own right is not a licensed insurer.

(9:30 a.m.)

MS. NEWMAN: Okay, I wanted to also go back to something else that we dealt with yesterday, and that is some documentation that was provided with a witness that was on the stand before you, Mike Kehoe. He provided a series of documentation that set out some insurance coverage for a woman called Mary Fitzgerald. Have you had an opportunity to look through those documents?

MR. ANTHONY: I've had a quick look at this morning, yes.

MS. NEWMAN: There was some confusion yesterday about what these documents were saying, and as we didn't have the knowledge that you would have with respect to how the insurance is placed and what these documents would mean, I thought it might be helpful for the Board for you to just run through what was going on here and explain in particular what was happening with the December 30th item, so can you please just look to December 30th, which would be MK-2, for those who have documents that are labelled.

MR. ANTHONY: Okay, that's the invoice amount and the endorsement for, I guess, $19.55.

MS. NEWMAN: December 30th, yes, $19.55, and look to the second page for me, please.

MR. ANTHONY: Okay.

MS. NEWMAN: It's an amended, it says in the top left hand corner, an amended declaration.

MR. ANTHONY: Okay.

MS. NEWMAN: Can you please describe for us what is going on here?

MR. ANTHONY: Okay, Ms. Newman, I'll answer this to the best of my ability. Obviously, it's not a complete file, some of it could be my opinion or somewhat conjecture.

MS. NEWMAN: Okay.

MR. ANTHONY: But what's certainly occurring here, it's no problem verifying, is that they are adding a driver as of the 12th of December, '02, until the expiry date of the policy, which is the 12th of January, '03, and the net premium charge is $17.00, which if you go to the next sheet, it's on the invoice, $17.00 plus your tax, so for a reason, they're adding a driver who was obviously not listed on the policy before or would appear to be never listed on the policy before. They're amending the driving to, if you refer to item three on the form, you'll see described automobiles. You go to the second line and it says occasional driver.

MS. NEWMAN: Okay, so we're at, item three is in the top third of the page, it says item three on the left hand side there.

MR. ANTHONY: Yeah.

MS. NEWMAN: Okay.

MR. ANTHONY: You'll see the first line says '95 Toyota Corolla, the next line says for whatever reason, '95 and it says occasional driver.

MS. NEWMAN: Okay.

MR. ANTHONY: Of vehicle 01, and if you come across that line, you'll come to a column which says class.

MS. NEWMAN: Yes.

MR. ANTHONY: Okay, you'll see 056, okay, that's telling me that that's adding an under age female operator. 05 is the class for under age female drivers, as per the Superintendent's stat plan, as per the driving records and classes published by the PUB.

MS. NEWMAN: And if you look at the original declaration dated February 15th, 2002, that confirms that, on the second page there, that the occasional driver was not there, is that ...

MR. ANTHONY: Correct.

MS. NEWMAN: Is that accurate?

MR. ANTHONY: That's rated as a class 01, which identifies the vehicle that's not driven to or from work.

MS. NEWMAN: So just slow down a bit, February 15th, 2002, which is MK-3, and on the second page of that document ... sorry, go ahead, Mr. Anthony.

MR. ANTHONY: I'm sorry, I was just going to highlight that, again, if you refer across the line to where it says class, and you see 01.

MS. NEWMAN: Yes.

MR. ANTHONY: Again, that identifies a risk where there are no under age drivers, where the vehicle is not driven to or from work, strictly pleasure.

MS. NEWMAN: So then there's MK-2, the December 30th document, 2002, is not an offer for new insurance, is it?

MR. ANTHONY: No, it's strictly an endorsement covering basically a month adding an occasional operator for the duration of that policy.

MS. NEWMAN: So the remainder of that policy.

MR. ANTHONY: Exactly.

MS. NEWMAN: Okay, and then can you tell us why would it would be, if you can, that this insured, Mary Fitzgerald, would have been put in Facility Association one week and then the next week would have been offered an additional coverage on the existing policy?

MR. ANTHONY: Well, I think you need to do it in reverse order.

MS. NEWMAN: Okay.

MR. ANTHONY: I think what happened was that they've had, it would appear they had an unlisted driver.

MS. NEWMAN: Okay.

MR. ANTHONY: That they've added for the balance of the term to collect premium for that driver who would appear, according to what I heard from Mr. Kehoe yesterday, I understood was driving the vehicle at the time of an accident, and then, and that brought it to the end of that term. Of course, then you get into a renewal situation where a new offer has to be made, so what happened was the person was added to the policy for the balance of the term. They have identified her as a driver. She would have appeared to have been unlisted or not rated on the policy prior to that, and then they, then they reviewed it on renewal and, of course, the policy is rated to include that driver to go forward.

MS. NEWMAN: So I was just wondering why they wouldn't have cancelled the policy near the end of the term rather than waiting until the renewal ...

MR. ANTHONY: We can't cancel policies mid term.

MS. NEWMAN: Okay.

MR. ANTHONY: You can if there is a material nondisclosure. It is very rare that we do that. Usually we'll carry the ... unless it's extreme. We do have the legal right to cancel policies for a material change in risk, nondisclosure, misrepresentation. A lot of times when you get a situation like this, it's easier to do it this way, get to the end of the term and then deal with it on a renewal date. It's not unusual, if someone has an accident mid year, we don't re-rate the policy mid year, we carry it until the next renewal, and then policy is adjusted accordingly, so it's not totally dissimilar.

MS. NEWMAN: Okay, so Dominion then, I guess, refused to offer insurance by virtue of the testimony of Mr. Kehoe, and FA insurance was offered.

MR. ANTHONY: It would appear that way and I'm basing that on, actually on the email that was received because it seems to verify there that, in fact, it is what happened.

MS. NEWMAN: The Consent No. 4 document that we entered this morning ...

MR. ANTHONY: Yes.

MS. NEWMAN: It seems to verify that Dominion refused coverage.

MR. ANTHONY: And that it is being quoted FA.

MS. NEWMAN: Okay, and Dominion is not a servicing carrier.

MR. ANTHONY: No.

MS. NEWMAN: So the broker would then have taken that piece of business to the servicing carrier?

MR. ANTHONY: They would then complete, complete a new application. I guess I'll go back instead ... what the broker can do and what it appears they've done here, they can actually quote a renewal premium to the client and then if the client wishes to accept that, it's noted on the renewal that they have to come in and complete a new application, it's there in the documents, I saw it there this morning. Anyway, they have to come in ... on Facility when a risk is taken in Facility, there has to be a new application completed on each new policy and then that is simply forwarded to the servicing carrier who checks it for completeness and correctness and issues a policy.

MS. NEWMAN: Okay, so this document dated December 17th, 2002, is merely a quote, and that's the first step in the process, is it?

MR. ANTHONY: Let me ... which document are you ...

MS. NEWMAN: MK-1, December 17th, 2002.

MR. ANTHONY: Yes, here we go, on the second page you'll see about a third down, it says automobile renewal notice.

MS. NEWMAN: Yes.

MR. ANTHONY: Right, so this, this is an offer to renew.

MS. NEWMAN: Okay.

MR. ANTHONY: And you'll note on the very bottom, just under policy term, it says new application required, okay.

MS. NEWMAN: So if Mary Fitzgerald were to have accepted this, she would have had to go into the office or by telephone, if that's the way the broker did it, and actually complete a new application.

MR. ANTHONY: Yeah, there'd be no misunderstanding that this is a new policy, and with the applications as they are now, there'd be no misunderstanding in my mind that it's Facility Association because it states so right on the application that she would be completing.

MS. NEWMAN: Okay, so what you're saying is while she wasn't advised at this stage that it was FA, when she completed the new application she would have been advised?

MR. ANTHONY: Exactly.

MS. NEWMAN: And is ...

MR. ANTHONY: Well, let me put it this way, I would expect she would be advised. It is noted on the application and if she were to view the application that she's obligated to sign, she would see it there. Now, that's not to say, not everyone notices everything that's on an application, but it is there, at least, and I would expect the broker to state what's going on.

MS. NEWMAN: Okay, so Cal LeGrow was initially dealing with Dominion on this matter, and then ultimately placed it with FA. Are you, is ICON the servicing carrier for Cal LeGrow?

MR. ANTHONY: No.

MS. NEWMAN: It would be a different ...

MR. ANTHONY: We were at one time but we're not at the moment.

MS. NEWMAN: And how many brokers did you say that you write FA business for?

MR. ANTHONY: Eight.

MS. NEWMAN: And are there brokers that only write FA business for their own, or are there servicing carriers that only write FA business for their own brokers?

MR. ANTHONY: There are two that are technically that way. The two would be Coop and Unifund because they're more of what you referred to yesterday as direct writer.

MS. NEWMAN: I wanted to ask you some questions about how this surplus and deficit is flowed out to the members and then ultimately to ratepayers.

MR. ANTHONY: Uh hum.

MS. NEWMAN: There's been some talk throughout this matter and you've probably heard it, about subsidization, and Jennifer Power did speak to this somewhat the other day but I'd like for you to add some more details. If FA experienced a surplus and there's actually an assessment, a payment out to the member companies, what do member companies, in your experience, do with that surplus?

MR. ANTHONY: Probably it would be easier ... can I refer to her evidence yesterday, that would help explain it.

MS. NEWMAN: Okay, that would be ...

MR. ANTHONY: If I can just get a copy right there if that's okay. It might just make it a little easier to explain.

MS. NEWMAN: Okay.

MR. ANTHONY: And if you refer to the page, 2001 Newfoundland Auto Results, the page there.

MS. NEWMAN: Just give me a moment.

MR. ANTHONY: Okay.

MS. NEWMAN: So that's the chart type page, the colourful chart.

MR. ANTHONY: And there's three columns, regular market, Facility Association, total, the upper left corner number is $29,032,000.

MS. NEWMAN: Yes.

MR. SAUNDERS, PRESIDING CHAIRMAN: Just a minute, Ms. Newman, I'm having difficulty finding my copy of that. Yes, I have it.

MR. ANTHONY: Okay, I'm going to focus on the second column, which is Facility Association.

MS. NEWMAN: Okay.

MR. ANTHONY: If you go back to my testimony yesterday where I made reference that we receive on a monthly basis, a participation report.

MS. NEWMAN: Uh hum.

MR. ANTHONY: Okay, these are the CGU's numbers, and that represents their share of the total market but each member company in Newfoundland would receive basically, if you converted those numbers back to 100 percent, for argument's sake, each company would receive their share of the same number, if that makes sense, that ...

MS. NEWMAN: CGU is not a servicing carrier.

MR. ANTHONY: No, these are member, these are numbers that come to all member companies on their participation report. It has nothing to do with servicing carriers.

MS. NEWMAN: So in a sense, would it be fair to say that it's almost an artificial number, it's not actual FA business written?

MR. ANTHONY: Oh, it certainly is.

MS. NEWMAN: Written by this carrier?

MR. ANTHONY: No, no.

MS. NEWMAN: It's attributed to them on a proportional basis.

MR. ANTHONY: It's attributed, it's their share, this would be their share of the total business, the term (inaudible), written by Facility Association.

MS. NEWMAN: By the four servicing carriers.

MR. ANTHONY: By the four servicing carriers, right, this is their share of the 100 percent pie.

MS. NEWMAN: So it's been apportioned to them on ...

MR. ANTHONY: Exactly, and each member company would have received an apportion, if you took the numbers for each member company in Newfoundland for 2001 and added it together, you would get the 100 percent number that Facility would see from the four servicing carriers.

MS. NEWMAN: And the proportion that they receive is based upon the written premium?

MR. ANTHONY: Their vehicle count.

MS. NEWMAN: Their vehicle count.

MR. ANTHONY: Their share of the total pool in Newfoundland, okay, and I'll use this one as an example, and I'm not, I'm not using it for convenience. That happens to be a year when there was a loss, I'll touch on that after, but it would apply equally in a year where there's a positive number. In their case they picked up and they would have included in their own written premiums, $2,263,000, okay. They would have also included in their numbers losses, you'd have to ... you'd have to add the $2,263,000 to the $1,434,000. That would be the number, that would be the dollar value of the losses which would be, I guess, $3,697,000, and that would give you the product of $1,434,000, which would be a loss. Are you okay?

(9:45 a.m.)

MS. NEWMAN: No.

MR. ANTHONY: Okay, what's not included in here is the ... the first line is the written premium, okay. Then they've shown the underwriting loss, okay. What's missing there is the number, which would be the loss cost, the losses for the year.

MS. NEWMAN: Okay.

MR. ANTHONY: Alright, which will be $2,263,000 plus a minus ... plus $1,434,000, which would give you $3,697,000, okay.

MS. NEWMAN: So that underwriting loss in this case is actually a net of that premium that's set out above and the costs which aren't shown.

MR. ANTHONY: Okay, so what, as a member company, we would book, would be on written premium, we would book $2,263,000. We would have booked losses of $3,697,000, okay.

MS. NEWMAN: Okay.

MR. ANTHONY: We would have booked our share of the investment income, and in this case we're using CGU's numbers because they're here. They would have booked their share of investment income of $383,000.

MS. NEWMAN: And does that come from FA?

MR. ANTHONY: Yes, okay, so the end result is they would have booked the loss in their own books of $1,051,000.

MS. NEWMAN: How does that tie back to the assessment that might be paid out to the member companies?

MR. ANTHONY: If you put this through all years that would generally over time tie into the assessment. The numbers would marry together.

MS. NEWMAN: Okay.

MR. ANTHONY: Because you book, you book the results in the year they occur, and then the cash is distributed or called back at a later date, but if you were to wind, I mean if you were to wind the whole thing up tomorrow, say everything ceased, those numbers would mesh together at the end of the day.

MS. NEWMAN: Can I ask you to have a look at DJS-2? The Clerk will come over and help you find that and ...

MR. ANTHONY: Okay, I have that.

MS. NEWMAN: Okay, so DJS-2 is a financial document setting out the written premiums of FA, the excess to (inaudible), and the assessments?

MR. ANTHONY: Uh hum.

MS. NEWMAN: I wonder if you could just clarify if this $1,051,000 that we were just looking at ...

MR. ANTHONY: Uh hum.

MS. NEWMAN: Which column on that chart, does it, on that financial statement does it relate to?

MR. ANTHONY: You would have excess deficiency revenues over expenses.

MS. NEWMAN: Okay, so for 2001 the total excess deficiency was $8,491,000.

MR. ANTHONY: That's correct.

MS. NEWMAN: And based upon the chart provided by Jennifer Power then, it would seem that CGU would have been, if we can say responsible, or would have been assigned the loss of $1,051,000 of that $8,491,000, is that ...

MR. ANTHONY: I believe you're right on the money there.

MS. NEWMAN: Okay, fair enough, so that doesn't reflect the assessment by FA to its members for the deficit.

MR. ANTHONY: Yes.

MS. NEWMAN: That's done separately.

MR. ANTHONY: That's, like I said, that's accounted on an annual basis and then the funds are distributed because they're not distributed at the year end, there are timing differences, and like I said, the only, you know, the simplest way to look at this would be in a wind up situation where everything ceased tomorrow, and ultimately they would merge together.

MS. NEWMAN: Right, okay, so I'm back to the $1,051,000, and that's a loss in this particular year for CGU.

MR. ANTHONY: Correct.

MS. NEWMAN: How does CGU or any other insurance company deal with that? What happens with it from there?

MR. ANTHONY: You basically suck it up and go on to the next year. I mean you don't recover, I mean you have a loss in a year, it's lost, it's gone, it's history, and you move to the next year, and you hope that you've got your rates in line for the following year. I guess it's been talked about here. You do rate setting on a forward thinking basis. You don't look at, you don't try to recover losses of the past, so you move on, and you would hope that the companies that you're picking up their share of, i.e., Facility, would have done the same thing and got their rates up to where they should be and that that won't reoccur, because if it doesn't happen, what happens is your own clients, the general market subsidizes the loss.

MS. NEWMAN: That's what I want to get to. How is it that the general market would subsidize FA? Do the insurers when they're applying for rates, include this loss in the application for rates for the ...

MR. ANTHONY: Ultimately they would because what you're doing when you're setting rates, to break it down to sort of the simplest way I can think of it, is that every company has an expected ROE, and I think everyone has accepted that insurers have a right to earn a profit. Most insurers today are part of large national, multinational corporations, publicly traded on the various stock markets, and there's a fair pressure to earn adequate ROE. If you don't earn adequate ROE, investors would not consider you a suitable investment and to raise capital would be difficult, so you would start with your ROE number. Then you would look at your expense numbers and then you would look at the amount you would need for premium to get you to basically 100 percent. I mean at the end of the day it's not rocket science. We can make it out like that sometimes, but it's pretty simple, and if you have losses which basically add to your expense factor, it means you have to pick up more premium on the other side and you have to have a higher premium than you would have another way, so in effect, it becomes subsidized.

If I can go back in history, and I touched on it yesterday, back before Facility Association, it was a risk sharing pool. Every company wrote its own business based on its own premiums, okay, and every company had a right to seed *(phonetic)* into the pool. It's not really any different that the risk sharing pool that's being used in Ontario now for the risks that don't fall into Facility Association but insurance companies don't want to write, and those risk went in, and then went into the pool. The big difference was they were written at individual company premiums so everything was subsidized, everything ... because there wasn't a specific rate, and this is, in effect, what you'd be doing here. If Facility rates in their own right aren't adequate to cover the losses of Facility through the mechanism of picking up this loss, it gets transferred down to the general market, and then it becomes subsidized.

MS. NEWMAN: I want to get a bit more detail as to how it gets transferred down, because we've already spoken about how rates are prospective and when a company applies to the Board to have its rate approved ...

MR. ANTHONY: It becomes part of it ... it's really, it gets converted into part of your expense factor. Like when we're doing a rate filing, we will show an amount for ROE. We calculate, I mean very basically, whatever a company requires for ROE, there's a number for that, and then we have the ...

MS. NEWMAN: The equivalent of a profit margin?

MR. ANTHONY: Yes.

MS. NEWMAN: And that's established by the Board?

MR. ANTHONY: That's established by the Board of each individual company, or the shareholders. In a lot of cases they're publicly traded companies, so ultimately it's the investment market that sort of dictates the climate, and those percentages really vary. I mean that's where all the competition comes in in this business. Some companies would be satisfied with an ROE of six or seven percent. A lot of companies today are not satisfied with ROEs less than 10 to 15 percent. The industry right now, or last year, or the year before, had an ROE of two to three percent, so hence the dilemma, but ... so you take, anyway, you take the ROE, you take your expenses, and like I said, this loss, you know, if this loss is not corrected, it's part of the expense of the company, so it gets picked up in the expense component and then you have to set a rate to get you to, basically to cover everything off, and so if that's a negative number, it increases your expense ratio, in effect, and makes you have to take more rate that you would have had to if that number was not there. And the reverse would be true ... if the reverse, the exact reverse would be true if there was a profit

MS. NEWMAN: So in the last few years we've seen through the evidence, and I think you'll probably accept that for the years '96, it appears, to 2000, there was no loss, there was, in fact, surpluses or excesses.

MR. ANTHONY: Uh hum.

MS. NEWMAN: And there was assessments out to members, so would those have reduced the ROE then of the companies?

MR. ANTHONY: It would have assisted in making ROE, so it would have, it would be the reverse, as I said, the reverse of when there's a loss, so it ebbs and flows, it goes two ways. I guess what we need to bear in mind here is that over the span of the life of Facility, I think they're off target 2 1/2 percent from what I've heard in the various testimony. If over 15 years I was only off 2 1/2 percent overall on our regular book of business, I'd be a pretty happy camper.

MS. NEWMAN: Now, you had said that it goes as an expense, are you using that as a financial term, that it is an actual expense booked into the ... because I had understood from what Jennifer ...

MR. ANTHONY: No, that's my ... I'm not an accountant, that's my layman's terminology, but it's, well it is, it is an expense to the member company, I mean it's ...

MS. NEWMAN: But it's not booked into the expenses which are set out in a rate application.

MR. ANTHONY: Well, it's booked into the underwriting result because you're taking, you know, when ... if you look at this here, I mean if you were to look at their statements, if Facility did not exist, Facility Association did not exist, they would have shown an income before taxes of $499,000, okay.

MS. NEWMAN: Uh hum.

MR. ANTHONY: Because Facility exists, and because they had to pick up their share, they actually had to book a loss of $552,000.

MS. NEWMAN: Okay, so they had a loss for 2001 of $552,000.

MR. ANTHONY: Correct, including Facility Association, their share of Facility Association.

MS. NEWMAN: Their total loss.

MR. ANTHONY: Uh hum.

MS. NEWMAN: So they come back to the Board in 2002 for a rate application.

MR. ANTHONY: Uh hum.

MS. NEWMAN: And they're seeking rates for the voluntary market.

MR. ANTHONY: Uh hum.

MS. NEWMAN: Based upon an actuarial estimation of what the loss costs are going to be.

MR. ANTHONY: Right.

MS. NEWMAN: Completely irrelevant what their loss was, their profit or loss was last year.

MR. ANTHONY: Right.

MS. NEWMAN: Okay, so how do we factor this $552,000 loss into that rate application?

MR. ANTHONY: Because in their rates they also have to include factors for expense ratio, taxes, and, but I'm suggesting to you, that becomes a product contained within the ... it's an underwriting cost of doing business.

MS. NEWMAN: So you're saying this $552,000 is brought forward into the expenses in the rate application?

MR. ANTHONY: That's how I look at it. I mean it's worked through, like I said, if this company, if Facility did not exist, this company would be able to meet its ROE easier because it would have had a profit of $499,000. Because Facility exists it has an expense.

MS. NEWMAN: But again, that expense ... you're using it as a layman's term, not a financial term where it's the actual expense booked into the ...

MR. ANTHONY: Well, in effect it's a financial term, it's included in their financial records.

MS. NEWMAN: So is it your understanding then that the surpluses that have been experienced within FA over the last number of years have been reflected in the voluntary market rates?

MR. ANTHONY: It works, as I said in this example, in the negative it works through, and in the other events in the positive.

MS. NEWMAN: So the voluntary market has been benefiting the last number of years by this subsidization?

MR. ANTHONY: Well, it's benefited over the term of Facility by 2 1/2 percent, which in the volume of numbers that we're talking about it's probably ... you know, I guess, it's subject to interpretation and one of the reasons why we're here, and people have made a judgement call of whether that's acceptable or not. I personally would suggest it is but that's only my opinion.

(10:00 a.m.)

MS. NEWMAN: Are there insureds in FA because the rates are cheaper in FA than they are for certain coverages in the regular market, in the voluntary market?

MR. ANTHONY: Absolutely.

MS. NEWMAN: Okay, can you speak to the extent of that occurrence?

MR. ANTHONY: No, I can't, unfortunately, if we had our binder control registry, we'd have the number.

MS. NEWMAN: Do you see it as a big number or a small number?

MR. ANTHONY: Well, it's not, it's not an overly large number, I would suggest to you, because most, most business, I mean the majority of auto business in Newfoundland, and in fact in Atlantic Canada for that matter, is basic classes 01, 02, most businesses, the maximum driving record that's available, so and I would suggest to you that works out as about, I don't know, 82, 83 percent is rated that way. I mean that's ...

MS. NEWMAN: So these are the good drivers, these are the ...

MR. ANTHONY: No, well these, no, well these are all your drivers over 25, all your drivers who are claims free, and the vast, vast majority of drivers never have a claim, and I would suggest the numbers are in the range of 82, 83 percent for those groupings, so what you're left with, with all the other classes that we have, are fairly small percentages, so just taking that as a base, the number of under age rated on their own would be not an overly large number.

MS. NEWMAN: And we've heard some testimony here about the tightening of the insurance market.

MR. ANTHONY: Uh hum.

MS. NEWMAN: Would you agree that it is becoming tight and can you explain how that's being seen?

MR. ANTHONY: Absolutely, I agree with that 100 percent.

MS. NEWMAN: Okay.

MR. ANTHONY: And what happens, when you're in a year or series of years where the profits are dwindling or unacceptable, or where there's significant losses, it becomes a matter of getting the rates adequate to meet the risk and, of course, that doesn't happen overnight ... go by the length of the hearing here and the process, and it's certainly, I think, required from time to time so I'm not complaining, but that takes time, and in the intervening period until you can get your affairs lined up, i.e., get your adequate rate, what happens generally is you look after the business that you have ... as I said yesterday, we struggled very hard to get clients and then we struggled very hard to retain clients, that's our main ambition, so what you generally do is you tighten up on new business you wish to write because if you're having a loss on your existing book which you want to control, just common sense would suggest why would you want to write business you know you're going to lose money on, so you tend to sort of turn the tap off until you get to where you're comfortable with the rate, and then you turn the tap back on and you move along, so there are periods when things can get very tight. There's no question the market in Newfoundland the last couple of years has been very tight. 2001 was probably the worst underwriting year most companies here have ever had, significant losses and things got pretty tight, and I guess as the result of that, rates in the general market, I would suggest, have increased 30, 40 percent over the past 24 months to the general public, so you know, it's sort of (inaudible), the rate increase that's being suggested here is really not out of line with what the general consumer, what you'd call your best driver has been facing. Why that's happened is simply the cost, loss costs have outstripped the ability to get premium. There was quite a public debate last year as to the reasons or the root cause of that. I guess the Minister for, who is responsible, I guess, for whatever reason, who seems to move with public opinion, feels that the public does not want to change the system we have to reduce those costs and that's perfectly acceptable. If that's what the consuming public wishes to have, it's perfectly fine with me, but there is a cost for that, and that was a lot of debate, there was a lot, a part of the debate that was kind of hidden with all the sort of rhetoric, I guess it was that, you know, we can have any system we want, any system the government wants to out there, or the Consumer Advocate wants, or the PUB, it's just there's different costs for different things, and because the system, it was suggested that it's not in the public's acceptance to change, the costs have to be adjusted to reflect the costs of that system and that's what's occurred and that's what's occurring and a lot of that is that's what's occurring here. There's no more to it than that.

MS. NEWMAN: So it's not only cost that gets adjusted, it's also the underwriting practices that get adjusted as well?

MR. ANTHONY: They're all tied together. Like I said, when ... I mean, you know, if you're selling widgets, okay, and you can't sell your widgets for a profit or in the worst of times, when you're just trying to protect your market at zero, well what you generally do is you stop selling widgets for a while until the prices get adjusted and that's what happens with underwriting. You can't ... like I said, it would not be common sense to think that you would continue selling something at a known loss, but in the intervening period, you try very hard to protect the insureds you have and try to get over, I guess, get over the hump is the expression I'd use and get to where you can move along, which is why insurance is a cyclical business. I mean it ebbs and flows, it gets, it can get ferociously, ferociously competitive.

MS. NEWMAN: So does that mean that you would be declining risks now that would have been accepted three years ago?

MR. ANTHONY: As new business, yes.

MS. NEWMAN: So that means these risks, if the other insurance companies are doing the same thing, are going to FA.

MR. ANTHONY: Yes.

MS. NEWMAN: Does that mean then that FA is going to be populated with drivers that are relatively less risky because three years ago they would have been in the voluntary market but now they're going to FA?

MR. ANTHONY: Well, we've seen, we've seen a fair increase in rate in the general market so if the results follow what action we've taken and 2002 was a better year than 2001, at least we've returned, I think the industry has returned to some small level of profitability, so we're not, we're not deep in the ditches type thing, but it's not to an acceptable level of profitability, at least in my view, but if we see the trend continue, things ... generally what happens is things will ease off, competition increases and like I said, we'll get to where it can become pretty ferocious at times actually.

MS. NEWMAN: But those risks that are now going to FA that weren't in the past will be, is it fair to say that they will be relatively less risky than the other risks that had always been placed in FA, is that fair statement?

MR. ANTHONY: That's fair and you've touched on a key point and that's where your grey market comes in. The problem we have is we're like in a black and white world right now. You're regular market or you're Facility and there's no room for the middle ground because there's not enough of a spread of rate for these players to fit in. I mean I don't, I don't mind saying, I've talked to, as part of, for the company I'm with, we've looked at a strategy that if it was appealing enough, because we're part of a multi-national, international group, and we've had brief discussions about the possibility of bringing in one of the companies that is not here, filing rates for that company and offering that product to people we deal with now as another route to go, rather than you're here or you're here. There's a progress back, you know, there's a progression up as well as there can be a progression back the other way. The hope is you get everyone in your regular book eventually, because they stick. If they're not in your regular book, and certainly if they're in Facility, they're here today and within two years I would suggest they're gone, so there's a very ... you never make money on it. I mean you just can't. It's impossible.

MS. NEWMAN: So there must be some thought that there's money to be made in this middle ground, this grey market zone.

MR. ANTHONY: If the rate, it's like anything, the expression is there's a rate for everything, so if you can get an adequate rate for the risk that you're taking, you can make money at it, but you have to be able to get the required rate and, you know, if the rate, for instance, today I would suggest that if nothing changed, the rate you would need as a grey market insurer would be higher than the Facility rate as it exists. Well then you're not going to get any ... which is exactly what's happened. I mean the markets were here and then they became uncompetitive. I mean they have to earn a profit, so there's no enough of a spread, and they also have the dilemma where they're competing with an entity which doesn't have to have a profit, and which I suggest doesn't have a profit and that makes it doubly tough, so it's an interesting situation that we have.

MS. NEWMAN: Is there some reason why there would have to be a separate company offering this other type of insurance? Couldn't the rates which the insurance company, the existing insurance company is offering be adjusted by a differential or surcharges or other measures to bring it up to the rate level necessary to offer appropriate insurance to these people?

MR. ANTHONY: I gave a bit of thought to this this morning, I think it was about 5:30 this morning, it's a warped world we live in but what ... yes, you could. If we were allowed to have two-tiered rates, we could, we could do that. I don't believe that would be the way I would want to go. I would prefer to have it identified on its own, because what will happen, that will get merged in with all the other business and it becomes hard to isolate it if you start having problems, and how to rate, and is the problem exactly in this book or is it part of the other book, so I'd strongly suggest that the most adequate way of doing it would be having a separate identifiable entity write that business. You may used shared services with, and I'm sure that's what happens, but then at least the accounting for that operation is totally separate from the general book, it's totally separate from Facility, so you can look at it in isolation and determine whether you're doing the right thing, are you a bit high, a bit low, and I just, that was kind of the conclusion I came to early this morning. Anyway, that would be the only way that I would want to put a business case forward to my Board at least to consider it.

MS. NEWMAN: Is that in part because the loss experience would then be separated out, is that what you're getting at?

MR. ANTHONY: Yes, everything would be separate. The premiums would be separate, your expenses would be separate, the losses would be separate, so you can see, you can see the picture. It's not unlike Facility, and we see it's a cycle that it comes through where you can identify Facility, I guess, good, bad, or indifferent, at least you know exactly what it's doing and a grey market insurer, I would suggest, would very much want to know what you're doing, even more so than a regular market because the book of business you're dealing with would be more volatile. I mean your general book of business is generally very, well almost like on a straight line. You would expect it to perform without, you know, without bumps, to be fairly level, and your clientele would be fairly level. When you move to a grey market, you've moved up to some degree beyond that, so it becomes a little bit more volatile, so you would, you know, there would be more inherent problems, I would suggest, and again, if you did that, then if you moved to Facility Association where you would be dealing with the, sort of the toughest part of the business, it would be even more volatile, which can give you swings in results, and I think as we've seen with Facility ... because when you get to small books of business and volatile books, it swings wildly. That's part of the nature of the business. It's kind of like the stock market, I mean you don't know from one day to the next sometimes which way it's going to go but it eventually balances itself out.

(10:15 a.m.)

MS. NEWMAN: Okay, I just have one last thing that I'll ask you a couple of questions about and that's the CLEAR system.

MR. ANTHONY: Uh hum.

MS. NEWMAN: Do you know when that was implemented in the voluntary market?

MR. ANTHONY: It's implemented by a fair number of national insurers. It's slowly getting adopted by all. I mean I don't mind saying, we haven't, as a company haven't adopted CLEAR yet, although we have changed our systems as of last year to accommodate CLEAR. It was just my own view, with all the other issues in the industry and getting our affairs in shape, that I had enough to tackle without a dislocation problem within our regular book of business, and it's a little different in the general market than Facility because a lot of our clients would have full coverage, so they would certainly be impacted if we switched to CLEAR. With Facility, the majority ...

MS. NEWMAN: That's because CLEAR only applies to the own damages, the physical damages coverages.

MR. ANTHONY: Physical damage, collision and comprehensive and specified perils. With Facility the majority of the business, it's liability only and CLEAR would have no impact so the ultimate result of dislocation would be, I would think would be tolerable. And what CLEAR, what CLEAR does, Dave Simpson touched on it to some degree, it identifies high risk vehicles, but it also identifies vehicles that are expensive to repair, and I think that's more of a complete answer in that some vehicles are subjected to high theft rates, and in Newfoundland it's not a big deal because like where do you go when you steal a car, so we're not, it's one of these things fortunately we don't have, but you know, some vehicles are subjected to high theft rates, so you'd see a higher rating group for comprehensive and specified perils than you would collision, for argument's sake ... some other vehicles that no one wants to steal can be very expensive to repair, and in those cases you would see a higher rate group for collision than you would for specified perils or comprehensive, and that's really what CLEAR does. It's more of a finite way of assigning risk to the vehicle, so it was a very fair, it's much more fair, I believe than the system we have now, but there is, if you're in a market that, where you write a lot of physical damage and a lot, and in a general insurance market we do, and that's the business we want, that's our sort of first line of business is full coverage business. You get a higher premium for policies, it's good business to have ... then you've got more of an issue and in Facility's case where they don't attract that type of business generally, much less so, so like I said, it's, I believe it's a very fair system because it basis the premium on the particular vehicle rather than just on the price of the vehicle which doesn't relate necessarily to the cost of repairs.

MS. NEWMAN: So one of the reasons that FA had suggested that CLEAR should be implemented now is to be more consistent with the regular market, the voluntary market, but what you're saying is that CLEAR has not been adopted by all of the regular market or the voluntary market?

MR. ANTHONY: It's been adopted by the majority.

MS. NEWMAN: Okay.

MR. ANTHONY: Almost all, I suspect, all the national writers, which are the vast majority, and there's only a few, I guess a few of us left that haven't moved, and we will certainly be moving.

MS. NEWMAN: There was some talk about delaying the implementation of CLEAR or capping the implementation of CLEAR, would you have any comments on that?

MR. ANTHONY: No, I think it would probably be a good time to do it. Again, I don't think it would have a significant effect on the Facility book because of the type of book that it is. Capping is always problematic because you always, at some point you've got to fix it, because you've compromised, and you know, like I said, the majority of the market is moved to CLEAR. I think it's ... you know, if you're looking at fairness and what's adequate and what reflects risk, I mean it's a very good tool, I would suggest, to follow, so on that basis I would suggest that it be considered.

MS. NEWMAN: I believe it was Dave Simpson, and perhaps even Brian Pelly had suggested that capping would pose major problems, logistical difficulties. Do you agree with that?

MR. ANTHONY: Well, from a systems point of view, it would be horrific because usually now what we do, we load rates into our systems, and you load the driving record, or the rate class, the rate group in, which is what CLEAR tells you, is what rate group the vehicle is for collision or what rate group it is, and it becomes a very simple table, and then the rates marry up exactly what's in the rate manual, but then if you put capping on something then you've added another mathematical factor to the equation which is not included in our systems, and we'd have to, what would happen is we would have to revise ... right now all the systems, you handle the Facility ... as a servicing carrier we can use the same systems because they're the same scenario, okay, and we don't have capping in our own book, for instance. We would have to, as a project, have systems developed and programs changed to accommodate that and that would be, and usually with systems stuff, it's pretty significant cost, which on a project like this, and it would probably be passed back as a special request of Facility Association, which then would get passed to the member companies on a sharing basis at the end of the day, and it would increase costs.

MS. NEWMAN: Those are all my questions for this witness, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, thank you, Ms. Newman. I think what we'll do now is since there is only five minutes before the break is we'll have our break and come back in 15 minutes, and commence with Mr. Whalen or Mr. Stamp, thank you.

(break)

(10:45 a.m.)

MR. SAUNDERS, PRESIDING, CHAIRMAN: You've completed your direct ...

MS. NEWMAN: Yes, I am.

MR. SAUNDERS, PRESIDING, CHAIRMAN: ... examination of Mr. Anthony? Mr. Stamp, are you ready to proceed?

MR. STAMP, Q.C.: Yes, I am. Thank you, Mr. Chairman. I just was going to refer to the same document that Mr. Anthony referred to himself, that is the Jennifer Power document. Has that been labelled, Mr. Chairman?

MS. NEWMAN: No, it hasn't.

MR. SAUNDERS, PRESIDING, CHAIRMAN: I was looking for a label on that but I haven't found one.

MR. STAMP, Q.C.: Could we call it JP No. 1 or something?

MR. SAUNDERS, PRESIDING, CHAIRMAN: We have a JP-1.

MR. STAMP, Q.C.: Oh, do we?

MR. SAUNDERS, PRESIDING, CHAIRMAN: The JP-1 was ... look, I have it here. I know I had it there a minute ago.

MR. WHALEN, Q.C.: (inaudible)

MR. STAMP, Q.C.: Oh, yes, right.

MR. SAUNDERS, PRESIDING, CHAIRMAN: Yeah, that's it.

MR. STAMP, Q.C.: Could we call it 2, then?

MS. NEWMAN: JP No. 2.

MR. SAUNDERS, PRESIDING, CHAIRMAN: JP-2.

EXHIBIT JP NO. 2 ENTERED

MR. SAUNDERS, PRESIDING, CHAIRMAN: Thank you for bringing that to our attention, Mr. Stamp.

MR. STAMP, Q.C.: Mr. Chairman, if I could just turn to the same page that Mr. Anthony referred to, I'd just like to ask him a couple of questions about it. Mr. Anthony, I want to just focus for a moment, if I can, I don't have very many questions, on this issue of, you mentioned a two and a half percent and so on and this particular result for this particular year, and I understand you to say that this was rather a bad year generally in the market, but what I want to sort of make sure I understand clearly is the impact of Facility operations on, well, let's just assume we're talking about CGU for this purpose, and that's good enough. Facility Association activity, I guess, that gets downloaded to CGU in this case, is in the middle column, and so the loss before taxes that's shown on the bottom line area is a million and, I guess fifty-one thousand dollars that they must record in their books or it's somehow reflected in their books because of the downloading of the premium underwriting loss and the investment income, is that right?

MR. ANTHONY: Correct.

MR. STAMP, Q.C.: Now you had talked about a bit already this business of the premium tax and health levies and they being paid directly by CGU and by ICON and other insurers as a direct sort of levy themselves or charge against their own, on their own account. So does the fact that CGU is paying premium tax and health levy, reflected in this middle column?

MR. ANTHONY: No.

MR. STAMP, Q.C.: So that's a further hit, if you like, for CGU in this case, that they've got to deal with in this particular year.

MR. ANTHONY: Yes, it would be.

MR. STAMP, Q.C.: So on top of the bad result that we see in the middle column, if you would just turn back to written premium, and I understand it's somehow related ... well, I guess the premium tax is based on written premium, so somehow in there, four percent or something that is, got to be paid to the government by CGU to pay that particular tax.

MR. ANTHONY: Correct.

MR. STAMP, Q.C.: And there's somehow health levy billed directly to CGU, as I understand you to say, which they would also have to pay for this particular business.

MR. ANTHONY: Correct, based on their share of the vehicle count for Newfoundland, so there'd be an additional charge.

MR. STAMP, Q.C.: So here you are ... let's just pretend, Mr. Anthony, for a moment if we could, that this is the first year of operation of Facility, okay. So here you have a bad year and a bad result and Facility Association doesn't have resources. I mean, presumably they've got to make an assessment now against member companies in some way, plus you don't get your four percent and your health levy money, your 5 1/2 percent or whatever that is, to compensate you for those direct expenses. Now, you may get that in two or three years time, I would hope you would, but presumably there would be a time value concern, would there not?

MR. ANTHONY: Correct. There would be a lost opportunity on those funds for whatever the period is that you're without ... and considering basically you can write the premium to assets of, in a ratio of three to one, you know, take it and basically multiply it by three.

MR. STAMP, Q.C.: Uh hum. So then if I just look back at DJS No. 2, which you had looked at as well during your direct evidence, there seems for four years, you know, first running, the activities of Facility Association did, you know, resulted in, I don't know, it's operations, or noted there as being, you know, deficiencies or excess of revenues over expenses in those several years, but nothing done for the member companies in those initial years.

MR. ANTHONY: Correct.

MR. STAMP, Q.C.: So you might assume from this, I'm guessing, that for five years or into the fifth year before any of the member companies got any money out of it at all to pay for these four percent, one and a half percent other charges.

MR. ANTHONY: I agree with that.

MR. STAMP, Q.C.: And similarly in the latest result, if you look at it that way, there is not only the actual operating result of Facility, but the part of the expense that you pay directly not even reflected in Facility's operations, you have to pay that, the health levy and the premium tax, is that right?

MR. ANTHONY: I agree. They're built into our own result.

MR. STAMP, Q.C.: One other point I wanted to make with you was that in that latest, I think it was filed this morning and I think it's identified now as Consent No. 4, I don't know if you have it there but it's the, it's a email message from Mr. Kehoe to the Board and I guess copied to parties and so on, there's a reference here, I guess, to Mr. LeGrow has apparently gone back, so I read this, perhaps you can tell us, but it looks like Mr. LeGrow has gone back to Dominion of Canada Underwriters, you know, for a further request that they look at this and also it looks like he's gone to CGU. Is that what you see going on there?

MR. ANTHONY: That's how I read this, that he's canvassed his other companies in his, I guess, in his stable of companies and they've all refused for whatever reason they have to not accept this risk.

MR. STAMP, Q.C.: So when I saw this yesterday, not this but the other, the paper that Mr. Kehoe presented here, had the benefit of hearing you give your evidence this morning on this, but my initial reaction yesterday was Dominion of Canada didn't look like they were very happy with the fact that this was an undisclosed driver to them, an underaged driver at that, that hadn't been reported to them, and it looks like they said we're not prepared to deal with this risk anymore and that perhaps it's particularly when you talk about the type market that you're talking about. Can you give us some comment on that?

MR. ANTHONY: Like I said, without having the benefit of the full documentation, I'll comment on the same premises as I did earlier, and in this case, you know, looking at the policy and the endorsements and you get to where kind of it looks like a duck and it quacks like a duck, it's probably a duck. What it looks like is that you had a non-disclosed underaged driver. If that driver had been identified in the beginning, the charge for that driver would have been on the policy from the very beginning, and it was not, it was certainly not there. Looking at the policy as issued for the full year, that I highlighted this morning, is rated as 01. There's no question in my mind there's no reference to an underaged driver, and I realize Mr. Kehoe in his testimony yesterday said they would have it in their file. Now, that could mean they could have it in their files for other drivers, other policies, I don't know, but when that, what you have to look at is on that application was that driver there, and it would appear that it was not or there would have been a charge assigned for that driver from the very beginning, and if that is the case, and I can only (inaudible) based on what it would appear without seeing the whole file, that the reason that that risk is being declined is because there was an unlisted driver that subsequently had an accident, and that's when it became apparent that that person existed on that policy. In addition to that you've got a person with a vehicle who doesn't have a licence, has no intention of getting a licence. He stated his wife was the driver of that vehicle, yet he also stated she has her own car, so I would assume that, you know, if she's driving, sounds like they help her out, if, you know, she's coming to pick her up to take her out somewhere, I kind of doubt whether she would drive her own vehicle, it sounds like she lives a distance away, drive her own vehicle there, then hop out and get into a cold vehicle with an elderly person and then her chances are she's probably driving the vehicle that she came with, and, you know, that would on the surface ... like I said, there's another, there's a flip side to this story. What he may be saying may be quite correct, I wouldn't dare say that it's not, but when we're looking at this, I mean, and just in a very general term, when an underwriter is looking at a policy, it tells you a story. It tells you what's been happening. That's why having the information from prior carriers, from previous years insurance, it all tells you a story and you have to make your best judgement, and like I said, if it looks like a duck and quacks like a duck, chances are that's not guarantee ... it could be a decoy, I mean, you know, but you have to base it on the best information that you have and it's not always right. I wouldn't dare suggest that, you know, strike it on 100 percent every time, but sometimes it's probabilities and that's what we have to go on, so.

MR. STAMP, Q.C.: Mr. Anthony, just one last question for you. There's been discussion about this, the premium tax of course at 4 percent and then there's a, not a HST or a GST, but it sounds like it's a special named insurance premium sales tax, which is 15 percent. I guess the 15 percent goes on to the rate that's got the 4 percent built into it, so it's something more than 19 percent. Is this an unusual feature to have this occur or, you know, what can you tell us about that or what ...

MR. ANTHONY: I mean, you have an effective tax rate of nearly 20 percent, which I think there's testimony been given it's probably the highest, I'm sure it's the highest in the country, and what's particularly frustrating to me is that most consumers assume when we're talking about transparency and making everything obvious and identifying who the carrier is and if it's Facility, if it's not, we have a situation here where that tax appears to be HST and the consuming public has accepted it as HST, and I suspect there are people out there who, when they're doing their tax credits for HST rebate, probably misguided, put it in as an HST credit. I don't know for sure but I wouldn't be surprised at all. What's particularly frustrating on this is that in this, I mean, there's going to be a fair tax grab for the government if this rate is ultimately approved. I mean, I don't hear anyone here from government saying, well, we'll do this to do this with roads or education or consumer ... in addition to that, when the HST came in, when the blended tax came in at 15 percent, the government, I don't have the exact timing, but it's almost at the same time. The government increased provincial tax rate from 12 percent to 15 percent for no reason other than to match the HST, and it's, and so they had a grab back then of 3 percent to the insuring public, and, as I said, as far as I can see, most of the insuring public look at that as HST. It's very coincidental that they would change the rate from 12 to 15. This is purely personal opinion, but, I mean, again it has a look and feel to it that, you know, they, and I don't even know who the government was at the time, what stripe they were, I don't, not of particular importance to me.

MR. STAMP, Q.C.: Have any representations been made to government about reducing the rate, do you know?

MR. ANTHONY: Many by the industry, many by the IBC. It's come up here before. All we get, the answer we get back is that, you know, the revenue has to come from somewhere and we can't afford to pass it back. You know, we get into situations here, we've had discussions on information, what's available, what Motor Registration does, and I know even in the Superintendent's Department, I mean, they're tight for staff up there, but, as a result of that, there's materials, I think, that are lacking, there's information that's lacking from those areas. I think they should be much more proactive and I think the funds are already there, have been collected from the insuring public, from the insurance company to fund that but unfortunately it goes into general revenue and gets buried away.

MR. STAMP, Q.C.: Okay, thank you, Mr. Anthony. Mr. Chairman, that's all the questions that we have, thank you.

MR. SAUNDERS, PRESIDING, CHAIRMAN: Okay, thank you, Mr. Stamp. Mr. O'Flaherty, Mr. Goodland?

MR. O'FLAHERTY: Mr. Goodland will be cross-examining.

MR. GOODLAND: Thank you, Mr. Chairman. I'm just going to pick up, Mr. Anthony, on a couple of last, a couple of the most recent points Mr. Stamp brought you to. First of all on the tax issue which you, obviously you're complaining or criticizing the government about the tax rate and the manner in which it's taxed, is that correct?

MR. ANTHONY: Well, I believe the consuming public should be aware of what the tax is and where it's been increased.

MR. GOODLAND: Is it fair to say that that tax rate, whatever it is, whether it's 5 percent or 25 percent, has no impact on the premium that you, that the insurance industry will charge?

MR. ANTHONY: Not what we charge but certainly what the consuming public will pay.

MR. GOODLAND: Yes. So it doesn't affect your bottom line.

MR. ANTHONY: Not at all.

MR. GOODLAND: And it's not relevant then to the rate increase for this particular filing.

MR. ANTHONY: It's a matter of ... I guess as representing the consumer, I believe the consumer has a right to know what the ultimate cost is and it certainly affects the ultimate cost, so if there's, you know, if there's an increase in premium, there's an increase in tax.

MR. GOODLAND: But it doesn't affect the cost of the product from your end of it.

MR. ANTHONY: Not from my end, no, but for the consumer it certainly does.

MR. GOODLAND: Okay. And it's not factored into the actuarial evidence for this particular filing.

MR. ANTHONY: No.

(11:00 a.m.)

MR. GOODLAND: So there's no reason the Board should consider the level of tax when it's considering the appropriate rate increase for this particular filing?

MR. ANTHONY: I'd agree with that.

MR. GOODLAND: Thank you. One of the other points Mr. Stamp brought you to, his first issue actually, regarding the, said it was a hypothetical question about the infancy or the start up time of Facility Association. Mr. Whalen also alluded to it with Mr. Morris in his examination of him. And the suggestion was that the member insurance companies of FA would be carrying a certain burden, financial burden, in the infancy of the operation, is that correct?

MR. ANTHONY: That would be ... that's fair to say.

MR. GOODLAND: When the assessments ... if we look at DJS No. 2, for example ... do you have that document?

MR. ANTHONY: Yes, I'm looking right at it.

MR. GOODLAND: There were four years when there were no assessments, nor distributions to members.

MR. ANTHONY: Correct.

MR. GOODLAND: Okay. And you agreed in fact that the member companies would ... were there three particular costs or charges that the member companies, it was suggested the member companies would carry during the start up period? My notes indicate there would have been the premium tax, the health care levy and was there one other or am I ...

MR. ANTHONY: No, they're the two ... you pick up the surplus or deficit, should there be one, on the sharing and the main cost would be the health levy and 4 percent premium tax, and indirectly then there's loss of use of capital.

MR. GOODLAND: Okay. Now, the premium tax today is at 4 percent, is that correct?

MR. ANTHONY: Correct.

MR. GOODLAND: Do you know during the infancy of FA, which would be in 1986, and we'll even look at the period that's identified here, let's say 1986 to '89, or, yes, '89, as the start up period, do you know what the premium tax rate was during that period?

MR. ANTHONY: I couldn't say with ... I don't believe it changed for ... it may have ... I would think it was still 4 percent but I couldn't say with certainty.

MR. GOODLAND: So if I suggested to you it was 3 percent, for instance ...

MR. ANTHONY: I wouldn't argue with you.

MR. GOODLAND: You wouldn't be able to disagree with that.

MR. ANTHONY: No, I couldn't say one way or the other, to be frank.

MR. GOODLAND: Now, I started practicing law in the, in 1990, and for the first four or five years when I practiced, if ever a personal injury came my way, part of the negotiated settlement or a judgement from the court would include an MCP account. Do you recall that?

MR. ANTHONY: Correct, yes.

MR. GOODLAND: That MCP account charge, that was on each individual claim for damages, personal injury damages, included in that claim as a solicitor, you would be obliged to retrieve the amount of the MCP account on behalf of government, the amount that government paid for the health care costs of that injured person.

MR. ANTHONY: You are correct.

MR. GOODLAND: My understanding is, based on my own personal practice and certainly knowing something about the legislative changes that took place in 1994, that it was only in around December of 1994, I believe, that the, that system changed and was eradicated or wiped out and it was moved to a health care levy system.

MR. ANTHONY: You are probably correct. I may stand corrected. If Commissioner, Chair would like, I can confirm that exact time when it did change, but it certainly, you sound about right. The date, I don't know, it could have been ...

MR. GOODLAND: You would acknowledge the date would have been sometime in the 1990s, around the mid 1990s.

MR. ANTHONY: I'm not sure of the exact date but there was a change and I ...

MR. GOODLAND: You can find that out for the Board?

MR. ANTHONY: I can certainly, can find out when we went to the health levy system and provide that.

MR. GOODLAND: And maybe you can provide that information to the Board and the ...

MR. ANTHONY: I'll get something to the Board before today is over.

MR. GOODLAND: Okay. So assuming that I am accurate that it was in around 1994 that, in fact, a health care levy was implemented, during the first four years of operation of Facility Association in this province there was no health care levy passed onto the member companies, correct?

MR. ANTHONY: If your dates are correct ...

MR. GOODLAND: Yes.

MR. ANTHONY: ... I would agree, I'd have to agree with that statement.

MR. GOODLAND: Correct. So you wouldn't have carried ...

MR. ANTHONY: And I ...

MR. GOODLAND: So these members, the members of FA would not have had to carry the burden of a health care levy.

MR. ANTHONY: They wouldn't have carried the burden of a health care levy but the expense would have been built into the claims cost. There's a cost, was still picked up by the members.

MR. GOODLAND: Yes, but it would ...

MR. ANTHONY: As you stated, what, in simple fact what had occurred was the, we used to get billed from MCP or from the hospital association and it was somewhat arbitrary and somewhat subject to negotiation and things of that nature, but that cost, that cost would have been paid as part of the claims cost, which would ultimately flow to the member companies and would have been picked up by the member companies, so we've just substituted the expense from one place to another, but ultimately they're still paid by the member company, so it, I'd suggest to you that while in a different form, I'd suggest even going back to '86, the cost was still there.

MR. GOODLAND: Yes, but then if you look at the following year, the second year of operation, there was, on the member company's profit and loss statement, it would have showed a profit of that member company's proportion of business in the province, correct?

MR. ANTHONY: If you're looking at the one million one fifty-eight?

MR. GOODLAND: That's correct, yes.

MR. ANTHONY: That would have been shared amongst ...

MR. GOODLAND: Yes. So that would have actually shown as a positive on your profit and loss statement.

MR. ANTHONY: It comes and goes, yeah.

MR. GOODLAND: So there was no loss. The health care, or based on the MCP account process at that time, Facility still showed, had a revenue, a profit revenue in the second year of operation.

MR. ANTHONY: That would be fair to say because that would, within the losses, include the amount. I'd agree with that.

MR. GOODLAND: Okay. And really what you were speaking of with Mr. Stamp was the fact that you were actually in the infancy of this program, the Facility

Association, that you were under the impression that the members were actually cutting cheques for health care levies to government.

MR. ANTHONY: Yeah.

MR. GOODLAND: And that's probably not the case.

MR. ANTHONY: In those years, whatever the year it started out, it's been there for so long you tend to forget, so I would concede that.

MR. GOODLAND: Okay, fair enough. I'm going to take you ... yeah, I'm just going to ... there's going to be two, there'll be two topics, two general topics I'll discuss with you this morning. One will deal with the hat you wear as a service carrier, which I guess is the primary reason for your attendance, and second would be your involvement with Facility Association as a member. So my first ... I'm just going to speak from the service carrier, I'll ask you to speak from a service carrier's perspective now. First off, your company has been a service carrier for how long?

MR. ANTHONY: Since the beginning of Facility Association.

MR. GOODLAND: Since its inception, okay. At that time your company, was that a wholly owned Newfoundland operation?

MR. ANTHONY: Yes, it was.

MR. GOODLAND: Okay. And since then, because you've made reference this morning, you have an affiliation with a national or an international company?

MR. ANTHONY: Six years ago controlling interest in ICON was purchased by a large multi-national insurer, in fact one of the largest in the world.

MR. GOODLAND: And that would be AXA?

MR. ANTHONY: Yes, it would.

MR. GOODLAND: And that's six years ago?

MR. ANTHONY: Yes.

MR. GOODLAND: And you say they're one of the largest multi-national insurers in the world.

MR. ANTHONY: Correct.

MR. GOODLAND: Okay. And obviously you've maintained or ICON has maintained its service carrier role subsequent to that purchase by AXA.

MR. ANTHONY: Our operations in Newfoundland haven't changed. I mean, it's an ownership issue and a board issue, but beyond that there's been really no change.

MR. GOODLAND: So and the process to become a service carrier, that was a voluntary process.

MR. ANTHONY: Correct.

MR. GOODLAND: ICON made application without any coaxing from Facility Association or industry.

MR. ANTHONY: We looked at it, we, as I touched on yesterday, we looked at it as a way to have some opportunity to have access to a client base perhaps. We also looked at it, and I guess something else that sort of cropped in my head at five o'clock this morning, but when our firm was formed, it was formed by my father, and it was formed because there was a severe market shortage in Newfoundland and companies were coming and going, Newfoundland wasn't perceived as an attractive place to do business for insurance companies. To be frank, not too different from where we sit today, I'm afraid. And his approach was, you know, we need to have control over our own destiny, it needs to stay in Newfoundland, so he formed the Insurance Corporation of Newfoundland, and we've always since then, and I've subscribed to the idea, that, you know, if something's going to be here and it's going to use our money, Newfoundlanders' money, we should do it and we're more than capable of doing as well if not better than someone in Ontario or Toronto or wherever they are in the world, and so we've looked at this as an opportunity to have some control, to create some employment. From a company perspective, I guess the one thing I didn't touch on that I had meant to, was that it allows us to, obviously with volume, requires staff. I mean, like I said, we don't have per se dedicated staff to handle Facility, handle as our own, but obviously it creates employment for more staff than we would have. That drives synergy, drives efficiency, creates opportunity, and there's a lot of soft costs. Like I said, Ms. Newman referred to compensation as adequate, and I said that's a good term to use. There are a lot of soft costs and that is a lot of what the attraction is.

MR. GOODLAND: Now, your company has been around for, are you suggesting three decades possibly?

MR. ANTHONY: We've been ... we started writing business in 1962 as an insurance company.

MR. GOODLAND: Okay. So around four decades. Anthony Insurance, which is a wholly owned subsidiary, was a wholly owned subsidiary of ICON?

MR. ANTHONY: No, they're two separate companies.

MR. GOODLAND: Two separate companies.

MR. ANTHONY: Yeah, different ownership structure.

MR. GOODLAND: Okay, different ownership. You happen to be the President of ...

MR. ANTHONY: And CEO of Anthony.

MR. GOODLAND: And CEO of each company.

MR. ANTHONY: Yeah.

MR. GOODLAND: Okay. How long has Anthony Insurance, which is the brokerage company ...

MR. ANTHONY: We're having our, this year we're having our 50th anniversary.

MR. GOODLAND: 50.

MR. ANTHONY: Uh hum.

MR. GOODLAND: Okay. Now, ICON was, and I assume still is, is in the business of making money, making profit, correct?

MR. ANTHONY: That is always the hope.

MR. GOODLAND: Okay. And when, in fact, Facility Association came to light, I assume your company would have looked at the association, the mechanisms for partnering with service carriers and you would have determined that you weren't going to lose money by becoming a service carrier of Facility, correct?

MR. ANTHONY: I'd agree with that.

MR. GOODLAND: Okay. And in fact if it wasn't, if it was a money losing venture being a service carrier, would you as a sensible businessman remove yourself from Facility as a service carrier?

MR. ANTHONY: Yes, we would. It's not pure ... like I said, there are soft costs that are much harder to identify. You'd do a business case and if, for whatever reason, if the structure changed or something changed within the mechanisms of how it works, we'd revisit the business case and decide, you know, does it still make sense to do that and weigh that out with all the soft costs and make a business decision.

MR. GOODLAND: Okay. And not to belabour the point but certainly there've been no indicators to you up until this point that being a service carrier is costing your company any money, costing you a loss.

MR. ANTHONY: I'd agree with that.

MR. GOODLAND: Now, in relation to, you say there are eight brokerages that are, that you partner with for Facility Association policies?

MR. ANTHONY: They're assigned to us by Facility and we are assigned as their servicing carrier.

MR. GOODLAND: Okay. Can you indicate ... and one of them is Anthony Insurance.

MR. ANTHONY: Correct.

MR. GOODLAND: Okay. Can you indicate how the, how Facility policies get placed amongst the four service carriers in the province? What kind of a distribution? Are there rules, unwritten rules as to what service carrier gets provided what percentage of the Facility drivers?

MR. ANTHONY: No. We were assigned ... I think it works out that actually it's fairly evenly distributed. It's more by chance than by plan, I suspect, but we were assigned brokers in the beginning. I think they may have looked at trying to have a balance to it. Over the years usually as brokers come and go, if there's a new one coming on ... for instance, the only two servicing carriers who deal with the broker force in general would be ICON and Royal Sun Alliance, and generally it seems to be the practice that, you know, we get one, then they get one, then we get one, they get one, and it comes and goes like that.

MR. GOODLAND: And the other two service carriers in the province, they have the direct links to their own brokers, correct?

MR. ANTHONY: Yes.

MR. GOODLAND: Now, the person, we've heard a person gets placed in Facility as a result of an inability to satisfy certain underwriting requirements as established by insurers in the province, correct?

MR. ANTHONY: I agree with that.

MR. GOODLAND: Okay. So as those ... if those underwriting requirements change, a person may or may not qualify for Facility in any given year.

MR. ANTHONY: I would agree with that.

MR. GOODLAND: And it's the ... and it's within the total discretion of each individual insurer to amend its underwriting rules, correct?

MR. ANTHONY: Correct.

(11:15 a.m.)

MR. GOODLAND: Okay. So what happens is in the instance, let's take Anthony's for instance, they have, they only write, refer business to ICON, is that correct?

MR. ANTHONY: At the moment that's correct.

MR. GOODLAND: At the moment. How long has that been in, like that for?

MR. ANTHONY: Five or six years, since really the transaction with AXA, so about six years.

MR. GOODLAND: Six years?

MR. ANTHONY: Yeah.

MR. GOODLAND: And if I went to Anthony to place insurance or to try to buy a policy, the brokers at Anthony would have one underwriting policy or one underwriting manual to refer to, correct?

MR. ANTHONY: That would be correct.

MR. GOODLAND: That would be ICON's.

MR. ANTHONY: I would agree with that.

MR. GOODLAND: Okay. And if you didn't fit the requirements of the ICON underwriting rules, Anthony's could only offer you placement in FA.

MR. ANTHONY: At the moment that would be correct.

MR. GOODLAND: At the moment, okay. And then the work is done on the ground for the, the mechanics of an FA placement of a particular insured is done on the ground at Anthony's Insurance.

MR. ANTHONY: At the brokerage ...

MR. GOODLAND: At the brokerage end, okay.

MR. ANTHONY: Same as any other broker in Newfoundland.

MR. GOODLAND: And your, from the ICON end, what the underwriter would do at ICON ... is it an underwriter who'd review the FA application once it's filled out at Anthony's?

MR. ANTHONY: Well, we, as we treat the Anthony business the same as every other broker that's assigned to us, we would audit it for correctness, (inaudible), the exact same process.

MR. GOODLAND: And what you're doing is you're auditing it for correctness and ... when you say auditing, really what you're doing is three things, I believe. You're reviewing physically the application ...

MR. ANTHONY: Correct.

MR. GOODLAND: ... to make sure there are no errors in the application ...

MR. ANTHONY: Correct.

MR. GOODLAND: ... you're doing a driver's abstract search ...

MR. ANTHONY: Correct.

MR. GOODLAND: ... and did you indicate there was something about, was it an auto plus or ...

MR. ANTHONY: Auto plus, which is a product of the IO, which basically gives you electronically prior carrier information.

MR. GOODLAND: Okay. Now, those three particular functions aren't overly involved, I would suggest to you. Would that be fair to say?

MR. ANTHONY: No, they're ... you know, you would make the request, the information comes in and then you deal with it appropriately.

MR. GOODLAND: Okay. Not that time consuming though, those three ...

MR. ANTHONY: Well, no, actually we're linked direct with Motor Registration so we get electronically immediately so it's a ...

MR. GOODLAND: It's a fairly seamless process.

MR. ANTHONY: Yeah, I'd agree with that.

MR. GOODLAND: Okay. And what you're really doing is you're looking at the application, the other two sources of information, and then you're ... is the risk assigned or the rating, I should say, of a driver assigned at the underwriters, then being ICON, or is it assigned at the brokerage end?

MR. ANTHONY: No, it's assigned ... the rating is always assigned at the broker. We never rate a policy for a broker. If a broker calls and is having a problem determining a rate, we will point them to the appropriate part of the manual and provide general assistance in that but ultimately it's the broker's responsibility to rate the ... we do not provide them with a rate.

MR. GOODLAND: Okay. And just tell me, if you can just explain a little bit for the Board about the rating process. I'm not so sure we've heard a tremendous amount about that thus far.

MR. ANTHONY: Well, within ... oh, how can I refer to something? I guess in simplest terms there are multiple classes, and I'll just focus on private passenger for the moment. You have Classes 01, 02. 01 is basically pure pleasure driving and 02 would be pleasure driving and some driving to and from work, etcetera, etcetera, etcetera. That's one of the key drivers of developing a rate. The next function is determining the driving record, you know, has there been losses, when were they, and then that determines the driving record, so you determine the class, you determine the driving record. If it's just liability, that would, that's all you need to determine the base rate ...

MR. GOODLAND: If the coverage is third party liability only?

MR. ANTHONY: Yeah. Let's just focus on that part first. You know, there's different rates for different limits. Let's ... we'll just keep it simple and keep to 200, which is the required statutory requirement. So it's just a grid. It's very, very simple, very simple grid. You target a rate. Now, if you ...

MR. GOODLAND: And the rating, what are the rating numbers? Is it from one to a hundred, is it one to five or zero to five?

MR. ANTHONY: The driving record for Facility I think is zero to five.

MR. GOODLAND: Okay. And that's your rating for the risk.

MR. ANTHONY: And zero would be someone who's either a new driver or someone who's just had an accident, and then one represents one year of claims free experience, two, two years of claims free, on and on and on.

MR. GOODLAND: Okay. And so zero would, if you were zero rated in Facility, as a Facility driver, would you be exposed to the highest premiums? Is that the way it works?

MR. ANTHONY: Depending on ... well, you would have the highest premium for that class, okay. Now, if you ... but I guess the ultimate highest premium you would find in Facility, which is not hard to find, would be, which would be Class ten zero. There is a 17 year old male, new driver, no experience, and that is ... also the highest rate for that class itself, is have a new driver who's over 25, would be zero, would be the highest for that class but it would be a different premium then and underage ...

MR. GOODLAND: That would be what, like seven zero or five ...

MR. ANTHONY: No. They all run five to zero for driving ...

MR. GOODLAND: Yeah. I mean the class, the classes run from what, Class ...

MR. ANTHONY: Well, the one you'd have your, one there's ... oh, my, there's one, two, three, five and six, seven, then you have eight, nine, ten, eleven, twelve, thirteen, eighteen, nineteen.

MR. GOODLAND: So you have ... as a driver, as a Facility insured, you are put in a class.

MR. ANTHONY: Correct.

MR. GOODLAND: And then within that class you are given a rating.

MR. ANTHONY: Correct.

MR. GOODLAND: From zero to five.

MR. ANTHONY: Correct.

MR. GOODLAND: And within that class if you have a rating of zero, you will pay the highest premium within that class.

MR. ANTHONY: Correct. Now, I need ... sorry, there's always a qualification. Subject to if the policy, if there's a surcharge. You could have a driver who's rated ten zero, I'll just focus on that one, without a surcharge, that the rate is ... you could actually have a driver who's a ten one, which is a high driving (inaudible), but has had, because he's had experience, he may have had multiple tickets, that would have a surcharge, so when you ...

MR. GOODLAND: An added expense to the premium.

MR. ANTHONY: Yeah. So when you apply the surcharge to that premium, his rate could in fact be higher than ten zero.

MR. GOODLAND: So let's assume all things being equal. Yes, that's fair, I understand what you're saying, okay. And so the rating is from zero to five within any given class, and what, do you know offhand what the monetary value or the range of the monetary difference would be if I was a Class 5, Mr. ... I don't even know if Class 5 exists. Say I was a Class 10, the highest rating, the worst rating, which is a 17 year old male.

MR. ANTHONY: Okay.

MR. GOODLAND: If I was a zero rating and Mr. O'Flaherty was a one rating, do you know what the difference in premium would be?

MR. ANTHONY: Not off the top of my head, no. There's ...

MR. GOODLAND: Ballpark?

MR. ANTHONY: No, I wouldn't even hazard a guess. They're all differentials which are produced by the PUB as a guide and it'd be a pure guess. I wouldn't even dare.

MR. GOODLAND: Fair enough, and we don't need to get into that. And the ratings initially, the ratings could be a fraction of a number. For instance, you could be rated at 1.7 after you crunch all your numbers, correct, within your class?

MR. ANTHONY: I don't know what you mean by that.

MR. GOODLAND: I could receive a rating of, for instance, 1.9. The broker could rate me at 1.9 in the zero to five range. Are you aware of that?

MR. ANTHONY: You were talking about driving record. No, I don't know what you're ...

MR. GOODLAND: I'm talking about the class of ...

MR. ANTHONY: I have no idea what ...

MR. GOODLAND: I'm talking about the risk rating within the classification that we just discussed.

MR. ANTHONY: The risk rating in Facility are the classes that I've identified in driving record zero to five. There were no other risk rate ...

MR. GOODLAND: Okay. So the ... okay, the driving record you're saying.

MR. ANTHONY: Yeah.

MR. GOODLAND: Is zero to five rating.

MR. ANTHONY: Now, I'm wondering what you're referring to because we've only talked about liability.

MR. GOODLAND: Yes.

MR. ANTHONY: If we were to talk about collision, comprehensive, specified perils, then you introduce a new factor which is the rate group for the vehicle.

MR. GOODLAND: Right.

MR. ANTHONY: Okay. And that's where you get from, I mean, goes from zero up into the 20s, depending on the vehicle. This is where this CLEAR issue comes in, because in non-CLEAR there's one rate group, okay, and then to determine the premium you've identified your class, you've identified your driving record, and then for physical damage you have a new component of the grid called the rate group, okay.

MR. GOODLAND: I don't have my hands on it now and I may be able to if we get to the next break. I seem to recall in the plan, Facility's plan of operation, for instance, if in fact, and it may be just for liability, it may be applicable to this line of questioning, this next issue for liability for only coverage, but my understanding was the rating system for driving record even, because you could have a driving record that's comprised of moving violations, accidents and so on, different types of ...

MR. ANTHONY: Well, your driving record relates to accidents. Your surcharges tend to relate to convictions.

MR. GOODLAND: Okay. So you'd have varying degrees of accidents within your driving record, one accident versus two and so on.

MR. ANTHONY: I agree with that.

MR. GOODLAND: My understanding is a broker, after crunching the numbers to try to extrapolate a rating, could end up with a rating of 1.9 for instance.

MR. ANTHONY: No, I ...

MR. GOODLAND: You're not familiar with that, are you?

MR. ANTHONY: I don't know what that is in reference to.

MR. GOODLAND: Okay. I'll actually attempt to source it out.

MR. ANTHONY: If you'd show me something I might be able to understand, but the rating actually is fairly straightforward and that is that the rates are set in a grid pattern and, like I said, you determine your class and your driving record, and liability, that's all you need. For the other coverages, physical damage coverages, as we call it, you need the rate group and then the rate is right there, you can put your finger right on that rate. There's no other factor unless you want to introduce a surcharge for something.

MR. GOODLAND: Okay. I'm just going to ask you the fee structure for the service carriers as it relates to Facility. Can you just explain the various commissions again that you, as a service carrier, receive from Facility ...

MR. ANTHONY: Is there a ...

MR. GOODLAND: ... the various levels?

MR. ANTHONY: I need the plan of operation rather than just quote off the top of my head. I know it's here somewhere, if someone could be kind enough to refer it to me. One thing I've learned in life is not to refer to numbers off the top of my head very often.

MR. SAUNDERS, PRESIDING, CHAIRMAN: I think it's in Appendix C.

MR. ANTHONY: I hope so. Appendix C, okay. No, that's the broker commission. That's not what we're looking for.

MR. GOODLAND: No.

MS. NEWMAN: Article 9, yeah. Page 18, Article 9.

MR. ANTHONY: Page 18, here we go. Thank you. Okay, if you refer on this, this has been mentioned several times. I think the safest thing, I'll just quote, if you don't mind, right from the plan under Article 9, Subsection 2, Section (a), "Operating costs excluding claims expenses, the following percentages of written premiums apply: Ontario, 9.9, other jurisdictions would be 9." We're other jurisdictions so we receive 9 there. We also receive a service fee equal the following percentage of written premiums, Ontario 0.9, other jurisdictions 1, so we're an other, we receive 1, and on claims expenses we receive, Ontario receives 9.1, we receive 10. "The rates of reimbursement are predicated on an (inaudible) incurred ratio as follows: Ontario, 61.7, other, 67.5." Then there's reference to adjusting the sliding commission if the loss ratio is high or low. We're obviously a higher loss ratio, means more work, so there's more expense so there, try to be some offset.

MR. GOODLAND: The last ratio being between .9 and 1.6, is that the range?

MR. ANTHONY: Well, the loss ratio is based, the predicated loss ratio for the 10 percent we receive is based on a loss ratio of 67.5.

MR. GOODLAND: Okay.

MR. ANTHONY: Okay. Then there's a slide which basically means the commission is adjusted by .5 percent for each 5 percent increase or decrease in loss ratios, so if ... it's easier to do math going the other way. So let's say the loss ratio was 62.5 instead of 67, our commission we would receive would be 9.5 instead of 10.

MR. GOODLAND: Okay. And if it was 72.5 ...

MR. ANTHONY: It'd go ... if that's the math, yeah.

(11:30 a.m.)

MR. GOODLAND: It goes up. Has that gone up or down in recent memory from the 10 percent?

MR. ANTHONY: Yeah, there was an adjustment a couple of years ago, I think.

MR. GOODLAND: And what would the adjustment have been?

MR. ANTHONY: There was a ... we paid back.

MR. GOODLAND: You paid back?

MR. ANTHONY: I believe we paid back in a year, yeah, but I can't with certainty, I'm not, I've nothing to refer to to answer that question totally.

MR. GOODLAND: And the percentage for claims expenses, does it, do you know if in fact there's a floor and a ceiling on that of 9 percent up to 16 percent? In other words, FA would never pay you below 9 percent nor higher than 16?

MR. ANTHONY: I remember hearing about that and seeing it somewhere but off the top of my head, like I said, I wouldn't, I can't give you a definitive answer there.

MR. GOODLAND: So you're saying there was, several years ago there was a time when your claims expenses or your loss ratios would have been below 65.5 percent?

MR. ANTHONY: I believe so but I could be wrong. Like I said, I'm going from memory and I don't like trusting in my memory to that degree.

MR. GOODLAND: That's your sense of it.

MR. ANTHONY: But I'm sure Facility Association could get that for you if ...

MR. GOODLAND: And there's supposed to be a correlation obviously with the loss ratios and the expense claim percentage pay-out?

MR. ANTHONY: Yeah. Like I said, there's I guess what we call a sliding commission which basically if there's 5 percent, you know, whole sums of 5 percent either way, there's an upward or downward adjustment to the factor.

MR. GOODLAND: So the 9 percent you first spoke of, that represents what?

MR. ANTHONY: The 9 percent is a fee based on the written premium.

MR. GOODLAND: Fee, that's basically for you providing a service as a service carrier.

MR. ANTHONY: That's for doing, providing all the services that we do.

MR. GOODLAND: Fee based on written premium.

MR. ANTHONY: Okay.

MR. GOODLAND: And there's 1 percent representing what?

MR. ANTHONY: Service fee. Again it's to ... really, I mean, I don't quite understand why they're done ...

MR. GOODLAND: Why there's a difference.

MR. ANTHONY: It's really 10 percent, I mean.

MR. GOODLAND: It's really 10 percent, okay.

MR. ANTHONY: It all goes towards the cost of running, of taking care of dealing with the business, issuing the policies, auditing, make sure they're correct. It's all related and then the other main fee is the 10 percent to deal with claims, and, as I said yesterday, we receive that fee, should we cease to be a servicing carrier tomorrow, we do have an obligation to run those claims off for 60 months and as part of our accounting and our own books we would, we set up a contingency liability for that which basically is cost to us because that's money then we can't apply to write premiums in the general market.

MR. GOODLAND: Okay. Just on that point, so let's assume then you're writing 25 percent of the market, ICON would be as a service carrier for Facility.

MR. ANTHONY: Not far off.

MR. GOODLAND: Based on, you're saying it's pretty much carved up fairly ...

MR. ANTHONY: It's about what it happens to be, yeah.

MR. GOODLAND: Yeah. And we're doing, I know we're doing 18, or I see numbers here ...

MR. ANTHONY: It's around 20, I think it'll be.

MR. GOODLAND: Let's assume 20 million just for the, it's easier for the math.

MR. ANTHONY: Yeah.

MR. GOODLAND: You're receiving, you're sending Facility premium, or your portion of that premium written would be $5 million?

MR. ANTHONY: Yeah. 25, well, 25 percent of 20, for argument sake.

MR. GOODLAND: $5 million?

MR. ANTHONY: Uh hum.

MR. GOODLAND: Okay. And that's fairly accurate, as you say, so we're not, this is not, you know, these aren't crazy numbers.

MR. ANTHONY: Of course based on written premiums, so it's a fairly easy number to get.

MR. GOODLAND: That's right. It's not collected premium, things like that, correct?

MR. ANTHONY: It's not earned premium, it's written.

MR. GOODLAND: Not earned premium, it's written.

MR. ANTHONY: No, it's pretty straightforward that way.

MR. GOODLAND: It shows on the books that you booked this business for, particular premium for $2,000.

MR. ANTHONY: Yeah.

MR. GOODLAND: That's what's considered for net written premium or net premiums. So you're collecting $5 million for the year.

MR. ANTHONY: Uh hum.

MR. GOODLAND: Okay. And you get paid on every, you get paid your percentage on a total $5 million package, correct?

MR. ANTHONY: Correct.

MR. GOODLAND: So you're getting your 10 percent based on written premiums.

MR. ANTHONY: No, based on ... 10 on the claims. Are you referring to ...

MR. GOODLAND: No, I'm talking about the first ... 9 plus 1, I'm sorry.

MR. ANTHONY: We're still on that, okay. I'm sorry.

MR. GOODLAND: You just lump it as 10.

MR. ANTHONY: Okay.

MR. GOODLAND: So let's just assume it's 10 and 10 for purposes of this, okay?

MR. ANTHONY: Okay.

MR. GOODLAND: So you're getting 10 percent on the $5 million.

MR. ANTHONY: Correct.

MR. GOODLAND: And that's your fee for writing the premium.

MR. ANTHONY: Correct.

MR. GOODLAND: Okay. My numbers suggest that's $500,000.

MR. ANTHONY: If that's the math, I won't ... okay.

MR. GOODLAND: I could be wrong about this. That is the math, okay. And then you're receiving another 10 percent for claims expenses from that $5 million as well.

MR. ANTHONY: Well, the 10 percent on claims is based on earned premium.

MR. GOODLAND: Okay.

MR. ANTHONY: So it's not necessarily exactly the same. If the premium over a two year span was exactly the same, yeah, it'd be that number, but when you're in, if you're in an environment where it's decreasing or increasing, the earned can be different than the written, okay, because it's spread over ...

MR. GOODLAND: Is there much of a difference generally? Do you see much of a difference?

MR. ANTHONY: Well, when it's growing, in simplest terms, when a book of business, and this applies to any business, I won't refer to Facility, but any business, if you're growing your earned premium will generally be less than the written premium, because you've written it in the year but you earn part of it in the following year, okay. If you're in an area where your business is ...

MR. GOODLAND: But that's carried over on other policies as well from the year prior.

MR. ANTHONY: Yeah. Well, it's all ...

MR. GOODLAND: It's a domino type of ...

MR. ANTHONY: But the fee, to be exact, I mean, the fee relates to earned premium.

MR. GOODLAND: In that year.

MR. ANTHONY: Yeah. But, like I say, for to keep the exercise simple, let's assume two years were exactly the same.

MR. GOODLAND: Okay, yes.

MR. ANTHONY: And let's use, keep using your $20 million, it'd be 10 percent of that, so ... okay.

MR. GOODLAND: So that's another $500,000 ICON would receive to handle claims expenses. And you're getting paid that 10 percent on every earned premium, this is for claims expense now, you're getting paid 10 percent on every earned premium whether or not there's a claim attached to any particular policy, correct?

MR. ANTHONY: It's somewhat irrelevant because if you just applied it to policies that you had claims, the percentage would be multiples of hundreds I would ...

MR. GOODLAND: Yeah, and what I'm ...

MR. ANTHONY: So it's kind of a irrelevant number.

MR. GOODLAND: But it is correct, what I'm saying, it is correct.

MR. ANTHONY: The fee is based on the total, yes.

MR. GOODLAND: Okay.

MR. ANTHONY: I mean, there's a dollar amount required. Now, how you determine that dollar amount, you can do it that way or ...

MR. GOODLAND: But we're doing it on a 67.5 percent loss ratio basis, so I assume throughout the history of the, of FA, that's a number that would be sufficient, I would, you can correct me if I'm wrong, that would be sufficient, the 10 percent on all net premiums written ...

MR. ANTHONY: I couldn't answer. I wasn't a party to how that was arrived at, so ...

MR. GOODLAND: Okay, fair enough, okay. Now, the ...

MR. ANTHONY: Now, if I could just, if you don't ... I don't know, maybe you would mind or don't mind, but just getting back to the operating costs. I mean, in Facility, I think we talked about many times, there's a fair redundancy in Facility. There's a lot of churning, there's a lot of work. I know in our own as a servicing carrier, what we start with, say 100 percent number in January, before we even get an opportunity to offer a renewal, that business has dwindled down to about 65, 68 percent, and of that 68 percent, when we provide renewal offers to the brokers, and out of that there's a lot that aren't taken, so there's a lot of that work gets done that generates negative premium or cancellation. Of course we still have to do all the work and the revenue is the other way, so it's, you know, it's not ...

MR. GOODLAND: You do the work, for instance, if someone is getting out of premium, out of Facility ...

MR. ANTHONY: There's a lot involved with Facility. There's a lot of churning in the book. There's, I'd suggest that there's a higher incidence of endorsements, a lot of vehicle substitutions, you know, I think, and I'll just refer to the document, the binder for Nova Scotia, New Brunswick. You see a lot, a fair number in there for vehicle age, for instance, that generally when you're dealing with older vehicles you get a lot of substitutions because, you know, they kind of, I guess two trains of thought on vehicles, either buy one new one and run it to the ground and at a high cost or keep flipping them over and keep going, but all those are nil premium endorsements. If it's just liability only, the vehicle, as we just went through on the rating, the vehicle is not a component of the rating, so they all generate a nil premium, so there's a lot of paper shuffling.

MR. GOODLAND: Now that ... yeah, that administrative work, that's largely, that would be covered off, anticipated in the 9 and the 1 percent of the cost, correct?

MR. ANTHONY: That's why it's there, yeah.

MR. GOODLAND: Not in the claims expense column.

MR. ANTHONY: Agreed.

MR. GOODLAND: Okay.

MR. ANTHONY: Yeah.

MR. GOODLAND: And I'm just going back to the claims expenses and the 10 percent, because you've suggested that if, in fact, you decide to withdraw from Facility being a service carrier, you have to process and handle the claims for a 60 month period.

MR. ANTHONY: Correct.

MR. GOODLAND: Now those would be the claims or the policies that were written or placed through ICON or with ICON, correct?

MR. ANTHONY: Were placed with us and had a claim related to that and, I mean, the argument, and, like I said, we book contingency liability. I mean, the argument would be, I mean, we've received the income to handle those and we certainly have.

MR. GOODLAND: That's my point exactly, that in fact you're not asked to administer any claims for Facility that you already haven't been paid for.

MR. ANTHONY: I agree with that. You're correct.

MR. GOODLAND: The cost into the 60 months following your withdrawal, you've already received the money up front.

MR. ANTHONY: But ... agreed, but I've had, you know, we're carrying a liability that reduces our ability to write business and on an ongoing basis that wouldn't occur, so at some point on wind-up I'd suggest there is cost, but I agree with what you're saying.

MR. GOODLAND: Okay, fair enough.

MR. ANTHONY: You're on the money there.

MR. GOODLAND: Okay. And just to confirm with the, from the service carrier's end, the ratings, there's no underwriting requirements for the service carriers, correct?

MR. ANTHONY: No. We don't make any determination whatsoever of who's in or out of Facility.

MR. GOODLAND: Okay. The ratings are done below. When I say below, at the brokerage level.

MR. ANTHONY: At the broker level, uh hum.

MR. GOODLAND: Okay. And there's no ... you have no dedicated staff or particular office for Facility Association policies, correct?

MR. ANTHONY: As I said yesterday, on the claims side, no, at all. On the administrative side or the auditing side, we have staff who handle other business but whose skill set would be higher and that they would be very familiar with Facility, so they ... we do move them around, so, you know, there's generally one person specifically who handles Facility for some period of time, then we may switch staff around.

MR. GOODLAND: So, and we hear that Facility is non-profit and when we hear that I think sometimes a person can get the sense that people who are placed in Facility, insureds who are placed in Facility, added onto their, there's nothing added onto their premiums for profit provisions unlike insureds in the voluntary market, correct?

MR. ANTHONY: I don't know what you're, what you mean there.

MR. GOODLAND: Okay.

MR. ANTHONY: There's a profit component built into the rate?

MR. GOODLAND: Yes.

MR. ANTHONY: My understanding, in the Facility rate filing there's no profit provision.

MR. GOODLAND: But wouldn't the counterpart to a pure profit component that you can build into your voluntary market rate, wouldn't the counterpart Facility be the 10 percent, the 9 and 1, and, the 9 and 1 percent?

MR. ANTHONY: No, because if they were handling it in their own right, they'd have those expenses, so it's not a profit generator, it's a ...

MR. GOODLAND: It's not a return on equity.

MR. ANTHONY: No, it's basically covering the cost. Like I said, if we weren't doing it and Facility was a company in its own right, they would have the expenses and presumably they'd charge out, I think the term yesterday was an acceptable or something to that term. Obviously we're not doing it to lose money, we're doing it for other reasons. It's certainly not ... if there was ... I think there was a suggestion yesterday if it was a big profit generator, there'd be a line-up of companies wanting to do it and it's quite the reverse.

MR. GOODLAND: And obviously in years that there were less claims made on Facility policies or by Facility, as a result of Facility insureds, your margin of expenses would be lower, I suppose, and it would be more profitable during those years, correct?

(11:45 a.m.)

MR. ANTHONY: It's interesting you bring that up. In fact, and I'll relate this to another question. In the last couple of years, because there's been reference made to fewer claims because, or higher claims because of the weather, things like that. In fact, in the year just past, 2002, the claims frequency is actually higher, at least as, and I'm only speaking to the business of ICON services as a servicing carrier, so I can't comment on the other four but I see no real reason why it'd be any different, that we actually have had a higher incident of claims reported in 2002 than we had in 2001. Yes, there was a higher incidence in '01 versus 2000, however, not to the same degree as the year just past, and, in addition to that, this year, last year and just simple new claims reported, reported every month, and this is before they're fully developed and we've determined the full extent of injuries, and usually would drive the number up even higher, 2001 to 2000, there was an actual increase in quantum of 9 percent, and in 2002 to 2001 there's an increase in quantum of about 12 and change. So even though the numbers may go down or stabilize, what's happening is the quantum of claims keep going up, the work involved with claims continues to rise, we see a higher incidence of bodily injuries, soft tissue injuries. It's to the point where just last year we hired our own in-house legal counsel just to try to help defray costs. At least, with all due respect, we took the profit component out and made it break ... but, you know, those costs are going up.

MR. GOODLAND: Okay. Now, certainly you've hired in-house legal counsel in the past, is that fair to say?

MR. ANTHONY: We've had legal, in-house legal before, and then more of a corporate issue, decision was made not to continue with it and some people saw the light again and we're, now we're ...

MR. GOODLAND: And when you have an in-house counsel, that was an issue, that wasn't driven as a result of FA claims, was it?

MR. ANTHONY: It was driven on claims overall including Facility. Like I say, we don't treat FA any different but I'm just more demonstrating that there are, you know, costs. I mean, my main point is that the quantum, the dollar amounts of claims have increased and there's no doubt the work involved in settling, even on fewer claims, keeps growing.

MR. GOODLAND: And when you had counsel ... when did you have in-house counsel in the past? Was it the mid '90s, I believe?

MR. ANTHONY: About right, yeah. We went a period of, I guess, five years without.

MR. GOODLAND: And when did you or what years do you recall having in-house?

MR. ANTHONY: Not off the top of my head, no, no. We had in-house ... well, if we go back, let's for round numbers go back, I don't know, six years. Basically at the time there was a difference in philosophy over what we were doing to what AXA's position was at the time and that's why we made the change away from it, and anyways we had counsel for, I don't know how long in the intervening period, I don't know if it's overly relevant, and then we decided last year to, we managed to get our shareholders, I refer to AXA, see the light and that it makes sense to do that, and because the work was even increased much more than it was when we had it before, so it only made good business sense, a way to try to keep expenses down, and, you know, it all ... like I said, with all due respect to free enterprise and lawyers, try to keep the profit ...

MR. GOODLAND: And of course those aren't claims only related to auto.

MR. ANTHONY: Primarily it's ... I'd almost go so far to say it's all auto but there may ...

MR. GOODLAND: No ...

MR. ANTHONY: A few dribs and drabs of other.

MR. GOODLAND: No oil problems, things like that?

MR. ANTHONY: Oh, we have oil, we have lots of oil problems but lawyer, our legal counsel, I doubt if she has a file on that. It's like 99.9 percent ... there are a few. I mean, there could be a general liability on a slip and fall, she could be involved in, but 99.9 percent, and, you know, it's high, very, very high, is auto.

MR. GOODLAND: Okay. I'm just going to talk to you a little bit about the ... you've referenced initially ... is there a ... just while we're on the service carriers, is there a ... there are four service carriers in the province administering Facility, correct?

MR. ANTHONY: Correct.

MR. GOODLAND: How long have those four been doing, providing ...

MR. ANTHONY: I think we've all been there since the beginning. I'm not sure ... I don't believe there's been any here that have dropped off. There wasn't a lot of interest in the beginning, I mean, why I think there was only the four and it's very common for direct writers to want to be their own servicing carriers, which is Coop and Unifund. There is actually not a lot, there's very little interest in being a servicing carrier, from my recollection back 15 years ago now, to becoming ... there wasn't a line-up that we had to go and present our case. I mean, they were quite happy when we made the offer because they were sort of scrambling I think to find somebody.

MR. GOODLAND: We've spoken about a grey market here today.

MR. ANTHONY: Yeah.

MR. GOODLAND: A grey market does exist in Newfoundland?

MR. ANTHONY: It exists but it's not vibrant, it's not where it should be, and I think there's been some evidence given that if things don't shape up, they're going to be gone.

MR. GOODLAND: Would you not agree that it's certainly not the mandate of this board to have its decision based on rate increases influenced by whether or not a grey market should or shouldn't exist?

MR. ANTHONY: Well, I don't know if the answer to that is yes or no because I think Facility rates, I will go so far as to agree Facility rates should stand on their own merits, and I believe what's been presented, they would certainly stand on their own merits, but on top of that, and I guess particularly why there's a Consumer Advocate involved in the process, and before, while it's on my mind I think it's been, especially in this hearing, been a welcome addition to it and compliment as much, been a much more productive hearing, I think, than the last one. (inaudible) a lot more personalities, I think, but ...

MR. GOODLAND: I'm sure Mr. O'Flaherty will appreciate your comments. Getting back to the question ...

MR. ANTHONY: But I think in the, in here, that if the intent is to ultimately get rates down for the consuming public, to have other options, to depopulate the Facility, and it seems that the Board has taken, you know, a significant interest, and as well they should, then the grey market insurers are a key to the equation. Without them, there's no middle ground. As I said earlier this morning, it's sort of black and white and fairly abrupt.

MR. GOODLAND: One of the difficulties in the insurance industry generally, speaking of depopulating FA and so on, isn't one of the difficulties the insurance industry is facing, there's been a worldwide downturn in the profitability of insurers based on many complicated reasons?

MR. ANTHONY: In general but Newfoundland, fortunately here we're, it's nice to think we're ahead of the curve and I think we are ahead of the curve in the general market. I mean, we've had our rounds of significant rate increases over the last 24, 36 months. Our rates, I would suggest, are getting generally in shape. There's probably a little bit more work yet to be done. But I can, you know, only speak to what I see around and that generally things here for the general market are starting to settle down and I think the market, as demonstrated in years past, we went a period of almost four years where there were no rate increases at all, and I think when things stabilize and, you know, we don't see increases, significant swings in claims costs, things stabilize. I'm somewhat optimistic that we should, barring some new head of damage that the court could award tomorrow that would cause an increase in claims costs again, things should settle down, but, you know, the problem you have is that the general market rate has crept up to become very, very close, in some cases higher than Facility, and that's a problem.

MR. GOODLAND: But that's a product of other events such as poor return on investment, other world events such as 9-11.

MR. ANTHONY: Well, 9-11 hasn't had any impact on auto insurance in Newfoundland.

MR. GOODLAND: Okay. What about the poor investment climate for the last several, not poor, the worst we've seen in decades?

MR. ANTHONY: The poor, the investment climate, when ... let me put it to you this way, when the investment climate is good, it makes it easier to attain an ROE, and I would strongly suggest to you then the consumer is the ultimate beneficiary of that, and that's a windfall for the consumer when ...

MR. GOODLAND: As well as for the companies.

MR. ANTHONY: Oh, yes, yeah, but, I mean, insurance in the most basic form are the premiums of the many pay for the losses of the few. I mean, and, you know, we have gotten to a point, and I would suggest that I don't think you'll ever in the future see insurance companies get away from pure technical underwriting like they did in the past.

MR. GOODLAND: But they did because they did get away from pure technical underwriting because of the positive investment climate and so on.

MR. ANTHONY: Yeah, and that benefit certainly got passed down to the consumer because it made attaining ROE much easier to get.

MR. GOODLAND: And that's why insurers, some insurers make corporate decisions to try to obtain larger portions of any particular market, correct?

MR. ANTHONY: As I said, it's very, it's an extremely competitive environment here, but it's been particularly competitive here, and each company has its own initiatives that they want to go. I mean, you look at where you can pick up new business and you develop a strategy and a plan and a marketing plan for that, and you kind of, and you look at your rate, your own rate filings and you'll align yourself with where you want to go, and then you go for it.

MR. GOODLAND: So because of the, as you say, you'd never see an environment, you'll never see an environment where the underwriting guidelines or principles are comprising, and that's what you're suggesting, correct?

MR. ANTHONY: I would hope not.

MR. GOODLAND: You would hope not.

MR. ANTHONY: I would ... I think and ultimately that would give, you know, would give a more stable product.

MR. GOODLAND: And that's what we've heard as a tightening of the underwriting requirements of particular insurers, correct?

MR. ANTHONY: Yes, we have to get back to ... it's like anything, when things go off the rails, the best thing to do is get back to the basics and focus on basics.

MR. GOODLAND: As a result of that tightening, there's going to be fewer people, there will be more people migrating to the Facility market, correct?

MR. ANTHONY: If we had a grey market, there'd be people migrating to the grey market. Some would come from the regular market and a lot would come from Facility Association, but we're missing ... I guess what I'm saying is that we're missing a component here. We are missing a component.

MR. GOODLAND: Well, there is a grey market here though. I mean, we had, I think we had, is it Ms. Brown, testify on behalf of CGU. She's doing $6 million from one of her grey market companies, 5 or $6 million.

MR. ANTHONY: Somewhat ... yeah. They represent ... there's certain brokers that they have an affiliation with. It's not ... a grey market insurer is not readily available to every broker in Newfoundland. They don't ... CGU Group do not write business for every broker, nor would they.

MR. GOODLAND: Fair enough, but we've heard from the brokers that if, in fact, they can't offer a market to a particular person other than Facility, should not that broker then advise the consumer that, well, there is a grey market out there and it may be available through ABC Company down the street?

MR. ANTHONY: I couldn't agree with you more.

MR. GOODLAND: Okay. So ...

MR. ANTHONY: And I suggest to you that that's being done.

MR. GOODLAND: So it does exist.

MR. ANTHONY: Brokers lose, brokers in their own right, I would suggest to you, lose money writing Facility business.

MR. GOODLAND: Okay, fair enough, but you don't have any knowledge of that, I wouldn't think, do you? Well, maybe you do because you're President and CEO of a brokerage company.

MR. ANTHONY: I'll go so far, and, like I said, I'm somewhat careful, a lot of it is proprietary type thing, but I'll go far, because if you were to call our number today and go through the telephone, the ADR (phonetic), you would be instructed if you have had an accident, I'll just deal with that one, that we cannot, we will not be able to offer you a competitive quote and we suggest that you shop around, and you can call, anyone here can call that number right now and ...

MR. GOODLAND: Fair enough, and that's commendable, and ...

MR. ANTHONY: And I suspect, and I would suggest that others do things in a similar fashion. Maybe not all, but I don't know.

MR. GOODLAND: But the fact is there is a grey market in this province that can be accessed.

MR. ANTHONY: It's a limited, it's a very limited market, it's not available to everybody. As I said, if grey markets show an interest, and one, the other one that is here, Pembridge, I think they're on, I think it's on record that, you know, if things don't shape up, they're going to be out of here, they would, you know, they would be who, you know, we'd probably talk to. Obviously they're not going to take anyone on right now in the environment until they see what's going to happen, and, as I stated myself, we've actually discussed in our group putting together a business case if it made sense, and right now it would not make sense, not at all.

MR. GOODLAND: But again there's no mandate here with this board to create a grey market for no other reason than to create it.

MR. ANTHONY: Well, I guess inter alia with what they're looking at, if they allow the rate filing as it is or pretty close to it, it'll probably create the opportunity for the grey market which will help depopulate Facility Association, so from that point of view, it'd certainly have an impact.

MR. GOODLAND: And would allow, for instance, a company like yours to create another company to offer ...

(12:00 p.m.)

MR. ANTHONY: We would look at it and see if it made ... I'd have a ... I'll be honest, I'd have a pretty tough selling job to do with the shareholder because they're generally not in that business anywhere in the country.

MR. GOODLAND: So it doesn't matter to you then from your ...

MR. ANTHONY: Well, it certainly does because if we don't do it ourselves, I would look at, I'll put my broker's hat on for a minute as Anthony Insurance, we would certainly look to an outside provider of that to have in our shop because if we don't do it and we have someone we need to move, if our only option would be to move them to Facility, well we'll lose that client to a competitor who can put them with a grey market at a lower rate, so one way or the other I'd want to have that service, absolutely.

MR. GOODLAND: Maybe, Mr. Chairman, it's an opportune time. I don't have a lot more for the witness but maybe we can have our noon break.

MR. SAUNDERS, PRESIDING, CHAIRMAN: Okay. It's, I think, a good idea considering the amount of water that's been drunk here in the last ...

MR. ANTHONY: Yeah, I'm about ... your timing is perfect.

(break)

(12:20 p.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, gentlemen. Mr. Goodland, do you want to continue?

MR. GOODLAND: Thank you, Mr. Chairman. I just have one housekeeping point. The issue I raised with Mr. Anthony regarding the health care levies and the implementation. I found in my own briefcase, a copy of the Hospital Insurance Agreement Act. It was assented to December 16th, 1994, so it's a Statute of Newfoundland, 1994, Chapter 43. I would suggest, Mr. Anthony, that that's the document that changed the system from an MCP account claim by claim recovery to across the board health levy.

MR. ANTHONY: I have no reason to argue any different to that.

MR. GOODLAND: So my point being, I don't think you need to go back and ...

MR. ANTHONY: I appreciate that.

MR. GOODLAND: And sort of rummage around for that information.

MR. ANTHONY: Okay, okay.

MR. GOODLAND: Just one issue you mentioned towards the end of your testimony before the break, you said the quantum of claims have increased in 2002.

MR. ANTHONY: Uh hum.

MR. GOODLAND: Do you mean the quantum of claims, Facility Association claims?

MR. ANTHONY: This is strictly what claims we have as a servicing carrier for Facility Association.

MR. GOODLAND: Okay, and when you say the quantum, can you, how do you define what the quantum is?

MR. ANTHONY: These would be amounts, dollar amounts that we have set up for known claims as they became reported.

MR. GOODLAND: And do you know the percentage increase?

MR. ANTHONY: Last year it was about 12, 12 point something.

MR. GOODLAND: 12 point something percent increase?

MR. ANTHONY: Yeah, yeah.

MR. GOODLAND: Now, if you look at DJS, I believe it's number two. Here it, I actually have it here, DJS-2.

MR. ANTHONY: Uh hum.

MR. GOODLAND: Certainly through to September 2002, the net premiums written have increased significantly.

MR. ANTHONY: Correct.

MR. GOODLAND: Possibly by 30 percent.

MR. ANTHONY: It would appear that way, yeah.

MR. GOODLAND: Would that ...

MR. ANTHONY: Yeah, okay, that's the ... the numbers are the numbers.

MR. GOODLAND: Yeah, would that be, would that be one of the likely reasons why FA, quantums, as you call them, have increased if either the number of insureds placed in FA, well certainly the net written premiums have increased by 30 percent. There's more business in FA in 2002?

MR. ANTHONY: There is, but you need to relate the quantum to the claims frequency more so than the premium number. The frequency increases or decreases, you tie the quantum to that rather than the actual premium. You could have, actually have a situation where you're having growth and have a frequency decrease, and what we've seen, we have seen, you know, I've seen ... I mean what I saw in 2002 was an increase over and above 2001, I believe I stated it in count, and also a fairly significant increase in quantum and value.

MR. GOODLAND: You've indicated about a 12 point something percent increase in the actual reserves, the dollar amount ... but there's been a 30 percent increase in net premiums written, correct?

MR. ANTHONY: But that, one doesn't relate to the other, I would suggest to you.

MR. GOODLAND: Okay, alright, so there's more drivers in FA, there's more premiums written, but that wouldn't necessarily impact on your 12 percent ...

MR. ANTHONY: No, you tie, what you'd look at is tie the claims reported to the quantum.

MR. GOODLAND: Now, I'm going to ask you about ... you made a comment yesterday regarding, and I believe it was in the context of the grey market or lack ... I'm not sure, it might have been in the context of ... it was on the heels of a comment regarding Bill 28. You said we've already had one company leave.

MR. ANTHONY: Uh hum.

MR. GOODLAND: What did you mean by that?

MR. ANTHONY: Uh hum.

MR. GOODLAND: What did you mean by that?

MR. ANTHONY: Well, we've had the ING leave, which is not a grey market insurer.

MR. GOODLAND: Right.

MR. ANTHONY: Which has left. We've also had testimony here to the best of my knowledge, that Pembridge, if things don't shape up, will probably pull out of the market. I guess there's another instance here this morning that you referred me to, which was having to deal with Mr. Kehoe, and, and Cal LeGrow, where they've tried to place a risk and they have no grey market to move it to, it would appear, so ...

MR. GOODLAND: But you're not certain that risk would even be suitable for grey market.

MR. ANTHONY: I couldn't say.

MR. GOODLAND: Right, so that may be ...

MR. ANTHONY: But it's just another example of lack of grey market though.

MR. GOODLAND: Now, so the company you referred to yesterday was ING leaving.

MR. ANTHONY: Correct.

MR. GOODLAND: But now ING's publicly stated reason for leaving was that they couldn't grow their market beyond a three percent market share that they've had here.

MR. ANTHONY: Couldn't grow, it couldn't, I'd argue that it would be very difficult to grow ... I mean the main, the main focus, the main volume of business in Newfoundland is auto, private passenger, it would be very difficult to grow to a significant number on a profitable basis very easily.

MR. GOODLAND: But they didn't suggest, they just felt that they couldn't infiltrate the market beyond the three percent to any significant degree.

MR. ANTHONY: That's what they're stating and I can't ...

MR. GOODLAND: That's what they're stating.

MR. ANTHONY: I have no knowledge or anything to argue one way or the other on that.

MR. GOODLAND: Okay, so there's no, they haven't suggested or stated that it's as a result of the potential implementation of Bill 28.

MR. ANTHONY: Well, they've only, they've stated what they've stated, and I accept that.

MR. GOODLAND: Okay, fair enough, so we can't draw anything from ING's departure as it relates to the relevancy of this filing.

MR. ANTHONY: No, I don't think ... well, it wasn't my intent to try and tie ...

MR. GOODLAND: Okay.

MR. ANTHONY: But if we have Bill 28 come in, I can assure you that it will cause problems in the industry.

MR. GOODLAND: And that's what your, that's your conjecture or speculation into the future.

MR. ANTHONY: That's my worry.

MR. GOODLAND: Okay, now the binder registry system that you've referenced, and you, you sort of lamented on the fact that the Superintendent of Insurance for Newfoundland and Labrador hasn't implemented that system, correct?

MR. ANTHONY: That's what I said, yes.

MR. GOODLAND: Now, you were here when the Superintendent, Mr. Morris, testified, and he suggested that that could be implemented on a voluntary basis by the ... by the insurance industry without his endorsement or consent.

MR. ANTHONY: That's what he said in his testimony, however, it came up, there was a fair to do about it in the last hearing that he was very much involved in, and I believe still he was challenged at that time to come with a system here and make some other changes, which they have made, and I guess it becomes an issue of who is going to work with the information that's developed from it. It's not, it shouldn't be the insurance industry's business to regulate the insurance industry in Newfoundland. We offer services. The regulator should regulate what would be best for the market and for the consumer, and ...

MR. GOODLAND: But he's made the decision that Bill 28 is the actual way to regulate, correct?

MR. ANTHONY: He thinks it is the be all end all, and in all due respect to the Superintendent, I mean, you know, I have with him certainly differences of opinions on many things, and that is one that I believe is nothing more than a political football.

MR. GOODLAND: Okay, but the binder registry system itself doesn't impose any regulations per se on the service carriers or the Facility Association market.

MR. ANTHONY: No, I believe it's ...

MR. GOODLAND: It's fact finding.

MR. ANTHONY: I believe what I said beginning the other day was that it would be a tool to help develop more information that perhaps would be of value at some later date.

MR. GOODLAND: And it is a tool that the industry itself, on its own initiative, could have implemented.

MR. ANTHONY: We could, we still can.

MR. GOODLAND: Still can.

MR. ANTHONY: The fact is, who is going to look at it, who is going to deal with it, and I believe it's the Superintendent should be involved in that process. He regulates our industry and he should provide some guidance in that.

MR. GOODLAND: But he indicated the superintendents in the other two provinces, based on his information, where the binder registry system is implemented, that being, I believe, New Brunswick and Nova Scotia, that wasn't done with, at the cajoling of the superintendents of those provinces.

MR. ANTHONY: You know, we can debate this forever, but I think the, you know, the government, the Minister in particular, and no doubt (inaudible) the Superintendent, has got tunnel vision on Bill 28 that it's going to cure all the woes of the industry and I think they are sadly misinformed.

MR. GOODLAND: And the last point I'll make on it, would you agree that the binder registry system in and of itself is not going to cure any of the industry ills or woes?

MR. ANTHONY: I would agree with that. It will certainly inform us as to what may be going in there, and then maybe something can happen from that, but you need to know the detail to fix the problem, we need to find the root cause of issues.

MR. GOODLAND: Did you ever, you spoke about the brochures that Mr. Simpson had suggested or indicated to the Board had been passed out by FA to its, to the member companies, I guess, service carriers and brokers. Did you ever determine why that hadn't happened within your brokerage, Anthony Insurance?

MR. ANTHONY: It is a fairly new development and there was still communication amongst the marketing people as to how to best handle that and get it out, but as soon as became aware, it's been remedied.

MR. GOODLAND: Okay, do you know if that was a similar difficulty with the other brokers?

MR. ANTHONY: I wouldn't have knowledge.

MR. GOODLAND: You don't know, okay.

MR. ANTHONY: Okay, we simply provide them with the information and what they do. You'd have to canvass each individual broker.

MR. GOODLAND: You've spoken briefly this morning about the implementation of CLEAR and your sense of it is, and I suppose you're speaking as a service carrier, that that's not going to have a major impact on the Facility Association insureds because of the fewer numbers who are actually buying the comprehensive property damage components of coverage, correct?

(12:30 p.m.)

MR. ANTHONY: That's what I said this morning, correct.

MR. GOODLAND: Okay, and we've also heard that the dislocation study we've been, or the Board has been provided and asked to rely upon when determining whether CLEAR should be implemented or not is of limited value because it is dated.

MR. ANTHONY: Well, I haven't seen the studies so it's very hard for me to comment on it one way or the other to be honest.

MR. GOODLAND: So, in fact, if the Board wanted, or in its decision suggested that it would want an updated dislocation study, that's not going to be that devastating for the Facility Association, the implementation of CLEAR for FA drivers.

MR. ANTHONY: Well, if it delays the result of the hearing, it has certainly a negative effect and I'd strongly suggest that, you know, I mean the dislocation ... what you're looking at are the preponderance of certain vehicles within a market and I doubt very, very much there's been any significant shift in what vehicles are insured where, whether it be Facility Association or in the general market or in the grey market or anywhere else. I mean the vehicles in Newfoundland, if you look around, I haven't seen a big shift from pick-ups away to something else, I mean there's a high percentage of certain vehicles. I would strongly suggest that hasn't changed, but that's strictly my opinion.

MR. GOODLAND: And I'm under the assumption that the national or international insurers that write here have implemented CLEAR in the voluntary market for vehicles insured here, is that, was that your evidence earlier?

MR. ANTHONY: I believe so, I can't, I wouldn't be able to say Company A, B, C, D, but in general, everyone is moving towards CLEAR.

MR. GOODLAND: But do you know if the vehicles insured in the Newfoundland voluntary market, at least in part are subject to the implementation of CLEAR?

MR. ANTHONY: As far as ... yes, I believe that's the case.

MR. GOODLAND: I'm going to just take you to DJS-2.

MR. ANTHONY: Uh hum.

MR. GOODLAND: And in conjunction, I suppose I'll ask you to refer, as well, to JP-2.

MR. ANTHONY: Okay.

MR. GOODLAND: Just so I'm clear on these documents.

MR. ANTHONY: JP-2, where might I find that?

MR. GOODLAND: That's the CGU Powerpoint.

MR. ANTHONY: Oh that one, okay, here we go.

MR. GOODLAND: Yeah, I'm going to take you ... I'm going to ask you some questions regarding your interpretation of JP-2 and DJS-2. First off, JP-2, you suggested, and if you look to the lower right hand corner of the fourth page which is entitled 2001 Newfoundland Auto Results.

MR. ANTHONY: Uh hum.

MR. GOODLAND: If you look at the $552,000 loss for 2001.

MR. ANTHONY: Yes.

MR. GOODLAND: You're suggesting if we had carved out the FA loss then that would have, that would have been, then CGU would have shown a profit for 2001, correct?

MR. ANTHONY: I guess what I said was if Facility Association didn't exist and that business didn't exist, sliced the whole thing out, they would have had, they would have been showing a profit of $499,000, that's what I said.

MR. GOODLAND: Okay, but in fairness now, I put to you that if, in fact, the investment return, for instance, had been better in 2001 for the regular market, written premium, or on the regular market written premium, that loss might not be showing as well, correct?

MR. ANTHONY: Just say that again, please?

MR. GOODLAND: Okay, here's my proposition to you, that's one way to look at the loss, we can attribute it to FA, or say if FA is carved out there wouldn't be a loss.

MR. ANTHONY: Okay.

MR. GOODLAND: Let's go to the regular market under underwriting income.

MR. ANTHONY: Uh hum.

MR. GOODLAND: If, in fact, that loss was $3 million, there wouldn't be a $552,000 loss either, a $552,000 loss.

MR. ANTHONY: A basic math equation, how can I argue with that?

MR. GOODLAND: And if, in fact, the CGU had had a better return on their, or a higher return on their investment for 2001 from the written premiums, they might not show a loss either.

MR. ANTHONY: Well, you know, it's ... I mean whatever numbers you want to throw at it, they add up. I mean ...

MR. GOODLAND: They add up, and there's a whole host of reasons why we get to the $552,000.

MR. ANTHONY: The fact is if Facility didn't exist, CGU would have had a profit. Facility Association exists, it created a loss. I mean, you know, could have, would have, should have.

MR. GOODLAND: Well, it might have helped create, it might have helped create a loss. It helped create the overall loss, is that a fair statement?

MR. ANTHONY: Well, you know, I would take what you said a step farther and say, you know, if Facility hadn't existed, and in their own books they had had a higher investment, they would have had a higher profit, period. I mean Facility has no, no bearing on that scenario, but the simple fact of life is is that we're dealing with real numbers, they really exist, and they have, certainly have a real impact.

MR. GOODLAND: So let's say the investment market for Facility Association in that year was more positive, those, the $1,434,000 loss would have been less, correct?

MR. ANTHONY: Well, the $1,051,000 loss would have been less.

MR. GOODLAND: Would have been less.

MR. ANTHONY: Yeah, they still would have had the same underwriting loss, and as I was talking about earlier, I think it's important, I think the market in general is getting back to the pure principle of insurance, so what you're talking about wouldn't affect ... the key number, I would argue with you, is the $1,434,000.

MR. GOODLAND: Okay, just to go to DJS-2.

MR. ANTHONY: Okay.

MR. GOODLAND: Just so I understand what these columns represent, if we look at the third column from the left, under ... it's called excess (deficiency) of revenues over expenses.

MR. ANTHONY: Okay.

MR. GOODLAND: This is really a profit/loss column, isn't it?

MR. ANTHONY: Well it's a deficit surplus column.

MR. GOODLAND: Okay, it's an accounting, it's more of an accounting exercise?

MR. ANTHONY: I presume you could say that, I guess.

MR. GOODLAND: Okay, yeah, it's not, that's not in and of itself, that column doesn't reflect money passing hands between FA and its members, one way or the other.

MR. ANTHONY: Ultimately on a wind up, it would.

MR. GOODLAND: Ultimately on a wind up, but it doesn't right now.

MR. ANTHONY: No, well that's why it doesn't tie into the next column on the right.

MR. GOODLAND: Okay, I'm going to ask you about the next column on the right, the assessments to and from members.

MR. ANTHONY: Okay.

MR. GOODLAND: The, and it goes to the, I suppose, tracking through what we see here. I see, let's start in 1997 as an example, okay. There was an assessment to members of $4,191,000.

MR. ANTHONY: I believe that's from, that's ...

MR. GOODLAND: That's distribution.

MR. ANTHONY: Distribution to, yes, okay.

MR. GOODLAND: Okay, now that, that gets distributed to each member based on that member's percentage of insured vehicles in the province?

MR. ANTHONY: Exactly.

MR. GOODLAND: Okay, and that comes by way of just a cold hard cheque, is that correct?

MR. ANTHONY: Cash.

MR. GOODLAND: Cash, and the member company will do with that as it pleases, correct?

MR. ANTHONY: Well, we won't do with it as pleases because it's already booked, it's already booked to revenue and the expense through its operations, so it's just a simple cash transaction that's tied to results that have already been accumulated. When we receive, let me put it to you this way ... when we receive, or let's say the industry in total receives a cheque, and if you're looking at 1997 of $4 million.

MR. GOODLAND: Yes.

MR. ANTHONY: They wouldn't have a profit of, they wouldn't show a profit of $4 million, that doesn't exist, that's already been worked through the books over the year, so it's not a windfall if that's what you may be suggesting.

MR. GOODLAND: No, it's not a windfall, it's a cheque that you receive and it goes on your balance sheet as revenue.

MR. ANTHONY: No.

MR. GOODLAND: Cash, just cash.

MR. ANTHONY: Just cash because the revenue has already been recorded.

MR. GOODLAND: Okay, sure, so it does increase your capital, correct?

MR. ANTHONY: No.

MR. GOODLAND: It doesn't?

MR. ANTHONY: No.

MR. GOODLAND: Well, what does it do then?

MR. ANTHONY: It's already been recorded, the revenue and expenses have already been recorded on the participation reports, so this is simply a cash transaction. It has no direct input on the, in and of itself on the, on the assets or liabilities, nor the profit or loss of the company. That's already been worked through.

MR. GOODLAND: Okay, so are you saying it makes no, does it make a different to the bottom line of your company?

MR. ANTHONY: Not in and of itself. Like I said, it's already worked through the accounting.

MR. GOODLAND: Okay.

MR. ANTHONY: So you would not ...

MR. GOODLAND: Let me ask you this.

MR. ANTHONY: ... so you would not see that number stand out.

MR. GOODLAND: Okay, let me ask you, would you rather see the 1997 results in the fourth column over, or the 2002 up to September results?

MR. ANTHONY: Well I'd like to see at the end of the day that it comes, all washes out to zero, that's the intent.

MR. GOODLAND: But if you had to pick between those two years.

MR. ANTHONY: Well, obviously a positive number is always better than a negative number.

MR. GOODLAND: Right.

MR. ANTHONY: But ...

MR. GOODLAND: And why is that?

MR. ANTHONY: Well, a positive number indicates that there's a surplus there, however, and I think it has to be accepted that there are years when there may be surpluses, there are years when there may be deficits. It's not ... I guess it has already been debating, actuarial science is not a perfect one, and there's ups and downs and I think the end of it, what you've got to look at is where you are at the end of the day, and I think everyone has agreed that right now at the end of the day, you know, we're at 2 percent, 2 1/2 percent over zero, shall we say, and on an enterprise with, you know, $198 million of premiums transacted, to have a deficit/surplus that close is not too shabby.

MR. GOODLAND: Those are the numbers, I suppose, that certainly Mr. Simpson and ... well certainly Mr. Simpson is inviting the Board to accept. I don't know if I'd go so far as every party, but ...

MR. ANTHONY: Yeah, well that's fine, that's ...

MR. GOODLAND: Fair enough.

MR. ANTHONY: Okay.

MR. GOODLAND: Now, we've heard as well that the actuarial exercise is not an exact science.

MR. ANTHONY: No, that's ...

MR. GOODLAND: And what we ... I think we all can agree on one thing. The actuary is going to be wrong, because it's a perspective type of an exercise.

MR. ANTHONY: Yes, they have their moments, and as a prime, I'll use as a prime example, the PUB's own actuary put forth a rate submission two years ago, interestingly, unfortunately or interestingly, coincidentally, it came out at the same time as the tort reform, and the actuary who was, I believe, the actuary of record now, was actually suggesting a rate decrease here in Newfoundland, and the industry looked at it and said where in the love of God is that coming from and challenged it, and the Board's actuary withdrew that. They now have, there's also now an actuarial report that's been circulated for, I don't know what the exact status, it's been circulated for comment, from the Board's actuary stating that rate increases of some amount, and I know that report is also being challenged because there is some feeling that there are some significant flaws in the underlying logic of it, so it's ... yeah, it's an imperfect science all the way around.

MR. GOODLAND: Now if, in fact, you as a member of Facility, you have to choose between the actuarial being wrong on the high side or wrong on the low side, what would you prefer?

MR. ANTHONY: I think what you have to accept is they can be one side or the other. I think you've got to look at it over, you know, it gets back, you've got to look at it over the life of ... you can't, you know, I think you'd be equally wrong to look at one year in isolation to another. You've got to look at over time and we keep, you know, we just keep coming back to this, this amount over the 15 years, and as you said, you know, whether that's acceptable or not, you know, that's up, I guess, for the Board will ultimately decide that. I would suggest to you that it's not an unreasonable number but you have to look because it ebbs and flows, it's, as I said it's ... assumptions can change. I mean the Board's actuary to the best of my knowledge on the last filing made a pretty broad based assumption on what's an acceptable ROE, for instance, which is totally unacceptable, I think, to our industry, and but that has a very significant impact on a rate filing, so you know, I don't know what else to say on it. I've kind of got that one beat to death.

MR. GOODLAND: Mr. Anthony, you will be pleased to know that those will be my questions, thank you.

MR. ANTHONY: No problem.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, thank you, Mr. Goodland. Commissioner Powell.

COMMISSIONER POWELL: Do you want to go ...

MS. NEWMAN: I don't have any redirect, so ...

MR. SAUNDERS, PRESIDING CHAIRMAN: No redirect?

COMMISSIONER POWELL: Now to me.

MR. SAUNDERS, PRESIDING CHAIRMAN: Now to you.

COMMISSIONER POWELL: Okay, I only have a couple, Mr. Anthony, I enjoyed your evidence. I think actually it worked out well the way everything came around and having you as one of the insurance provides as last has sort of brought a lot of things together. One of the issues that came up, we talked about reporting to the Insurance Bureau of Canada, and apparently it's on a voluntary basis and not everybody does it, I understand.

MR. ANTHONY: That's not correct, sir.

COMMISSIONER POWELL: It's not?

MR. ANTHONY: No.

COMMISSIONER POWELL: There was some question that not everybody reported all their data.

MR. ANTHONY: No, I think, I think (inaudible) and that is all companies are required and do report, to the best of my knowledge, to the Insurance Bureau of Canada, under the Superintendent's statistical plan. However, in my evidence I referred several times to the Auto Plus.

COMMISSIONER POWELL: Yes.

MR. ANTHONY: The IAO, that is a voluntary organization, not all companies in Newfoundland provide data to that, so there are certain companies, for instance, if I had an insured coming from there, I can't go in on their system and request the information, it's not available, but it's required, I believe, by law, and I could be wrong, but under the Act, that all auto insurers have to provide statistical data to the IBC for auto insurance.

COMMISSIONER POWELL: I was going to ask you if you did report, but obviously you do. Can you, without going into any great amount of detail, the FA came about in 1986, and in your evidence you mentioned there was a risk pool type ...

MR. ANTHONY: Risk sharing pool.

COMMISSIONER POWELL: How did that work from an administration point of view, or as a policyholder, I found myself there?

MR. ANTHONY: Well, if you came in as an insured, you would be quoted, you would be quoted the rate for your risk, and there wasn't a difference between a person who was going in the regular market versus a person who is going into Facility, the same rate, okay. The policy would be simply written by the broker, they would make no determination whether it was Facility or pool, or not Facility, or regular market, it would just go to the insurance company, and as a product of doing the underwriting of that risk, the insurance company might determine that that was a risk they'd rather seed off to the pool, in other words, pass along to the pool. There was no additional premium, there was no additional charges to the consumer, and what would happen, the insurance company could seed off 85 percent of that risk to the pool, so in other words, we'd provide Facility with 85 percent of the premium, we'd retain 15 percent of the premium for ourselves, and should there be a loss, Facility would pay 85 percent of the loss, and we would pay 15 percent of the loss, plus we would incur the fees for handling the claim. What that, in effect, did and does in the risk sharing pool in Ontario is that you wind up with individuals who would be in Facility, going into the pool at a much lower rate, because I think we all, I think we, you know, concede there's a difference between general market rate and Facility rate. That would go in at a much lower rate, and then, of course, the overall population shares in that result, so it becomes very much subsidized by the industry, and really you don't, there's no incentive in the system for people to improve their habits, which Facility ... and I mean good, bad or indifferent, I mean does drive home the message that, you know, if you have certain driving habits sometimes there's going to be a cost associated with it.

COMMISSIONER POWELL: So when you say Facility, so the risk pool was administered by the same organization?

MR. ANTHONY: By the ... yes, in effect, it was, Facility existed as a mechanism back then too.

(12:45 p.m.)

COMMISSIONER POWELL: So would there be any figures prepared in terms of ...

MR. ANTHONY: I couldn't honestly say, sir, I wouldn't know.

COMMISSIONER POWELL: So in 1986 when the Facility and their present methods started from day one, scratch, in terms of ...

MR. ANTHONY: Yeah, I could, I mean I can say that they would accumulate all, all the results for what was, the 85 percent of what was put in and then that would be shared out again amongst the members, and I would suggest to you that that was shared out as a significant cost because the underlying premium would be much less, and as you apply sort of the loss trend on this to a much lower premium base, I mean the result is fairly obvious, I think.

COMMISSIONER POWELL: On a vehicle type the same as ...

MR. ANTHONY: Yeah, yeah.

COMMISSIONER POWELL: Okay, so you guaranteed that the voluntary market was subsidizing the high risk drivers.

MR. ANTHONY: Absolutely.

COMMISSIONER POWELL: Okay, just a little note I made there, you were talking about the, the counsel for the FA talked about the HST component and tax that ... and you were talking about people getting mixed up with the ... my own knowledge, the people who put out the HST/GST bulletin, they actually for a number of quarterly bulletins, they put in a special note for people in Atlantic Canada who are subject to the HST, that that was a, or Newfoundland, excuse me, that that was a tax and not an HST component, and it wasn't an input credit, so they had ...

MR. ANTHONY: It probably went to the ... I don't know, did it go out to the general public, or was that to businesses, I wonder, because they get the input tax credits.

COMMISSIONER POWELL: Well, whoever qualifies for the input tax credits, but they specifically put in the bulletin saying that ... because there were a lot of people who were making claims.

MR. ANTHONY: Yeah, yeah, and I would suggest there still is.

COMMISSIONER POWELL: Oh yes, I can assure you there is, sir. There was some talk about one of the costs that brokers incur and I think Mr. Hickey referred to this as, you now, if they had their druthers, they wouldn't be fooling around with FA because everything is manual whereas now most brokers dealing with their insurance providers are all computerized. Is there any reason for that, that FA is not computerized and they have a ...

MR. ANTHONY: It's much more, we require, like it has to be, policies have to physically reviewed by, well by an underwriter, I'll call it an underwriter, but more of an audit function, however, you know, I know companies are looking at trying to implement systems, we're looking at it ourselves. I know Royal Sun Alliance tie in is particularly somewhat easier to do when you're a servicing carrier for a broker that you do normal business with because you have systems already. But it is being looked at, and you know, I think ways are always looked at to try to reduce costs. Do we always do the best job of that, probably, maybe not. I mean there's always better ways to do things, I'm sure, but it's, it is being looked at, and I mean within, I guess, the Facility plan of operation, I mean there is a mechanism there for servicing carriers to request funding or payment of extra expense to put in such a system, but in and of itself, I wouldn't have a, you know, much beyond, sir, automating the application, like having it online type of thing, there is ... much of it is still very much a hands on process because it has to be physically looked at by a human. MVRs have to be ordered, and unfortunately the MVR, the system we use is a stand-alone system, it's not, there's no way of integrating with our normal systems. We have to go in on a different, basically a different computer, or logged in with a different code and request that, so it's very difficult to do, much different than the way we're doing it. And of course, the other big expense is the claims expense, and there's never, I don't think there's ever a way to automate that. It will always be human and, in fact, my daughter, who I think will graduating MUN next year, she's just about finished, I've always encouraged her to look at, she's interested in the business, go into the claims side, because I think it's an area where humans will never be replaced, and there's only way of doing it that I can imagine.

COMMISSIONER POWELL: One of the, you suggested if Facility doesn't make it, the insurance company, the insurer's viability and profitability has to pass on the cost to the voluntary market, and under the system that we have (inaudible) rates in the voluntary market, there's the benchmark and the benchmark says the premium is $1,000, it's plus or minus ten percent, so the premium can be sold between $900 and $1,100, and you're ...

MR. ANTHONY: It's actually probably much broader than that to be honest with you.

COMMISSIONER POWELL: Yeah, but there's different categories for different things, it's just ... so my understanding that, well the benchmark really hasn't changed over the last few years, that insurance companies have actually, increasing their rates to consumers. Is that a case where they may be on the lower end of the benchmark and now they're ...

MR. ANTHONY: Well, I think, in fact, for a period and sometimes we may not always do the brightest things, we have our moments, a few years ago we actually filed, a lot of companies filed for rate decreases, and probably it was the worst thing we probably could have done at the time, but we filed, there was a lot of rates actually that were filed under the benchmark and were, you know, reviewed by the Board and by the Board's actuary, and subsequently approved, though, you know, we weren't near the minimum, so even with the benchmark as they stand now, you know, you know, you've got an allowance in the benchmarks to alter your differentials by ten percent, and on top of that you have high and low range of rates, so there's, I mean there's a vast array of opportunity to peg rates where it suits your business as it exists now, and you know, I would suggest to the Board, no, it's been suggested by the Superintendent to abolish the minimum. It won't change a thing. The companies, I think, have already demonstrated that if they feel their rates should be below the minimum, they file at it anyway and they've been approved, and again, it is more, you know, I'm not on a bit of a mission here today, but it's bit more political fodder, I guess.

COMMISSIONER POWELL: By filing they've got to justify that they have the stability, the capital to justify those rates.

MR. ANTHONY: Well, it's that, and more so that the actual experience ... because I think the Superintendent's responsibility is to ensure the companies are viable and, and in shape to do what they do. I guess the Board's responsibility primarily is one of rate and one should work independently of the other.

COMMISSIONER POWELL: Would this be a case why a company would want to do that, you have a good investment climate and they're actually using the underwriting as sort of, in my words, loss leader, to get more premiums to get better investment income?

MR. ANTHONY: I mean that's where you get into we're not always doing the brightest things in the world at times and, you know, we pagan are we, I guess, (inaudible). We pagan are we ... there's, mandated by the shareholder or by the buying public in the stock exchange, they have an expectation of an ROE, and you have an expense factor and you work backwards, and then you have to develop, to make you get to 100 percent you have to develop a loss experience number, a loss ratio of X to make the formula work, and you hopefully can peg your rates to drive that loss ratio and still be competitive in the marketplace. When you can't be competitive in the marketplace on that, sometimes you have to lower your expectations for ROE. Or another way which I think the industry has done, which doesn't get picked up on, is that, you know, I think we go, we try very hard and we've tried hard as an industry to reduce expenses, some better than others ... that's one of the things ... I mean very simply, if I can find a way to reduce my expense ratio by two percent, that's two percent less I can charge on rate and keep the ROE that I need to get, very simply put.

COMMISSIONER POWELL: And this is where we come back to having a competitive market, it pushes these forces.

MR. ANTHONY: That's what ... yeah, I mean some, some companies are satisfied and looking at six, seven percent ROE as acceptable, others require much higher. A lot look at, you know, we're in competition with financial institutions, with banks, and bank ROE, and getting investor confidence requires numbers that match, which are significantly more than five or six percent, and that's what drives it, but that's what drives competition. Not everyone sits down and says well we're all going to collect an ROE of X. It really varies. Some companies are much more creative in how they can do their business and if they can drive a lower expense ratio, well their clients will benefit. I mean that's how we compete, and like I said, very simply, if I can reduce my expenses ... if my ROE is pegged and everyone is happy with that, if I can reduce my expense ratio by two percent, that would allow me to reduce my rates by two percent. I've not become two percent more competitive than my competitor, if all things were equal.

COMMISSIONER POWELL: And just one other comment, I mentioned to Mr. Simpson, I was looking at the financial statements that FA produces on behalf of the insurance industry, I just don't think they do justice to explaining what they're about to the insurance industry because it almost gives the impression that they are an insurer themselves, which we know they are not, but I'll leave that for another day. Thank you very much.

MR. SAUNDERS, PRESIDING CHAIRMAN: Thank you, Commissioner Powell. Commissioner Martin?

COMMISSIONER MARTIN: I just have one question but I think you've probably answered it. Two or three witnesses were asked in terms of the implementation of CLEAR and the imposition of caps, and there was some discussion earlier in this hearing and I don't know if you were here for it or not, but in terms of phasing in any increase in premium, I take it your comments would be the same, it would be a nightmare for your system.

MR. ANTHONY: I would suggest to go one way or the other, don't go halfway, and you know, if, like I said, I think the CLEAR more adequately reflects the risk, and it's fair, but to go in between I don't think would serve anybody any great justice. It would be better, like I said, pick one or the other, I would suggest to you.

COMMISSIONER MARTIN: And your comment would be the same in terms of phasing in an increase in premiums, I take it?

MR. ANTHONY: Well, if, you know, if they don't, sir, if they don't get to where they need to be, there's ... I mean I will agree with counsel that, you know, you have to look at Facility in and of itself, as you should, but there are other market implications that would result, and you know, getting back, you can't ... you know, the grey market is an important market, and if there's not enough of a spread, I think you need to keep in mind that, you know, in the general market there will continue to be rate filings this year. I'm sure there will be inflationary increases, if nothing else, but I think there will be something more than that. Nothing, I don't think, to the magnitude people have seen in the last couple of years, I don't see that, but there will be increases there, so it's, you know, kind of running, you're kind of running behind already and we haven't started yet, and so that's, I think that's, that's where I see it, and I'm to the point with all this, I guess, and like with tort reform, whatever the product is and wherever we are we'll be, and things will get priced accordingly, but you know, insurance has gotten, it's a very expensive item. It's a major purchase for householders and, you know, until the root cause of what's causing this gets fixed, if it ever does, it will continue to be somewhat expensive, but it's what's, it's the way society wants the rules to be and I'm perfectly acceptable to that if that's what they want.

COMMISSIONER MARTIN: Okay.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, thank you, Commissioner Martin. Mr. Anthony, you've got a wealth of experience in the business, you and your family and your companies. I'd be interested in some general observations from you in terms of where we are and where we need to go in terms of how rates should be set, or structured, I suppose. You made a statement back some time ago, I think, in response to Mr. Stamp, or Mr. Goodland, I'm not sure which, that the premium that you collect from all of the clients you have goes towards the losses of the few, something similar to that. In other words, the total premiums you collect from all of your insureds, goes towards paying the losses of the few that incur those losses.

MR. ANTHONY: I think that basic insurance, is the premiums of the many pay for the losses of the few.

(1:00 p.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: That's it, and I guess it's the same in any business except that in the insurance business, you have a system of rating, of recovering your costs, if you like, which puts a larger premium on the group or the drivers who cause most of the loss.

MR. ANTHONY: That would be ... well the way rating is structured, to a point that's correct, and then you get to a point where do you want to segment out a certain part of that to control costs in one piece versus the other, which is why I suggested earlier that I think there's a role for the general market, I think there's a role for the grey market, and then there continues to be a role for Facility Association. You segment the markets accordingly so you ... because it's not only dollars and cents, there's risk profile, there's volatility with it, and I think if you get the worst of it up in Facility Association where everyone accepts that as a pool and it's shared out, it helps stabilize other pieces of it.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, but the underwriting guidelines and the rate structure recognizes drivers that are claims free for a period of time, as well as it does recognize drivers who cause a lot of accidents, and that's ...

MR. ANTHONY: That's correct.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, and that's probably an oversimplification of the theory of the whole thing, but the rate structure is such that there is a recognition of the cost being borne by those who cause the most of it, although there's still a large degree of cross-subsidization, of course, because if you haven't had a claim then your premium cost reflects the claims of the whole of the industry.

MR. ANTHONY: That's fair, but what you also have, and I think we touched on it several times this morning, much higher administrative costs, much higher other costs of dealing, because like I said, there's a huge turnover in this. You, you know, the Facility Association, how it's (inaudible), it's very black and white, there's no, there's no decision making. I mean it slots into a spot and the rate is the rate, which probably one of the biggest problems I have with Bill 28 is that what it's going to do, it will somewhat tie our hands of running the business of insurance, of underwriting. I mean it, you know, whether people agree or not, I mean we look at, like I said, sometimes when you get into these stories, I mean the risk will tell a story and, you know, we all have staff and have done it for a long time, and you've been there, done that, and you've seen it before, and you know, we're not always right, but in the vast majority of cases, I'm sure we make the right decisions, and that will take that away and what will happen, I would suggest to you, is business that would not have gone into Facility will wind up going in there because I may take, have a risk come across, and it's kind of on the fringes of it and you say, well, we've been with you a long time, or whatever, and there's a bit of a story, I'll take a chance on it. What I fear with Bill 28 is say tomorrow something else happens that is not one of the criteria for moving it into Facility then I have just tied my hands and I can't move that risk now, so what it will force the industry to do is move risks ... if you have a valid reason under the criteria that ... and I mean it's going to be the Superintendent of Insurance who sets this criteria and that's concerning enough to me, that you'll have to move that into Facility because if you have the opportunity to do it then, you may not have it next month when something else happens that would put it over the edge, and this is the business of insurance, and it's fraught with pitfalls and, you know, yes, you'll drive people to, there'll be people who will move out of Facility Association into the general market, without a doubt. It will ... because of that alone it will drive the average rate up in the general market, I can assure you of that, and on top of that it will take away the opportunity where, you know, we have a long term client now, the industry has a long term client. We treat long term clients, everybody does, much better ... not much better, but if they're going to give someone the benefit of the doubt, you're going to give the benefit of the doubt to someone you've had a relationship with for a long time. I was thinking of something this morning. If you go to the corner store and you've been going to the corner store for 20 years and you know them and you know their kids (inaudible) whatever, and you to go the store and pick up a quart of milk and you forgot your wallet, alright, they're going to send you and say next time you're in pay me the $3.00 or $2.75 or whatever it is, but if you go down to some store you don't know, well you can say what you want to them but they're not going to let you go out of there with that quart of milk, and that's the business we're in and all joking aside, if Bill 28 comes in, that's ... our hands are going to be tied. We're going to be forced to conform to a system that is problematic. Would we have to, maybe not all companies but some would. I mean we're here in Newfoundland and we write a lot of business here and we have every intent of staying here, so we try to find a way to live with it, as untasteful as it might be, but we will not be able to give the same level of service that we give now. It will drive costs up to the general consumer. Yes, it will depopulate Facility, I'm sure it would, but then maybe the next alternative then is to go back to the old risk sharing pool which is what they have in Ontario. I think Mr. Simpson already mentioned that that's very costly and the old system was here too, because there's a lot of, a lot of ... you had to account for it differently and it becomes very much subsidized, so, and that's my five cents on that one.

MR. SAUNDERS, PRESIDING CHAIRMAN: There's been a lot of discussion or a lot of ... yeah, a lot of discussion on Bill 28. Did you have an opportunity to have input into the Bill 28 proposal?

MR. ANTHONY: No sir, not one iota. I should qualify that in that it came up in the list of reforms, along with tort reform and to be honest with you, we expressed a concern to the Minister and to the Superintendent, and to almost anyone else who would listen that, you know, to even consider one without the other would be a problem, and to be frank, I mean this is the absolute worst case scenario for our industry, is to have this come in without, without tort reform packages attached to it. It's, you know, it got in ... I mean if the tort reform package would come and you'd sit down and ... I mean it would be a compromise all the way around the end of the day. I'm sure, I mean there's things in there that I'm sure we could probably live with. To tell you the truth, there's not a lot, but you ... it's like anything, I mean if you sit down long enough and bang away at it long enough, you'll come to some resolution of it, but we've got ... I mean it's strange in the industry, the insurance industry is also treated like for GST in the worst case scenario. We can't apply for input tax credits, and it's the same ... the worst case scenario you can have and Bill 28 to my mind is the way it's going right now, it's exactly the same thing. It's the worst, absolute worst case. It will do nothing to help the consumer at the end of the day in my view.

MR. SAUNDERS, PRESIDING CHAIRMAN: I assume you've got a copy of Bill 28?

MR. ANTHONY: Yes, I have, unfortunately, I mean the way ... you know, we couldn't get it, we couldn't get a draft copy of it before it actually appeared in the Gazette, or got on the website, but we couldn't ... I requested it, and I was told we couldn't get it, so you know, the first time I saw the Bill as it was being presented to the House was when it was put in under for first reading. I mean it's scandalous.

MR. SAUNDERS, PRESIDING CHAIRMAN: Well, I don't want to make any further comment on Bill 28 myself except to say that there was a press release that came out just before Christmas indicating the Minister was having some kind of public town hall hearings on the matter. I don't know if you're ...

MR. ANTHONY: Well, I've attended, I had the honour of sitting in front of, on behalf of the industry, about

300 people who were ... (inaudible) you get the vocal minority, and sat there for three or four or five hours, and I don't mind, I'm a big boy, I don't mind getting beat up on, but it's not constructive.

MR. SAUNDERS, PRESIDING CHAIRMAN: No.

MR. ANTHONY: We had some discussion about it this morning, I think, you know, if anything like that were to come in, I would suggest that some kind of public forum for it, to my humble opinion, this forum that we're in, based on the behaviour I've seen here, would not be such a bad place to debate it, but just in a public forum where you tend to face stacked decks, it's not, it's certainly not productive and when you've got an election in the wind and things of that nature, it gets complicated.

MR. SAUNDERS, PRESIDING CHAIRMAN: I just want you to comment on the grey market, Facility, normal or voluntary market configuration, and without regard to the actuarial reasons for setting rates, can you describe to me what happens when, on the one hand you have a grey market participant or more that can comfortably exist in that gap between the Facility and the voluntary, and what happens when you don't have that opportunity for the grey market insurers, in respect of what happens to the average rate.

MR. ANTHONY: Okay, well, you have ... probably best I'll use examples. Say the average rate in the general market is pegged at $500, let's say that's the average rate, and let's say the average rate for Facility Association is pegged at $1,000. Okay, right now it's like $500 and $501, okay, but let's say in the perfect world ... for some it may be, it mightn't be for others. But anyway, so the grey market will look at that and say, well we come in and we can come in at a $750 average rat, and that will give us, we can underwrite that, we feel comfortable, and they're experts, they know how to underwrite that type of business, they've got experience in it, they know what twigs certain events, and so they'll look at that and say we can make a dollar there, okay, and where we are right now is that if a company has a risk and their average rate is $500 and there's a problem with it. It's such a problem, it's significant enough for that company not to want to write it any longer. Right now the only option is to move it to Facility Association, and right now the rate is not sufficient, and let's, let's just pretend that the filing gets approved, and let's say their average rate is $1,000, okay. Without a grey market that will move obviously to Facility and the average rate will have gone up from $500 to $1,000, and that's really, like on the best ... I think it's important, like the general market is competitive with Facility on some of the under age classes where there's not a lot of risk anyway, there's not a lot of drivers, so there is a spread of rate between, on the majority of it now between general and Facility, so there is a cost, okay. One would hope that, you know, the rate filing is justified and the need is real and it will be approved, so without a grey market, the person is going to jump right from, like A to Z. If there's enough of a gap there the person will not move from A to Z, probably go in the middle, which would be the grey market and wind up effectively, yes, they're paying more than they're paying today, but they're paying less than if they had to go to Facility Association, and there needs ... like I said, these companies are, have an expertise in writing a type of risk that's more volatile than the general market, but less volatile than Facility Association.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MR. ANTHONY: And that's how I see it. That would allow you to depopulate Facility Association, move business out of there, a fair bit of business, I would suspect, out of there into the grey market. It may also have the effect of there might be some business in the regular market that could move up as well. I mean it's ... because there's some, right now there's times when we have a risk where it really should go to Facility, I mean it could be a client you've had for a long, long time, and you really shouldn't keep it, but for whatever reason, I mean, like I said, the client's been with you for, God, for decades, and you'll do that but I've got to be honest, in my experience, they come back to haunt you. I don't mind giving a real example, and it's not an auto risk, but it's a property risk where there was a client we had, we had a lot of business for him, someone I knew quite well, as far as I was concerned ... and still does run the business very, very well, I won't say what business it is, but there was a loss problem, and there was a loss problem enough, it was on the auto side of his account, but it was also a big property account, and my senior underwriter came to me before renewing and said we should, you know, this risk is not acceptable, we should get off ... anyway, the broker got very much involved in it and I mean the broker does do a lot of arguing for their client, and there was a lot of going back and forth and I also had personal knowledge, I guess, so anyway, at the end of the day we decided to write the risk. Okay, it was about a week, ten days later we had a half million dollar loss, so you learn your lessons sometimes the tough way, and that was, you know, and there's times when you see risks like that, and you make the decision, and you know you shouldn't but you do it because you don't have another option. You don't want to drive them all the way to Facility, you wish you had ... because I mean these aren't numbers, these are people out there, and you want to treat them as best you can, you know.

(1:15 p.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, coming back to the example though, because you've explained the three tier system.

MR. ANTHONY: Uh hum.

MR. SAUNDERS, PRESIDING CHAIRMAN: In terms of what may impact the average rate, but let's eliminate the grey market insurer for the rest of the example, or the other part of the example, and you have a situation like we have today, where as you say the Facility rate is too close to the voluntary market rate.

MR. ANTHONY: To attract the grey market.

MR. SAUNDERS, PRESIDING CHAIRMAN: To attract the grey market, but let's assume that the grey market is not attracted, so now you only have the option to place the person that the voluntary market doesn't want into Facility, but Facility's rates are kept low, so what happens to the average rate?

MR. ANTHONY: The average rate, the average rate, well what will happen ultimately you'll drive the general market rate higher because you're, in effect, subsidizing, you will continue to subsidize the risk in Facility Association, you would probably, you could almost get to a point where I'd actually suggest you could conceivably get to a point where the general market rate is higher, period, than Facility rate in the extreme, or the same, so you would just, you just created the old risk sharing pool and drivers are being subsidized.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, yeah, I just wanted to hear you say that, I just wanted to hear you explain that, to see it from where you sit. Following up on a question that Commissioner Martin asked you and that was in respect of the implementation of CLEAR.

MR. ANTHONY: Yeah.

MR. SAUNDERS, PRESIDING CHAIRMAN: Could you get the witness some water?

MR. ANTHONY: I'm parched.

MR. SAUNDERS, PRESIDING CHAIRMAN: On the implementation of CLEAR and we've talked about various scenarios as to how that might be done and what would be the most efficient way of doing it and what the problems are with phasing in, for example, and as I understanding phasing in as it's been referred to here, it would be phasing it in in terms of partial implementation and then taking it another step. I'm talking about a different kind of phasing in, and that would be in relation to setting it to phase in at a date later, say than implementation of the rate revision that may come out of this hearing, in other words, not to tie it to the rate revision. From where you stand as a broker and as a servicing carrier, has that any appeal?

MR. ANTHONY: If it doesn't affect the filed average rate, what would be the new average rate, not really, if that's what the Board felt was best for the consumer. Like I said, I think, I'd rather see it one way or the other, I mean and what you're suggesting is one way or the other, so I'd be, I wouldn't be, have a problem with that. Like I said, I think what's been suggested is, you know, CLEAR is a very, very good idea and there's not a lot of policies or risks on Facility, I don't believe, that carry physical damage, so I don't, I don't know if it would be a huge thing, and it's certainly a very fair system in my view, so, but you could certainly consider that, you know, I don't think that that would be the end of the world. Like I said, as long as it didn't affect the total rate that's being requested.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, a couple of other questions, one of which I've been anxious to ask you.

MR. ANTHONY: Uh hum.

MR. SAUNDERS, PRESIDING CHAIRMAN: And that is in relation to the mystery, if you like, surrounding whether or not Facility is a profit or a non-profit organization. You've been around business long enough to have an opinion, I'm sure, and you know the legislation, I'm sure, and you've heard all, or pretty all of the evidence given here and at the previous hearing where we dealt with surpluses.

MR. ANTHONY: Uh hum.

MR. SAUNDERS, PRESIDING CHAIRMAN: Alleged surpluses, what's your opinion?

MR. ANTHONY: Well, as I understand the incorporation of Facility and the Act, I think Facility Association in its own right is a not-for-profit, it basically has revenue to cover its expenses. I think it's been explained by Mr. Simpson. The next, so I think it meets the intent of the Act. I believe the general insurers who are participants in Facility Association, who pick up their share, I don't believe there's been profit made there beyond, perhaps there's surpluses and deficiencies, and we've been, I guess, the number around 2 1/2 percent has been beat around. I mean there is a number there, and it's not a nice neat zero, but my own personal view is I think it meets the spirit of the Act and I think it accomplishes what it has set out to do up until now.

MR. SAUNDERS, PRESIDING CHAIRMAN: You mentioned having a direct tie in to Motor Registration Division.

MR. ANTHONY: Uh hum.

MR. SAUNDERS, PRESIDING CHAIRMAN: For the purpose, I guess, of getting information on applicants.

MR. ANTHONY: Getting their driver's abstracts.

MR. SAUNDERS, PRESIDING CHAIRMAN: Is it only for that purpose?

MR. ANTHONY: That's it.

MR. SAUNDERS, PRESIDING CHAIRMAN: And there's no information that flows through that system back from Motor Registration to you in terms of any statistical data that might be of use to your industry?

MR. ANTHONY: Zero.

MR. SAUNDERS, PRESIDING CHAIRMAN: Zero.

MR. ANTHONY: We, I mean we provide, I mean there's reams of information provided, I mean from everywhere it would seem, and it seems to funnel into a black hole and it's sitting out there somewhere for somebody to work with but, you know, we have the experience when, and I know this came up when mandatory insurance came in, it was required at the time that when someone cancelled insurance that we would notify Motor Registration.

MR. SAUNDERS, PRESIDING CHAIRMAN: You've anticipated my next question, carry on.

MR. ANTHONY: And that was an unmitigated disaster. I mean we reported everyone who cancelled and as you can appreciate, particularly in Facility Association, that's a lot in the run of a year, and even ... not near as much in the regular market, but there are, you know, people leave for whatever reason, you know, vehicles are taken off a policy and we don't know if they're insured somewhere else, so they had to be, you know ... anyway, we had to send in, I mean basically the paper at the time, and my understanding is it sat in a room, and sat in a room, and it grew and it grew and it grew, until you had a forest in there, and one day we got a phone call and they said please don't send us anymore, and that's been the last I've ever heard of notifying Motor Registration whether someone has insurance or not. They just couldn't cope with the volume, and even more so now, I mean with ... they've got, I've been somewhat critical this morning of the government, but they've got a pretty good website when it comes to renewing your vehicle, but you don't have to show proof of insurance, you just put in a number and a name, and there's no one checks on it, and, in fact, half the people complete it incorrectly because it asks for the insurance company, okay, but I'd say 70 or 80 percent of the times it's the broker whose name goes in there, so it's ... no one ever, there's never been anything sent out to the public to identify the ... a lot of people in Newfoundland, particularly here more so than others, but relate to the broker much more than the insurer because they know, they know the broker, most of the brokers have been around for a long, long time, so the whole thing is kind of fraught with problems, and what you keep hearing is that we don't have money to do this, we don't have money to do that. Well, you know, they're getting four percent premium tax, so they're getting now 15 percent sales tax where they used to get 12 percent, so they got a three percent grab when the HST came in, right, and now money is going in there, why don't they use it for where it came from, or part of it, or something.

MR. SAUNDERS, PRESIDING CHAIRMAN: Because the system, or that system that you're talking about is not in place, there's not only a loss to the industry, there's a loss to government in terms of taxation as well, isn't there, because if people are out there going around without any insurance, it means you haven't sold the premium, you haven't picked up the taxes to submit to government.

MR. ANTHONY: Yeah.

MR. SAUNDERS, PRESIDING CHAIRMAN: And so there's a loss all around.

MR. ANTHONY: Yeah, you know, and there's some percentage of the population out there without insurance. What it is, I have no idea.

MR. SAUNDERS, PRESIDING CHAIRMAN: Are you familiar with what takes place in other jurisdictions in respect of that arrangement?

MR. ANTHONY: Not when it comes to ... well, there's systems in place where you take the plates, or the insurance is tied to the plates, or tied to, you know, the issuance of, I guess, a sticker or whatever. I guess it's like anything, if everyone would sit down in a room and there's solutions to everything.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, and some are affordable and some aren't.

MR. ANTHONY: That's what it becomes, it becomes a social issue.

MR. SAUNDERS, PRESIDING CHAIRMAN: Just let me check my notes and see if there's anything else that I had. That's all I had. Anything arising?

MS. NEWMAN: Nothing arising.

MR. SAUNDERS, PRESIDING CHAIRMAN: Nothing arising?

MR. ANTHONY: I don't know if it's in the normal course, but just a couple of other comments if I could make that I wasn't ask a direct question to, and that I'd like to just ...

MR. SAUNDERS, PRESIDING CHAIRMAN: I'm surprised you weren't, but anyway, carry on.

MR. ANTHONY: Just to touch on, and I guess there's one thing that came up from Mr. Morris with regards to complaints to the Superintendent. As an industry dealing with the volume of transactions that we deal with in the run of a year, and the sheer volume of clients, I would suggest to the panel and the Superintendent I don't believe can, he's said he can't provide the statistic of the number of complaints, but I'd strongly suggest that the number of complaints related to insurance are minuscule and I'll go so far as in our own case we have tens of thousands of clients that the complaints we receive on an annual basis, you wouldn't need to use your ten fingers to count, and most of those complaints usually relate to claims and how the claim was settled, and the quantum or how much someone is getting on the repair of their vehicle, so I'd like to go on record saying that, you know, the complaints that occur are not a lot. Yes, they receive, I'm sure they receive lots of inquiries on certain things, but inquiries are not complaints, they're simply inquiries.

I guess the only other thing that sort of is ... as insurance, I mean we're here dealing with a product that we take someone who comes in, we don't know them, we take down some very simple information and we have just given them an unsecured guaranteed loan of at least $200,000, we've given them a gift and that if they do something ... most accidents are just that, not planned, totally innocent, some occur for absolute stupidity, but I mean accidents are still accidents. We as an industry, I mean we've taken some fairly minimal information and basically said we will pay that amount of money and we won't come looking for it back, and I would like to see anyone go to any bank or any financial institution and ask for a guarantee, or I guess ... I was trying to figure out how I could reference that this morning, and the best thing would be to, you're going to the bank asking for a line of credit that you may need or never need. Well, I guarantee you that it would be a lot more complicated transaction and a lot more required than what we deal with here, and that's ... I think I've covered off, I had lots of little notes over the days but I think that's, I've covered them all off, I think.

MR. SAUNDERS, PRESIDING CHAIRMAN: Thank you.

MS. NEWMAN: Mr. Chairman, in the event that, as Mr. Anthony has made some additional comments, I don't know if we want to offer counsel an opportunity to respond to some of those as they didn't have a chance to cross-examine him on those two new points.

MR. O'FLAHERTY: I just offer this brief observation with respect to the issue of inquiries and complaints.

Myself personally and my partner have been involved in this matter since, as it has been averted to, sometime in, I think it was in mid to late November, and I've certainly received considerably more than I can count on two hands, inquiries ... I won't characterize them whether they're inquiries or complaints, about this matter, about Facility. There is in my experience, personal experience, a considerable amount of public interest and concern about it. I won't say that a lot of the people will leave their names. I think that's one of the issues, Mr. Anthony. A lot of people want to register and they want to be heard on this, but a lot of times they don't want to actually, you know, leave me their name or contact number, but I have received emails as well from people. I agree with your position that it's not always complaints. Lots of times it's what would be, what could be considered inquiries, but I do think that it's fair to say that there is a good bit of public interest in the issue of insurance in general, just gauging on the basis of the four percent of it that I think we're dealing with, so I just offer that as an observation. I don't know if it's germane to what's before the Board at all, but as a Consumer Advocate I wanted to have the last word anyway, so thank you very much.

MR. SAUNDERS, PRESIDING CHAIRMAN: And it's unsworn.

MR. O'FLAHERTY: Completely.

MR. SAUNDERS, PRESIDING CHAIRMAN: Thank you, Mr. Anthony, you've been very helpful to us.

MR. ANTHONY: You're quite welcome.

MS. NEWMAN: Mr. Chairman, I did have a couple of issues that I wanted to address. One is that the transcript for this day, the proceeding today will not be available overnight. I understand that it might in fact be next week before it is available to the parties. I don't know if that impacts upon the dates that we've scheduled for the closing arguments. We'll do our utmost to get it to you as soon as we can, but we are suffering some logistical difficulties so it will not be available for the next several days.

MR. STAMP, Q.C.: And this is the one question I was going to raise, Mr. Chairman, when would that be available in hard copy because I didn't want just the one on the computer, the email, or the internet or whatever it is that we get it, because we're going to be referring to it obviously and we need to have the right page numbers, we saw that little problem before, and so I'm disappointed. I guess my point is that I have not been a great note taker in these proceedings because this process is so good, so when they take it away from us without telling us in advance, it's a bit of a complication.

MR. SAUNDERS, PRESIDING CHAIRMAN: So what, is there a problem with the transcriber?

MS. NEWMAN: Just, I think, capacity difficulties, Mr. Chairman, they are not able to commit to us that they can give us overnight service.

MR. SAUNDERS, PRESIDING CHAIRMAN: Well, if not overnight, then certainly Friday will be helpful.

MS. NEWMAN: I have certainly communicated that point and to the extent that it's possible it will happen.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MS. NEWMAN: We will do our best, but just to let people know on the record that we will have some difficulties getting it to them as quick as we normally do.

MR. SAUNDERS, PRESIDING CHAIRMAN: We will certainly be chasing it down because I'm just as interested as you are to get the document.

MS. NEWMAN: And the other item that I did want to mention is that there is now, I believe, three outstanding undertakings.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MS. NEWMAN: That's not ... no? That's the answer, okay, so it was only ... okay, so we just have two, and ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Two outstanding.

MS. NEWMAN: And we are not able to get in touch with Jennifer Power. I understand she's travelling, so as soon as we can we will ...

MR. O'FLAHERTY: I can update the Board with respect to the inquiry that was raised this morning concerning Mr. Morris' undertaking.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. O'FLAHERTY: I did make an inquiry and a telephone call was made to Mr. Morris and my understanding is that that information, he would prefer to provide that in written form, a written answer to it rather than a verbal ...

MR. SAUNDERS, PRESIDING CHAIRMAN: I was expecting that he would have provided it in written form anyway.

MR. O'FLAHERTY: Well that's the situation and he is in the process of doing so, so I'll undertake to, you know, quarterback that if you'd prefer, Mr. Chairman, because as you pointed out he as a witness that was called by the Consumer Advocate.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, will you undertake as well to give it to Mr. Stamp and Mr. Whalen?

MR. O'FLAHERTY: Oh yes, most certainly.

MR. SAUNDERS, PRESIDING CHAIRMAN: Alright, anything else, Ms. Newman?

MS. NEWMAN: That's all.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, then all that's left to do, I guess, is to look forward to your written arguments being received by 3:00 on the 4th of February.

MR. STAMP, Q.C.: The 6th, I believe, sir.

MR. SAUNDERS, PRESIDING CHAIRMAN: I'm sorry, on the 6th of February, and the oral argument starting at 9:00 on the 11th.

MR. WHALEN, Q.C.: Thank you, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: I'd like to thank you all ... the witnesses, of course, for their contribution. I'd like to particularly thank legal counsel for remaining so focused throughout most of this hearing, and I think we probably set some kind of a record in the number of objections that we didn't have. I'd like to thank the Board staff and Secretary for their help in ensuring that the matter went off on time and kept on time, and we did sit for 13 days and we have a lot of documentation to analyze, and of course, it will take some time for us to reach a decision but you can rest assured that we will do it as expeditiously as we can, all things being considered, so thanks again for your cooperation.

MR. WHALEN, Q.C.: Thank you very much.

MR. O'FLAHERTY: Thank you.

(hearing adjourned)