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MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA PUBLIC INSURANCE COMPANY (MPI)
GENERAL RATE APPLICATION
FOR 2011/12 INSURANCE YEAR

Before Board Panel:

Graham Lane - Board Chairman
Len Evans - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
October 25, 2010
Pages 2134 to 2351

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APPEARANCES

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1 --- Upon commencing at 9:04 a.m.

2

3 THE CHAIRPERSON: Okay. Good morning,
4 everyone. Ms. Kalinowsky, do you have some undertakings
5 to file as exhibits?

6 MS. KATHY KALINOWSKY: Yes, they were
7 distributed electronically over Friday in several
8 different batches, but I do have numbers, I guess, to --
9 to assign to them. They also have one (1) additional
10 Information Request, which was not distributed on Friday,
11 and it's literally just fresh off the press, and still
12 warm actually, so I'll distribute that afterwards.

13 But if I could just go quickly through the
14 numbers to assign -- sign the Undertakings exhibit
15 numbers, that would be of assistance this morning.

16 Undertaking number 10 should be marked as
17 MPI Exhibit number 31.

18

19 --- EXHIBIT NO. MPI-31: Response to Undertaking 10

20

21 MS. KATHY KALINOWSKY: Undertaking number
22 14 as MPI Exhibit number 32.

23

24 --- EXHIBIT NO. MPI-32: Response to Undertaking 14

25

1 MS. KATHY KALINOWSKY: Undertaking number
2 15 should be marked as Exhibit 33.

3

4 --- EXHIBIT NO. MPI-33: Response to Undertaking 15

5

6 MS. KATHY KALINOWSKY: Undertaking number
7 18 should be marked as MPI Exhibit number 34.

8

9 --- EXHIBIT NO. MPI-34: Response to Undertaking 18

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11 MS. KATHY KALINOWSKY: Undertaking number
12 19 should be marked as MPI Exhibit number 35.

13

14 --- EXHIBIT NO. MPI-35: Response to Undertaking 19

15

16 MS. KATHY KALINOWSKY: Undertaking number
17 21 should be marked as MPI Exhibit number 36.

18

19 --- EXHIBIT NO. MPI-36: Response to Undertaking 21

20

21 MS. KATHY KALINOWSKY: Undertakings 25
22 and 29 have been combined together, and a combined number
23 of MPI number -- Exhibit number 37.

24

25 --- EXHIBIT NO. MPI-37: Response to Undertakings 25

1 and 29

2

3 MS. KATHY KALINOWSKY: Undertaking number
4 26 should be provided with the number of MPI Exhibit
5 number 38.

6

7 --- EXHIBIT NO. MPI-38: Response to Undertaking 26

8

9 MS. KATHY KALINOWSKY: Undertaking number
10 27 should be assigned MPI Exhibit number 39.

11

12 --- EXHIBIT NO. MPI-39: Response to Undertaking 27

13

14 MS. KATHY KALINOWSKY: Undertaking number
15 28 should be assigned MPI Exhibit number 40.

16

17 --- EXHIBIT NO. MPI-40: Response to Undertaking 28

18

19 MS. KATHY KALINOWSKY: Undertaking number
20 30 should have number forty-one (41) assigned to it.

21

22 --- EXHIBIT NO. MPI-41: Response to Undertaking 30

23

24 MS. KATHY KALINOWSKY: Undertaking number
25 31 should have MPI Exhibit number 42.

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--- EXHIBIT NO. MPI-42: Response to Undertaking 31

 MS. KATHY KALINOWSKY: Undertaking number
34, MPI Exhibit number 43.

--- EXHIBIT NO. MPI-43: Response to Undertaking 34

 MS. KATHY KALINOWSKY: And Undertaking
number 36 should have MPI Exhibit number 44 assigned to
that.

--- EXHIBIT NO. MPI-44: Response to Undertaking 36

 MS. KATHY KALINOWSKY: And Undertaking
number 37 should have MPI Exhibit number 45 attached to
it.

--- EXHIBIT NO. MPI-45: Response to Undertaking 37

 MS. KATHY KALINOWSKY: Undertaking number
38 should have MPI Exhibit number 46.

--- EXHIBIT NO. MPI-46: Response to Undertaking 38

1 MS. KATHY KALINOWSKY: Undertaking 39
2 should have MPI Exhibit number 47.

3

4

5 --- EXHIBIT NO. MPI-47: Response to Undertaking 39

6

7 MS. KATHY KALINOWSKY: And, finally, the
8 Undertaking that is just -- most recently prepared, and I
9 -- I will distribute right now, is MPI -- is Undertaking
10 number 24. And I know that Board counsel had asked for
11 that, which is MPI to file a Corporate wide TI.7(a) and
12 TI.8(b) (sic), and we've got a -- a response to that,
13 which I'll just file right now, along with the
14 attachments to it.

15 So that should be marked as MPI Exhibit
16 number 48.

17 THE CHAIRPERSON: Thank you.

18

19 --- EXHIBIT NO. MPI-48: Response to Undertaking 24

20

21 THE CHAIRPERSON: Mr. Singh, would you
22 assist Ms. Kalinowsky.

23 MS. KATHY KALINOWSKY: Sir, I may have
24 mis -- misspoken. I said that it was to -- the
25 undertaking was to MPI-12, Corporate wide TI.7(a) and

1 TI.8. I may have read that as TI(b), sorry.

2

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(BRIEF PAUSE)

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THE CHAIRPERSON: Thank you. Mr. Williams, I understand that you're finished with your cross?

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MPI PANEL 1:

MARILYN MCLAREN, Resumed

DON PALMER, Resumed

OTTMAR KRAMER, Resumed

1 CROSS-EXAMINATION BY MR. ROBERT DAWSON:

2 MR. ROBERT DAWSON: First I have to
3 indicate that I had forgotten to introduce to the Board,
4 during my opening submissions, a Ms. Stacy Nagle, who is
5 the Executive Director of the Bar Association. She was
6 present throughout my submissions, and in fact, she was
7 there until the morning break, and I had simply stupidly
8 forgotten to acknowledge my own client. So there was a
9 time when I had a back row.

10 I'm supposed to have a back row today, but
11 unfortunately, Ms. Nagel, again, finds herself travelling
12 on Bar Association business. So we shouldn't inter --
13 interpret her absence as in any indication of her
14 disinterest. The Bar Association carefully follows
15 what's happening here.

16 I'll start with some questions about
17 subrogation. And, Mr. Palmer, you had had an exchange
18 with PUB counsel about subrogation earlier in these
19 proceedings, is that correct?

20 MR. DON PALMER: I recall, yeah -- that,
21 yes.

22 MR. ROBERT DAWSON: And by subrogation,
23 the Corporation means in very general terms, the
24 assumption of an insured person's right of recovery
25 against the party that caused the insurable loss.

1 Is that right?

2 MR. DON PALMER: Yes, that's correct.

3 MR. ROBERT DAWSON: And again, just in
4 general terms, if the Corporation does not exercise it's
5 right of subrogation in those cases, the expense of the
6 claim would otherwise be written off.

7 Is that right?

8

9 (BRIEF PAUSE)

10

11 MR. DON PALMER: The -- the subrogation
12 is written off, yes.

13 MR. ROBERT DAWSON: That's what I meant,
14 and thank you for clarifying.

15 Now, where there is such a writeoff, the
16 expense of the -- the claim, effectively adds to the
17 total operating expenses of the Corporation, doesn't it?

18 MR. DON PALMER: Yes, it does.

19 MR. ROBERT DAWSON: And as I've learned --

20 MR. DON PALMER: As clai -- as claims cos
21 -- claims cost, just operating expenses in the broadest
22 terms, but they are included as claims costs.

23 MR. ROBERT DAWSON: Thank you. And as
24 I've learnt from these proceedings over the years, when
25 the operating expenses in this broadest sense of the

1 Corporation go up, it sometimes means that insurance
2 rates should go up too.

3 Is that right?

4 MR. DON PALMER: Insurance rates are
5 directly, as a result of the expected cost of claims to
6 the ex -- to the extent that there are some expected
7 subrogation writeoffs, then yes, they are included in
8 claims and would be included in the rate base.

9 MR. ROBERT DAWSON: So, subject to the
10 way you've characterized it, I'd be correct to say that
11 there's a connection between the Corporation's
12 subrogation efforts and the insurance rates that it
13 proposes to this Board?

14 MR. DON PALMER: Yes, that's correct.

15 MR. ROBERT DAWSON: So in very general
16 terms then, subrogation is a good thing for Manitoba
17 ratepayers, unless you happen to be the party that
18 they're coming after?

19 MR. DON PALMER: It is a recovery of
20 costs, yes.

21 MR. ROBERT DAWSON: You explained, when
22 answering the questions of PUB counsel, that in deciding
23 whether or not to pursue subrogation, the Corporation
24 performs what you called a "Cost Benefit Analysis."

25 Is that right?

1 MR. DON PALMER: Yes, that's correct.

2 MR. ROBERT DAWSON: While PUB counsel
3 chose to go on from there and explore the reason for
4 uncollectible accounts, I'd like to focus, if I can, on
5 this cost benefit analysis.

6 First, by -- by way of definition, by
7 "cost-benefit analysis," would I be correct to say that
8 the Corporation makes a calculation of sorts in every
9 case, that it might cost more money to pursue recovery
10 than the value of the recovery, if any, that would
11 result?

12 MR. DON PALMER: That would be accurate,
13 yes.

14 MR. ROBERT DAWSON: And by the "value of
15 the recovery," this means the value of the claim, that
16 is, how much money the wrongdoer would likely pay the
17 Corporation if the subrogation claim were successful?

18 MR. DON PALMER: Yes, that would be
19 correct.

20 MR. ROBERT DAWSON: And in terms of the
21 costs to pursue the recovery, this would refer, for
22 example, to expenses associated with the provision of
23 legal services and the incurring of disbursements in
24 pursuing that claim; correct?

25 MR. DON PALMER: And there could be some

1 external adjusting costs, I suppose, out of province, but
2 that would be the bulk of it, yes.

3 MR. ROBERT DAWSON: And the factors that
4 affect the expense that's associated with the provision
5 of legal services would include the amount and the nature
6 of legal work that the particular matter would require?

7 MR. DON PALMER: Yes.

8 MR. ROBERT DAWSON: And another factor
9 might also be the jurisdiction in which the subrogated
10 claim is being pursued?

11 MR. DON PALMER: That would be correct,
12 yes.

13 MR. ROBERT DAWSON: And these
14 disbursements would also include any fees that are
15 payable to experts who might have to be retained in the
16 specific case, and to attendance fees paid to witnesses?

17 MR. DON PALMER: Yes.

18 MR. ROBERT DAWSON: According to its
19 answer to Manitoba Bar Association First Round
20 Information Request 27C - and I don't there's a need at
21 the moment to turn to it - the Corporation begins
22 subrogation proceedings in roughly five hundred and sixty
23 (560) to eleven hundred (1,100) cases a year, subject to
24 check; is that about right?

25 MR. DON PALMER: That sounds like actual

1 -- actuals over the last number of years, but, yes,
2 subject to check, I would agree.

3 MR. ROBERT DAWSON: I certainly have no
4 problem if you'd like to pull out the IR, but I'm just --
5 at this point, I don't think we need it.

6

7 (BRIEF PAUSE)

8

9

10 MR. DON PALMER: It's kind of a security
11 blanket, so I'll grab it, and I have it.

12 MR. ROBERT DAWSON: So we're looking at
13 1-27C. So I'm correct that those statistics that I
14 mentioned mean that the Corporation had performed what
15 we're calling a cost-benefit analysis, and decided that
16 the value of recovery in those cases would likely be
17 greater than the cost to pursue that recovery in those
18 cases, is that right?

19 MR. DON PALMER: Yes, that would be
20 correct.

21 MR. ROBERT DAWSON: And so it followed,
22 therefore, that the Corporation decided it would exercise
23 its right of subrogation in those cases?

24 MR. DON PALMER: Yes.

25 MR. ROBERT DAWSON: Since you have it in

1 front of you, you could now turn your attention to
2 Manitoba Bar Association First Round Information Request
3 27D as in delta. There it indicates that the Corporation
4 obtains judgment against the defendant in subrogation
5 proceedings in roughly three hundred and ten (310) to
6 five hundred and eighty (580) cases a year. Is that
7 about right?

8 MR. DON PALMER: Yes, that's right.

9 MR. ROBERT DAWSON: And am I correct that
10 these statistics mean that a court agreed that the
11 Corporation's -- agreed with the Corporation's
12 entitlement to subrogated recovery in those particular
13 cases?

14 MR. DON PALMER: Yes, that's correct.

15 MR. ROBERT DAWSON: And so it follows,
16 then, that the Corporation obtained judgment, in whatever
17 dollar amount, against the defendants in those subrogated
18 cases?

19 MR. DON PALMER: Yes, that's correct.

20 MR. ROBERT DAWSON: So these statistics
21 are gratifying in that the -- they tell us that, by
22 obtaining judgment, the Corporation essentially guessed
23 right, that is, when it decided at the very beginning
24 that it thought it had a case against those defendants,
25 right?

1 MR. DON PALMER: I think in 27C, the key
2 word is "began legal proceedings." There's no indication
3 of how far that was pushed in terms of whether we lost
4 the difference between 27(c) and 27(d). There would be
5 various degrees of that. But in 27...

6 MR. ROBERT DAWSON: If it helps you, Mr.
7 Palmer, I'm not connecting (c) and (d). I'm -- (c) talks
8 about exactly as you said, how many lawsuits did you
9 start, and quite perhaps even unrelated. They might be
10 very different lawsuits in (d) I think. It talks about
11 how many did you win.

12 Am I correct in that?

13 MR. DON PALMER: That's correct.

14 MR. ROBERT DAWSON: So I'm not trying to
15 lead some sort of connection between (c) and (d). I'm --
16 they're discrete questions, as far as I can tell.

17 MR. DON PALMER: Thank you.

18 MR. ROBERT DAWSON: So again the question
19 was that focussing on the (d) part of Information Request
20 27, those statistics about obtaining judgment tell us
21 that the Corporation guessed correctly when, at some
22 point, at the beginning it decided that it had a case
23 against those defendants. Is that right?

24 MR. DON PALMER: I would agree, although
25 the term "guess" is a -- is a little bit of a stretch.

1 Educated --

2 MR. ROBERT DAWSON: Carefully analysed
3 and decided to act. Would that --

4 MR. DON PALMER: That's --

5 MR. ROBERT DAWSON: -- be better?

6 MR. DON PALMER: That's better.

7 MR. ROBERT DAWSON: I didn't mean guess
8 in a pejorative sense.

9 Another way to say it would be that these
10 statistics, that is in 27(d), tell us how many defendants
11 that the Corporation was able to convert into persons who
12 owe money to the Corporation by reason of subrogation; is
13 that right?

14 MR. DON PALMER: Yes.

15 MR. ROBERT DAWSON: And, of course, we've
16 sort of touched upon this, so I'm sure you'll agree with
17 me that it would be obviously unrealistic to expect that
18 the Corporation could successfully convert every
19 defendant into a judgment debtor; is that right?

20 MR. DON PALMER: I'd agree with that,
21 yes.

22 MR. ROBERT DAWSON: And at the same time,
23 though, you'd agree that it would be realistic to expect
24 that the Corporation would have a reasonable degree of
25 success in those endeavours.

1 MR. DON PALMER: I would say that that
2 would vary a lot on the -- on the defendant, but there is
3 a reasonable chance of recovery, yes, of all or some of
4 the debt.

5

6 (BRIEF PAUSE)

7

8 MR. ROBERT DAWSON: You'd agree with me
9 that there are several reasons that might affect the
10 success of the Corporation in its subrogation efforts
11 against the defendant, isn't that right?

12 MR. DON PALMER: Yes.

13 MR. ROBERT DAWSON: For example, after
14 obtaining judgment against the defendant on a subrogated
15 claim, the Corporation has to be able to collect on that
16 judgment, is that right?

17 MR. DON PALMER: Yes, that's correct.

18 MR. ROBERT DAWSON: And where a defendant
19 satisfies in full a judgment against him, the Corporation
20 can be said to have been successful in actually
21 recovering the expense of the subrogated claim, is that
22 right?

23 MR. DON PALMER: Yes.

24 MR. ROBERT DAWSON: But you'll agree that
25 it's possible to obtain judgment against a defendant and

1 never recover any or all of the judgment sum; isn't that
2 right?

3 MR. DON PALMER: That's possible, yes.

4 MR. ROBERT DAWSON: For example, a
5 defendant might have no assets against which to enforce
6 the judgment.

7 MR. DON PALMER: That's correct.

8 MR. ROBERT DAWSON: Or the Corporation
9 might be able -- might rather be unable to identify any
10 assets to target in its enforcement proceedings.

11 MR. DON PALMER: Yes, I would agree with
12 that.

13 MR. ROBERT DAWSON: Where a defendant
14 fails to satisfy in full or in part a judgment against
15 him, would you also agree that this failure impacts the
16 ability of the Corporation to recover the expense of the
17 claim that's been subrogated?

18

19 (BRIEF PAUSE)

20

21 MR. DON PALMER: Where -- where we don't
22 collect the money, we don't collect the money, so I guess
23 I would ag -- agree with what you're saying.

24 MR. ROBERT DAWSON: It's fairly
25 tautological at this point.

1 In addition, in those instances where the
2 Corporation will have pursued subrogation but not
3 recovered payment on a judgment, the Corporation, you'll
4 agree, will have incurred legal costs, and disbursements
5 in the expectation of that subrogated recovery, and these
6 costs will have added to the overall cost of the claim?

7

8 (BRIEF PAUSE)

9

10 MR. DON PALMER: In -- in some cases, the
11 probability of collection would affect the subrogation,
12 or pursuing the subrogation efforts.

13 In some cases, the costs benefit, which
14 may include other factors, for instance, there may be
15 efforts to subrogate against young car theft -- or young
16 car thieves where the benefit could be ongoing
17 deterrence. It could be media exposure. There are other
18 factors than just recovery of cost.

19 MR. ROBERT DAWSON: That's fair. I --
20 I'm -- I was simply focussing on the financials, but
21 that's -- that's worth mentioning.

22 If we did focus on just the financials
23 though, you'd agree with me that because success in
24 subrogations helps to control the Corporation's overall
25 expenses, then generally speaking failure in subrogation

1 is not going to be good for the Corporation's bottom
2 line.

3 MR. DON PALMER: Focussing only on the
4 bottom line I would agree but, again, there are other
5 ongoing benefits. Deterrence, for instance, does not
6 necessarily affect just the subrogee, but may affect with
7 media exposure other perpetrators as well.

8 So you -- you may save some cost down the
9 --the line, and not really necessarily being -- be able
10 to identify those. So it's on -- ongoing deterrence.

11 MR. ROBERT DAWSON: I -- I'm -- I've
12 taken your point, and I note the qualifications you're
13 adding to the answer, but the reason why I'm choosing to
14 ask you as the chief financial officer is because I am
15 really focussing on the financial aspect of the direct
16 connection between a particular claim and the bottom
17 line.

18 So I've taken your policy point, and I
19 think you've made that quite clear, and that's something
20 that qualifies this entire discussion, but I think we're
21 going to focus, if you don't mind, on the financials.

22 So, if you want to look back at Manitoba
23 Bar Association First Round Information Request 27, and
24 now look to paragraph 'F', which the Corporation
25 answered, you'll be able to confirm that the

1 Corporation's answer is that it does not track the total
2 number of claims in which a defendant in a subrogated
3 claim has satisfied in full a judgment entered against
4 them.

5 Is that right?

6 MR. DON PALMER: That's correct.

7 MR. ROBERT DAWSON: And in its answer
8 at...

9

10 (BRIEF PAUSE)

11

12 MR. ROBERT DAWSON: So if we look back to
13 Information Request 27, paragraph 'D', we recall that the
14 Corporation there had provided statistics about the
15 number of claims in which it had obtained judgment
16 against a defendant in a subrogated claim, right?

17 MR. DON PALMER: Yes.

18 MR. ROBERT DAWSON: But of those numbers,
19 if I've read the Corporation's answer correctly at
20 paragraph 'F', it does not track its success at
21 collecting on those judgments.

22 Is that right?

23 MR. DON PALMER: Not in terms of the
24 numbers of cases, but certainly in the number of dollars
25 we would track that. We know the amount of the awards,

1 and we know how much has been collected against those
2 awards. MR. ROBERT DAWSON: Based upon the answer
3 that the Corporation has given to the question as it was
4 asked, though, it seems that, of those roughly three
5 hundred and ten (310) to five hundred and eighty (580)
6 cases a year in which the Corporation has obtained
7 judgment, it -- it seems possible at least that the
8 Corporation didn't collect even a single cent.

9 Does that seem to follow from these
10 numbers?

11 MR. DON PALMER: No. The fact that we
12 don't track it means we don't track it, so -- but we do
13 for sure make collections against the -- the subrogation
14 -- subrogation awards.

15 MR. ROBERT DAWSON: Let me turn to
16 another aspect of testing the success of the
17 Corporation's subrogation efforts. You can confirm the
18 Corporation's answer to Manitoba Bar Association First
19 Round Information Request 27 at paragraph H, that it does
20 not track the total number of claims in which a judgment
21 was entered in favour of the defendant in a subrogated
22 claim, is that right?

23 MR. DON PALMER: That's correct.

24 MR. ROBERT DAWSON: In other words, we
25 could say that the Corporation doesn't track when it

1 loses a subrogation claim?

2

3

(BRIEF PAUSE)

4

5 MR. DON PALMER: Again, we don't track
6 specifically the information that you've -- you've
7 requested in number of losses -- your word. Again, we
8 know how many we've collected. We don't collect
9 abandoned judgments received. So, from that standpoint,
10 we just -- we don't have the information that you've
11 specifically asked for.

12 MR. ROBERT DAWSON: Can I -- just by way
13 of followup on what you've said, you leave me with the
14 impression that a report gets generated which states that
15 either an awful lot of money was recovered in a certain
16 year, or very little money was recovered in a certain
17 year, but there's no connection between how much money
18 and the number of cases that generated or lost it. Is
19 that fair?

20

21

(BRIEF PAUSE)

22

23 MR. DON PALMER: In terms of -- of the
24 actual cases pursued, what -- we've answered the
25 information that we do not track his -- the answers are

1 correct. Mr. Kramer is just tracking down the amount of
2 collections that we do make, and it's approximately, I'm
3 thinking, around \$14 million per year, and we'll give you
4 a reference to that.

5 So in terms of -- of that recovery, we
6 don't have exactly the number of cases that that may --
7 may or may not represent from ones that we've abandoned
8 or haven't been able to collect, but we do have about \$14
9 million in cash collected annually.

10 MR. ROBERT DAWSON: That sounds more
11 money than I make in a year, so it's impressive, but I'm
12 wondering whether or not, simply by throwing out the
13 number \$14 million, it might, for example, reflect that
14 you had a great win and a collection of \$12 million in
15 one case, and then, for the other thousand (1,000) or so
16 cases that had went through the system that year, you
17 lost nine hundred and ninety-five (995). That seems to
18 be possible under the scenario that you've just
19 described.

20 MR. DON PALMER: Possible. Highly
21 unlikely.

22 MR. ROBERT DAWSON: Like my making \$14
23 million, although I have an award of costs that I plan to
24 make at the end of these proceedings.

25 So you would agree with me, though, that a

1 loss in court means that the Corporation won't recover
2 the cost of the -- of the expense -- the subrogated
3 expense of a claim, right?

4 MR. DON PALMER: Yes.

5 MR. ROBERT DAWSON: And again, as we had
6 canvassed earlier, whenever you pursue a subrogated
7 claim, there's also going to be legal costs and
8 disbursements, and these would be added to the overall
9 costs of a claim to inflate the original subrogated loss.

10 Is that not right?

11 MR. DON PALMER: That would be correct.

12 MR. ROBERT DAWSON: And you'd also agree
13 with me that being the losing party in a court case, in
14 at least some jurisdictions, the Corporation could be
15 ordered to pay costs to the successful party. Is that
16 right?

17 MR. DON PALMER: Yes, that's possible.

18 MR. ROBERT DAWSON: And any such award of
19 costs would, of course, be added to the overall cost of
20 an unsuccessful subrogated claim?

21 MR. DON PALMER: Yes.

22 MR. ROBERT DAWSON: So just to summarize
23 then, if a corporation loses a subrogated lawsuit, it
24 doesn't recover the expense of the subrogated claim, it
25 incurs legal costs, and it could be subject to an award

1 of costs, right?

2 MR. DON PALMER: That's possible, yes.

3 MR. ROBERT DAWSON: And all of this would
4 increase in the way that we've been talking, the very
5 general operating expenses of the Corporation?

6 MR. DON PALMER: In a very general -- the
7 broadest sense, that would be correct.

8 MR. ROBERT DAWSON: And despite this,
9 though, the Corporation doesn't track how often it loses
10 a case?

11

12 (BRIEF PAUSE)

13

14 MR. DON PALMER: That's correct.

15 MR. ROBERT DAWSON: Let me turn to
16 another aspect of testing the success of the
17 Corporation's subrogation efforts, Mr. Palmer.

18 Staying with Manitoba Bar Association
19 First Round Information Request number 27, and turning to
20 paragraph G, you can confirm that the Corporation's
21 answer to that question was that it does not track the
22 total number of claims in which it abandons the
23 subrogated claim.

24 Is that right?

25 MR. DON PALMER: That's correct.

1 MR. ROBERT DAWSON: And we know from our
2 earlier conversation that putting forward a subrogation
3 claim involves expenses, correct?

4 MR. DON PALMER: Yes.

5 MR. ROBERT DAWSON: And when a claim is
6 abandoned, it obviously goes without saying that the
7 Corporation does not recover the subrogated expense that
8 it was trying to pursue?

9 MR. DON PALMER: That's correct.

10 MR. ROBERT DAWSON: And that expense is
11 going to be compounded, as we've talked about, by further
12 expenses that the Corporation had incurred in order to
13 advance the claim?

14 MR. DON PALMER: That's correct.

15 MR. ROBERT DAWSON: And yet again, the
16 Corporation has no statistics, though, on how often it
17 does abandon subrogation claims?

18 MR. DON PALMER: Not exactly as -- as
19 you've asked the question, no.

20 MR. ROBERT DAWSON: Well can you tell me
21 how many subrogated claims were abandoned in a year?

22 MR. DON PALMER: No, I can't.

23 MR. ROBERT DAWSON: So again, the
24 question that I asked you that you seem to have trouble
25 with was: The Corporation has no statistics on how often

1 it abandons the subrogation efforts. Isn't that the same
2 question?

3 MR. DON PALMER: Yes, that's the same
4 question.

5 MR. ROBERT DAWSON: So the same answer
6 applies?

7 MR. DON PALMER: Yes.

8 MR. ROBERT DAWSON: Thank you. Let me
9 turn to another aspect of testing the success of the
10 Corporation's subrogation efforts. Staying with Manitoba
11 Bar Association First Round Information Request 27, and
12 this time going to paragraph E.

13 You can confirm for me that the
14 Corporation's answer is that it does not track the total
15 number of claims in which it settles a subrogation claim.
16 Is that right?

17 MR. DON PALMER: That's correct.

18 MR. ROBERT DAWSON: Now as far as I
19 think, and you can confirm for me, a settlement seems to
20 be a good thing, because a defendant might agree to pay
21 the Corporation an amount that the Corporation thinks is
22 sufficient to cover the costs of a subrogated claim?

23 MR. DON PALMER: Yes, that would be a
24 good thing.

25 MR. ROBERT DAWSON: So it could, in fact,

1 be a sign of a shrewd negotiator, or lawyer, who
2 successfully settles lawsuits and avoids the costs and
3 delay of a trial?

4 MR. DON PALMER: Yes.

5 MR. ROBERT DAWSON: On the other hand,
6 you'd also agree that a settlement could be a bad thing
7 in that the Corporation might be forced to compromise its
8 subrogation claim in a way that does not adequately
9 address the expense of the claim, or the cost of its
10 recovery efforts?

11 MR. DON PALMER: That could be possible,
12 yes.

13 MR. ROBERT DAWSON: And it could be also
14 possible in that light that a settlement is a sign
15 perhaps of poor judgment or inadequate training in a
16 negotiator or lawyer who waits, for example, too long to
17 settle claims or is simply unable to secure good deals
18 for the Corporation.

19 MR. DON PALMER: It could be any one (1)
20 of a large number of factors, yes.

21 MR. ROBERT DAWSON: Would those large
22 number of factors include the two (2) factors that I gave
23 as examples?

24 MR. DON PALMER: It could.

25 MR. ROBERT DAWSON: Now despite all of

1 this, despite the fact that it could be a bad sign, I'm
2 just confirming again that the Corporation has no
3 statistics on how often it enters into settlement
4 agreements.

5 MR. DON PALMER: In aggregate, that's
6 correct. We don't.

7 MR. ROBERT DAWSON: So before I move on
8 to another area let's just summarize our discussion here.
9 Mr. Palmer, the Corporation tracks how many times it
10 starts a lawsuit to pursue subrogated recovery, right?

11 MR. DON PALMER: Yes.

12 MR. ROBERT DAWSON: It tracks how often
13 it wins such a lawsuit.

14 MR. DON PALMER: Yes.

15 MR. ROBERT DAWSON: But it doesn't track
16 if and how often it recovers on such judgments.

17 MR. DON PALMER: That's correct.

18 MR. ROBERT DAWSON: And it doesn't track
19 if and how often it loses its subrogated lawsuits.

20 MR. DON PALMER: In aggregate, that's
21 correct, yes.

22 MR. ROBERT DAWSON: And it doesn't track
23 if or how often it abandons its subrogated claims.

24 MR. DON PALMER: That's correct.

25 MR. ROBERT DAWSON: And it doesn't track

1 if or how often it settles its subrogated claims.

2 MR. DON PALMER: That's correct, although
3 we know the dollar amounts that are settled and award and
4 collect.

5 MR. ROBERT DAWSON: And despite all of
6 this the Corporation still acknowledges that success in
7 Cor -- in subrogation is a good thing for ratepayers.

8 MR. DON PALMER: Yes.

9 MR. ROBERT DAWSON: Let me turn to the
10 subject of external legal services. And I imagine that
11 will come to Ms. McLaren although I leave it to the
12 witness panel to decide who should answer. By way of
13 preliminary I'd like to turn, as I say, to the
14 Corporation's use of external legal services but I'd like
15 to pause and make sure that it's understood that I do not
16 intend to explore the Corporation's engagement of legals
17 -- external legal services relating to the stated case
18 that is currently before the Manitoba Court of Appeal
19 unless you, the panel, think it necessary to discuss that
20 specific engagement. I'm expecting to cover other
21 retainers in a general way.

22 So I -- I'm going to guess that again
23 this question will go to Ms. McLaren. I'm correct that
24 the Corporation receives legal services from lawyers who
25 are not in its employ.

1 MS. MARILYN MCLAREN: Yes, that's true.

2 MR. ROBERT DAWSON: And according to the
3 Corporation, I understand that about three quarters (3/4)
4 of the fees that are paid to external lawyers relate to
5 litigation.

6 MS. MARILYN MCLAREN: Do you have a
7 reference?

8 MR. ROBERT DAWSON: I do. That's at
9 Manitoba bar Information Request, First Round Information
10 Request 31(b).

11 MS. MARILYN MCLAREN: Thank you. Yes,
12 that would be true.

13 MR. ROBERT DAWSON: And I understand also
14 that most of the litigation fees are paid to lawyers in
15 other jurisdictions relating to work done on bodily
16 injury and physical damage claims, is that right?

17 MS. MARILYN MCLAREN: Yes.

18 MR. ROBERT DAWSON: And the bulk of the
19 non-litigation fees relate to the Corporation's service
20 centres, correct?

21 MS. MARILYN MCLAREN: Yes, that's right.

22 MR. ROBERT DAWSON: To the extent that
23 you're able, could you just clarify what the Corporation
24 means in its answer at Information Request -- First Round
25 Information Request by the Bar Association 31(b) when it

1 says that non-litigation services are related to service
2 centres? Is this presumably the purchase of land, the
3 renting of building?

4 MS. MARILYN MCLAREN: Exactly. The
5 construction of the three (3) new ones for the most part.

6 MR. ROBERT DAWSON: And you'd agree with
7 me that when the Corporation incurs fees for external
8 legal services these constitute an operating expense of
9 the Corporation.

10 MS. MARILYN MCLAREN: Operating or claims
11 expense.

12 MR. ROBERT DAWSON: And, of course,
13 operating, or as you add, claims expenses need to be
14 offset, so there's a connection between legal fees in a
15 general way and the insurance rates that the Corporation
16 seeks.

17 MS. MARILYN MCLAREN: Sure, all expenses
18 add into the required rate base.

19 MR. ROBERT DAWSON: The Corporation is --
20 the Corporation is surely aware that the cost of
21 providing legal services in private practice will vary
22 from one lawyer to another.

23 MS. MARILYN MCLAREN: Yes.

24 MR. ROBERT DAWSON: And you're aware that
25 some lawyers would charge for their services on an hourly

1 basis, for example?

2 MS. MARILYN MCLAREN: Yes, I'm aware of
3 that.

4 MR. ROBERT DAWSON: And other lawyers
5 might charge for their services on a flat rate basis.

6 MS. MARILYN MCLAREN: Yes.

7 MR. ROBERT DAWSON: And even other
8 lawyers might charge for their work using what might be
9 called, alternative, or non-traditional billing
10 arrangements.

11 MS. MARILYN MCLAREN: I'm sure that could
12 be true.

13 MR. ROBERT DAWSON: And you're also
14 likely aware that regardless of the way that fees are
15 calculated, those fees in terms of what will be actually
16 charged for a specific service will vary from one (1)
17 lawyer to another.

18 MS. MARILYN MCLAREN: Yes.

19 MR. ROBERT DAWSON: And that variation
20 might occur even among lawyers of the same skill level
21 and experience.

22 MS. MARILYN MCLAREN: I expect that would
23 be true.

24 MR. ROBERT DAWSON: Quite apart from the
25 services for which they are expressly retained, might you

1 be aware that some lawyers will offer, for example, free
2 or discounted services for clients, and I can give some
3 examples, information and training sessions on legal
4 issues, access to publications.

5 In short, shall we say the -- the fringe
6 benefits of retaining a certain lawyer. Are you aware
7 that some lawyers may offer that, and others wouldn't?

8 MS. MARILYN MCLAREN: Not specifically,
9 but I find it credible.

10 MR. ROBERT DAWSON: I rarely lie unless
11 offered \$14 million.

12 Turning to Manitoba Bar Association
13 Information Request Second Round number 21, and you may
14 want to turn to that because I'm going to ask you to
15 confirm.

16

17 (BRIEF PAUSE)

18

19 MR. ROBERT DAWSON: Can you confirm that
20 the Corporation does not issue requests for proposals
21 before engaging lawyers not in its employ?

22 MS. MARILYN MCLAREN: I can con --
23 confirm that we do not.

24 MR. ROBERT DAWSON: And just in passing,
25 am I correct that the Corporation used tenders when

1 hiring external consultants for its business process
2 review?

3 MS. MARILYN MCLAREN: Yes.

4 MR. ROBERT DAWSON: And I presume it did
5 so because it recognized that the tender process
6 introduces competition among potential supplier.

7 MS. MARILYN MCLAREN: Sure, that would
8 likely be part of it, but it's also to make sure that we
9 have a structured way of understanding the capability and
10 capacity, of people bidding to do a specific job.

11

12 (BRIEF PAUSE)

13

14 MR. ROBERT DAWSON: Would you also agree
15 that a request for proposals could introduce competition,
16 and as you say, also demonstrate the ability of
17 individuals to perform certain services if these requests
18 for proposals were directed to the lawyers for the
19 Corporation's business?

20

21 (BRIEF PAUSE)

22

23 MS. MARILYN MCLAREN: It's always a
24 possibility, but I think it's important to -- to
25 recognize, and put on the record, that, you know, when

1 you're talking about the majority of the funds spent on
2 external legal counsel spent in other jurisdictions,
3 these are -- you know, could very well be just about
4 every other Canadian and American jurisdiction.

5 They're largely one-offs. It -- it is not
6 likely that we would ever have any significant
7 requirement for work in any of these communities, other
8 than very rare one-offs.

9 MR. ROBERT DAWSON: Even in those
10 instances of what you're calling the one-offs, wouldn't
11 you accept that as a consequence of competition to get
12 the Corporation's business, bidding lawyers would likely
13 propose fees for legal services at a competitive rate?

14 MS. MARILYN MCLAREN: That's possible,
15 but it's not the only way to get a competitive rate.

16

17 (BRIEF PAUSE)

18

19 MR. ROBERT DAWSON: Thank you, Ms.
20 McLaren. I'm going to turn back to Mr. Palmer to ask
21 some questions about the business process review,
22 especially the PIPP infrastructure initiative.

23 Mr. Palmer, you had answered questions put
24 to you earlier by PUB counsel relating to the business
25 process review. You remember that, Mr. Palmer?

1 MR. DON PALMER: I do, and -- but I'm
2 going to go back about a few questions ago with regard to
3 the cash recoveries on subrogation. I had estimated the
4 recoveries at \$14 million. Those actual recoveries are
5 included in PUB/MPI-2-2E, just to close that loop.

6 MR. ROBERT DAWSON: As long as I'm not
7 getting the \$14 million, I'm entirely disinterested in
8 the number. So closing the loop and moving on, you
9 remember talking with PUB counsel about the business
10 process review?

11 MR. DON PALMER: Yes, I do.

12 MR. ROBERT DAWSON: And in those
13 conversations, you anticipated that the business process
14 review would result in claim savings on the PIPP side,
15 right?

16 MR. DON PALMER: Yes.

17 MR. ROBERT DAWSON: And much of those
18 claim savings would come through the PIPP infrastructure
19 initiative, right?

20 MR. DON PALMER: Yes.

21 MR. ROBERT DAWSON: And if I understand
22 correct?

23 MS. MARILYN MCLAREN: Sorry. In terms of
24 savings related to BPR initiatives, all of the claim
25 savings are related to the PIPP infrastructure project --

1 not just most of them, all of them.

2 MR. ROBERT DAWSON: The words in the
3 transcript on October 5th at page 306, starting at line
4 23 and following, are "most" or "much," but I take your
5 correction.

6 Just so that we set a quick background
7 here, the Corporation's filed materials have described
8 the PIPP infrastructure initiative as unfolding in three
9 (3) phases, right?

10 MR. DON PALMER: Yes.

11 MR. ROBERT DAWSON: And phase one was the
12 blueprint and road maps. You're essentially getting
13 ready to decide what to do?

14 MR. DON PALMER: That's correct.

15 MR. ROBERT DAWSON: And then the second
16 was the solution and selection process, which I think is
17 fancy for deciding who you're going to use and what
18 materials you're going to use in order to achieve the
19 goals that you set in phase one?

20 MR. DON PALMER: Yes, that's correct.

21 MR. ROBERT DAWSON: And then phase three
22 talks about integrating, and I quote -- oh, no, I don't
23 quote, sorry -- integrating manpower, technology and
24 workflow in order to handle PIPP claims, right?

25 MR. DON PALMER: Yes.

1 MR. ROBERT DAWSON: In very general
2 terms, would I be wrong to think of the PIPP
3 infrastructure initiative as essentially a streamlining
4 of the way in which PIPP claims are being, or are to be,
5 handled?

6 MS. MARILYN MCLAREN: That would be one
7 (1) aspect of what we set out to achieve with that
8 initiative.

9 MR. ROBERT DAWSON: And again, in very
10 general terms, the PIPP infrastructure defines specific
11 workflows and employs software that ensures that those
12 workflows are to be followed by employees, am I correct?

13 MS. MARILYN MCLAREN: Yes, that's true.

14 MR. ROBERT DAWSON: If I could trouble
15 you -- and I'm not sure if Ms. McLaren has simply taken
16 over, which is fine -- to turn to Manitoba Bar
17 Association First Round Information Request number 34.

18

19 (BRIEF PAUSE)

20

21 MR. ROBERT DAWSON: So information --

22 MS. MARILYN MCLAREN: I have it.

23 MR. ROBERT DAWSON: -- Information
24 Request from the First Round number 34 sought information
25 about the way in which the internal review and appeals

1 system had changed as a result of the infrastructure --
2 or the PIPP infrastructure initiative, correct?

3 MS. MARILYN MCLAREN: Yes.

4 MR. ROBERT DAWSON: And at page 2 of the
5 answer that the Corporation gives, there is a workflow,
6 which I'm going to describe as a flow chart. Would that
7 be an acceptable term?

8 MS. MARILYN MCLAREN: Yes.

9 MR. ROBERT DAWSON: And do I read this
10 correctly that the flow chart starts at -- from the very
11 top in the middle with the box marked, "Claims
12 evaluation?"

13 MS. MARILYN MCLAREN: Yes, I believe so.

14 MR. ROBERT DAWSON: Presumably to start
15 at that box, I'm guessing the background is that a
16 decision unfavourable to a PIPP claimant has been made,
17 and a letter goes to the insured, informing him of that
18 decision.

19 Is that how we get into that box to start
20 with?

21 MS. MARILYN MCLAREN: Yes, that's right.

22 MR. ROBERT DAWSON: And if I'm reading
23 the flow chart correctly, and please do correct me if I'm
24 wrong, it tells us that the PIPP claimant will request an
25 internal review, and a letter will then go out to the

1 PIPP claimant acknowledging receipt of that request,
2 correct?

3 MS. MARILYN MCLAREN: Yes.

4 MR. ROBERT DAWSON: And lest you think
5 we're going to go through the entire flow chart line by
6 line, we're not, but the next step seems to be that
7 internally the PIPP claims department is informed that an
8 internal review has been requested?

9 MS. MARILYN MCLAREN: Yes.

10 MR. ROBERT DAWSON: Now let me skip some
11 steps, and ask if as part of readying the matter for
12 internal review, does the flow chart show, as I think it
13 does, that details of the PIPP claim are collected, or
14 received from the PIPP claims department?

15 MS. MARILYN MCLAREN: No. The whole file
16 in its entirety is forwarded to internal review, or
17 alternatively, with an online claim filed, access would
18 be given to the internal review office.

19 MR. ROBERT DAWSON: So that's what that -
20 -that PIPP file refers to, all right.

21 MS. MARILYN MCLAREN: Yes.

22 MR. ROBERT DAWSON: I understand also,
23 and maybe this is just part of the file, other
24 information that's received from the PIPP claim's
25 department would be details of any prior reviews or

1 appeals.

2 Is that right?

3 MS. MARILYN MCLAREN: That would be part
4 of the file, yes.

5 MR. ROBERT DAWSON: And part of the
6 preparations -- no, let's -- let's just keep moving here
7 otherwise we'll be on this par -- flow chart forever.

8 Let's move to the middle box that's
9 labelled, "Conduct Internal Review." At that point, it
10 seems that a reviewer will be of -- will have been named,
11 and he will, or she will, will have received details of
12 the PIPP claim.

13 Am I -- is that right?

14 MS. MARILYN MCLAREN: Yes.

15 MR. ROBERT DAWSON: And just out of
16 curiosity, are those details of the PIPP claim different
17 from the whole file that was transmitted as part of the
18 earlier stage?

19 MS. MARILYN MCLAREN: No, it's not
20 different. It's the whole file.

21 MR. ROBERT DAWSON: And that would also
22 include then the information about the prior -- any prior
23 reviews and appeals.

24 MS. MARILYN MCLAREN: Yes.

25 MR. ROBERT DAWSON: Returning to that

1 conduct -- or conduct internal review box, it seems that
2 the reviewer will have what are labelled as discussions
3 with the case manager, health care professional, and
4 employer.

5 Is that right?

6 MS. MARILYN MCLAREN: Yes.

7 MR. ROBERT DAWSON: And these discussions
8 are conducted by the reviewer for the purposes of, in
9 part, deciding the outcome of the review.

10 Is that right?

11 MS. MARILYN MCLAREN: Yes.

12 MR. ROBERT DAWSON: Am I right that these
13 discussions are not recorded or transcribed?

14

15 (BRIEF PAUSE)

16

17 MS. MARILYN MCLAREN: No, they're not
18 recorded electronically, I presume you mean. They're not
19 transcribed, but the information gleaned from that
20 research done by the internal review officer would be
21 incorporated into the internal review decision.

22 And discussion may not have been the best
23 choice of word, because it is usually written information
24 that goes back and forth. The review officer would tend
25 to request information in writing, and would likely, in

1 most -- the majority of cases, be returned in writing.

2 MR. ROBERT DAWSON: Let's deal with it in
3 two (2) ways. Let's suppose it were an actual
4 discussion. I assume from the flow chart that the
5 claimant, or -- would not have been, shall we say, part
6 of a three (3) way telephone conversation, or present for
7 any meeting?

8 MS. MARILYN MCLAREN: If, in fact, it
9 happened as a telephone meeting, it would likely involve
10 just the two (2) parties and not the claimant, that's
11 true.

12 MR. ROBERT DAWSON: And when you say that
13 notes are made of the what -- we're going to still use
14 the "discussions," although I take your point that the
15 majority of these so-called discussions are, in fact, in
16 writing.

17 When notes are made, these are notes that
18 one (1) individual, presumably the reviewer, has written,
19 so they would have that reviewer's particular sense of --
20 well, particular approach to the particular discussion
21 that had happened.

22 MS. MARILYN MCLAREN: Sure, that's fair.
23 And -- and that likely would happen in terms of, you
24 know, a meeting or telephone conversation. The internal
25 review officer would make notes of it which would --

1 would form part of the claim file, they would be there,
2 but the internal review decisions is what I was referring
3 to.

4 More specifically, the notes tend to be
5 very -- quite lengthy and very comprehensive in terms of
6 explaining the information on which the internal review
7 officer relied, and that decision letter would reference
8 these conversations potentially if tho -- if they
9 occurred as well.

10 MR. ROBERT DAWSON: But then again that
11 decision letter would be essentially a summary of those
12 earlier conversations and -- and that the summary would
13 be prepared as far as the reviewer, the internal reviewer
14 thought was relevant to the --

15 MS. MARILYN MCLAREN: Yes.

16 MR. ROBERT DAWSON: -- actual --

17 MS. MARILYN MCLAREN: Agreed.

18 MR. ROBERT DAWSON: I note on the flow
19 chart there's also a reference to what is labelled as
20 discussions with the claimant, is that correct?

21 MS. MARILYN MCLAREN: Yes.

22 MR. ROBERT DAWSON: Just for information,
23 would the reviewer use these so-called discussions to
24 convey to the claimant a summary, as we're now labelling
25 it, of any exchanges with the case manager or health

1 profe -- healthcare professional or lawyer?

2

3

(BRIEF PAUSE)

4

5 MS. MARILYN MCLAREN: The discussions
6 could certainly include that.

7 MR. ROBERT DAWSON: And when you use the
8 conditional "could," I'm led to infer, and you can
9 correct me if I'm wrong, that the workflow doesn't
10 stipulate the order in which these so-called discussions
11 will occur, is that right?

12 MS. MARILYN MCLAREN: Well, the fact that
13 it's plural means it's an iterative process, it happens
14 more than once. It's very common for claimants to want
15 to speak with the internal review officers a number of
16 times throughout the internal review officer's review of
17 the particular decision that was made, but certainly
18 there would be back and forth and sharing of information.

19 There -- there's no opportunity and no
20 legitimacy to -- to learning something and keeping it
21 from the claimant.

22 MR. ROBERT DAWSON: And, again, this is
23 for information, not by way of trying to indict you. If
24 the PIPP infrastructure initiative is designed to set up
25 workflows that prescribed the specific order in which --

1 or specific approaches that are supposed to be taken,
2 would we find in those documents a direction to the
3 internal reviewer as to where to start, for example,
4 start by calling the case manager?

5 And if you don't know, that's fine. As I
6 say, it's just a question that's arising out of your
7 comment now.

8 MS. MARILYN MCLAREN: No, I would suspect
9 that the steps would not be pres -- prescribed that
10 specifically. A number of internal reviews come in on a
11 regular basis that are very clear that would not require
12 the first step to be talking to the case manager. So,
13 no, I would not expect them to be that detailed as -- as
14 that example.

15 MR. ROBERT DAWSON: In those same
16 materials would there be a requirement that the internal
17 reviewer must put to the claimant information that the
18 internal reviewer has either gleaned from the PIPP claim
19 file or from these discussions with healthcare workers,
20 case managers, or employers?

21 MS. MARILYN MCLAREN: As it relates to
22 the topic of the request for review, yes, of course,
23 because the internal review officer has to give reasons
24 for their decisions.

25

1 (BRIEF PAUSE)

2

3 MR. ROBERT DAWSON: In putting together
4 the flowchart and materials relating to the handling of
5 internal reviews, did the corporation obtain a legal
6 opinion about any obligation that it might owe to a
7 claimant respecting -- the fancy word is the application
8 of the rules of natural justice, at this internal review
9 stage? And I'm not asking for the contents of that
10 opinion, just whether or not that was part of the
11 workflow building process.

12 MS. MARILYN MCLAREN: No, it wasn't.

13 MR. ROBERT DAWSON: Okay. Let's turn to
14 a related topic on PIPP claims. And again, do correct me
15 if my understanding of the PIPP infrastructure
16 initiative, as it's turned out, is wrong in what I'm
17 about to say. But it does seem to me that, looking
18 specifically at the workflow set out relating to the
19 internal review process, that the overall business
20 process review did not introduce any new help or aids for
21 people who are making claims arising out of injuries --
22 or as -- as a result of injuries arising out of the
23 operation of motor vehicles.

24 Is that right? There's no new help,
25 there's no new resources set out there. It's just a

1 streamling -- streamlining of the process?

2 MS. MARILYN MCLAREN: That -- that's
3 fair. I mean, the legislation didn't change. There --
4 there's no different avenues of review and appeal.

5 MR. ROBERT DAWSON: So let me just go
6 through a couple of quick examples, not to belabour that
7 point, but, although there's a claimant advisory office
8 at the appeal commission level, of course, there's no new
9 office that was created for prospective or potential PIPP
10 claimants that might give assistance when they first
11 contact MPI to file a claim?

12 MS. MARILYN MCLAREN: Right.

13 MR. ROBERT DAWSON: And I recall going
14 back to my cross-examination of Mr. Bedard I think in
15 2004 that there's an intake telephone script that the
16 claims centre operators use.

17 I'm sure that there still is some form of
18 script in place, is that right?

19 MS. MARILYN MCLAREN: Some form in place,
20 yes.

21 MR. ROBERT DAWSON: And would it be fair
22 to say that, although the script might have changed in
23 parts, that the PIPP infrastructure initiative has not
24 resulted in any change to that script that might suggest
25 to claimants that they contact a lawyer or community help

1 resource or other assistance when filling or trying to
2 file their PIPP claim?

3 MS. MARILYN MCLAREN: No, we don't do
4 that. No, we do not offer those suggestions.

5 MR. ROBERT DAWSON: And as a last
6 example, I would take it from the flowchart above, the
7 new internal review process, that the Corporation has not
8 created any sort of help desk or advisor for PIPP claim -
9 - claimants who are faced with the decision of requesting
10 an internal review or making submissions to the reviewer?

11 MS. MARILYN MCLAREN: No, that's --
12 that's true.

13 MR. ROBERT DAWSON: The Corporation has
14 spent approximately \$22.3 million on the PIPP
15 infrastructure initiative to date?

16 MS. MARILYN MCLAREN: Yes, we have.

17 MR. ROBERT DAWSON: And always in very
18 general terms, the rationale is that the expense will
19 result in future savings that make up for the cost of
20 making the change from the old claims handling system to
21 the new system, right?

22 MS. MARILYN MCLAREN: It was very
23 important for us to work to drive productivity
24 improvements, efficiencies, lower costs to the extent
25 that was possible, but that was really not the driver

1 behind this project.

2 The driver was really to put our case
3 managers in a position where they could better administer
4 these claims and, therefore, provide better service to --
5 to automobile injury victims in Manitoba.

6 The way we were able to do that, the
7 decisions that we made, the choices that we made
8 certainly have facilitated the -- the productivity
9 improvements and -- and expected lower costs, but -- but,
10 as I say, it was really intended to provide significantly
11 enhanced tools not only for the case managers, but also
12 for management, in terms of a better ability to provide
13 oversight and to therefore understand when claimants may
14 or may not have received the service they were entitled
15 to or, quite frankly, received the benefits to which they
16 may have been entitled. We expect it to enhance all --
17 all of that.

18 MR. ROBERT DAWSON: Thank you for that
19 answer, but I -- I'm wondering, and there's no need to
20 turn to it because I'm going to actually read it. When
21 the Corporation answered a similar question that I had
22 posed specifically at Manitoba Bar Association Second
23 Round Information Request number 23, and I had asked a
24 question about essentially where's the benefit to
25 claimants arising out of the internal review flow chart

1 that we reviewed, the answer came back, and I quote:

2 "The advant..."

3 And refer to a paperless environment that
4 was created, the -- the answer came back, quote:

5 "The advantage of a paperless
6 environment will be that internal
7 reviews can be addressed in a timelier
8 manner, thus improving the level of
9 customer support."

10 Does that sound familiar, Ms. McLaren?

11 MS. MARILYN MCLAREN: Yes, that's true.

12 MR. ROBERT DAWSON: And -- and is this
13 sort of in line with what you were just speaking about in
14 general terms?

15 MS. MARILYN MCLAREN: It's in line with
16 it, but it's a tiny, tiny piece of the -- the whole
17 picture, remembering that -- I think it's fair to say we
18 have fewer than a thousand (1,000) requests for internal
19 review every year.

20 We have, I don't know, between fourteen
21 (14) and fifteen (15), sixteen thousand (16,000) injury
22 claims every year, each of which have potentially dozens
23 of decisions.

24 It's -- it's the fourteen thousand
25 (14,000) that I was talking about, so certainly this is

1 an -- an advantage that the internal review officer will
2 get comprehensive information quicker with no opportunity
3 for photocopying errors, or -- or anything else, and that
4 will allow the internal review process to move ahead in a
5 -- in a more timely way.

6 But that's a tiny piece of the overall
7 infrastructure that the Corporation uses to administer
8 fourteen thousand (14,000) injury claims a year.

9 MR. ROBERT DAWSON: You'll undoubtedly
10 think it's unfair, but I'll give you the opportunity to
11 comment on the perception that I'm extracting from your -
12 - your -- your comments.

13 We have what might be described as this
14 mammoth and expensive project that seems to make the
15 bureaucratic shuffling of claims paperwork more
16 efficient.

17 That's -- I'll -- I'll give you the chance
18 to respond to that, if you'd like.

19 MS. MARILYN MCLAREN: Well, that'll be
20 true but that's not all it's going to do. I remember a
21 conversation we've had in this forum.

22 We filed information a few years ago in
23 terms of our ability, from a management perspective, to
24 really understand what's going on, and spot problems
25 before they become really problematic. For example, with

1 the system, and with the information that will be
2 collected at the beginning of a claim, if -- you know,
3 we'll -- we'll always be using the system and our ability
4 to mind the data in the system as one (1) example.

5 If by virtue of the particular
6 circumstances of a -- of a claimant, when the claim was
7 set up, and the claim goes on, and certain payments are
8 made, but no income replacement was -- was made within
9 the first few weeks of the claim, that'll be flagged in
10 the system.

11 It'll brought to the attention of the case
12 manager and supervisor, and the question will be asked,
13 Did this person not qualify for IRI for -- for some
14 reason? Why? Was it -- you know, are you having a
15 problem getting it approved? What's going on here.

16 So there's things like that that will
17 absolutely enhance the service available to claimants.

18 MR. ROBERT DAWSON: You'd agree with me
19 that in order to make an income replacement claim, the
20 claimant would have had to have known that that kind of a
21 claim should be advanced in the first place.

22 Isn't that right?

23 MS. MARILYN MCLAREN: Certainly. And we
24 certainly don't leave it to the claimant to figure that
25 out.

1 MR. ROBERT DAWSON: But in many ways, and
2 again correct me if I'm wrong, when you say you don't
3 leave it to the claimant, what you mean is the claimant
4 has to assume that the insurer is going to look out for
5 its interests, is that right?

6 MS. MARILYN MCLAREN: I can refer to --
7 you to section 150 of the Act. Absolutely. It's one (1)
8 of our responsibilities.

9 MR. ROBERT DAWSON: Can I ask you to turn
10 to Manitoba Bar Association First Round Information
11 Request number 18.

12

13 (BRIEF PAUSE)

14

15 MS. MARILYN MCLAREN: We have that.

16 MR. ROBERT DAWSON: Although it relates
17 to a different context, the last paragraph of the
18 Corporation's answer defines transparent as meaning,
19 quote, "open, accessible, and also understandable for an
20 interested layperson."

21 Would you not agree that that same sense
22 of transparency should permeate the handling of personal
23 injury claims by the Corporation?

24 MS. MARILYN MCLAREN: I'd say it's more
25 important in handling injury claims. I think people in

1 Manitoba have varying levels of interest in rate making
2 at Manitoba Public Insurance. Claimants have a lot of
3 interest, absolutely. The -- the standard, the test
4 would be higher with respect to our responsibilities for
5 administering PIPP.

6 MR. ROBERT DAWSON: So I take it then
7 that, in general terms, you'd agree that where an insured
8 person fails to receive the insured benefits to which he
9 or she is statutorily and legally entitled, this is a
10 concern to the Corporation.

11 MS. MARILYN MCLAREN: Definitely.

12 MR. ROBERT DAWSON: And you'd also
13 accept, I assume, that where an insured person does not
14 receive those insured benefits because he or she didn't
15 understand how to file a defensible claim, this too would
16 be a concern to the Corporation.

17 MS. MARILYN MCLAREN: That should never
18 happen. That's our job, to explain to people what they
19 are entitled to, to help them figure out which of the
20 many benefits under PIPP they specifically are entitled
21 to and -- and help them to prove that entitlement.

22 MR. ROBERT DAWSON: You said "That should
23 never happen." I heard you right?

24 MS. MARILYN MCLAREN: It should never
25 happen that someone just doesn't get benefit to which

1 they're entitled because they can't figure out how to go
2 after it.

3 MR. ROBERT DAWSON: Where -- of all of
4 the claims -- the internal review, sorry. Of all of the
5 internal reviews that claimants file, you'll certainly
6 agree that internal reviewers find that there have been
7 mistakes or oversight made on occasion.

8 MS. MARILYN MCLAREN: Yes, on occasion,
9 definitely.

10 MR. ROBERT DAWSON: Would you accept that
11 where an insured person does not receive the insured
12 benefits to which he or she is entitled because of an
13 unnoticed error by the Corporation that this would also
14 be a concern to the Corporation?

15 MS. MARILYN MCLAREN: Yes, definitely.
16 And through the example that I gave earlier about the IRI
17 that wasn't paid when we would legitimately expect one to
18 be paid, we expect the changes that we've made through
19 this initiative will reduce the chances of that happening
20 both by enhanced organization structure, by enhanced
21 clarity of roles and responsibilities, by enhanced
22 documentation of policies and procedures and resource
23 material, enhanced training, as well as a system that is
24 smart enough to expect certain things and flag when those
25 things don't happen.

1 MR. ROBERT DAWSON: If I could put words
2 into your mouth, are you saying then that one (1) of the
3 great advantages of the PIPP infrastructure initiative is
4 that it reduces the chance of error and oversight on the
5 part of the Corporation in handling PIPP claim?

6 MS. MARILYN MCLAREN: Yes.

7 MR. ROBERT DAWSON: And if can return to
8 my questioning, would you accept also that where the
9 medical condition of an insured person prevents him or
10 her from advancing a claim for insured benefits as a
11 victim of personal injury, that this also would be a
12 concern to the Corporation?

13 MS. MARILYN MCLAREN: Yes.

14 MR. ROBERT DAWSON: That concludes my
15 questions relating to the business infrastructure. Mr.
16 Saranchuk is not here, but in his absent honour I'm going
17 ca -- ask a quick -- or quick snapper, and I'm not sure
18 whether it will be Mr. Kramer or Mr. Palmer who will
19 answer. I don't think we need to turn to it.

20 In Manitoba Bar Association First Round
21 Information Request 29 the Corporation's answer relies
22 upon a -- and they all turn to it. I'll wait.

23

24

(BRIEF PAUSE)

25

1 MR. ROBERT DAWSON: The Corporation's
2 answer relies upon a four (4) year average to forecast
3 PIPP claims. Very simply, why is it four (4) years
4 instead of three (3), or five (5), or ten (10)?

5 MR. DON PALMER: That would be based
6 on the management judgment within the Claims Forecast
7 Committee. It -- it's essentially a tradeoff between
8 responsiveness. You want to make sure that you catch
9 certain trends but long enough that we do eliminate some
10 of the random fluctuations in the data, so four (4) years
11 has been that period.

12 As to a specific reason why it's not five
13 (5), there probably isn't one (1) specific thing, but we
14 analyse the data, and -- and that's the number that seems
15 to both best match that responsiveness with the smoothing
16 out of the fluctuations.

17 MR. ROBERT DAWSON: I'm pleased that the
18 answer wasn't that there was something I had overlooked.
19 It was just something that struck me as odd, so that's
20 why I asked. Thank you.

21 I'm going to move to my last area of
22 cross-examination, and I think that this will be a
23 question for Ms. McLaren. I understand that there's an
24 Investment Committee group that's comprised of
25 representatives from the Corporation and the Manitoba

1 Department of Finance, correct?

2 MS. MARILYN MCLAREN: Yes.

3 MR. ROBERT DAWSON: And in an average
4 year, how often would that working group meet?

5 MS. MARILYN MCLAREN: I would say ten
6 (10) or eleven (11) times. We might miss one (1) month.

7 MR. ROBERT DAWSON: And without being
8 terribly specific, would it be fair to say that the last
9 meeting of that working group was within the past two (2)
10 months or so?

11 MS. MARILYN MCLAREN: Definitely, yes.

12 MR. ROBERT DAWSON: And who would have
13 attended that meeting for the Corporation?

14 MS. MARILYN MCLAREN: I think the -- if
15 that's a specific question, exactly who was at attendance
16 at the last meeting?

17 MR. ROBERT DAWSON: Le -- let me make it
18 easier. Would you likely have been at one (1) of these
19 meetings this year?

20 MS. MARILYN MCLAREN: More than one (1).
21 I generally attend at least part of most.

22 MR. ROBERT DAWSON: And I assume Mr.
23 Bunston, the manager investments, would have been at at
24 least one (1) of these meetings this year.

25 MS. MARILYN MCLAREN: I expect he would

1 have been at all of them or very close thereof.

2 MR. ROBERT DAWSON: And I understand that
3 there are minutes taken of those meetings.

4 MS. MARILYN MCLAREN: Yes, they were
5 provided as MPI-21, Undertaking number 5.

6 MR. ROBERT DAWSON: Thank you for that.
7 Let's switch gears. And at the risk of causing Ms.
8 Kalinowsky to clamour, I wonder if the Corporation has
9 had any discussions with the government on the subject of
10 improvements to Basic coverage since last year's order of
11 this Board.

12 MS. MARILYN MCLAREN: Such conversations
13 with government would be confidential.

14 MR. ROBERT DAWSON: And you appreciate
15 that I'm not asking for a report of the substance of
16 those discussions, correct?

17 MS. MARILYN MCLAREN: Yes, I do
18 understand that.

19 MR. ROBERT DAWSON: So you appreciate
20 that I'm simply asking if there were any such discussion.

21 MS. MARILYN MCLAREN: I understand that.

22 MR. ROBERT DAWSON: And your answer,
23 presumably, would not change if I were to tell you that,
24 regardless of what answer you might give on the
25 substance, I do not intend to follow up with questions

1 about the substance of any of those discussions.

2 MS. MARILYN MCLAREN: Understood. And,
3 no, my answer wouldn't change.

4 MR. ROBERT DAWSON: So in short, you're
5 consistently adopting the Corporation's answer to
6 Manitoba Bar Association First Round Information Request
7 number 24, correct?

8 MS. MARILYN MCLAREN: Yes. And I guess I
9 could say the Corporation has put on the record in
10 response to a request from the PUB to file information in
11 confidence as to whether we know of any upcoming changes
12 to coverage, the Corporation has done that. That's on
13 the record that we've filed that in confidence.

14 But with respect to our answers to those
15 questions of yours, yes, we're staying with that answer.

16 MR. ROBERT DAWSON: And I don't want to
17 belabour this. I just have to do certain steps. If the
18 First Round Information Request from the Bar Association
19 number 24 asked if the Corporation initiated discussions
20 with the government about improvements to Basic coverage,
21 the First Round Information Request number 23 had asked
22 if the government itself had initiated those discussions,
23 and I assume you would adopt the answer that the
24 Corporation gives at First Round Information Request
25 number 23 which is you won't answer.

1 MS. MARILYN MCLAREN: Yes.

2 MR. ROBERT DAWSON: And very quickly let
3 me turn to Manitoba Bar Association First Round
4 Information Request 21 and 22, which asks the same sort
5 of questions, but this time relating to environmental
6 objections.

7 And I assume you're also -- you would also
8 adopt the Corporation's answers to those Information
9 Requests.

10 MS. MARILYN MCLAREN: Yes, subject to
11 check with Round Two, because I think on -- on some of
12 these there was a clarification provided in Round Two.

13 I don't remember off the top of my head
14 which ones, but generally yes, we stand with that answer,
15 unless it was modified in Round Two.

16 MR. ROBERT DAWSON: I think the
17 clarifications that you're suggesting in Round Two refer
18 to where the Corporation recognized that the originally
19 worded question sought information not only relating to
20 discussions with the government, but for example, the
21 crown counsel corporation -- or crown corporation's
22 counsel, or other bodies, such as law enforcement groups,
23 or otherwise, and then the Corporation would make a reply
24 to that.

25 But my questions here, and I think your

1 answers now, are focussed only on discussions with the
2 government itself.

3 MS. MARILYN MCLAREN: Yes, that's
4 correct.

5 MR. ROBERT DAWSON: And again, in
6 Manitoba Bar Association First Round Information Requests
7 10 and 11, the Corporation was asked about any contact
8 with the government concerning two (2) Board
9 recommendations.

10 And I assume you're also adopting the
11 Corporation's answer to those Information Requests.

12 MS. MARILYN MCLAREN: Yes.

13

14 (BRIEF PAUSE)

15

16 MR. ROBERT DAWSON: You made reference to
17 a confidential filing with the Board with respect to
18 future discussions. Not to betray the confidence, but to
19 the -- if those questions had been formulated reflecting
20 whether or not there will be any discussions with the
21 government on any of those points that I've raised, is it
22 your position that the Corporation has answered those
23 questions in confidence to the Board with respect to the
24 future?

25

1 (BRIEF PAUSE)

2

3 MS. MARILYN MCLAREN: With respect to
4 PIPP coverage, yes.

5 MR. ROBERT DAWSON: So for example,
6 Information Request First Round number 10 looked at a
7 recommendation that this Board had made relating to
8 changes in its legislation so that it might broaden its
9 oversight. The Corporation has not answered that
10 question with respect to whether or not there will be any
11 future discussions with the government on that topic.

12 MS. MARILYN MCLAREN: The -- the one (1)
13 piece of confidential information was related to the
14 extent to which we -- we might know about potential
15 changes to PIPP coverage. That's it.

16 MR. ROBERT DAWSON: Okay. So I won't go
17 through all of them. I just wanted to be clear on that
18 particular point.

19

20 (BRIEF PAUSE)

21

22 MR. ROBERT DAWSON: I -- I note your
23 unwillingness to answer those questions relating to, and
24 they can be summarized as Manitoba Bar Association First
25 Round questions 10, 11, 21, 22, 23, and 24.

1 If you're unwilling to make a reply on the
2 public record here, will the Corporation undertake to
3 answer those questions in confidence to the Board itself
4 before closing submissions are made?

5 MS. MARILYN MCLAREN: No. I -- I think
6 we're comfortable with the one (1) piece of information
7 that we have provided to PUB in confidence. I'll leave
8 it at that.

9 MR. ROBERT DAWSON: Mr. Chairman, at this
10 point, noting the time, I'd simply like to indicate to
11 the Board where I plan to go, and take direction from the
12 Board as to how it would like the morning to unfold.

13 In light of the witness's refusal to
14 answer the question, it's my intention to make a motion
15 that would compel the Corporation to answer those six (6)
16 Information Requests to which I have made reference, and
17 seek an order from the Board now to compel the witness to
18 answer those questions either on the record here, or in
19 confidence to the Board alone at whatever schedule the
20 Board chooses.

21 In terms of the time tabling, the Board
22 can ask me to proceed and make my submission now, and
23 then use the morning break as an opportunity to think
24 about what I've said, or, in the alternative, the Board
25 may say, We've had quite enough of you for now, Dawson,

1 and we'll go away and we'll make that motion when we come
2 back.

3 THE CHAIRPERSON: I think we'll take a --
4 a break now, Mr. Dawson.

5 MR. ROBERT DAWSON: I've had enough of me
6 as well. Thank you, Mr. Chairman.

7

8 --- Upon recessing at 10:27 a.m.

9 --- Upon resuming at 10:53 a.m.

10

11 THE CHAIRPERSON: Okay. Welcome back.
12 Mr. Dawson...?

13

14 MOTION BY CBA/MBA:

15 MR. ROBERT DAWSON: Thank you, Mr.
16 Chairman.

17 This is a motion seeking an order for
18 production, or for an answer from the witness, and it
19 follows of course in light of the witness's refusal to
20 answer the questions posed, as well as following the
21 Corporation's refusal to answer Information Requests MBA
22 First Round 10, 11, 21, 22, 23 and 24.

23 And the motion is seeking an order from
24 the Board that would compel the witness to answer the
25 questions as posed today.

1 Very briefly, I'll start by explaining the
2 nature of those questions, just to make sure we're clear.
3 In general terms, these questions ask whether, over the
4 past year or so, and going forward, the Corporation had
5 initiated, or plans to initiate, contact with the
6 government about issues that this Board had expressly set
7 out in its Order 161/09, which of course arose out of
8 last year's rate application hearing.

9 The questions also ask, almost as an
10 alternative, whether the government had, or plans to, as
11 far as the Corporation knows, to initiate such contact
12 with the Corporation.

13 The questions further ask, as I'm
14 indicating, about future plans for such discussions, and
15 the questions also afford the witness the opportunity to
16 make confidential answers to the Board alone.

17 I'll candidly state that the use of
18 confidential filings is problematic from the perspective
19 of natural justice, but I am waiving any objection in
20 this instance.

21 I emphasize that, in putting these
22 questions to the witness, I'm not seeking disclosure of
23 the substance of any discussions that might have
24 occurred. I merely want the witness to tell me if, in
25 reaction to the Board's Order of last year, the

1 Corporation followed the Board's advice, or plans to
2 follow the Board's advice, by initiating or receiving
3 discussions with the government about, first, broadening
4 the legislative scope of this Board's regulatory in --
5 oversight relating to the Corporation -- that's 1-10;
6 encouraging the Crown Corporation's counsel to conduct an
7 operational review of the Corporation -- that's 1-11;
8 thirdly, improvements to basic coverage -- that's 1-21
9 and 22; and environmental objectives -- and that's 1-23
10 and 24.

11 In the alternative, I'm asking the witness
12 to tell me if the government took the initiative --
13 meaning the government started the conversations -- to
14 communicate first with the Corporation about any of these
15 subjects.

16 So this, then, is less about the specific
17 information, and really it is about a demonstrated
18 respect for the Board and its statutory process.

19 Of course, the Board will remember that a
20 formal motion was brought as part of last year's rate
21 application, which resulted in Board Order 133/09. By
22 way of background, the Board will recall that the
23 Corporation last year had refused to answer Information
24 Requests that similarly asked about whether or not
25 communication had occurred between the Corporation and

1 the government. As the question's now put to the
2 witness, last year's Information Requests did not seek
3 disclosure of the substance of any discussions, just
4 whether or not that contact had occurred.

5 In its reply, the Corporation then had
6 relied upon the Freedom of Information and Protection of
7 Privacy Act, which is Manitoba legislation, arguing that
8 FIPPA, as its abbreviated, that FIPPA and its principles
9 applied and precluded the disclosure of the requested
10 information.

11 In dismissing that argument the Board held
12 in its order, and I quote:

13 "FIPPA does not derogate from the
14 Board's powers as reflected in the Act
15 such that the Corporation cannot rely
16 upon FIPPA as a basis to refuse to
17 provide documents to the Board," end
18 quote.

19 However, at page 8 of its reasons for
20 decision from last year, the Board had disinclined to
21 compel disclosure, noting that:

22 "The substance of the Information
23 Requests [quote] relates to past events
24 that unfolded between the Corporation
25 and the Government of Manitoba," quote.

1 The Board then went on to treat other
2 Information Requests and ordered that the Corporation
3 provide answers to them.

4 Turning to this year, the argument
5 follows: The questions at the heart of this motion aim
6 to preserve and promote the statutory function of the
7 Public Utilities Board as the legislative regulator of
8 this Crown monopoly. During the course of past hearings
9 and in its past orders the Board has frequently expressed
10 an interest in the interaction between the Applicant
11 Corporation and the Manitoba Government, and we find
12 examples of that in the past three (3) orders that the
13 Board have issued as a result of rate applications.
14 Those are Orders 157/08, 89/09, and 161/09.

15 In some instances, the Board has sought
16 the cooperation of the Applicant to encourage the
17 Manitoba Government to allow the Board to have a fuller
18 picture of the Applicant's operations so that the Board
19 may fully discharge its oversight and regulatory mandate.

20 In other circumstances, the Board has
21 expressed a desire for greater insight into the way in
22 which the Manitoba Government and the Applicant
23 communicate. The Board's motivation seems to have always
24 been to better understand the operations of the Applicant
25 and to fulfill its statutory mandate.

1 The questions that I put to the witness
2 today, I submit, are relevant. In deciding last year's
3 motion the Board correctly treated the Corporation's
4 refusal to answer Information Requests as a limited and
5 single occurrence. However, the Corporation's
6 continuation of its tactic this year shows that the
7 problem is ongoing.

8 While deciding the motion for disclosure
9 last year, Board Order 133/09 did not order disclosure,
10 characterizing the refusal by the Corporation as relating
11 to, quote, "past events." Unfortunately, those past
12 events remain current and undermine again today the
13 effectiveness of this Board.

14 This line of questioning, though, shows
15 that the so-called past events are to be future events,
16 if I can put it that way, because one (1) of the
17 questions that I put to the witness in closing was about
18 disclosing any future plans of communicating on the
19 subjects. And the stonewalled answer remained unchanged.

20 More troubling, the evidence before the
21 Board in this year's Rate Application shows that the
22 Corporation is selective in what information that it
23 discloses to the Board.

24 In the questions that prompted this motion
25 and preceded it, the witness was asked merely if there

1 had been or might be any communication between the
2 Corporation and the government. The witness declined to
3 answer.

4 However, earlier in cross-examination the
5 witness had freely disclosed that an Investment Committee
6 working group exists and regularly meets. That working
7 group consisted of conversations between the Corporation
8 and the government's Department of Finance.

9 So not only was the Corporation freely
10 willing to admit that there are meetings between the
11 Corporation and the government on the subject of the
12 Corporation's investments, but it was also apparently
13 willing to disclose the substance of those discussions
14 because it chose to file the minutes of those meetings.

15 The disclosure problem is, therefore, a
16 matter of public confidence in the process. The Board
17 has a statutory mandate to discharge.

18 The respect and sincerity with which the
19 Corporation submits to the Board's oversight may be
20 gauged by such questions as, Whether or not the
21 Corporation even bothered to mention to the government
22 that its statutory regulator has a particular view about
23 some subject.

24 The Corporation is free to disagree with
25 the Board in the way in which parties might -- parties to

1 litigation might not always agree in the way that a judge
2 rules, but the Corporation, I suggest, is not free to
3 dismiss the Board, and ignore its recommendations as if
4 these were no more than an uninformed scribble dropped in
5 some dusty suggestion box.

6 So let me now turn to the law. Last year
7 the Corporation advanced an argument on the basis of the
8 Freedom of Information and Protection of Privacy Act,
9 pointing to exemptions from disclosure relating to
10 cabinet confidences.

11 And this Board correctly dismissed such
12 considerations, noting that section 3(d) of that Act
13 provides that FIPPA, quote:

14 "Does not affect the power of a court
15 or tribunal to compel a witness to
16 testify, or to compel the production of
17 documents."

18 In short, FIPPA has no place in these
19 proceedings.

20 In fact, the Corporation should have
21 relied upon the correct legal principle, which falls
22 under the heading of, "Public Interest Immunity."

23 The subject is detailed, and requires even
24 its own chapter in the leading text book by Sopinka,
25 called, "The Law of Evidence in Canada." And rather than

1 belabour this Board with a series of court decisions that
2 I'll labouriously go through in detail, I thought I would
3 rely more on that textbook as a neat and accurate summary
4 of the law.

5 The authors of that book, at its paragraph
6 15.1, define the public policy consideration that should
7 underlie this discussion, quote:

8 "Claims for the disclosure of such
9 documents and information can involve a
10 conflict between public interests. The
11 public interest in the administration
12 of justice is promoted through full
13 access of litigants to relevant
14 information. The public also has an
15 interest in protecting the country from
16 damage to national security, and
17 international relations, that could be
18 caused by the disclosure of state
19 secrets. Also the damage of -- to the
20 process of government decision making
21 and functioning may be caused by
22 disclosure of other government
23 documents."

24 In those areas, where the public interest
25 favours non-disclosure, the government may assert an

1 immunity from disclosure. It therefore becomes a
2 balancing act for this Board, as a decision maker -- make
3 -- maker to consider.

4 However, at paragraph 15.4 of that same
5 text, the authors note that, quote:

6 "The trend in the application of this
7 immunity is to treat the government no
8 differently than any other litigant or
9 witness. The immunity should not be
10 invoked unless clearly warranted by the
11 circumstances."

12 It's interesting that although the
13 Corporation knew that the issue of disclosure was in the
14 minds of -- of the parties to these proceedings, it has
15 not solicited the assistance of the government in
16 advancing any public interest immunity.

17 We do not have before us any submissions
18 from the Minister responsible for the Corporation, or any
19 other representative of the government of Manitoba
20 itself. This certainly is not fatal to the Corporation's
21 claim. However, as Sopinka states at paragraph --
22 paragraph 15.9, that the usual practice is, quote:

23 "For the production --"

24 Sorry:

25 "For the objection to production to be

1 raised by the government. In support
2 of the objection, the minister, or some
3 other high level government official,
4 will file an affidavit with the court
5 that deposes to the government's
6 opinion that the document is subject to
7 public interest immunity on some
8 particular specified basis."

9 End quote. Indeed, leading Supreme Court
10 of Canada cases on public interest immunity almost all
11 focus upon the effect that a Ministerial pronouncement
12 may have upon a court's finding that information should,
13 or should not, be disclosed.

14 Even though the Corporation has not
15 thought ahead enough to give proper effect to its refusal
16 to disclose information in these proceedings, it might be
17 helpful to the Board to be aware of the criteria that
18 emerges from the case law in guidance of a decision maker
19 who has to decide a claim for public interest immunity.

20 It is a balancing test, and paragraph
21 15.44 of Sopinka's book gives, as examples, some of the
22 factors to consider, and there are seven (7). And I
23 propose first to state what these are, and then to come
24 back and apply these principles in support of the motion
25 that's now being made.

1 First factor to consider, the probative
2 value of the evidence in the particular case, and how
3 necessary it will be for a proper determination of the
4 issues.

5 Secondly, the subject matter of the
6 litigation.

7 Thirdly, the effect of non-disclosure on
8 the public perception of the administration of justice.
9 Just giving you a chance to catch up, and I certainly can
10 go back.

11 Fourthly, whether the claim or defence
12 involves an allegation of government wrongdoing.

13 Fifth, the length of time that has passed
14 since the communication was made.

15 Sixth is the level of government from
16 which the communication supposedly emanates.

17 And seventh is the sensitivity of the
18 contents of that communication.

19 So now I propose to apply these general
20 factors of consideration to the facts before us in this
21 case, and I'll submit that there should be no claim for
22 public interest immunity that can be sustained.

23 On the question of the first factor, which
24 is the probative value of the evidence in the particular
25 claim and how necessary it will be for proper

1 determination of the issues, answers to the questions
2 that are posed in this case are the only way in which the
3 Board may test how the Corporation is approaching the
4 recommendations and directions of this Board.

5 The second factor relates to the subject
6 matter of the litigation, and I would say on that that
7 these proceedings are a regulatory hearing involving the
8 acts of a Crown monopoly which is bound really only by
9 the Orders that this Board might make as to how it sets
10 its rates.

11 The third factor discusses the effect of
12 non-disclosure on public perception of the administration
13 of justice, and here I suggest that the questions that
14 are posed raise the issue of whether or not there is
15 transparency in this process, which even the Corporation
16 in cross-examination has acknowledged is an important
17 attribute.

18 The fourth factor deals with whether or
19 not the defence of not disclosing involves some sort of
20 allegation of government wrongdoing. Now, we're not
21 here, of course, to point any fingers, and I'm not saying
22 that there is any government wrongdoing, but I do wonder
23 if some people out there might suspect that the
24 Corporation has failed to respect the recommendations of
25 the Board, and that, in order to prevent confirmation of

1 those suspicions, the Corporation now simply refuses to
2 answer the posed questions, thus, tarnishing the
3 administration of justice.

4 The fifth point is the length of time that
5 has passed since the communication was made, and applying
6 that here, we know that the problem of course is
7 contemporary to these hearings and it's ongoing.

8 The sixth factor related to the level of
9 government from which the communication emanated. That's
10 difficult to say, because we don't have any disclosure in
11 this particular case. Perhaps it was at the highest
12 level, or perhaps, given the nature of the communications
13 that the questions mention, this might have been at a
14 lower level.

15 And the final one is the sensitivity of
16 the contents of the communication, and I submit that,
17 because of the way that the questions are framed, no
18 sensitive government information is at play here. I'm
19 not seeking disclosure of the substance of discussions,
20 just whether or not those discussions were held. Just as
21 we know that discussions were held of the finan -- or the
22 investment committee's working group involving the
23 government and the Corporation, we simply want to know
24 whether or not these meetings occurred, or these
25 communications occurred.

1 For all of these reasons, then, Mr.
2 Chairman, I submit that the order for disclosure is
3 appropriate, and it is what the law requires in the
4 circumstances of this case. And, failing any questions
5 from the Board now and any reply that this Board may
6 request or allow to the submissions that My Learned
7 Friend will likely now make, those conclude my remarks.
8 Thank you, Mr. Chairman.

9 THE CHAIRPERSON: Thank you, Mr. Dawson.
10 Just to confirm, I'm wondering, why did you choose this
11 time to bring forward your motion?

12 MR. ROBERT DAWSON: The motion, of
13 course, could have been brought forward in the course of
14 the formal motion proceedings. Last year that was the
15 route that the Bar Association had followed, and there
16 are least two (2) reasons why. Practically, first, it's
17 a very expensive way to conduct these proceedings and it
18 did result in an increase in the costs that the -- that
19 were sought by my client as a result of its
20 participation. And we're cognisant that any time costs
21 are incurred, this ultimately affects the rate payers of
22 Manitoba.

23 Second, and more practically, was that
24 even though the Board had made a clear ruling in its
25 written reasons, the question again arose at the hearing

1 revo -- inquire -- requiring the Board again to spend
2 time and consideration and make another ruling. And with
3 respect, it's arguable even that the ruling of the Board
4 at the hearing was different than the ruling of the Board
5 in its written reasons.

6 So I've simply taken it upon myself,
7 thinking that the best way to put this matter before the
8 Board was to simply do it here. The other reality,
9 although impractical as it might be, is that there was
10 always a chance that the witness might decide to answer
11 the question.

12 THE CHAIRPERSON: Thank you, Mr. Dawson.
13 Mr. Williams, do you have any comments on
14 this?

15
16 SUBMISSIONS BY CAC/MSOS ON CBA/MBA MOTION:

17 MR. BYRON WILLIAMS: Just very brief.
18 Certainly my clients in general are of the view that the
19 motion is in the -- in the public interest. Like Mr.
20 Dawson's clients, they're always cautious about ever
21 providing information to the Board in confidence given
22 its implications for the principles of natural justice,
23 but generally they're supportive of this motion.

24 THE CHAIRPERSON: Thank you, Mr.
25 Williams.

1 Ms. Peters, does CAA have any comment?

2 MS. LIZ PETERS: No comments.

3 THE CHAIRPERSON: Ms. Everard, do you
4 have any light to bring on this?

5 MS. CANDACE EVERARD: No, Mr. Chairman.
6 We should probably hear from Ms. Kalinowsky and go from
7 there.

8 THE CHAIRPERSON: Yes, that's where I'm
9 headed. Ms. Kalinowsky...?

10 MS. KATHY KALINOWSKY: Could I just take
11 a few minutes to be able to gather my thoughts and notes
12 from the five (5) pages of notes that I took from Mr.
13 Dawson's motion?

14 THE CHAIRPERSON: It sounds reasonable.
15 Do you expect that you'll be able to provide your
16 comments in the next fifteen (15), twenty (20) minutes?

17 MS. KATHY KALINOWSKY: Five (5) minutes,
18 yes.

19 THE CHAIRPERSON: Very good. We'll
20 adjourn for the five (5) minutes.

21

22 --- Upon recessing at 11:14 a.m.

23 --- Upon resuming at 11:30 a.m.

24

25 THE CHAIRPERSON: Are you ready, Ms.

1 Kalinowsky?

2 MS. KATHY KALINOWSKY: Yes, I am. Thank
3 you for the additional few minutes there. I really
4 appreciate that Mr. Chair -- Mr. Chair.

5 THE CHAIRPERSON: No problem.

6

7 SUBMISSIONS BY MPI ON CBA/MBA MOTION:

8 MS. KATHY KALINOWSKY: I just want to say
9 a number of things in my response, and one (1) that would
10 have been of extreme assistance to the Corporation to
11 have had this motion filed in September 17th rather than
12 today at the last day of the Hearing.

13 There is an indica -- there is a date for
14 motions to be filed as per the agenda -- the timetable
15 that's set up at the pre-hearing conference. There's
16 reasons for that. Mr. Dawson knew on August 4th that the
17 response would not be forthcoming. I believe the
18 questions were also an -- asked again in the Second
19 Round, which would have been answered in September, and
20 he then knew that the responses surely would not be
21 forthcoming, and that would have been helpful.

22 One (1) of the reasons it would have been
23 helpful is just, self-servedly on my own part, it would
24 have been helpful to have some time to prepare for an
25 excellent response and gather my thoughts on this.

1 Having not seen a motion, I assumed that one would not be
2 coming so I didn't have a lot of time to prepare for
3 this, obviously.

4 Secondly is -- obviously is that this is a
5 confidence that's not necessarily MPI's. It's a
6 confidence that belongs to government. It's a confidence
7 indeed that belongs to cabinet. The Canadian Government,
8 the Manitoba Government, et cetera, is -- you know, going
9 back to Westminster, it's all based on a cabinet system.

10 Mr. Evans, of course, will be very
11 familiar with this, of course, will be very familiar with
12 this, of course. Responsibility rests not in a single
13 Minister, but indeed on a committee of Ministers that are
14 sitting together in a cabinet together.

15 Cabinet Ministers are collectively
16 responsible for all actions of the cabinet, whether --
17 and they must support all decisions of the cabinet,
18 whether they're directly involved with them, as being the
19 Minister responsible for that area, or whether they have
20 agrish -- initially agreed to them, or not.

21 However, to reach that final decision, all
22 Ministers must be able to express their views freely
23 during the discussions leading up to the cabinet
24 decisions. To permit this exchange of views to be
25 disclosed publically would result in the erosion of a

1 collective responsibility for these Ministers.

2 As a result, the collective decision-
3 making process has traditionally been protected by the
4 rule of confidentiality, which protects the principle of
5 the collective responsibility while enabling Ministers to
6 engage in a full and frank discussions that are
7 absolutely fundamentally necessary for the effective
8 functioning of the cabinet system of government.

9 So with that, kind of as a theoretical
10 stance for this, I would again reiterate that it's not
11 MPI's confidentiality. Indeed, it is the government's
12 confidentiality. In this case, it's discussions that the
13 president and CEO held with the Minister, or indeed with
14 -- whether the Minister initiated conversations with the
15 Corporation.

16

17 (BRIEF PAUSE)

18

19 MS. KATHY KALINOWSKY: The information in
20 doc -- requested is indeed a cabinet confidence with the
21 -- and its within the meaning of FIPPA.

22 Now, whether FIPPA applies or not, it
23 certainly is an excellent framework to look at whether
24 cabinet information should be provided or not. This
25 information in this case does not belong to Manitoba

1 Public Insurance. Indeed, it belongs to the Minister of
2 justice, and the min -- sorry, the administer responsible
3 for MPI, who also happens to be the Minister of justice,
4 and Attorney General.

5 Providing fifteen (15) or twenty (20)
6 minutes notice on a motion doesn't permit civil legal
7 services the opportunity to come over and advance the
8 Minister's and cabinet's position on this.

9 I would also like to refer you to a specif
10 -- specific case of Mr. Justice Clearwater in Jaslowski,
11 that's J-A-S-L-O-W-S-K-I, versus Manitoba, the Minister
12 of Justice.

13 In that case, the applicant was
14 specifically seeking information on discussions,
15 documents exchanged, and correspondence between the
16 Department of Justice, and the Attorney General, and it
17 was within regards to a FIPPA discussion, and FIPPA
18 application.

19 Regardless of whether it's in -- in the
20 context of a FIPPA application, there's a few good
21 provisions that are in there that I'd like to quote. And
22 they could be applicable, and should be applicable, to
23 the Public Utilities Board.

24 But looking at the exemption for a cabinet
25 confidentiality, the purpose of having that exemption, as

1 I alluded to earlier, is to promote the open -- to
2 promote the candid discussion, and to promote the advice
3 internally within the government with respect to
4 deliberative and decision making process.

5 Another quote from Mr. Justice Clearwater
6 is that, and I quote:

7 "The exemption sections are designed to
8 facilitate clear and open discussions
9 between employees, the Minister,
10 cabinet members, and other public
11 officuse -- officials who are acting in
12 the course of their employment, or
13 their duties, in reviewing information,
14 and coming to decisions within the
15 scope of their authority."

16 Close quote. And in that case, Mr.
17 Justice Clearwater denied that the information should be
18 disclosed. It's also interesting note -- to note that
19 the Auditor Generals Act specifically denies the auditor
20 general access to con -- cabinet confidences as described
21 in FIPPA.

22

23

(BRIEF PAUSE)

24

25

MS. KATHY KALINOWSKY: It is very

1 important that Cabinet confidences and discussions with
2 ministers are protected. It allows government --
3 government in the sense being minister -- at the
4 ministerial level -- to have open discussion about
5 options. It allows government and MPI to consider
6 positions prior to public discussions. It allows
7 government to express concerns to the Corporation that
8 may or may not be valid. It allows government and MPI to
9 discuss whether possible initiatives should go forward or
10 not. It allows government to proceed with its decision
11 without MPI's views being made public, unless of course
12 it's the government, in the minister's view, that they
13 particularly want those views to be made public.

14 MPI can be an advisor to the minister and
15 can be just one (1) source of input to the government on
16 a number of different aspects of the Information Requests
17 that have been sought, but MPI is not the only source of
18 the government policy-making decision body.

19 Having the ability to have confidential
20 discussions between the president and the minister allows
21 a sharing of information, and allows the government to
22 receive that information without having to be -- to worry
23 that the information might be disclosed or that the
24 responses might be disclosed.

25 So, with that, I would again reiterate

1 that it's the minister's confidence here. It's not ours
2 to waive. That is why you look at the responses to the
3 First Round and also I believe the Second Round of
4 Information Requests.

5 Listening today to the arguments put
6 forward by Mr. Dawson, he's put a bit of a different
7 focus on this, and it's a phrase that he reiterated
8 several times as being fundamental to the -- the reason
9 as to why he wanted this information. And that phrase --
10 and I -- sorry if I didn't write it down correctly, but I
11 put down here in quotes, It's a demonstrated respect for
12 the PUB's Order, closed quotes. And I think I got that
13 right.

14 There are several ways to indicate that
15 there is fundamental demonstrated respect for the PUB's
16 Order. First and foremost is, one (1), the rates that
17 were approved are indeed the rates that are going to be
18 charged the upcoming year.

19 Secondly, you can see that various
20 different parts of the body of the Order do have
21 responses to in the application. PUB ordered asset and
22 liability allocation be undertaken last year. This year
23 there's a study provided and we bring forward witnesses.
24 That shows the utmost of respect for something that's
25 firmly within the four (4) squares of the PUB's

1 jurisdiction.

2 Another way to look at the respect that is
3 demonstrated for the PUB's Order is what happens with the
4 Order when it's received. And we can advise that, upon
5 receipt of the order from the PUB -- and I'm talking
6 about the general rate -- the -- the GRA Order, not the
7 late -- later Order, but the GRA Order -- that Order, now
8 by a -- by an electronic link, is shared with the
9 minister.

10 The president and CEO of Manitoba Public
11 Insurance has discussion/discussions with the Minister
12 about the Order. That is how far we are willing to go
13 with respect to answering any of those questions about
14 the demonstrated respect for the PUB's Order. So we will
15 not advise what occurs in those discussions about the
16 Order, but we will advise that discussion/discussions do
17 occur. So we're not going to talk about the substance of
18 those discussions.

19 Now, I just provided some evidence. And
20 since I'm not a sworn witness I would like to be able to
21 ask if it would be okay if Ms. McLaren confirms that she
22 does indeed ha -- that indeed the order is shared with
23 the Minister and indeed, as president and CEO, she has
24 discussions/discussions with the minister about the order
25 so that that is on the record. With your consent, I

1 would ask that that be provided.

2 MS. CANDACE EVERARD: Mr. Chairman, I
3 have no objection to that suggestion, but perhaps the --
4 the Intervenors, including Mr. Dawson, should be
5 canvassed for their positions before you make a ruling.

6 THE CHAIRPERSON: Mr. Dawson, do you have
7 any problem with this process that Ms. Kalinowsky is
8 suggesting?

9 MR. ROBERT DAWSON: First, Mr. Chairman,
10 what essentially is happening here is that the witness is
11 answering the question that I had posed. And I'm -- if
12 My Learned Friend wishes to put the questions to the
13 witness, she may, but I'm prepared to accept her
14 representation.

15 And if I understand this correctly, and
16 she can confirm, the question I was asking was never what
17 was said. I said, Did the government initiate
18 communications or did the Corporation initiate the
19 communications on any of the issues that were raised in
20 PUB-1-10, 11, 21, 22, 23, 24.

21 The information that My Learned Friend
22 now, after I bring the motion, is -- is reporting is
23 that, yes, there have been those discussions. If that's
24 the information, I have the answers to my questions and
25 we're -- we have no need to continue.

1 THE CHAIRPERSON: Mr. Williams...?

2 MR. BYRON WILLIAMS: I have nothing
3 further to add, Mr. Chairman.

4 THE CHAIRPERSON: Ms. McLaren, since you
5 are the sworn witness, are you willing to attest to
6 assist Ms. Kalinowsky's comments as representative of
7 MPI's position?

8 MS. MARILYN MCLAREN: Yes.

9 THE CHAIRPERSON: Ms. Everard, unless I'm
10 mistaken, I believe that this deals with Mr. Dawson's
11 motion. Which he is nodding, so we can then proceed
12 onwards.

13 MS. CANDACE EVERARD: That would appear
14 to be the case, Mr. Chairman.

15 THE CHAIRPERSON: Is that the case, Mr.
16 Dawson? Are you withdrawing now your motion having had
17 your questions answered?

18

19 CBA/MBA WITHDRAWS MOTION:

20 MR. ROBERT DAWSON: There's no need to
21 proceed with the motion. I wouldn't withdraw it on the
22 grounds that this was the only way that the Corporation
23 was going to answer my question. So, as unfortunate and
24 reluctant as I am to disrupt the proceedings with these
25 sorts of procedural issues, I have to say, in retrospect

1 I'm glad that I did because I have the answer that I
2 sought last year and was refused, and that I sought this
3 year in the First Round Information Request and was
4 refused, and that I sought in the Second Round
5 Information Request and refused, and that I asked only an
6 hour ago of the witness and was refused.

7 But apparently something has happened.
8 The witness has answered to my satisfaction so there's no
9 need to proceed with the motion.

10 THE CHAIRPERSON: Thank you. Mr. Dawson,
11 do you have any questions, any further questions of the
12 panel or have you finished your cross?

13 MR. ROBERT DAWSON: Mr. Chairman, with
14 the answers that we've now received, I have no further
15 questions for the witness panel. Thank you.

16 THE CHAIRPERSON: Thank you. Mr.
17 Williams, on reflection, do you have any further
18 questions?

19 MR. BYRON WILLIAMS: I have a number
20 relating to the undertakings that were filed on Friday.
21 I estimate it would take somewhere between fifteen (15)
22 minutes and twenty (25), to go through them. So I'm
23 prepared to do so now if that would be of assistance.

24 THE CHAIRPERSON: Yes, please.

25

1 CONTINUED CROSS-EXAMINATION BY MR. BYRON WILLIAMS:

2 MR. BYRON WILLIAMS: And for the panel's
3 information, I would be referring to MPI Exhibit 37,
4 which is Undertaking 25, MPI 38, which is Undertaking 26.
5 Sorry, first of all, I think it's MPI 37, which is the
6 response to Undertakings 25 and 29. Secondly, MPI 38,
7 which is the response to Undertaking 26.

8 THE CHAIRPERSON: Mr. Williams, do you
9 mind holding just for a second.

10

11 (BRIEF PAUSE)

12

13 THE CHAIRPERSON: Our wandering back and
14 forth into our inner sanctums, sometimes we leave things
15 behind.

16

17 (BRIEF PAUSE)

18

19 THE CHAIRPERSON: Thank you, Mr.
20 Williams.

21

22 CONTINUED BY MR. BYRON WILLIAMS:

23 MR. BYRON WILLIAMS: And just to confirm,
24 so the -- the four (4) that I'll be making brief
25 reference to are MPI-37, which is Undertaking 25; MPI-38,

1 which is Undertake -- the response to Undertaking 26;
2 MPI-40, which is the response to Undertaking 28; and MPI-
3 42, which is the response to Undertaking 31. And I thank
4 Mr. Singh for getting my exhibit numbers corrected
5 earlier this morning.

6 Ms. McLaren, if -- if you could turn to
7 the Corporation's response to MPI ex -- or the
8 Corporation's exhibit MPI-37, which is its response to
9 Undertaking 25.

10 Do you have that?

11 MS. MARILYN MCLAREN: Yes, I do.

12 MR. BYRON WILLIAMS: And essentially,
13 what this response does is provide the Corporation's
14 budgeted -- first of all, the Corporation's budgeted and
15 actual expenditures on the RoadWatch pro -- program for
16 2009/'10.

17 Is -- is that right?

18 MS. MARILYN MCLAREN: Yes, that's right.

19 MR. BYRON WILLIAMS: And then
20 subsequently it also looks at the budgeted funding for
21 RoadWatch in 2010/'11.

22 Would that be fair, in terms of Basic's
23 share?

24 MS. MARILYN MCLAREN: Yes.

25 MR. BYRON WILLIAMS: And just very

1 quickly, if I look at the 2009/'10 year, which would be
2 the first table on this response, the total Basic share
3 of actual expenditures for RoadWatch, these -- these are
4 actual expenditures, would be about two hundred and
5 sixty-three thousand dollars (\$263,000) roughly?

6 MS. MARILYN MCLAREN: Yes.

7 MR. BYRON WILLIAMS: And I would be
8 correct in sug -- suggesting to you that the largest
9 expenditure in terms of the actuals is for the RCMP, at
10 around a hundred and two point five thousand dollars,
11 correct?

12 MS. MARILYN MCLAREN: Yes.

13 MR. BYRON WILLIAMS: The second largest
14 expenditure would be at the city of Brandon at around
15 eighty-six thousand -- thou -- eighty-six thousand
16 dollars (\$86,000), correct?

17 MS. MARILYN MCLAREN: Yes.

18 MR. BYRON WILLIAMS: And the third
19 largest expenditure would be for Winnipeg, coming in with
20 actuals around fifty-four point three thousand, correct?

21 MS. MARILYN MCLAREN: Yes.

22 MR. BYRON WILLIAMS: And again if we look
23 at the budget for the 2010/'11 year, a -- being Basic's
24 share, you would again see that the largest expenditure
25 is forecast for the RCMP, correct?

1 MS. MARILYN MCLAREN: Yes.

2 MR. BYRON WILLIAMS: The second largest
3 for Brandon, correct?

4 MS. MARILYN MCLAREN: Yes.

5 MR. BYRON WILLIAMS: And the third
6 largest being Winnipeg at about sixty-one thousand
7 (61,000), correct?

8 MS. MARILYN MCLAREN: Yes.

9 MR. BYRON WILLIAMS: Given the relatively
10 small expenditure in terms of the city of Winnipeg, would
11 it be fair to conclude from -- from these expenditures
12 that the -- that impaired driving issues are more severe
13 in Brandon than Winnipeg?

14 MS. MARILYN MCLAREN: I don't think you
15 can conclude that from this information.

16 MR. BYRON WILLIAMS: To an outside
17 observer, you'll agree, it might be surprising that
18 Winnipeg ranks number third in terms of RoadWatch
19 expenditures, and I'm not mean -- meaning this is a
20 judgment on the Corporation, but you'll agree --

21 MS. MARILYN MCLAREN: Understood.

22 MR. BYRON WILLIAMS: -- you'll agree?

23 MS. MARILYN MCLAREN: Understood, yes.

24 MR. BYRON WILLIAMS: And what, if any,
25 explanation could -- could -- can the Corporation offer

1 for the relatively small share that Winnipeg holds in
2 terms of RoadWatch expenditures?

3 MS. MARILYN MCLAREN: I can't give you a
4 specific answer. I can -- the best I can do is to refer
5 back to the fact that RoadWatch is really resourced with
6 overtime officers working extra additional time, and I
7 would conclude that there is less opportunity for
8 Winnipeg to resource a program on that basis.

9 MR. BYRON WILLIAMS: Would it be accurate
10 to say that if the cor -- if the resources were available
11 in terms of, overtime police officers from the City of
12 Winnipeg, that MPI would be prepared to step with -- to
13 the table with more expenditures in terms of RoadWatch
14 focussed on impaired driving?

15 MS. MARILYN MCLAREN: Yes, I believe that
16 would be fair.

17 MR. BYRON WILLIAMS: If you could turn to
18 Undertaking 26, the Corporation's response to Undertaking
19 26, which is MPI Exhibit 38. Do you have that?

20 MS. MARILYN MCLAREN: Yes, I have it.

21 MR. BYRON WILLIAMS: Ms. McLaren, just --
22 just before we get into the actual response, does the
23 Corporation have information about the rural-urban split
24 in terms of impaired driving fatalities?

25 MS. MARILYN MCLAREN: I'm not sure. We

1 had a look at the report from TIRF, I think it was last
2 week. I don't believe they just aggregated Manitoba any
3 more than -- than province-wide, but, with some effort, I
4 expect we would be able to reconcile the numbers on that
5 basis, but it would take a fair bit of effort that I
6 don't believe has been done to this point in time.

7 MR. BYRON WILLIAMS: And Ms. McLaren --
8 and -- and I thank you for that -- I mean, it's probably
9 too late in the day for -- for this hearing, but perhaps
10 if the Corporation was interested in looking at it for
11 the -- for the next year, and I think it's an important
12 issue that it'd be helpful to have insight in terms of
13 the relative split between fatalities related to impaired
14 driving between rural and urban parts of -- of Manitoba.

15 MS. MARILYN MCLAREN: Sure. We can
16 commit to -- to do that and provide some information in
17 the next filing.

18

19 --- UNDERTAKING NO. 40: MPI to provide information on
20 the split between fatalities
21 related to impaired driving
22 between rural and urban parts
23 of Manitoba

24

25 CONTINUED BY MR. BYRON WILLIAMS:

1 MR. BYRON WILLIAMS: Now, directing your
2 attention to MPI Exhibit 38, first of all, before we get
3 into the program summary, perhaps we can look at the
4 Corporation's response. And on -- on page 1 of the --
5 the response, you'll see a table with the heading in the
6 left-hand side "Internal Performance Indicators." Do you
7 see that?

8 MS. MARILYN MCLAREN: Yes, I do.

9 MR. BYRON WILLIAMS: And as I understand
10 it, this is some historical and current information
11 relating to the results of surveys conducted for Manitoba
12 Public Insurance regarding the perceptions and attitudes
13 of Manitoba with respect to impaired driving and the
14 perceived risk of being apprehended. Would that be fair?

15 MS. MARILYN MCLAREN: Yes.

16 MR. BYRON WILLIAMS: And what this table
17 provides is a summary of these indicators at certain
18 points in time, correct?

19 MS. MARILYN MCLAREN: Yes.

20 MR. BYRON WILLIAMS: And if you'll direct
21 your attention to the second line of this table, which --
22 you'll agree with me that it -- it captures Manitobans'
23 response in terms of the percentage of drivers who think
24 it is somewhat likely or very likely for a drunk driver
25 to be stopped by police, is that correct?

1 MS. MARILYN MCLAREN: Yes.

2 MR. BYRON WILLIAMS: And in terms of the
3 baseline for that, in terms of that information, the
4 baseline was -- information was compiled between the 1998
5 and 2002 periods, correct?

6 MS. MARILYN MCLAREN: Yes.

7 MR. BYRON WILLIAMS: And at that point in
8 time, about 47 percent thought it was somewhat likely or
9 very likely for a drunk driver to be stopped by police,
10 would that be right?

11 MS. MARILYN MCLAREN: Yes.

12 MR. BYRON WILLIAMS: As of September
13 2009, the number -- the percentage is about 45 percent,
14 would that be correct?

15 MS. MARILYN MCLAREN: Yes.

16 MR. BYRON WILLIAMS: Going to the third
17 internal performance indicator, you'll agree with me that
18 it's the percentage of drivers who drink who think it is
19 somewhat likely or very likely for a drunk driver to be
20 stopped by the police, is that right?

21 MS. MARILYN MCLAREN: Yes.

22 MR. BYRON WILLIAMS: And the baseline
23 being 1998 to 2002, about 46 percent of those surveyed
24 had that view, correct?

25 MS. MARILYN MCLAREN: Yes.

1 MR. BYRON WILLIAMS: In September 2009,
2 about 44 percent had that view, it's estimated?

3 MS. MARILYN MCLAREN: Yes.

4 MR. BYRON WILLIAMS: And again, going to
5 the last internal performance indicator, the percentage
6 of drivers who believe that roadside checks are effective
7 or very effective, you'll agree with me that the
8 baseline, 1998 to 2002, was about 86 percent, the
9 estimate is?

10 MS. MARILYN MCLAREN: Yes.

11 MR. BYRON WILLIAMS: And the estimate in
12 September 2009 was 77 percent, correct?

13 MS. MARILYN MCLAREN: Right.

14 MR. BYRON WILLIAMS: Ms. McLaren, you can
15 probably turn to the actual RoadWatch program summary,
16 and, in particular, to page 4 to start with.

17

18 (BRIEF PAUSE)

19

20 MS. MARILYN MCLAREN: I have it.

21 MR. BYRON WILLIAMS: And I'm going to
22 direct your attention on page 4, under the heading
23 "Section 2, the RoadWatch Proga -- Program," to the
24 second paragraph. And, first of all, it would be fair to
25 say -- I'll give you chance just to look at the paragraph

1 and the subsequent one for just a second, Ms. McLaren.

2

3

(BRIEF PAUSE)

4

5 MS. MARILYN MCLAREN: Yes, I have it.

6

7 MR. BYRON WILLIAMS: It would be fair to
8 say it's the Corporation's view that the only signi --
9 that only significant visible enforcement will increase
10 the motorists' per -- perceived risk of apprehension.
11 Would that be fair?

12 MS. MARILYN MCLAREN: Yes.

13

14 MR. BYRON WILLIAMS: And the Corporation
15 has found empirical support for this from an evaluation
16 of the ICBC Program counter attack, which found that when
17 a number of motorists encountering road checks fell below
18 20 percent of the residence population there were no
19 reductions in alcohol related crashes.

20 MS. MARILYN MCLAREN: That's right, yes.

21

22 MR. BYRON WILLIAMS: And so the
23 Corporation's view is that for roadside checks to be
24 effective as a deterrent, 20 percent of an - motorists
25 must encounter them. Fair enough?

MS. MARILYN MCLAREN: Yes.

24

25 MR. BYRON WILLIAMS: In terms -- and if
you don't have this information disaggregated, I'll

1 understand that. Is it the Corporation's view that
2 within the city of Winnipeg we can reasonably expect that
3 20 percent of motorists are encountering road stop checks
4 in any month?

5 MS. MARILYN MCLAREN: No, I -- I really
6 wouldn't be able to say. Even though the funds spent in
7 Winnipeg are lower than some of the other areas, it's
8 possible, depending on where they're located and for how
9 long, but I -- I don't know that we could say that either
10 way for sure.

11 MR. BYRON WILLIAMS: Okay. Turning to
12 page 5 of your -- your report, it would -- it would be
13 fair to say, and specifically to the third and fourth
14 paragraphs, that -- that the Corporation conducted a bit
15 of a pilot project with the Winnipeg Police Service in
16 2009, namely, in terms of area saturation operations.
17 Would that be fair?

18 MS. MARILYN MCLAREN: Yes.

19 MR. BYRON WILLIAMS: And these operations
20 generally re -- required less officers and targeted
21 locations where impaired drivers were most likely to be.
22 Would that be fair?

23 MS. MARILYN MCLAREN: Yes.

24 MR. BYRON WILLIAMS: And if you're
25 looking for a reference you can turn to page 7 of your

1 report. Would it be accurate to suggest that because of
2 misunderstanding regarding the collection of programmed
3 data for the Winnipeg area saturation pilot project, the
4 Winnipeg Police Service did not track manpower hours or
5 the specific number of vehicles screened during these
6 operations?

7 MS. MARILYN MCLAREN: Yes, that's right.

8 MR. BYRON WILLIAMS: Would it be fair to
9 say that because of that miscommunication the jury's
10 still out in terms of the -- the benefits of the
11 saturation approach?

12 MS. MARILYN MCLAREN: That's probably
13 fair to say. But I think it's also fair to say that this
14 particular approach has its own challenges given that
15 it's conducted during less visible hours as well.

16 MR. BYRON WILLIAMS: And wha -- does the
17 Corporation have any plans in terms of the saturation
18 approach, as opposed to the more typical roadside check
19 stop, for the 2010 year?

20 MS. MARILYN MCLAREN: Well, I suspect
21 it's a little bit late for 2010 year given that most of
22 this happens between May and November. But it's -- it's
23 certainly an area that deserves attention and -- and
24 we'll be giving it some attention.

25

1 MR. BYRON WILLIAMS: And what does that
2 mean?

3 MS. MARILYN MCLAREN: Well, I think the
4 extent to which we agreed to work with the police in --
5 in here in Winnipeg, on a somewhat different approach,
6 after several years of them not being part of the
7 RoadWatch Pro -- Program is positive. I don't want to do
8 anything that -- that jeopardizes that positive step, but
9 I think we really need to work closely together to find
10 ways that we can work towards, as best we can, approaches
11 that -- that have some empirical evidence of -- of
12 effectiveness behind them.

13 MR. BYRON WILLIAMS: And in your
14 reference to the city of Winnipeg not participating in
15 RoadWatch, that -- that's referring to the years between
16 2002 and 2006, or 2002 and 2005 when they were not
17 participants in the RoadWatch program?

18 MS. MARILYN MCLAREN: Yes, that's right.

19 MR. BYRON WILLIAMS: And did the --
20 again, without trying to prejudice your relationship with
21 the police, did the challenges with the Winnipeg police
22 service mainly relate to staffing availability?

23 MS. MARILYN MCLAREN: I'm not close
24 enough to it to know about that, but I -- I certainly
25 understand just from general information available to

1 people in Winnipeg that they -- they definitely do have
2 staffing challenges.

3 MR. BYRON WILLIAMS: If you can turn to
4 page 21 of this report just for a second.

5

6 (BRIEF PAUSE)

7

8 MR. BYRON WILLIAMS: You'll see a table,
9 "RoadWatch Ten (10) Year Program Results;" do you see
10 that?

11 MS. MARILYN MCLAREN: Yes.

12 MR. BYRON WILLIAMS: And if we look to
13 the -- the fourth column -- it's page 21. If we look to
14 the fourth column, you'll see a heading, "Vehicles
15 Checked."

16 Do you see that, Ms. McLaren?

17 MS. MARILYN MCLAREN: Yes.

18 MR. BYRON WILLIAMS: And would it be fair
19 to say that in terms of vehicles checked, the high point
20 of the program was in 2001?

21 MS. MARILYN MCLAREN: Yes.

22 MR. BYRON WILLIAMS: And in that year,
23 somewhat in excess of forty-four thousand (44,000)
24 vehicles were checked in that particular year?

25 MS. MARILYN MCLAREN: Yes, that's right.

1 (BRIEF PAUSE)

2

3 MR. BYRON WILLIAMS: Ms. McLaren, just a
4 couple more. Perhaps you could turn to page 26 for a
5 second.

6

7 (BRIEF PAUSE)

8

9 MS. MARILYN MCLAREN: Yes.

10 MR. BYRON WILLIAMS: In paragraph 2,
11 you'll agree that there's a strong support for roadside
12 checks, with 81 percent of Manitoba driving -- drivers
13 supporting the concept as an effective way to discourage
14 drinking and driving in our province.

15 Would that be fair?

16 MS. MARILYN MCLAREN: Yes.

17 MR. BYRON WILLIAMS: And the bottom of
18 page 26, you'll see a statement:

19 "The ongoing -- ongoing challenge for
20 RoadWatch is to attain an optimum..."

21 In quotation marks -- the word "optimum"
22 in quotation marks:

23 "...level of police participation that
24 will elevate current visibility rates."

25 Do you see that statement?

1 MS. MARILYN MCLAREN: Yes.

2 MR. BYRON WILLIAMS: And with reference
3 to that statement, perhaps you can assist my clients in
4 understanding what the Corporation means by, "optimum
5 level of police participation," and also its expectation
6 in terms of elevating current visibility rates.

7

8 (BRIEF PAUSE)

9

10 MS. MARILYN MCLAREN: Well, I would
11 expect that that would refer both to the benchmark we
12 spoke of earlier of 20 percent of motorists need to
13 encounter a roadside check stop, but also the public
14 perceptions that we looked at on the Corporation's
15 response to this IR that was on the front of the summary.

16 MR. BYRON WILLIAMS: Okay, thank you.
17 Very quickly, if I could have -- have you turn to your
18 response to Undertaking 28, which is MPI Exhibit 40.

19 And the thrust of this Information Request
20 through cross-examination was to get a breakdown of the
21 total number of motor vehicle fatalities, including --
22 involving occupants who were not restrained at the time --
23 - time of the crash.

24 You'll agree with that?

25 MS. MARILYN MCLAREN: Yes.

1 MR. BYRON WILLIAMS: And the -- the
2 Corporation's response is, as I understand it, is that
3 the seatbelt indicator was not known in about two-thirds
4 (2/3) of the -- of the circumstances, so it didn't have
5 enough confidence, or didn't have enough credible data to
6 complete the analysis.

7 Is that fair?

8 MS. MARILYN MCLAREN: Yes, that's fair.

9 MR. BYRON WILLIAMS: And would it --
10 you'll recall, Ms. McLaren, that similar questions have
11 been posed by my clients in -- in previous years, in
12 previous proceedings?

13 MS. MARILYN MCLAREN: Yes, I absolutely
14 recall that, and I think -- just to elaborate a little
15 bit on this, we believe that with more time we can go
16 back, and reconcile the differences between this data
17 base, and what we have discussed in these proceedings
18 before. But this is the actual data.

19 Because -- you know, we may very well have
20 reported on a third (1/3) of the cases before, and at
21 this point in time we just didn't really think that that
22 would be adequate, but we are going to reconcile this,
23 and again, I'll -- I'll commit to provide some
24 information in the next filing in this regard, because I
25 -- I think, with some effort, we -- we should be able to

1 get more information on -- on this that we believe is
2 credible and that we're prepared to stand behind.

3 MR. BYRON WILLIAMS: And just so I
4 understand you, that for the next filing, the Corporation
5 would be prepared to -- to provide recent information
6 relating to fatalities where no seatbelt use was occupied
7 with -- with some sort of either territorial split or
8 urban-rural split?

9 MS. MARILYN MCLAREN: Yes, or -- or worst
10 case scenario, explain why we can't do what we did a few
11 years ago.

12

13 --- UNDERTAKING NO. 41: MPI to provide recent
14 information relating to
15 fatalities where no seatbelt
16 was worn, with either a
17 territorial or urban-rural
18 split

19

20 CONTINUED BY MR. BYRON WILLIAMS:

21 MR. BYRON WILLIAMS: And, Mr. Chairman,
22 just two (2) or three (3) more minutes. I'd -- I'd like
23 to turn to Under -- Undertaking 31, which is marked as
24 MPI Exhibit 42.

25 MS. MARILYN MCLAREN: I have that.

1 MR. BYRON WILLIAMS: And, Ms. McLaren,
2 essentially this looks at the -- the Corp -- in terms of
3 impaired driving expenditures, it looks at the
4 Corporation's forecast expenditures versus actual
5 expenditures and the variance between the two (2) of
6 them.

7 Would that be fair?

8 MS. MARILYN MCLAREN: Yes.

9 MR. BYRON WILLIAMS: And just line by
10 line, what, first of all, going to the table, does the
11 Corporation mean by safety production?

12 MS. MARILYN MCLAREN: That's actually the
13 cost of making advertising, whether it's making a TV
14 commercial, radio, billboards, but it's the actual
15 production cost of advertising.

16 MR. BYRON WILLIAMS: And the -- the
17 actual cost in '09/'10 as compared to the forecast,
18 you'll agree with me, was sharply lower. And I wonder if
19 you can provide a bit -- bit of an explanation of why,
20 just less ads?

21 MS. MARILYN MCLAREN: Yes. Just a sec,
22 please.

23

24

(BRIEF PAUSE)

25

1 MS. MARILYN MCLAREN: When we put the
2 budget together, we expected to produce and air a
3 drinking and driving commercial. There was some thought
4 at the time that we may have been able to do something in
5 collaboration with MADD that would have reused something
6 that they had done, but it -- it just didn't work out.
7 It would have been cost prohibitive, and we ended up not
8 having another drinking and driving campaign, and that's
9 why both the production and media are underspent that
10 year.

11 MR. BYRON WILLIAMS: And media, just
12 going to the second line, that represents the number of
13 media buys. Would that be fair?

14 MS. MARILYN MCLAREN: Buying the space,
15 yes.

16 MR. BYRON WILLIAMS: And what is meant by
17 the term "impaired driving strategies"?

18 MS. MARILYN MCLAREN: I asked that, too.
19 I can tell you that impaired driving strategies is a bit
20 of a -- a broad category of a number of things, such as
21 our -- our funding to support Manitoba Addictions
22 Awareness Week, TADD and Safe-Grad. We also have some
23 costs associated with -- with sponsoring a speakers'
24 bureau to go out and speak to organizations or schools
25 about the dangers of drinking and driving, and some other

1 youth -- youth initiatives. That's the broad category.

2 MR. BYRON WILLIAMS: So it's -- it's a
3 broader category that, to a certain degree, is generally
4 responsive to demand in the community. Would that be
5 fair?

6 MS. MARILYN MCLAREN: That's fair, but
7 community in specific -- sometimes a broader community
8 with things like speakers' bureau, how many invitations,
9 how many opportunities to go and speak. But, more
10 specifically, TADD and -- and Safe-Grad is a much more
11 narrow community that we work with quite closely.

12 For example, for -- for two (2) years now,
13 they -- they had an intention to refresh all their
14 program material, so we planned to spend twenty-five
15 thousand dollars (\$25,000) over the last -- for each of
16 the last two (2) years, and neither year did anything
17 move forward on that. It's really at their -- their
18 discretion. We had budgeted to help them, but they
19 didn't move forward with the project.

20 MR. BYRON WILLIAMS: And who's TADD?

21 MS. MARILYN MCLAREN: Teens Against
22 Drinking and Driving.

23 MR. BYRON WILLIAMS: Thank you, Mr.
24 Chairman, and thank you to the MPI panel as well. Those
25 -- that closes my questions.

1 THE CHAIRPERSON: Thank you. I'm
2 thinking about this afternoon. If we'd come back at
3 1:15, and Ms. Everard can help me with this, but I
4 imagine the lineup would be Ms. Everard would have some
5 followup questions?

6 MS. CANDACE EVERARD: I have a few
7 follow-up questions from undertakings that I would ask.
8 I wouldn't be longer than thirty (30) or forty (40)
9 minutes.

10 THE CHAIRPERSON: Okay. Then the panel
11 itself has a -- a number of questions that will take some
12 time to work through, and then we will have re-direct by
13 Ms. Kalinowsky, and then finally, pre-closing remarks.

14 Have I missed anything?

15 MS. CANDACE EVERARD: No, Mr. Chairman.
16 I think, just so everyone's aware, when you referenced
17 the pre-closing remarks, those are your remarks --

18 THE CHAIRPERSON: Correct.

19 MS. CANDACE EVERARD: -- not anyone else
20 that's expected to say something that they didn't know
21 about before? Yeah.

22 THE CHAIRPERSON: No, no. The
23 expectation of them will follow on Tuesday and Friday.
24 So see you all back at 1:15.

25

1 --- Upon recessing at 12:12 p.m.

2 --- Upon resuming at 1:16 p.m.

3

4 THE CHAIRPERSON: Okay. Welcome back,
5 everyone. Anytime you're ready, Ms. Everard.

6 MS. CANDACE EVERARD: Thank you, Mr.
7 Chairman.

8

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

10 MS. CANDACE EVERARD: I'll begin with a
11 couple of questions with respect to Undertaking number 4.
12 This response was filed as MPI Exhibit 20.

13 This was an undertaking to provide
14 information regarding turnover ratios in the investment
15 portfolio, and the Corporation's provided some
16 information with respect to fiscal '06/'07, and, as well,
17 with fiscal '07/'08.

18 So we see -- Mr. Palmer, I am assuming
19 this'll be you. If we compare those two (2) years, that
20 is '06/'07 to '07/'08, we see an increase in the turnover
21 ratio between those two (2) years.

22 Is that right?

23 MR. DON PALMER: That's correct.

24 MS. CANDACE EVERARD: And we see, in
25 particular, increases in the turnover ratios relating to

1 equities. Can you comment on the -- the increases from
2 '06/'07 to '07/'08 in equity turnover?

3 MR. DON PALMER: During the '07/'08 year,
4 there were some in June of that year, I believe. In June
5 '07 there was some equities that had -- were sold in
6 order to take gains, so that added to the turnover.

7 And that in fact is the -- the last time
8 we have actually sold equities in order to -- for the
9 sole purpose of getting capital gains.

10 MS. CANDACE EVERARD: Thank you. And we
11 see with respect to the government and corporate bonds, a
12 fairly consistent turnover ratio between these two (2)
13 years, moving from 33 percent to 36 percent, so about a
14 third (1/3).

15 Is that fair to say?

16 MR. DON PALMER: Yes, that's fair to say.

17 MS. CANDACE EVERARD: Thank you. And
18 just for reference, Mr. Chairman, Mr. Palmer and I were
19 discussing at the break, this Undertaking was asked in
20 follow up to an IR, which was -- it's 2-16(a), PUB/MPI-2-
21 16(a), just for continuity.

22 So we'll go then to Undertaking 19, and I
23 was too slow to catch all of the exhibit numbers that
24 were put on the record this morning, but it's Undertaking
25 number 19, which would have been filed by the Corporation

1 this morning.

2 MR. OTTMAR KRAMER: I believe it's
3 thirty-five (35).

4 MS. CANDACE EVERARD: Thank you, Mr.
5 Kramer.

6

7 (BRIEF PAUSE)

8

9 MS. CANDACE EVERARD: I just need to put
10 my hands on that particular exhibit. One (1) moment, Mr.
11 Chairman, if you would. I thought I had it handy, and I
12 put it somewhere that I didn't know.

13

14 (BRIEF PAUSE)

15

16 MS. CANDACE EVERARD: Okay. So this was
17 an Undertaking that the Board had asked with respect to
18 the DCAT, following on the -- the filing of the DCAT, and
19 I just have a -- a couple of questions with respect to
20 Undertaking 19 and the first is this: It's reflected by
21 the Corporation in their response that the Corporation
22 has not yet developed a stochastic model for
23 comprehensive and public liability, and you've advised
24 that you can't provide what was requested with respect to
25 those covers.

1 That's right?

2 MR. DON PALMER: That's correct.

3 MS. CANDACE EVERARD: And is this
4 something that the Corporation intends to continue to
5 work on, going forward?

6 MR. DON PALMER: Yes, with -- with
7 comprehensive I -- I will say that we do have a
8 stochastic model for hail, which now is the largest part
9 of our comprehensive coverage, and certainly the most
10 volatile part. So we do -- we do have that model that is
11 incorporated.

12 With theft claims now being very much on
13 decrease and being very flat, there isn't quite the same
14 volatility or probability di -- distribution on -- from
15 that perspective. So -- so I would say that -- that,
16 yes, we'll continue to develop those models, but the --
17 the reason that we haven't is just that they're less
18 volatile.

19 On the public liability portion it would
20 also be the same on the public liability property damage
21 portion. Most of it is de -- deductible transfers, so
22 highly, highly correlated with collision claims. So,
23 again, there isn't the same volatility within those.

24 On the third party liability bodily injury
25 there isn't volatility there but the component is small

1 because that's just out-of-province injury claims, third
2 party claims, and it really makes up a very, very small
3 part of the Basic insurance component.

4 So, again, we will continue to look at
5 that and -- and see sources of volatility, but that
6 particular component is very, very small as well.

7 MS. CANDACE EVERARD: Can you tell me
8 with respect to -- to these issues whether you can
9 provide the Board with your estimate of the mean and
10 probability distribution of 2011/'12 net claims incurred
11 for all Basic coverages combined and, making whatever
12 simplifying assumptions you would need to, so that it can
13 be seen where the GRA's forecasted level of net claims
14 incurred for 2011/'12 is positioned within that
15 distribution?

16

17 (BRIEF PAUSE)

18

19 MR. DON PALMER: Certainly, if you take a
20 look at page 2 and the probability percentile within the
21 ultimate incurred for collision, and then on page 4 for
22 the personal injury protection plan. I would just
23 caution the Board though what to make this comparison to,
24 with these percentiles. There are not the snapshot
25 financial numbers that you see on -- that load right into

1 the pro formas.

2 These are the ultimate un-discounted
3 values that you would see in the claims forecast book.
4 That's TI -- the claims forecasting book, which is either
5 TI.17 or TI.8 -- TI.17, it's confirmed. So it would be
6 the comparison of the ultimates there on an accident year
7 basis that would coincide with these numbers here.

8 MS. CANDACE EVERARD: Thank you.

9

10 (BRIEF PAUSE)

11

12 MS. CANDACE EVERARD: Okay, the next area
13 that I have is also in the -- the actuarial arena and it
14 follows on some questions that were -- or some evidence
15 that was given last Wednesday when the CMMG witness was
16 here. And I have an exhibit for distribution.

17 Mr. Singh, if you wouldn't mind. Thank
18 you.

19 This is an exhibit, and you'll obviously
20 see it in a moment, but it's -- it's the Actuarial
21 Standards of Practice from the Actuarial Standards Board
22 out of the US, and what you're getting is actually two
23 (2) documents: the Actuarial Standard of Practice Number
24 12, as well as a second document which is called The Risk
25 Classification Statement of Principles, and it's also

1 from the American Academy of Actuaries.

2 Do you want to take a minute, Mr. Palmer?
3 I'm not going to go through the whole of these documents.
4 I just have a few references sort of here and there, so I
5 don't know if it would be easier for you to look at it,
6 or if you just want me to start asking the questions and
7 --

8 MR. DON PALMER: No. I'm familiar with
9 both of these documents, especially -- I know that The
10 Risk Classification Statement of Principles has been
11 filed as evidence with this Board in previous years.

12 MS. CANDACE EVERARD: Oh, okay.

13 THE CHAIRPERSON: Just hold a second, Ms.
14 Everard. Okay.

15

16 CONTINUED BY MS. CANDACE EVERARD:

17 MS. CANDACE EVERARD: Thank you. Just in
18 case the panel didn't hear, Mr. Palmer said that The
19 Statement of Principles has been filed with the Board in
20 previous years. So that wasn't something that I
21 recalled, but it could have been before my time, I
22 suppose.

23 MR. DON PALMER: I've -- I've been at
24 these hearings for a long time.

25 MS. CANDACE EVERARD: That is true.

1 Okay. So, as I indicated, it's our understanding that
2 these documents originate from the US, and, as such,
3 would not be considered strictly binding on actuaries
4 practising in Canada. Would you agree with that?

5 MR. DON PALMER: I would agree with the
6 first one, being the Actuarial Standards Board. The --
7 the -- there is a similar standard for property casualty
8 practice in Canada, not specifically for risk
9 classification.

10 With any of the standards, though, if
11 there isn't an applicable standard within Canada, then
12 you look for other standards that are also applicable,
13 and this would fall into that category.

14 The second one is a Statement of
15 Principles, which is not really rule -- rules based, but
16 more a set of principles that, as a -- an actuary, you
17 should always adhere to. So again, both of these would
18 be something we're familiar with and -- and would follow.

19 MS. CANDACE EVERARD: Thank you. So I'd
20 like to direct your attention first to the Standard of
21 Practice Number 12, and in particular page 4 -- not the
22 Roman numeral page 4 that appears at the very beginning,
23 but the -- the regular numeral 4 -- where we see Section
24 3.2.3. It's the second one on that page.

25 Are you with me?

1 MR. DON PALMER: Yes.

2 MS. CANDACE EVERARD: Thank you. So
3 we'll just read this into the record first, and then what
4 I'd ask you to comment on is how the Corporation sees any
5 guidance, or if the Corporation sees any guidance for
6 itself in this particular paragraph, and whether it
7 believes that it's aligned with what's set out here. So
8 the paragraph reads:

9 "The actuaries should select risk
10 characteristics that are capable of
11 being objectively determined. A risk
12 characteristic is objectively
13 determinable if it is based on readily
14 verifiable, observable facts that
15 cannot be easily manipulated. For
16 example, a risk classification of
17 blindness is not objective, where as
18 risk classification of vision corrected
19 to no better than 20/100 is objective."

20 MR. DON PALMER: Yes, I agree with that.
21 And in terms of applicability with the Corporation's risk
22 classification, which -- again, I will reiterate that the
23 classification system is in -- within regulation, not
24 really in the purview of the Corporation. But again, the
25 standards would be objective.

1 Things like -- and if I could use driver
2 safety rating as an example, we don't rate based on being
3 a good driver or a really good driver or a really, really
4 good driver. There are objective characteristics with
5 regard to driving behaviour through accident claims or
6 at-fault accident-free years, and specific number of
7 convictions and -- and specific criteria to -- to follow
8 with the number of merits or demerits, so that would be
9 objective.

10 Other classification criteria. For
11 instance, we have, on busses, number of seats. That's
12 very objective. Engine displacement would be an
13 objective criteria.

14 So -- so, yes, I -- I would say that most
15 of the classification criteria would be very objective,
16 very measurable, from that standpoint.

17 MS. CANDACE EVERARD: Thank you. I'd ask
18 you next to go to page 8 of the document where we see an
19 appendix. It's Appendix 1 to the Standards of Practice,
20 and under the heading of, "Background," we see a
21 discussion of risk classification.

22 So if you're on page 8 under the heading
23 of, "Background", the third full paragraph reads:

24 "Risk classification is generally used
25 to treat participants with similar risk

1 -- risk characteristics in a consistent
2 manner to permit economic incentives to
3 operate, and thereby encourage
4 widespread availability of coverage,
5 and to protect the soundness of the
6 system."

7 Again, is that something that you would
8 say the Corporation guides itself by, or the -- that
9 content that it applies?

10 MR. DON PALMER: To a certain extent,
11 yes. And just because I was just presented with the --
12 these, I haven't studied them fully, but I know that
13 there is an item in the statement of principles that
14 talks about government classification systems that tends
15 to sort of widen the categories a little bit from -- from
16 this, which is really -- has a fine -- this particular
17 paragraph would speak to a finer homogeneity of risk
18 classifications, whereas, generally, in a government pro
19 -- or a public program, as we have, those risk
20 classifications would be a little wider.

21 MS. CANDACE EVERARD: Thank you. If we
22 move into the next document which is attached, but just
23 the -- the second distinct document, the one (1) called,
24 "Risk Classification Statement of Principles," and I'd
25 ask you there to go to page 2 afer the table of contents,

1 and this is still on the -- the topic of risk
2 classification.

3 We see at the top of page 2 the documents
4 reflects:

5 "To achieve and maintain viable
6 insurance systems, the process of risk
7 classification should serve three (3)
8 primary purposes. It should protect
9 the insurance system's financial
10 soundness, be fair, and permit economic
11 incentives to operate, and thus
12 encourage widespread availability of
13 coverage."

14 Would you agree, even in the -- the
15 government orientated context of the Corporation that you
16 just spoke about, that those purposes would still apply?

17 MR. DON PALMER: And -- and -- yes, but
18 again reiterate the availability of coverage is not an
19 issue. So the -- so from that standpoint, number 1 and
20 number 2, absolutely. Number 3, again, knowing that
21 there is no concern under a government monopoly of
22 availability of -- of coverage, that this would be less
23 applicable.

24 MS. CANDACE EVERARD: Thank you. Just
25 one (1) more excerpt that I wanted to direct your

1 attention to. That's on page 13 of the -- this second
2 document. It's under the heading of, "Manipulation." So
3 page 13, paragraph 6. Under the heading of
4 "Manipulation" it reads:

5 "The system should minimize the ability
6 to manipulate, or misrepresent, a
7 risk's characteristics so as to avoid
8 the class to which it is assigned."

9 Can you comment on that piece from the
10 Corporation's perspective?

11 MR. DON PALMER: Again, within the
12 context of all seven (7) of these, which may be somewhat
13 at cross-purposes, I would agree with -- with that.

14

15 (BRIEF PAUSE)

16

17 MS. CANDACE EVERARD: While you're
18 considering that further, Mr. Chairman, I don't think I
19 formally entered this as an exhibit, but it should --
20 should be done, with the Board's permission, the next
21 Board exhibit. Mr. Singh's going to check and see what
22 number we're at. I don't recall offhand.

23

24 (BRIEF PAUSE)

25

1 MS. CANDACE EVERARD: I hear Ms.
2 Kalinowsky whispering nineteen (19). Okay. So Board
3 Exhibit 19. Thank you. Mr. Singh --

4 THE CHAIRPERSON: Very good.

5 MS. CANDACE EVERARD: -- is in agreement.

6 MS. KATHY KALINOWSKY: In agreement.

7

8 --- EXHIBIT NO. PUB-19: Two (2) documents: Risk
9 Classification (for All
10 Practice Areas) and Risk
11 Classification Statement of
12 Principles

13

14 CONTINUED BY MS. CANDACE EVERARD:

15 MS. CANDACE EVERARD: So, sorry, Mr.
16 Palmer. Did you have anything further that you wanted to
17 add?

18 MR. DON PALMER: Yes, I do. It'll just
19 take one second.

20

21 (BRIEF PAUSE)

22

23 MR. DON PALMER: Yes. Now -- now the
24 classification variables or -- that are used at Manitoba
25 Public Insurance are embedded in regulation as -- as I

1 mentioned, and really, within those regulations, really
2 not subject to manipulation. So what -- what we said
3 before is true.

4 I would point, just for further
5 clarification, on page 3 of that same document, that
6 Statement of Principles, where it describes some of the
7 differences between public and private programs, and that
8 also talks about some of the economic incentives for
9 further segregation of -- of coverages are not
10 necessarily applicable in a public program. So that just
11 again -- just so -- so that finer desegregation isn't
12 really needed as -- as much in a public program, because
13 there is no issues with availability of coverage.

14 MS. CANDACE EVERARD: Okay. Thank you.
15 I'll move then just to one more line of questioning, and
16 this follows on one of the other undertaking responses
17 that was filed this morning. That was Undertaking 24.
18 This was the filing of the Corporate-wide TI.7A and TI.8.
19 And again, I know it's been given an exhibit number, but
20 I don't know what the number is. It's forty-eight (48).
21 Thank you, Ms. Kalinowsky.

22 So the Corporation's provided some
23 narrative reply, and one of the things that it has
24 advised -- and this is in the second paragraph of the
25 answer -- is that it did not provide the Corporate-wide

1 information in the TI.7B format. And it's -- it's given
2 an explanation there that it was not done because it had
3 commercially confidential information. For instance,
4 advertising costs is the example that the Corporation
5 refers to as something that it did not want to have
6 disclosed.

7 Now, if we look at, just for context,
8 TI.7B as filed with respect to Basic, we can -- we can
9 see the form of the document anyways, that was requested.
10 Do you have it, Mr. Palmer?

11 MR. DON PALMER: Yes, I do.

12 MS. CANDACE EVERARD: And other than the
13 information that the Corporation provided that I -- I
14 paraphrased in answer to the undertaking, is there
15 anything else specific that the Corporation can point to
16 that it would not want to put on the public record with
17 respect to the Corporation as a whole. I know the
18 advertising expense was one (1) example, but can you give
19 us a little bit more information about what else there
20 may be, or just some further commentary on why the
21 Corporation doesn't want to provide this information?

22 MS. MARILYN MCLAREN: Ms. Everard, I can
23 take that. I mean, it -- it's split into four (4)
24 categories. Just -- so then to take it the next step and
25 have four (4) different -- you know, you've got the

1 corporate costs. And then to break those corporate costs
2 into four (4) different categories and, you know, allow
3 others that might be interested, not in this room
4 necessarily, to sort of disaggregate that to figure out
5 what the competitive lines are, so it's really just an
6 example that would be true of a number of things.

7 Claims expense might be another one, but
8 it's just the concept that it takes it to a level of
9 detail that -- that we believe is commercially
10 confidential.

11 MS. CANDACE EVERARD: So if I understand
12 you correctly, it's -- it is some of the -- the content
13 but it's -- by its nature it's the detail as opposed to
14 the generalities.

15 MS. MARILYN MCLAREN: That's right.
16 We've -- we've -- you've got the generality, yeah.

17 MS. CANDACE EVERARD: Do you know offhand
18 if the level of detail in TI.7(b) has been provided on a
19 corporate basis in the past? It wouldn't have been in
20 the recent past, but does anyone remember that being done
21 before?

22 MS. MARILYN MCLAREN: The -- the recall
23 that we have is that all we used to provide was on -- on
24 a corporate basis, both TI.7(a) and (b). So on that hand
25 it -- it would have been before but you would not have

1 had the Basic to subtract from, right, so --

2 MS. CANDACE EVERARD: Okay.

3 MS. MARILYN MCLAREN: -- both were done
4 on a corporate basis. And we talked about allocation
5 policy but we didn't split it out in Basic, so now you've
6 got more than you've than you've ever had before I guess
7 is a conclusion.

8 MS. CANDACE EVERARD: So you're saying
9 that the -- the recall of the panel is that what was
10 provided to the Public Utilities Board before, or in past
11 years at some point, was just the corporate information
12 without the -- the Basic being broken out.

13 MS. MARILYN MCLAREN: That's right.

14 MS. CANDACE EVERARD: Okay. Let's look
15 then at TI.7(a), the new one, the corporate one that's
16 been filed as part of Undertaking 24. And we see if we
17 look at compensation -- and I'll ask you to keep your
18 TI.7(a) for Basic opened because I want to do a little
19 bit of back and forth between the two (2).

20 But we see for the first line item for the
21 Corporation under "Compensation" that the anticipated
22 increase from last year to current year, so from '09/'10
23 to '10/'11, is about 2.2 percent. And that's compared
24 with 4.3 percent overall in Basic. Can you comment on
25 the -- the differences.

1 And obviously there's more significant
2 growth anticipated in Basic than in the Corporation as a
3 whole, but can you talk to us about that?

4

5 (BRIEF PAUSE)

6

7 MS. MARILYN MCLAREN: Can you repeat the
8 question.

9 MS. CANDACE EVERARD: Sure. Just looking
10 at the first line item on the newly filed TI.7(a), the
11 corporate one, we see an overall compensation growth
12 anticipated from current year to -- to -- or pardon me,
13 from last year to current year, of about 2.2 percent. On
14 the Basic side, when the number was broken out, Basic's
15 increase in and of itself for compensation is four point
16 three (4.3). So I just want to understand the -- the
17 differences between those.

18

19 (BRIEF PAUSE)

20

21 MS. MARILYN MCLAREN: Okay, so without
22 delving into the speci -- specifics of the non-Basic
23 lines, you can see that, and I think we've talked about
24 it here before, the Basic line is really expected to have
25 a fairly status quo year this year, comparison to last

1 year, so that increase really accounts for some limited
2 staffing increases and some number of staff who get
3 increments, and the negotiated increase.

4 On the non-Basic side, there are some
5 business changes that are -- business changes compared to
6 '09 that are actually contracting the operation. So
7 that's why the corporate is less than the Basic because
8 the non-Basic is less than it was in '09.

9 MS. CANDACE EVERARD: So, and when you
10 say, "contracted", you mean there's work that's being
11 contracted out of the Corporation.

12 MS. MARILYN MCLAREN: Not in that sense,
13 no. I just meant the -- the number of staff is
14 contracting. There are fewer staff in the non-Basic
15 lines compared to '09.

16 MS. CANDACE EVERARD: Contracting in the
17 sense of shrinking. I thought you meant --

18 MS. MARILYN MCLAREN: Contracting in the
19 sense of shrinking, yeah.

20 MS. CANDACE EVERARD: -- entering into a
21 contract.

22 MS. MARILYN MCLAREN: I was not --

23 MS. CANDACE EVERARD: Okay.

24 MS. MARILYN MCLAREN: -- suggesting
25 there's any contracting out.

1 (BRIEF PAUSE)

2

3 MS. CANDACE EVERARD: That makes sense.
4 Thank you. Okay. If we look at the second line item on
5 the -- the document, it relates to data processing, and
6 we see there's a fairly substantial increase corporate
7 wide for -- between '09/'10, and -- and the current year,
8 '10/'11, of some 74 percent.

9 Is -- is that in relation to the -- the
10 mainframe decommissioning that we spoke about, or is that
11 related to something else?

12 MR. OTTMAR KRAMER: Yes, it's -- it's
13 mainframe decommissioning, and other non-Basic
14 improvement initiatives.

15

16 (BRIEF PAUSE)

17

18 MS. CANDACE EVERARD: Now we see in the
19 Basic side for the same year, so from '09/'10 through to
20 current year, there's an increase of about 31.8 percent
21 in data processing, and I think we've spoken about that
22 already in -- in this proceeding.

23 MR. OTTMAR KRAMER: Yes, I believe we
24 have, and we answered some IRs on that, too.

25 MS. CANDACE EVERARD: Thank you. Now we

1 see -- moving ahead through the -- the outlook period as
2 provided for here, we see in the -- TI.7(a) that relates
3 to Basic, once we get through to year of Application
4 versus 2012/'13, again we just see a very small decrease
5 in data processing, where as for corporate-wide for the
6 same time period, year of Application versus 2012/'13, we
7 see a significant decrease of about 47 percent.

8 Is there a particular explanation for that
9 difference?

10 MR. OTTMAR KRAMER: It's the same
11 explanation I had two (2) questions ago about the
12 improvement initiatives. This is -- it spikes up in --
13 in '10/'11, and stays about the same in '11/'12, and then
14 goes back down in '12/'13.

15 MS. CANDACE EVERARD: Thank you. If we
16 look at building expenses, which is the fourth line on
17 the document, we see for Basic, if we start with that one
18 (1), from '08/'09 to '09/'10, there was a relatively
19 small decrease in expense of about 1.2 percent, whereas
20 for corporate-wide there was a more significant drop of
21 about 15 percent.

22 Can you explain that dichotomy between the
23 two (2)?

24 MR. OTTMAR KRAMER: It's similar to Ms.
25 McLaren's previous answer on -- on the compensation, in

1 that there were expen -- there were expenses incurred in
2 '08/'09 related to non-Basic services, and there was a
3 contraction of building requirements for -- for non-
4 Basic.

5

6

(BRIEF PAUSE)

7

8 MS. CANDACE EVERARD: Is it related to
9 1075 Portage closing?

10 MR. OTTMAR KRAMER: No.

11 MS. MARILYN MCLAREN: We've talked about
12 the service centre project here. We -- there was many
13 stand-alone DVL offices that don't exist anymore.

14

15

(BRIEF PAUSE)

16

17 MS. CANDACE EVERARD: Okay. If we look
18 at the amortization line, the next line, we see on the
19 Basic side, from '09/'10 to current year '10/'11, a
20 significant increase of over 100 percent. And that is
21 similar, although somewhat less on the corporate side, of
22 about 95 percent.

23 Is that right?

24 MR. OTTMAR KRAMER: Yes, that's correct,
25 and hopefully I'm reading your mind, the next question is

1 why. The -- the Basic really increases substantially
2 because of PIPP, and DSR, and SLR, which are -- are --
3 some of them have a small percentage that's non-Basic,
4 but something like PIPP is 100 percent Basic, so the non-
5 Basic doesn't get any amortization related to the PIPP
6 infrastructure study.

7 MS. CANDACE EVERARD: Sorry, did you just
8 say "SLR"?

9 MR. OTTMAR KRAMER: Streamline renewal.

10 MS. CANDACE EVERARD: Okay. Okay. So
11 what we've been calling SRP?

12 MR. OTTMAR KRAMER: Oh, SRP. Sorry.

13 MS. CANDACE EVERARD: Okay. That's okay.
14 I just wanted to make sure --

15 MR. OTTMAR KRAMER: Wrong acronym.

16 MS. CANDACE EVERARD: -- there wasn't a
17 new one coming in. Okay. And we see for -- staying with
18 the amortization for the current year, 2010/'11, compared
19 with year of Application, 2011/'12, we have for Basic an
20 anticipated increase of 18.6 percent, and on the
21 Corporate side an increase of about 32.8 percent.

22 Can you tell us anything about that?

23 MR. OTTMAR KRAMER: The -- on the
24 corporate side, the expenses are increasing more than on
25 Basic because of the non-Basic improvement initiatives

1 that will be amortized in the future.

2 MS. CANDACE EVERARD: That will be what,
3 sorry?

4 MR. OTTMAR KRAMER: Amortized in the
5 future.

6 MS. CANDACE EVERARD: Can you tell us
7 what the non-Basic initiatives are? Are -- is -- they're
8 these things that we talked about in this forum?

9 MR. OTTMAR KRAMER: Yes. It's -- it's
10 what we've talked about. I don't believe it's for
11 decommissioning in '11/'12, but something like service
12 centres, those sort of initiatives.

13 MS. CANDACE EVERARD: Okay. And the very
14 last line of the table, prior to the total numbers, is
15 "Other." Can you just confirm for the record what that
16 relates to?

17 MR. OTTMAR KRAMER: Could you repeat the
18 question?

19 MS. CANDACE EVERARD: For sure. The last
20 line of the table -- this is the same in TI.7A Basic
21 versus TI.7A corporate. The last line is "Other," and
22 I'm just asking to explain what that relates to, what
23 other expenditures those are.

24 MR. OTTMAR KRAMER: It's -- it's a host
25 of expenses that don't meet any of these other

1 categories. I don't have the reference in front of me,
2 but I believe -- I'm not sure which group asked the
3 question, but there was an IR in there that we gave a
4 breakdown of what that other is, and off the top of my
5 head, I don't -- I don't have that with me.

6 MS. CANDACE EVERARD: That's fine, thank
7 you. We can track that. If we look at the numbers, we
8 see, for '08/'09, a comparator to '09/'10, an increase in
9 Basic of about 46 percent, and an increase in corporate-
10 wide of about 23 percent.

11 Is that right?

12 MR. OTTMAR KRAMER: That's correct.

13 MS. CANDACE EVERARD: And can you comment
14 on the drivers or the factors behind those -- the
15 differences in those relativities?

16 MR. OTTMAR KRAMER: I believe the reason
17 that the corporate doesn't increase as much as Basic is
18 that corporate had some other expenses in -- in '08/'09 -
19 - in 2008/'09 related to some of the initiatives that
20 caused them to be higher in '08/'09, so not as much of an
21 increase in -- relative to '09/'10, whereas Basic didn't
22 -- didn't have those -- those costs related to those
23 initiatives in -- in that 2008/'09 year.

24

25

(BRIEF PAUSE)

1 MR. OTTMAR KRAMER: And I've just been
2 given -- you were asking about what "Other" is. I've got
3 a breakdown of Basic's share of Other: CAC-2-60.

4 MS. CANDACE EVERARD: Thank you. One
5 other question on the -- the new TI.7A relating to
6 corporate. We see at the last column, or the -- the last
7 comparison year over year, from year of Application
8 2011/'12 to 2012/'13, a fairly significant increase
9 that's being anticipated. It's considerably less than
10 the increase that's anticipated on the Basic side, but I
11 would imagine the increases are probably tied together.
12 Can you confirm to us what that increase relates to?

13 MR. OTTMAR KRAMER: What line,
14 specifically, are you referring to?

15 MS. CANDACE EVERARD: I'm still on the
16 "Other" line. So line item "Other," which is the last
17 row, but far right-hand column, we see fairly significant
18 increases in that year.

19 MR. OTTMAR KRAMER: I believe we have an
20 IR request, but I'm fairly certain that's the work
21 station refresh, new computers purchased that is causing
22 that -- that '12/'13 expenditure to increase.

23 MS. CANDACE EVERARD: Thank you. Okay.
24 I think I just have one (1) additional question which
25 relates to TI.8. If we look at the original -- yeah, we

1 see -- if we look at TI.8, which of course deals with
2 strictly compensation increases but has a breakdown by
3 category, we see for the '08/'09 year compared to the
4 '09/'10 year an anticipated increase corporate-wide of
5 about 10.7 million or 8.8 percent, compared with a
6 similar number for the same year in Basic.

7 Is that fair to say?

8 MR. OTTMAR KRAMER: Yes, the -- the
9 percentage being very similar, is that what you're
10 referring to?

11 MS. CANDACE EVERARD: Yes.

12

13 (BRIEF PAUSE)

14

15 MS. CANDACE EVERARD: Just one (1)
16 additional question on TI.8 before we -- we leave this.
17 The next comparative set of numbers which relates to
18 '09/'10 to '10/'11, we see on the "staff
19 changes/vacancies" line in Basic an increase of about 1.7
20 million or 1.1 percent, whereas on the corporate side we
21 see an increase of about four hundred and eighty-six
22 thousand (486,000), and it's actually shown as a decrease
23 of .6 percent.

24 Can you comment on that?

25 MR. OTTMAR KRAMER: First of all, I

1 believe we have an error in there that if the number's
2 positive and the percentage is negative there's
3 definitely an error, so I would say that negative should
4 probably be a point six (.6) positive, but it -- the --
5 they're relative to Basic.

6 The reason it isn't increasing as much is
7 a contraction related to initiatives. There's -- you
8 know, there's new staff coming on, staff being released
9 for -- for the projects which are more one (1) time in
10 nature.

11 MS. CANDACE EVERARD: Can you give us a
12 sense of how many individuals we're talking about?

13

14 (BRIEF PAUSE)

15

16 THE CHAIRPERSON: While they're
17 consulting we'll have a three (3) minute break.

18

19 --- Upon recessing at 1:58 p.m.

20 --- Upon resuming at 2:04 p.m.

21

22 THE CHAIRPERSON: Does Ms. Everard need
23 to re-ask the question?

24 MS. MARILYN MCLAREN: No, the Corporation
25 would re -- would respond this way, first, by starting

1 with TI.8 Basic. So whether corporately we -- we use
2 about -- and what Mr. Kramer did use in the calculation
3 for this year we're talking about was fifty-two thousand
4 dollars (\$52,000) per employee.

5 So, you know, you can do the math as well
6 as we can, right. It works out to about thirty-three
7 (33) people in Basic and it works out to about nine (9)
8 people on the non-Basic side, and it just reiterates what
9 we've been telling you before, is that we have con --
10 contracted the business.

11 There are less people working on that side
12 of the business than -- than there was in '09/'10.

13 MS. CANDACE EVERARD: Thank you.

14

15 (BRIEF PAUSE)

16

17 MS. CANDACE EVERARD: Thank you, Mr.

18 Chairman. I don't have further questions.

19 THE CHAIRPERSON: Okay. Thank you, Ms.
20 Everard. Just to remind everyone, I'm sure they're -- we
21 have some questions from the panel. Then we'll have re-
22 direct. And then we'll have pre-closing statement
23 remarks from the panel.

24

25 QUESTIONS BY THE BOARD:

1 THE CHAIRPERSON: First, with respect to
2 the Board's role, do you agree the PUB's role and
3 involvement came about as a result of a difficult time in
4 MPI's history, one that involved a large Basic and
5 overall loss perspective that certain lines of business
6 then carried on may not be necessary or could be too
7 costly to operate a large jump than in the Basic
8 deductible, very large rate increases, and the
9 implementation of a new approach intended to motivate
10 drivers to drive more responsibly?

11 MS. MARILYN MCLAREN: My recall is that
12 Basic rates be -- began to be required to be approved by
13 this Board because of the large rate increase primarily.

14 It was unexpected. it was disruptive. It
15 was a problem for people. And with, I think, a fairly
16 broad consensus in that government of the day is that
17 people deserved a little more stability, and
18 predictability, and they saw this Board as -- as serving
19 to assist with that.

20 THE CHAIRPERSON: Thank you. So you
21 would accept then that PUB's role came about by a
22 response by the government of the day in the legislature
23 to what was perceived, some may observe, as a loss of
24 some confidence in the Corporation, and/or the design or
25 makeup of the program?

1 MS. MARILYN MCLAREN: You know, I -- I --
2 that's broader than I would de -- define it, and as I
3 would remember it.

4 You know, when you talk about some loss of
5 confidence in the Corporation, that -- that's a really
6 broad statement. You know, I don't think there was any
7 issues on anything but sort of the -- the rate making
8 side of it, you know. I don't think there was any issues
9 with respect to the coverage. You know, the
10 accessibility, the -- anything else other than related to
11 the rate specifically.

12 THE CHAIRPERSON: Well, different people
13 can have different perspectives, that's granted. Would
14 you agree that ahead of PUB's entry, the government of
15 the day initiated an external review of MPI, and its
16 program, and that review was denoted as the Kopstein
17 commission.

18 And that review resulted in numerous
19 recommendations, one (1) major one (1) that was later
20 adopted with no advance notice to the public being total
21 no-fault rather than tort be the basis for the program?

22 MS. MARILYN MCLAREN: Sorry, one (1) of
23 the recommendations in the Kopstein without notice was
24 the move to no-fault? Is -- is that -- am I paraphrasing
25 correctly?

1 THE CHAIRPERSON: No, I was -- I was
2 saying that out of the Kopstein commission came a
3 recommendation for total no-fault, and then some years
4 later, with no advanced notice to the public, the change
5 was made.

6 MS. MARILYN MCLAREN: Oh, it was
7 definitely -- you know, I don't -- I don't remember that
8 Kopstein actually specifically recommended that the
9 Corporation move to that, but they certainly spoke
10 positively about no-fault insurance and its ability to,
11 you know, im -- improve coverage for certain classes, and
12 provide the stability.

13 But I think it -- you know, I don't know
14 quite what you mean in terms of notice either, but I know
15 the government announced its intention to introduce the
16 legislation early in '93. The legislation was passed
17 several months after that, and it started in March 1st of
18 '94.

19 So there was notice, and public
20 consultation, through that process, I believe.

21 THE CHAIRPERSON: But be --

22 MS. MARILYN MCLAREN: I'm not sure if I
23 understood you correctly.

24 THE CHAIRPERSON: Well, before that date,
25 if some would recall the -- the Minister responsible for

1 MPI indicated that, I forget the exact words to
2 paraphrase it, but basically no-fault was not going to
3 happen.

4 MS. MARILYN MCLAREN: Somewhere prior to
5 early 93, I think that's probably true.

6 THE CHAIRPERSON: Does the Corporation
7 accept that PUB's role has remained the same since the
8 advent of the -- the tribunal's involvement despite the
9 fact that many changes, and many major changes, in fact,
10 have occurred in MPI's structure, responsibilities, and
11 delivery methodology?

12 MS. MARILYN MCLAREN: I -- I think the
13 mandate has remained the same. I don't think there's
14 been changes.

15 I don't know -- as you say, you know,
16 people can have different perceptions. I think adding
17 DVL changed the Corporation's responsibilities, but not
18 extremely because we always had responsibility for
19 registration and insurance administration.

20 So it was certainly in line with the way
21 the program had been ever since 1971. Other than that, I
22 don't think -- you know, the -- the Basic program has --
23 has changed through no-fault, for sure, but I don't know
24 that it's really constructive, or -- or substantive
25 change really, that the Corporation's been through.

1 In relation to what any other ongoing
2 concern, or -- or businesses have gone through over forty
3 (40) years, or I guess it's only twenty (20) something,
4 twenty-three (23) since PUB became part of the process.

5 THE CHAIRPERSON: It was -- wasn't it
6 subsequent to PUB's involvement that the general property
7 and liability business was exited?

8 MS. MARILYN MCLAREN: Yes, I believe that
9 was ver -- well, very subsequent. I think it was 1990
10 when that ceased.

11 THE CHAIRPERSON: Do you agree that one
12 (1) of the initial goals of the introduction of PUB to
13 MPI's rate setting was to best assure the Corporation's
14 policyholders as to the fairness and reasonableness of
15 MPI's rates and the actions and circumstances that
16 support rates?

17 MS. MARILYN MCLAREN: Can you repeat
18 that?

19 THE CHAIRPERSON: Actually, I think
20 you've already said it, but does MPI agree that one (1)
21 of the initial goals of the introduction of PUB to MPI's
22 rate setting was towards better assuring the
23 Corporation's policyholders as to the fairness and
24 reasonableness of MPI's rates and the actions and
25 circumstances that support those rates?

1 MS. MARILYN MCLAREN: I -- I think that's
2 fair. You know, I mean, the -- the Basic Compulsory
3 Program is a very comprehensive program in this province.
4 And the extent to which people should be able to rely on
5 the predictability of -- of rates go -- going forward I
6 think is important. I think that in -- in a broad sense
7 the government believed that this, you know, public and -
8 - and second set of eyes, so to speak, would help the
9 stability of the Basic Compulsory Program, yes.

10 THE CHAIRPERSON: Thank you. Does MPI
11 also agree that towards providing that assurance the
12 concept of open and transparent hearing processes, the
13 involvement of the Intervenors, were developed and -- and
14 those goals continue to undergird the rationale for PUB's
15 involvement to this date; in other words, the public
16 hearing process that involves Intervenors?

17 MS. MARILYN MCLAREN: For sure, yeah.
18 And we've -- we've said many times in many different
19 ways, you know, we think the -- the forecasting and the
20 rate making which really at the heart of it what this is
21 all about is -- is far more robust and rigorous and
22 reliable because of this open process.

23 THE CHAIRPERSON: Is the Corporation of
24 the view that the initial goals of openness and
25 transparency towards the reality and perception of there

1 being just and reasonable rates can be achieved with a
2 regulatory role as it is now defined, or at least as
3 defined by MPI?

4 MS. MARILYN MCLAREN: Absolutely.

5 THE CHAIRPERSON: Moving on to a
6 different topic area, with respect to the option of
7 amending the rate structure, the -- to one that involves
8 only one (1) territory, a concept raised briefly in the
9 proceeding. Does the Corporation accept that a primary
10 objective of rate setting and PUB's role in rate setting
11 is to set premiums that are defined as not only just and
12 reasonable, but also as reasonably reflective of risk?

13 MS. MARILYN MCLAREN: Yes, that -- that
14 would be the actuarially sound and statistically-driven
15 objective that this Board set for the Corporation's Basic
16 rate making many years ago.

17 THE CHAIRPERSON: For the Basic
18 Compulsory Program do you accept that there is a basis
19 for having in place the simplest classification scheme
20 that is reasonable, actuarially supportable, and
21 consistent with public policy objectives?

22 MS. MARILYN MCLAREN: The -- the Basic
23 rate making should be reasonable and actuarial and
24 consistent with public policy?

25 THE CHAIRPERSON: I think the comment was

1 was that was there an argument for having in place the
2 simplest classification scheme that met those other
3 goals.

4 MS. MARILYN MCLAREN: I -- I think
5 oversimplification can be a bad thing. I think using the
6 territory example, I -- I think everyone in these
7 proceedings would be hard pressed to explain to people in
8 rural southern Manitoba why their rates have to go up.

9 No. I mean, I think -- I think that is
10 something that we would really have an issue with.

11 THE CHAIRPERSON: We would imagine first
12 that, for several reasons, including policyholder
13 dislocation and data integrity, the changing of
14 territorial boundaries is not something that should
15 happen often.

16 MS. MARILYN MCLAREN: Agreed.

17 THE CHAIRPERSON: With respect to the
18 territories, how are the boundaries of the territories
19 tested, and is the actuarial soundness of the selected
20 boundaries tested against alternate approaches from time
21 to time?

22 MR. DON PALMER: From time to time, yes,
23 taking a look at the experience from different parts of
24 different territories. A few years ago I know there was
25 some -- some question about Territory 3 and Territory 4,

1 and really there was a difference between sort of
2 adjacent areas that looked like maybe they should have
3 similar experience but in fact they -- they didn't.

4 We continued to refine that, to take a
5 look at different size of towns to -- I know there was
6 some suggestion that Brandon, being a more urban area,
7 might be subject to more Winnipeg-type rates, and in fact
8 that wasn't true. There really wasn't any different in -
9 - difference in the experience in Brandon towards the
10 other smaller towns in the -- in the same area.

11 So, yes, we do test that from time to
12 time. We're -- we're satisfied that what we have right
13 now is -- is sound from a territorial perspective. We
14 continue to test it, but again, as you mentioned, it's --
15 territorial changes have to be done very carefully.

16 Since I've started -- I've talked about my
17 long tenure here -- there's probably one (1) changed
18 territory. The commuter territory was added, I think, in
19 1990. So that's one (1) change that has been made. We
20 continue to look at it, but haven't seen the -- the need
21 for any continuing changes of the territory boundaries.

22 THE CHAIRPERSON: As we understand, in
23 MPI's (ch) approach, you know, starts with an analysis of
24 the provincial rate level need. So, of course, if -- if
25 there was only one (1) territory, eliminating the

1 territorial analysis, the forecasting uncertainty
2 presumably would be eliminated. If -- if there was but
3 one (1) territory, would the credibility of the system as
4 to predictability increase?

5 MR. DON PALMER: Not significantly. The
6 two (2) main territories that have -- well, three (3):
7 Winnipeg, commuter and southern Manitoba -- are almost
8 fully credible, so we are convin -- especially in the
9 private passenger realm, there definitely is a difference
10 in experience between urban and rural, no question about
11 that, and they're roughly the same size.

12 So to eliminate the territorial
13 differences doesn't improve your credibility --

14 THE CHAIRPERSON: Thank you.

15 MR. DON PALMER: -- and likely would not
16 be actuarially sound just because, again, the future
17 expected risk of someone outside of Winnipeg is different
18 than something -- someone within Winnipeg.

19 THE CHAIRPERSON: Thank you. This --
20 this came up before in -- in Mr. Oakes' cross, for
21 example. I'm just wondering whether -- and perhaps
22 you've done this, and if -- I -- I apologize if you have,
23 if you've already given this. Have you tested the effect
24 of capping large losses at various levels for what would
25 happen to the premiums of the various classes?

1 touched a little bit on this. With respect to the family
2 transfer issue which has been discussed here, and at
3 previous hearings, is it not an actuarial principle, if
4 you like, to design a classification scheme that avoids
5 as best as possible the potential for the manipulation,
6 by a policyholder, for the goal of obtaining financial
7 benefit?

8 MR. DON PALMER: Within the statement of
9 principles that Ms. Everard put on as an exhibit, I think
10 any of those particular considerations, you have to be
11 careful with looking at in isolation, and there's --
12 there's a set of seven (7) of them that are -- that are
13 there.

14 One (1) being expense. So again, if you
15 try to fix a perceived problem, and it -- and it cost
16 money, and it -- and it makes other problems, that really
17 doesn't serve to the -- the overall balance in those
18 seven (7) operational considerations.

19 Constancy is another one (1) of those
20 operational considerations you can't have sort of
21 ongoing. You've got to be careful with any changes you
22 make to your classification because -- because of that
23 constancy.

24 So -- so all I'm saying is that if you
25 focus in on one (1) of those objectives, you might break

1 another one, and -- and you just have to look at the
2 overall considerations of all of those operational
3 considerations, not just one (1).

4 THE CHAIRPERSON: Could you confirm that
5 you've -- you've determined that each year on average
6 there are approximately five thousand (5,000) transfers
7 of vehicle ownership between family members residing in
8 the same residence?

9 I believe that was your evidence.

10 MR. DON PALMER: Yes, that's correct.

11 THE CHAIRPERSON: Does this finding by
12 MPI suggest that over a five (5) year period there would
13 be approximately twenty-five thousand (25,000) such
14 transfers, approximately?

15

16 (BRIEF PAUSE)

17

18 THE CHAIRPERSON: I think you said they
19 were -- that was average, so its just five (5) times five
20 (5), so.

21 MR. DON PALMER: That's -- that sounds
22 right, yes.

23 MS. MARILYN MCLAREN: And that's on -- on
24 about five hundred thousand (500,000) private passenger
25 vehicles, right. So if you times that by five (5),

1 that's what, 2.5 million and twenty-five thousand
2 (25,000) transfers.

3 THE CHAIRPERSON: Thank you for the
4 context. Over a five (5) year period, and accepting the
5 Corporation's estimate of the range of financial impact
6 on premium revenue that could arise from one (1) year's
7 transfer affecting premiums for, I think you indicated
8 the time, up to five (5) years, does this not suggest the
9 likelihood, or at minimum, the risk, that a material loss
10 of premiums would arise over time as a result of family
11 transfers undertaken to avoid the loss of discounts?

12 In other words, there's a -- sort of a
13 compounding effect as it goes on?

14 MR. DON PALMER: I don't know if it's
15 compounding because you may have some of those transfers
16 reversing, in effect. So to speculate on what the
17 compounding effect would be, I don't think we can
18 speculate on that.

19 MS. MARILYN MCLAREN: But we've also --

20 THE CHAIRPERSON: So you're -- you're --

21 MS. MARILYN MCLAREN: -- but we've also
22 built in the five (5) year impact, right. I mean, so we
23 didn't just give you the one (1) year snap -- snapshot.
24 It -- it's based on what it would be over the full five
25 (5) years, if they all had a delta for five (5) years.

1 THE CHAIRPERSON: Okay. This is -- this
2 is perhaps where the confusion arose. When you gave the
3 -- the monetary effect, you're saying that wasn't for
4 five thousand (5,000) transfers in year one (1), the
5 effect of that over five (5) years?

6 MS. MARILYN MCLAREN: It was over the
7 five (5) years, yes.

8 THE CHAIRPERSON: Right, but then there'd
9 be another five thousand (5,000) in year two (2), and
10 another five thousand (5,000) in year three (3), another
11 five thousand in year four (4), et cetera.

12 So if you started the system in year 1 and
13 the process began, the effect in any year would be higher
14 than the range that you gave, would it not?

15 MR. DON PALMER: Again, I don't think
16 they're necessarily cumulative, as you have suggested.

17 THE CHAIRPERSON: You haven't tested for
18 reverse transfers back the other direction, in other
19 words, then?

20 MR. DON PALMER: We haven't tested either
21 way.

22 THE CHAIRPERSON: Well, I -- you've
23 already said this, but I'll ask the question anyway. So
24 MPI's discovery of such a large number of annual family
25 transfers for you doesn't suggest that the principle

1 arriving at just and reasonable rates is at jeopardy with
2 the continuation of a system that allows it to occur?

3 MR. DON PALMER: No. No, I don't believe
4 that to be true. You say a large number; I say 1
5 percent, so -- or something less than 1 percent.

6 And again, with the evolution of the
7 bigger surcharges coming from the driver safety rating
8 system, that loss is, you know, overcome to a great
9 degree. So it's -- it's really not, as we discovered, a
10 really large issue for us.

11 THE CHAIRPERSON: But you're -- in -- in
12 a sense, then, you're -- you're accepting the -- the
13 premise that there's a form of vehicle premium
14 manipulation occurring; it's just that it isn't creating
15 a significant material financial effect is the reason for
16 not trying to address it directly, like, for example,
17 seeking out who the principal driver is, like private
18 companies do.

19 MS. MARILYN MCLAREN: Right. We really
20 believe that's very contrary to the universal compulsory
21 program to do something like that. And I would also
22 encourage the panel to not overlook the myriad of reasons
23 that people can do transfers. When we -- when you talk
24 about the five thousand (5,000) being a high number, I
25 agree with Mr. Palmer that it's -- it's not very high

1 when you think about all the reasons that might cause a
2 family to move vehicle ownership from one (1) person to
3 another.

4 So it's definitely -- the ones who might
5 be doing it for a premium -- who might be doing it for a
6 premium purpose are a subset of the five thousand
7 (5,000), absolutely, but it -- it's impossible to find
8 out how big that subset is.

9 THE CHAIRPERSON: Changing subjects again
10 and going back to the subject of interprovincial
11 trucking, for several years now, PUB has recommended in
12 the order that the annual transfer of funds from SRE to -
13 - that an annual transfer of funds from SRE to Basic
14 occur to compensate Basic for the loss of Basic premiums
15 arising out of long-haul truck premiums being set without
16 taking into account PIPP costs.

17 Based on the Corporation's overall
18 description of SRE operations which you kindly provided,
19 does the Corporation accept that long-haul trucking firms
20 comprise the main policyholder base of SRE?

21 MS. MARILYN MCLAREN: It -- it's
22 significant, definitely.

23 THE CHAIRPERSON: Taking into account not
24 only the average annual level of PIPP costs related to
25 long-haul trucker exemption from having PIPP costs taken

1 into account in determining long-haul truck basic
2 premiums, but also other associated operating costs,
3 would the Corporation accept that a material sum of
4 premiums that otherwise would be recovered from long-haul
5 trucks is instead being covered by other Basic
6 policyholders?

7 MS. MARILYN MCLAREN: Yes, it is. And
8 the problem when the long-haul trucks did pay a premium
9 is there was no relationship there between the vehicle
10 owners paying that premium and the likelihood that their
11 vehicle operators would be eligible to claim PIPP
12 benefits. That's why the decision was made to stop that
13 premium on the trucks.

14 So when you say -- when you talk about
15 SRE, I mean, there could be very -- you know, there could
16 be absolutely no long-haul truck PIPP claimants in a
17 given year who worked for somebody that was an SRE
18 customer. There -- there could easily be no relationship
19 between the two (2).

20 We have an anomaly in that what we do know
21 is that these long-haul trucker claimants are Manitobans
22 and they have a Manitoba driver licence, they have
23 coverage by virtue of their residency, but there is no
24 other relationship between the vehicle owners and where -
25 - you know, where that funding might be. So, yes, we

1 have it built into the rate and -- and it is something
2 that other ratepayers and these individuals, on their
3 driver licences, pay for.

4 THE CHAIRPERSON: You haven't tested the
5 linkage of the drivers incurring the PIPP claims and were
6 the trucks plated?

7 MS. MARILYN MCLAREN: No, we haven't.
8 What we do know is that back when the trucking industry
9 made an issue of the fact that they were subject to this
10 premium, they said that it was discouraging Manitoba
11 businesses from plating here. And we do know that since
12 the premium was removed there are more of those kinds of
13 trucks plated here in Manitoba, so that seems to have
14 borne -- borne out in -- in the reality.

15 But there's really -- there -- there's
16 just no way to align the people eligible for benefits
17 with the vehicle plate premium.

18 THE CHAIRPERSON: I think you've
19 confirmed that the average annual PIPP costs for these
20 truckers that aren't reflected in the premiums in the
21 area of about \$2 million over the past ten (10) years. I
22 think that's what your testimony...

23 MR. DON PALMER: That's close. We filed
24 the exact numbers. I think it was slightly less than \$2
25 million, but that's --

1 THE CHAIRPERSON: Well, I think it -- for
2 five (5) years, if I recall properly, it was one point
3 six eight five (1.685) and -- just off the top of my
4 head, and I think ten (10) years it was a little bit
5 higher than that, one point eight nine (1.89) or eight
6 six (86) or something like that, but --

7 MR. DON PALMER: Yeah, something --

8 THE CHAIRPERSON: -- somewhere in that
9 order.

10 MR. DON PALMER: -- just short of -- of 2
11 mill -- \$2 million, yes.

12

13 (BRIEF PAUSE)

14

15 THE CHAIRPERSON: Okay. As you can see,
16 I'm moving from a variety of different topics over --
17 that came up during the Hearing.

18 With respect to the Extension insurance
19 market CAC/MSOS filed exhibits providing the name and
20 volume of automobile insurance written by those in the
21 field for the years 1988 through to and including 2009.

22 The Corporation has already testified in
23 the last year of that exhibit, which presumably is a
24 calendar year, 2009, it held approximately 95 percent of
25 the market. Does the Corporation accept that it has

1 dominated non-Basic lines of automobile insurance
2 throughout the period?

3 MS. MARILYN MCLAREN: Yes, if I remember
4 correctly, the time span that Mr. Williams put on the
5 record is pro -- one (1) of those. It shows that that's
6 one (1) of the other things that hasn't changed much
7 since the Basic rates became subject to PUB. It's about
8 the same as it was back then. It hasn't changed much.

9 THE CHAIRPERSON: Yes, coming to that.
10 Again, considering that exhibit, then MPI would accept
11 that roughly while Basic written premiums during that
12 period have increased almost three (3) times what they
13 were in 1988, and your non-Basic insurance lines have
14 increased almost four (4) times, the written premiums of
15 other insurance companies that are writing automobile
16 insurance of Manitoba increased by less than 40 percent?

17 MS. MARILYN MCLAREN: Yeah, for sure.
18 And -- and I think, you know, the -- the point worth
19 mentioning on that is that we are talking about auto
20 insurance here. And auto -- the -- the people -- these
21 companies doing some automobile insurance business here
22 in Manitoba, for the most part, are struggling like crazy
23 to run their automobile insurance businesses elsewhere in
24 Canada. I think that's a factor that is -- that is worth
25 mentioning, that, you know, it's -- it's not a pretty

1 picture in other -- where they have to compete.

2 So whether that absorbs most of their time
3 and attention, I think that's worth thinking about as
4 well.

5 THE CHAIRPERSON: Another way of just
6 making the point on respect to volume, that while MPI's
7 overall written premiums for '09/'10 year totals, say,
8 900 million, all the other writers of vehicle insurance
9 in Manitoba combining to produce approximately 10
10 million. And of those other writers, none of them
11 managed to write even 2 million.

12 MS. MARILYN MCLAREN: I believe that's
13 true. Most of them didn't pay out as much in relation to
14 the premiums they collected either.

15 THE CHAIRPERSON: Interesting. Would MPI
16 accept that the domination in the market disclosed in
17 those particular reports is particularly unlikely to
18 decline given the recent change to streamline renewals
19 combined with the increased commission rates for
20 Extension insurance, online communications between
21 brokers, and MPI and MPI's exclusive ability to access
22 driver records?

23 MS. MARILYN MCLAREN: We're working very
24 hard to make sure that it doesn't decline. Streamlined
25 renewals, you know, as -- as we talked before, that

1 wasn't -- that's something that could have hurt us. We -
2 - we don't want it to. We talked about the commissions;
3 we certainly agree with that.

4 I'm sorry, I lost my train of thought
5 there a little bit. But -- sorry, what were the last two
6 (2) points that you made? I don't want to...

7 THE CHAIRPERSON: Well, I think you --
8 you've basically --

9 MS. MARILYN MCLAREN: The last point you
10 made --

11 THE CHAIRPERSON: -- confirmed it.

12 MS. MARILYN MCLAREN: -- I think is -- is
13 not something that --

14 THE CHAIRPERSON: The MPI's exclusive
15 ability to access driver's records.

16 MS. MARILYN MCLAREN: I wanted to
17 reference that, yes, because every other insurer simply
18 needs to know what somebody's DSR rating is. That's all
19 they need. Does -- they don't need the driver record.
20 All they need to know is what -- what does MPI Basic rate
21 you.

22 THE CHAIRPERSON: Looking back, though.
23 Know the existing DSR rating.

24 MS. MARILYN MCLAREN: But that's all any
25 of us have.

1 THE CHAIRPERSON: Just a general
2 question. It's more philosophical if you like, but does
3 -- does the domination of non-Basic lines of automobile
4 insurance by MPI serve the interests of Manitobans, or
5 would the presence of more active competition represented
6 by a more significant market share held by private
7 insurers, better provide for innovation?

8 MS. MARILYN MCLAREN: I really believe
9 Manitobans are well served. We work hard at this
10 business. There's been more innovation on AutoPac
11 Extension than my information tells me of others in -- in
12 very active marketplaces.

13 The things that we offer on a competitive
14 basis for -- for snowmobiles, off-road vehicles, the
15 vacation or driver's policy, are innovative. They're hi
16 -- they're very, very well received.

17 I think that that in no small part is --
18 is why we dominate, not -- not for a lot -- any other
19 reasons, really. I mean, we work hard at it, and it
20 certainly has not hurt Manitobans in -- in terms of
21 innovation, or in terms of access, and stability, and
22 price.

23 THE CHAIRPERSON: But you confirmed
24 before that if Basic changes, or changes in the Basic
25 program affect the -- the market, if you like, for

1 Extension insurance.

2 MS. MARILYN MCLAREN: Sure. Absolutely.

3 THE CHAIRPERSON: Just to save time, if
4 you could remind the panel why MPI ceased providing
5 forecasts to future Extension and SRE results. The --
6 the rationale.

7 MS. MARILYN MCLAREN: Well, I -- it's
8 very tied to the rationale for transferring excess
9 retained earnings.

10 I mean, that's -- we gave those -- there
11 was times previously when we didn't give that
12 information, and we gave that information when the plan
13 was to use excess retained earnings from non-Basic lines
14 to increase the RSR to the Corporation's target.

15 And the PUB made it very clear it was not
16 accepting of that higher target, the transfers were --
17 formed -- the last couple of transfers formed part of
18 rebates that went to Basic ratepayers.

19 The transfers stopped. The communication
20 about the forecasted financials stopped because there was
21 no longer any link between Basic and the non-Basic lines,
22 once the transfers stopped.

23 THE CHAIRPERSON: When -- when MPI was
24 supplying the -- the forecast of Extension and SRE
25 revenues, did you note any increase in the share held by

1 the other insurers because they would presumably, if they
2 were reviewing the material as -- they would see what the
3 forecasts were just like everyone else because they came
4 up to the hearing.

5 MS. MARILYN MCLAREN: Yeah, and as you
6 talked about, we haven't seen much change in market share
7 over the last ten (10) years.

8

9 (BRIEF PAUSE)

10

11 THE CHAIRPERSON: We understand, rightly
12 or wrongly, that SGI's rate making is much less, you
13 could say, advanced than MPI's, especially in the
14 classification level. And it's possible, presumably,
15 that SGI's lower motorcycle rates may not necessarily
16 reflect actuarially indicated premiums.

17 Are you aware of what the motorcycle
18 premium rates are, offered by SGI, and is -- is their
19 approach to driving the premiums different than MPI's for
20 motorcycles, and, if so, why?

21 MR. DON PALMER: Certainly the regulatory
22 environment in Saskatchewan is much -- much less robust
23 than it is in Manitoba, and just to comparison of rate
24 applications that our's -- I think we've -- we've said
25 that there's about eight thousand (8,000) pages of

1 evidence that we filed before coming to these hear --
2 hearings. I think one (1) of the SGI rate filings was
3 forty-six (46) pages. So there -- there really is a
4 different from that -- that perspective.

5 They did go on record back, I think, maybe
6 the last rate filing, that their motorcycle rates needed
7 about 148 percent rate increase to -- to become adequate,
8 and that they put -- put in 15 percent rate increases on
9 motorcycles, and 25 percent on sport bikes. I think that
10 was the increases.

11 That's very close to where we were ten
12 (10), or fifteen (15) years ago. So the journey that
13 they're about to embark on -- bark upon is very similar
14 to the journey that we've -- somewhat painful journey
15 that we've seen ourselves over the last number of years.

16 Their motorcycle rates just are not
17 adequate. They have been very public in -- in announcing
18 that, so -- so from that perspective, they're a lot
19 behind us in terms of actuarially -- actuarially-sound
20 rating methodologies, but they've begun to be on exactly
21 the same path that we were on starting ten (10) or
22 fifteen (15) years ago.

23 THE CHAIRPERSON: Although they've held
24 to the one (1) territory.

25 MR. DON PALMER: Since 1947, I think

1 that's true.

2 THE CHAIRPERSON: I think it's 49, but
3 we're in the same area. Has the other --

4 MR. DON PALMER: And -- and I think the
5 other thing about Saskatchewan in terms of the one (1)
6 territory, again, is -- is there is a real geographical
7 difference.

8 They have --

9 THE CHAIRPERSON: Yes, we've discussed
10 that, Mr. Palmer.

11 MR. DON PALMER: -- many, many more
12 smaller cities, and we have one (1) very large urban
13 area.

14 THE CHAIRPERSON: Yes, definitely. I
15 think all parties would agree with that. Has MPI
16 modelled, I guess you would call it, the actuarially
17 indicated rate for motorists that own both a passenger
18 vehicle and a motorcycle? Have you gone down to that --
19 testing to that level?

20 MR. DON PALMER: We have not, and based
21 on -- I think there was evidence that suggested that
22 something like 90 percent of motorcyclists do own a
23 private passenger vehicle. There likely is not a -- a
24 major difference whether you do it one (1) way, or both
25 ways. It's essentially the same because it's -- it's

1 almost a completely intersecting group.

2

3

(BRIEF PAUSE)

4

5 THE CHAIRPERSON: Maybe I am just slow
6 here. I was suggesting the -- whether you had modelled
7 the pairing, if you like, of those who own a motorcycle
8 and a passenger vehicle, and whether or not the
9 actuarially indicated rate, in accommodation of the two
10 (2), would be different than one (1) that is separated,
11 if you like.

12 MR. DON PALMER: And -- and I guess in
13 terms of my answer, we haven't done that model, but there
14 probably wouldn't be much difference just because those -
15 - every -- in separating them you've got exactly the same
16 people, and the same risk as if you put them together, so
17 -- so I don't see that that would make any difference at
18 all.

19 THE CHAIRPERSON: I suppose the only
20 difference it could make, if it was a one (1) person
21 household, and they can either drive the motorcycle or
22 the car, but they cannot drive them both at the same
23 time, at least hard to do anyway.

24 MR. DON PALMER: With -- within that, and
25 we've heard that argument before, but I think given that

1 almost all motorcyclists do drive another vehicle that
2 they're also not driving at the same time, there really
3 isn't a difference.

4 I mean, remember that these rates that we
5 have are based on actual claims data, and the fact that
6 they drive other vehicles when they're not driving their
7 motorcycles is all baked into the actual emerging da --
8 data, so it's not that we're -- we're somehow otherwise
9 contriving a -- a rate. This is based on the actual
10 practice of the motorcycle community.

11 THE CHAIRPERSON: Thank you. Please
12 confirm the trucks plated in Manitoba are subject to
13 mandatory Basic insurance premiums.

14 MS. MARILYN MCLAREN: Depends on the
15 trucks. Regular light trucks certainly have full
16 coverage. The long-haul trucks that we've been talking
17 about do not pay a premium. And there's kind of a range
18 throughout -- those are the two (2) extremes.

19 The cover -- I guess what I'm trying to
20 say is the coverage differs for different types and
21 weights of vehicles. Some are obligated to buy the all-
22 perils coverage, some are not, and all contribute to
23 accident benefits except the long-haul extra-provincial,
24 and most are all subject to the third party liability.
25 But it -- you know, the -- the coverage that they have to

1 purchase with the plate varies.

2 Let me give you an example. The long-haul
3 -- the extra-provincial trucking industry is obligated by
4 law to buy much, much more than two hundred thousand
5 dollars (\$200,000) of third party liability. So they
6 came and -- back in 1980s and said, You know, it costs us
7 extra money if we have to buy two hundred thousand
8 (200,000) from you and then buy additional. So could you
9 exempt us from this? Because you already know by law we
10 have to buy more. So that was taken out as a requirement
11 coverage to purchase under the Basic program.

12 THE CHAIRPERSON: So there's categories
13 of trucks, then, that are plated in Manitoba but are not
14 subject to Basic insurance?

15 MS. MARILYN MCLAREN: Those would be --
16 the extra-provincial trucks have -- have none. They
17 don't pay a premium and have no all-perils coverage, no
18 liability through the Basic program. That's the extra-
19 provincial that we've been talking about.

20 Municipally-owned fire trucks are exempt
21 from coverage and don't pay a premium. They have their
22 own insurance policies elsewhere. They're -- they're
23 such an anomaly, it just wasn't deemed to be appropriate
24 to include them in the Basic -- you know, broadly-based
25 Basic compulsory program.

1 What else?

2 THE CHAIRPERSON: So if --

3 MS. MARILYN MCLAREN: Federal -- federal
4 government vehicles pay only a plate fee, and federal
5 government vehicles have a -- a -- a huge nationwide
6 insurance program of some sort.

7 THE CHAIRPERSON: That's interesting. So
8 these trucks that aren't subject to Basic but are
9 obviously -- but are plated in Manitoba, would the
10 insurance premiums they pay be falling into the
11 superintendent of insurance report on insurance written
12 in Manitoba?

13 MS. MARILYN MCLAREN: Yes, unless --
14 unless they place their insurance in another jurisdiction
15 or, you know, through a -- a broader national program
16 where the -- the broker's head office was in Regina or
17 something like that. So some of it would be, but some of
18 it wouldn't be.

19 THE CHAIRPERSON: Thank you. Just to
20 confirm something, the panel now understands, based on
21 the evidence presented at this and prior proceedings,
22 that if the interest rates -- we've provided a bit of a
23 model. If the interest rates rose by 2 percent and
24 inflation increased to, say, 3 percent, because of your
25 immunization, the negative impact on Basic net income

1 would be in the range of 50 to 60 million.

2 Would you either confirm or amend this
3 estimate?

4

5 (BRIEF PAUSE)

6

7 THE CHAIRPERSON: You can do it by
8 undertaking if you want.

9 MR. DON PALMER: Yeah. No. I -- I think
10 that sounds about right, because our immunization
11 strategy is about 80 percent effective with that --
12 that's -- that's certainly a possibility of that kind of
13 movement in that extreme event. We do model, sort of on
14 a reasonable movements in -- in inflation and interest
15 rates, because they certainly are tied together. I know
16 that last year in our -- in these hearings we were
17 roundly criticized by the Intervenors with regard to our
18 extreme inflation scenario, and I think it was something
19 -- 3 percent or -- or around there.

20 In our latest DCAT that was filed we have
21 amended that to an event I -- I think around -- something
22 less than 3 percent whe -- in any event. Again, it's a
23 scenario that does cause some movement in -- and the \$50
24 million sounds about right. It's certainly less than
25 what we would see -- see under some of the other adverse

1 scenarios. So it's one that falls within the range of
2 our existing RSR target.

3 THE CHAIRPERSON: So you'd accept then,
4 subject to your doing a direct calculation on it, that
5 that particular scenario could develop something in the
6 range of a 50 to \$60 million deduction of net income.

7 MR. DON PALMER: In one (1) year that's -
8 - that's possible, yes.

9 THE CHAIRPERSON: Do you agree that the
10 historical investment record, at least for North American
11 markets, indicate that over time equities out perform
12 bonds, particularly government bonds?

13 MR. DON PALMER: That's the theory. But
14 over the last ten (10) year period, where we've seen two
15 (2) significant dips, it hasn't been the practice. I
16 think in my pre-filed testimony, as we were investigating
17 our investment performance compared to other large pools
18 of money, that we are at least as good or better than
19 some of the other pools that have a larger equity
20 portfolio.

21 So it's -- maybe if we -- we look at very
22 long-term that might be true. In the last ten (10) years
23 it's definitely not true.

24 THE CHAIRPERSON: Well, you don't hold
25 this. I was going to ask a question based on the

1 historical record, what was the average out performance
2 of equities over government bonds, but you're holding
3 then that over the last ten (10) years bonds equalled or
4 out performed equities. I'm not sure which market you
5 were talking about, but...

6 MR. DON PALMER: No, I -- I'm talking
7 about our portfolio compared to other large investment
8 portfolios. So our mix -- our asset mix with
9 approximately 20/80 split has outperformed other large
10 funds that could have as much as a 80/20 split.

11 So, again, talking about median
12 performers, that's what the evidence that we've seen in -
13 - in the marketplace. So -- so, no, I'm not saying that
14 specifically bonds have outperformed equities. I'm
15 saying specifically our 80/20 -- 80 percent fixed income,
16 20, has performed better than the median large-investment
17 portfolio that likely has a much larger equity component
18 than -- than our portfolio has.

19 THE CHAIRPERSON: In immunizing the
20 portfolio to the present degree, is reducing the
21 volatility of annual net income a consideration?

22 MR. DON PALMER: Absolutely it is.

23 THE CHAIRPERSON: So is the reduction of
24 annual net income volatility the -- the major or major
25 determinant of MPI's investment approach?

1 MR. DON PALMER: No, it's determ --
2 determination of the classification of our investments.
3 I think I can -- can say that. But stability in -- in
4 investment income is absolutely a consideration in the
5 investment approach of the Investment Committee working
6 group. Of course, the ultimate authority is within the
7 Department of Finance, but they certainly are aware of
8 our liability profile, and -- and that's included in the
9 investment policy statement.

10 THE CHAIRPERSON: So then you're aware of
11 the fact, or you'd confirm, that MPI's annual results are
12 now included in the overall financial results of the
13 province?

14 MR. DON PALMER: Yes, they are.

15 THE CHAIRPERSON: The Corporation has
16 already stated that its investment portfolio, and
17 decisions related thereto, are, I think you can pick a
18 different word, controlled by the Department of Finance.

19 And that there are no members, either on
20 the investment working group or MPI's Board of Director's
21 investment committee, that are external investmnet
22 professionals. External to both MPI, and the province.

23 Is that true?

24 MR. DON PALMER: That's true.

25 MS. MARILYN MCLAREN: Mr. Chairman, if I

1 could ,that -- that gives me an opportunity to clarify
2 the way the Corporation kind of de -- defines the
3 province, the government, the Department of Finance.

4 When we talk about the province, the
5 government, we're talking about Ministers. We're talking
6 about cabinet.

7 And I say that because Mr. Dawson talked
8 about the fact that we've disclosed meetings with the
9 government because we have members of the Department of
10 Finance on the investment committee working group. You
11 know, the -- the most senior official is an Assistant
12 Deputy Minister.

13 We don't consider that to be the
14 government, so in terms of our investment portfolio,
15 under the legislation, the government absolutely controls
16 the investments, but the -- the staff from the Department
17 of Finance and MPI work collaboratively, really, to -- to
18 make recommendations to the government, being the
19 Ministers.

20 THE CHAIRPERSON: Thank you. If PUB were
21 to adopt a regulated accounting approach that for rate
22 setting purposes spread investment returns over a moving
23 five (5) year period, do you think that that practice
24 would affect the approach to investments that is taken by
25 MPI, or would it have no affect at all?

1 MS. MARILYN MCLAREN: I don't -- I don't
2 imagine it would have much affect be -- and I want to go
3 back to the -- the conversation you had a few minutes ago
4 with Mr. Palmer, right.

5 I mean, it's really important, I think, to
6 -- to reiterate that annual net income stability
7 influenced our -- our classification of a portion of our
8 bonds. It didn't influence the asset liability study
9 that we did a few years ago, and I guess at some point in
10 the future, we'll redo.

11 So that really has set the investment
12 profile. That has lead us to decide what we will invest
13 in, and how much, so that has not been driving by a need
14 to protect net in -- annual net income stability. So on
15 that basis, I'm -- I'm not sure that it -- you know, it's
16 -- it's hard for me to predict what that might look like.

17 But I just really want to be clear that we
18 don't make investment decisions to predict annual net
19 income stability. The investment decisions are based on
20 that asset liability study, and the asset liability
21 decisions that we made are in -- that are in the
22 investment policy statement.

23 MR. DON PALMER: Just adding to that,
24 with regard to regulatory accounting, from a rate setting
25 perspective, again we're talking prospective.

1 It -- it's not looking at what has
2 happened over the past period of time. What's past is
3 past, and that changes, up and down, go into the rate
4 stabilization reserve, but on a going-forward basis,
5 we're -- we're making assumptions going forward as to
6 sort of what the average rate of return will be.

7 And there will be -- we know -- it's not a
8 prediction, again it's a forecast, that an average return
9 over some longer period of time. So that may be close to
10 what you're talking about smoothing, but it's not really.
11 It's just the average rate of return over the next few
12 years. The -- the expected value that we've talked
13 about.

14 THE CHAIRPERSON: Changing topics again,
15 I believe you have indicated that the cost to the PIPP
16 infrastructure project would be approximately, I think at
17 least, originally, 27 million, and that your business
18 case suggested that the expected benefits to arise from
19 the program was something in the order of 42 million.
20 And you provided some estimates of how the benefit
21 realization would gradually build until, I think, in year
22 three (3), it would be realizing something like 6.6
23 million.

24 Is this still your expectation?

25 MS. MARILYN MCLAREN: Yes. There's --

1 nothing has evolved through the implementation to change
2 that at all. It looks pretty solid.

3 THE CHAIRPERSON: Switching again, please
4 comment on Mr. Olfert's evidence when he suggested that
5 PUB -- I think it was him or Mr. Parkinson, where one (1)
6 of them suggested that PUB could rely on the auditor's
7 clean audit opinions and senior management, and focus on
8 allocations rather than underlying data in coming to
9 annual premiums and fee decisions.

10 MS. MARILYN MCLAREN: I think that's -- I
11 alluded to that part of Mr. Olfert's comments in -- in
12 conversation with Ms. Everard. To -- to me, that --
13 that's the only thing that makes sense, you know. I
14 can't imagine that this Board is going to want to redo
15 the work of the external auditor, you know.

16 So if we have assurance that the
17 Corporation has been true to the allocation policies
18 through that Basic audit report, the audited financial
19 statements for Basic, that should be what the Board needs
20 to assure itself that -- that the actual allocations are
21 used consistently with the Corporation, which leaves us
22 to discuss what the allocation policy should be and --
23 and what are the actual monies that -- that Basic is
24 paying.

25 THE CHAIRPERSON: On a similar line,

1 please comment on Mr. Olfert's thought that going further
2 than relying on the allocation would or could be
3 justified if PUB was -- I think it was, in his words,
4 suspicious, or there were problem areas that had not been
5 adequately addressed to the panel's satisfaction, was his
6 qualifications to reliance on the allocations.

7 MS. MARILYN MCLAREN: That I -- I don't
8 remember. I -- I'd -- but, I mean, I -- I guess -- what
9 I remember him saying, there's really -- basically, you
10 know, you can rely on the external auditor or you can do
11 all the work yourself and -- or you could rely on
12 management telling you that they did it. I guess, in
13 terms of the -- you know, if you're suspicious that --
14 that they're giving the intended results or -- or that
15 they were simply -- I mean, the auditor -- it's
16 compliance for the most part, right? I mean, if you're
17 not sure that -- that there's compliance, then I don't
18 know. A special audit? I -- I'm not sure. You might
19 think of something.

20 But separate from the issue of compliance,
21 the extent to which you can be clear about what your
22 areas of concern are, we will do our best to address.

23 THE CHAIRPERSON: It was just my
24 recollection of his comments on the allocations was sort
25 of conditional upon there being no areas of

1 misunderstanding.

2 With respect to arrangements with
3 governments and brokers, as is on the record -- correct
4 me if I'm wrong -- for 2011/'12, the province will pay
5 MPI an extra \$7 million a year for DVA administration.

6 MS. MARILYN MCLAREN: Yes.

7 THE CHAIRPERSON: And for 2011/'12, MPI
8 will pay the province approximately \$7 million extra for
9 medical bills.

10 MS. MARILYN MCLAREN: I think that one's
11 closer to six (6), but it's certainly in the ballpark.

12 THE CHAIRPERSON: Is it MPI's view as to
13 the assurance of the continuity of these payments? Like,
14 is there any indication -- you indicated in both cases
15 that they were, well, basically the unilateral decision
16 of the government. So what assurances does MPI have as
17 to whether the extra DVA payments are going to continue,
18 or that the payments to the Health Services Corporation
19 are not going to jump ahead again?

20 MS. MARILYN MCLAREN: Well, in terms of
21 guarantees, at this point in time, I don't have any, but
22 clearly the initial intention of the -- the funds to
23 administer the -- the DVA duties was intended to be in --
24 in perpetuity. That's something that's been -- you know,
25 that they've revisited and they're increasing. There's a

1 basis, such as it is, for the healthcare costs. So, you
2 know, I mean, I -- I really believe that the healthcare
3 cost is not likely to be revisited again in the short
4 term, and the DVA to this -- you know, since '03/'04,
5 they certainly have been consistent, and no one's messed
6 with them, and I have no indication anyone intends to.

7 THE CHAIRPERSON: Just confirm that there
8 -- I believe you said that -- that, from your
9 perspective, there's not actually, from your perspective,
10 a contract between MPI and the province with respect to
11 DVA. And I think you've made it clear there's certainly
12 no contract dealing with MHSC.

13 MS. MARILYN MCLAREN: That's true.

14 THE CHAIRPERSON: This is just to clear
15 up something we weren't clear on, and I think we are
16 right now but it'd be just nice to get a confirmation.
17 Could you please confirm that the compensation to the
18 brokers that are paid by MPI with respect to DVA-related
19 collections on behalf of the province are allocated to
20 non-insurance operations, i.e., DVA?

21 MS. MARILYN MCLAREN: Yes, they are.

22

23 (BRIEF PAUSE)

24

25 THE CHAIRPERSON: I don't really like

1 asking this question but I have to. I just have to
2 ensure nothing is changed in the period of time. But
3 could you confirm that the Corporation decided to
4 consider DVA administration as non-Basic so as -- and I
5 believe I could paraphrase Dr. -- Mr. Galenzoski's
6 directly, who's a former CFO. I think he said to keep it
7 out of the purview of PUB. Very direct if I recall.

8 MS. MARILYN MCLAREN: Yeah, I think -- I
9 think he said that too. But, you know, I was in those
10 meetings and that -- that's not the basis of the
11 decision. I mean, we really truly believe that we have a
12 responsibility to keep -- I mean, what would be the
13 impact if -- if we'd put it in Basic, the Basic would
14 have been funding shortfalls?

15 That -- that's not on. It -- it's not
16 acceptable. We have a responsibility to keep Basic as
17 pure and as transparent as possible. I mean, we need to
18 talk about Basic and other lines of business only in the
19 context of allocation. That was our mind set. That's
20 the way the decision was made in the Corporation and I
21 was there too, so.

22 THE CHAIRPERSON: Thank you for that.
23 You'll be happy to know I'm getting close here. In
24 developing MPI's new approach to compensating brokers,
25 which, of course, includes Basic, did MPI engage external

1 advice to assist it in negotiations or was this MPI
2 direct?

3 MS. MARILYN MCLAREN: No, we -- we did
4 our own analysis. We did all our own work in that
5 regard. We worked with the brokers. But as I remember,
6 the brokers hired a third party to do some analysis for
7 them, to give them a comfort level rather than simply
8 accepting our analysis.

9 THE CHAIRPERSON: And that's a five (5)
10 year agreement?

11 MS. MARILYN MCLAREN: It may have
12 actually taken that long from the time it first was
13 passed into the regulation, and it started to be
14 implemented, until we actually get to the -- the final 2
15 1/2 percent for Basic. That's the final step in -- in
16 the step down on those particular commissions. But it's
17 not -- it's not an agreement that has a sunset clause in
18 it.

19 At some point I'm sure we will revisit it
20 again. And -- and, you know, if -- if we work hard and
21 if we're lucky, there'll be another joint recommendation
22 to government, but there's no specific window on that.

23

24

(BRIEF PAUSE)

25

1 THE CHAIRPERSON: I think we can gather
2 this just from reading the annual report, and it's not
3 looking forward, it's actually looking back. Are you
4 able to confirm that Extension experience represents
5 claims costs that are representative of a return of
6 eighty-five (85) cents on the premium dollar to
7 policyholders?

8 I think you said that that eighty-five
9 (85) cent pledge only applied to Basic. That's correct,
10 right?

11 MR. DON PALMER: Yes, that 85 percent is
12 Basic only.

13 MS. MARILYN MCLAREN: I -- I think over
14 the last many years if somebody did the analysis they'd
15 find that -- that SRE was a bit lower, but I think
16 Extension for the most part would be well in there,
17 around -- around the eighty-five (85) cent mark.

18 THE CHAIRPERSON: Thank you. MPI relied
19 at one point in time on an allocation of the rate
20 stabilization reserve to launch, if you like, the
21 Immobilizer Program. And, originally, I think it was 40
22 million that was set aside out of RSR, and then it became
23 50 million.

24 That's correct, is it not?

25 MR. DON PALMER: That's correct.

1 THE CHAIRPERSON: Okay. Would MPI
2 benefit from an allocation of the RSR to fund increased
3 or new road-safety accident-prevention actions?

4 MS. MARILYN MCLAREN: We would certainly
5 compliment -- or contemplate doing something similar
6 again in the future. But I -- I -- you know, I think our
7 responsibility is to make sure that it -- anything that
8 we would do in that regard would be tilting a lot closer
9 to loss prevention than road safety, in a general sense.

10 You know, I mean, there was such a -- a
11 soundly reasonable expectation of payback on -- on that
12 immobilizer incentive fund that it made it, I think, an
13 appropriate use of significant, significant dollars.

14 If we ever thought that there was another
15 opportunity like that with really significant dollars,
16 that's certainly something we would think about again.

17 THE CHAIRPERSON: Now, you may have
18 actually answered this question in a different way, but
19 would MPI benefit from a formalized advisory panel to
20 guide its actions with respect to road safety and
21 accident prevention?

22 MS. MARILYN MCLAREN: Yeah, we did -- we
23 did talk about that a little bit earlier in the
24 proceedings. You know, I -- I would -- formal advisory
25 boards can sometimes be a difficult governance construct

1 in -- in road safety endeavours, especially outside of
2 the field of engineering, and most of the enforcement
3 that goes on, you know, M -- MPI tends to have most of
4 the dollars on the education side of things.

5 So you know, I mean, I think we -- we have
6 a lot of work to do over the next year to really
7 redefine our vision, and our responsibility on road
8 safety, but I -- I think that's something that would
9 concern me a little bit unless it was really constructed
10 in a way that -- that would have lots of advantages, and
11 not much risk.

12 THE CHAIRPERSON: This next question is
13 not meant to be disrespectful, but given the range in
14 magnitude of MPI's activities and actions, can the
15 Corporation estimate what percentage of the time at Board
16 of Director's meetings is spent on road safety, and
17 accident prevention, given all the other issues that are
18 in front of the Board and MPI?

19

20 (BRIEF PAUSE)

21

22 MS. MARILYN MCLAREN: Not -- not
23 significant discussions, in the broadest sense over the
24 last few years. Clearly most -- most of our efforts have
25 been targeted towards, you know, the fundamental business

1 change that we've talked about here.

2 But I think it's reasonable to expect that
3 that will change. I mean, I -- it -- don't underestimate
4 the importance of having laid out, and -- and said in the
5 annual report, the work that we are beginning this year
6 in terms of that road safety vision.

7 We have a responsibility as well as an
8 opportunity, given that we have, you know, really
9 leveraged a lot of the benefits of the merger, it's now
10 time to really focus on this area.

11 It's time to revisit what we really
12 believe our role should be, and I can tell you that I
13 expect we will revisit decisions that were made long ago
14 that -- that, you know, for the most part have limited
15 our involvement to education and awareness, and that more
16 narrow perspective.

17 THE CHAIRPERSON: Thank you. That is
18 helpful. Has MPI received any recommendations from Crown
19 Corporation counsel with respect to road safety or
20 accident prevention? You don't have to tell us what.

21 MS. MARILYN MCLAREN: No, we haven't.

22

23 (BRIEF PAUSE)

24

25 THE CHAIRPERSON: Is MPI prepared to -- I

1 realize the, whatever the word is, non-popularity, or
2 outright outrage over this thought in the public
3 discourse, but is MPI prepared to seriously pursue the
4 possibility of assigning demerits against those given
5 multiple tickets for red light cameras, photo radar, and
6 handheld devices?

7 MS. MARILYN MCLAREN: It -- it's not up
8 to us as to what gets demerits and what not -- and what
9 doesn't, you know. It -- it's in a regulation. That's
10 something the government clearly holds as its
11 responsibility. We would certainly administer the
12 program, if the law changed, to -- to do such a thing.
13 We'll continue to administer the program as it is until
14 such time as it changes.

15 THE CHAIRPERSON: There were -- this is
16 more housekeeping. There were several presentations at
17 this hearing. Will MPI be following its normal practice
18 of responding to each presenter with respect to the
19 matters that were raised, with a copy to the Board?

20 MS. MARILYN MCLAREN: Yes, we will.

21 THE CHAIRPERSON: Of the various ideas
22 and suggestions put forward by the presenters, thoughts
23 that were offered under the premise that MPI acting on
24 them would increase the public acceptability of the MPI
25 program, at least for the groups that were advancing

1 these ideas.

2 Has MPI previously considered them?

3 MS. MARILYN MCLAREN: Nothing that I
4 remember coming up at the beginning of these proceedings
5 that we've had a, you know, very, very comprehensive in-
6 depth look at, no.

7 THE CHAIRPERSON: So then, in fairness,
8 MPI's prepared to consider the ones that the presenters
9 presented this time.

10 MS. MARILYN MCLAREN: Certainly respond
11 to them fulsomely.

12 THE CHAIRPERSON: Thank you. We started
13 with some general questions, so we'll conclude the same
14 way. Does MPI consider itself to be an insurance company
15 owned by the province or a quasi-insurance company that's
16 directed and administered by the province?

17 MS. MARILYN MCLAREN: No, I -- I think we
18 think of ourselves as an insurance company, but -- what
19 were the other words you used? Not -- not just owned by
20 the province, but directed and --

21 THE CHAIRPERSON: Well, quasi's not an
22 insulting term.

23 MS. MARILYN MCLAREN: No, no, I
24 understand.

25 THE CHAIRPERSON: We're a quasi-

1 administrative tribunal.

2 MS. MARILYN MCLAREN: Yeah.

3 THE CHAIRPERSON: Quasi-judicial
4 administrative tribunal.

5 MS. MARILYN MCLAREN: But I -- I guess
6 the point I'm trying to -- to make is that we're -- we
7 are primarily an insurance company. We administer the
8 Basic Compulsory Insurance Program. But I guess, you
9 know, the thing that is -- is different in some ways from
10 us and other insurers who operate in a competitive
11 marketplace is we have no control over the coverages, the
12 products, the -- the rates; and that's true not just for
13 the Basic line of business.

14 So it is prescribed in significant detail.
15 The -- the government establishes the classification
16 system, establishes the coverages, even AutoPac,
17 Extension, something like vacationer's driver policy.
18 The provisions of that coverage are in regulation. It's
19 not something that management has control over.

20 So it's definitely -- there's a lot of
21 alignment between the way we administer this program and
22 other government departments would administer a program
23 of the provincial government because so much of it is
24 embedded in legislation. You know, this Board and the
25 government have a lot to say about rates. The government

1 has a lot to say about coverage and classification.

2 We determine, you know, a lot to do with
3 how we provide service and so on, but -- so it -- it's --
4 I'm not sure that gave you much of an answer, but...

5 THE CHAIRPERSON: It did. It did.
6 Basically you're providing support for an earlier
7 statement that you made, correct me if I'm wrong, when
8 you were asked a question, and please tell us if we
9 misheard you, but that MPI does not keep, if you like, an
10 active list of options for changes to Basic or other
11 programs with implications and things of that order.
12 You're awaiting rather than promoting, if you like.

13 MS. MARILYN MCLAREN: No, some of that
14 goes both ways, you know. And where I'm -- where I'm
15 very hesitant is -- is I -- I will not say anything
16 publically about what some of our ideas in that regard
17 might be because they're not ideas we can act on. So we
18 would be constraining government. It's not about what we
19 would choose to -- to communicate.

20 So it certainly does go both ways, but we
21 really take the view in the Corporation that -- that when
22 it is said and done this is a program established by
23 government that we're administering, which is only
24 appropriate, you know. I mean, when you -- it's a
25 monopoly. It's compulsory. It should not be us who --

1 who's making the decisions about what it is.

2 THE CHAIRPERSON: A straightforward
3 question. Is MPI of the view that it's Board of
4 Directors bear the same responsibilities that generally
5 accrue to the directors of any company, including
6 insurance companies?

7 MS. MARILYN MCLAREN: With the provision
8 that they don't decide the basics of rates and coverage.

9 THE CHAIRPERSON: And they don't decide
10 to enter into a contract or not on DVL or MHSC.

11 MS. MARILYN MCLAREN: That's true too.

12 THE CHAIRPERSON: You've already
13 confirmed that the primary direction and directions are -
14 - they come from legislation and regulation.

15 MS. MARILYN MCLAREN: Yes, tho -- those
16 are the -- exactly. Those are the decisions of what it
17 is we are to administer.

18 THE CHAIRPERSON: Does MPI acknowledge or
19 accept that the province benefits directly and indirectly
20 from your policies, practices, and actions, as a whole?

21 MS. MARILYN MCLAREN: We can hurt them,
22 we can help them. I don't know if that's exactly what
23 you meant, but --

24 THE CHAIRPERSON: Well, one of the
25 objectives of MPI was, as Dr. Evans mentioned earlier,

1 was assisting the financing of municipal hospitals,
2 schools, and things of that particular nature. So
3 there's help at least in that direct action.

4 MS. MARILYN MCLAREN: Sure. That -- that
5 would be true.

6 THE CHAIRPERSON: Just a question that
7 came up during -- again, when the auditors were there.
8 Given the opinion of the auditor, which may be the first
9 time you heard it too, at the time, do you have any plans
10 to have the external auditor review your quarterly
11 reports in the future before you release them?

12 MS. MARILYN MCLAREN: You know, we have a
13 really tight window on those. It's certainly something
14 that we'll talk about. That's something that we will
15 discuss, the audit committee of the Board. We've got
16 forty-five (45) days by legislation from the quarter ends
17 and -- and the report has to be made public. I don't
18 know what other -- other companies are subject to. I'm
19 not sure that it's that quick.

20 THE CHAIRPERSON: You're faster than some
21 other Crowns.

22 MS. MARILYN MCLAREN: Okay. So we've got
23 forty-five (45) days, so I'm -- I'm not sure how much
24 time there is to engage the external -- external auditor,
25 but it's something we'll talk about.

1 THE CHAIRPERSON: I don't think the
2 auditors were suggesting they would provide you with an
3 audit opinion.

4 MS. MARILYN MCLAREN: Understood.

5 THE CHAIRPERSON: I don't think it went
6 to that degree. Could you please just confirm your
7 earlier evidence that, from MPI's perspective, the
8 primary beneficiary of the Corporation's operation is the
9 policyholder base?

10 MS. MARILYN MCLAREN: Confirmed.

11 THE CHAIRPERSON: And that MPI's decision
12 are taken with the policyholders' interests considered to
13 be of paramount importance?

14 MS. MARILYN MCLAREN: Yes, with the
15 clarification that it's policyholder and/or insured --

16 THE CHAIRPERSON: Understood.

17 MS. MARILYN MCLAREN: -- given the PIPP
18 component and, you know, the policyholder/ratepayer is
19 very well aligned. Policyholder is not necessarily all
20 the people who are covered by PIPP.

21 THE CHAIRPERSON: Thank you, and thank
22 you for your patience. It was a long list of questions
23 we have. If you don't mind, we'll just take a ten (10)
24 minute break, and we'll come back with the panel's pre-
25 closing comment -- or, sorry, any re-direct by Ms.

1 Kalinowsky, and then we'll do the pre-closing comments.

2

3 --- Upon recessing at 3:23 p.m.

4 --- Upon resuming at 3:41 p.m.

5

6 THE CHAIRPERSON: Okay. Welcome,
7 everyone. This brings to an end the evidentiary phase of
8 the --

9 MS. KATHY KALINOWSKY: I'm -- I'm sorry.
10 I'm sorry. It's over here, Mr. Chair.

11 THE CHAIRPERSON: Yes.

12 MS. KATHY KALINOWSKY: I do have re-
13 direct.

14

15 (BRIEF PAUSE)

16

17 RE-DIRECT EXAMINATION BY MS. KATHY KALINOWSKY:

18 MS. KATHY KALINOWSKY: Okay, I'll pursue
19 my question then to Ms. McLaren. Is there anything that
20 you wish to reiterate about the corporate's --
21 Corporation's Application, and, particularly, the order
22 that is required by no later than the beginning of
23 December?

24 MS. MARILYN MCLAREN: Yes, if I could. I
25 guess first on that point, often that's one (1) of the

1 questions the Chair asks at the end of the proceedings,
2 by -- by when does the Corporation require an order.

3 And we certainly do, on or about the first
4 of December, just like every other year. I believe there
5 was a question posed by the PUB in terms of, What would
6 the implication of a delay beyond that day, what would be
7 the ramifications of -- of a delay in receiving the
8 order.

9 I think there was also a question, I
10 remember this one (1) by number actually, CAC/MSOS-1-146,
11 with respect to, What are some of the technological
12 restraints, and so on, with respect to receiving an
13 order.

14 Given the fact that we did something quite
15 unusual this year, and applied for a change to late fees
16 to take effect on March 1, 2012, given the Corporation's
17 more recent experience with filing requests to review and
18 vary, which has been somewhat out of our experience until
19 more recently, I just wanted to take the opportunity to
20 ask the Board, as it considers potential orders, or
21 recommendations, to give consideration to that approach
22 by, you know, more substantive changes, some of which may
23 very well require the agreement of government to change
24 some aspect of the classification system, to give us that
25 extra year of leave time, if there was something like

1 that.

2 But other than that, even some of the
3 conversations that I had with Mr. Williams sug -- not
4 suggesting changes, but asking about the impact of
5 changes to the basis of the rebate, we do need time.

6 Protocols, and -- and things like
7 classification, and approaches, are established over very
8 long periods of time in our systems, and our processes
9 internally, as much as in regulation, and can't -- can't
10 be changed quickly.

11 So clearly the December 1 is important for
12 us. We believe we found a reasonable approach for things
13 that do take more time, such as the late fees, by asking
14 for approval a year in advance.

15 And I just wanted to reiterate those
16 constraints because as -- as much as we were here to
17 request review and approval of rates, they are very much
18 hinged within an -- an existing, embedded classification
19 system, and processes that -- that all take time to
20 change effectively.

21

22 (BRIEF PAUSE)

23

24 THE CHAIRPERSON: Thank you. Anything
25 more?

1 MS. KATHY KALINOWSKY: No, that composed
2 all of my re-direct. Thank you very much.

3 THE CHAIRPERSON: Okay. Well, thank you
4 very much to the panel. Appreciate your evidence and
5 patience in the amount of work that went into what MPI
6 has brought forward.

7

8 (PANEL STANDS DOWN)

9

10 THE CHAIRPERSON: This brings to an end
11 the evidentiary phase of the proceeding. What lies ahead
12 is closing statements, which we will begin tomorrow, and
13 then deliberation and decision by the panel.

14 The decision is expected by MPI, for the
15 reasons just cited, on or before December the 1st of
16 2010, this year.

17 The preliminary question we ask each party
18 to address in their closing argument is what decisions of
19 this panel would represent both the setting of just and
20 reasonable rates, and also be in the public interest.

21 The Application is both straightforward,
22 and complex, and coming to a decision will be, as usual,
23 difficult. And while MPI seeks but a decision on rates,
24 past proceedings have resulted not only in rates, but
25 also recommendations and commentary. And Ms. McLaren's

1 comments about lead-time are -- definitely be taken into
2 consideration.

3 While MPI continues not to provide
4 forecasts dealing with lines of business other than Basic
5 AutoPac, and while we all remain uncertain as to the
6 findings of the Manitoba Court of Appeal, it appears that
7 no party, including the applicant, denies that linkages
8 in operational interplay between Basic and the other
9 lines of business.

10 It seems evident that MPI's Basic and
11 other lines of business have been materially affected by
12 changes that are mandated and put in place by government.
13 In some cases the change is coming without previous
14 forecasts, long range forecasts, in rate proceedings.

15 Some large actions of that particular
16 nature that were not in longer-term forecasts included
17 with some of the rate applications include the surprise
18 move to total no-fault some sixteen (16) years ago, I
19 guess. The retroactive addition of retired income
20 benefits, the amalgamation of DVL, the major anti-theft
21 initiative, the business process review, the streamline
22 renewal and new arrangement with the brokers, the use of
23 funds to purchase Cityplace and the conversion to service
24 centres, the retroactively applied improvements to Basic
25 benefits related to those catastrophically injured in

1 motor vehicle accidents, most recently the major increase
2 in attributed medical costs and the Corporation's initial
3 adoption of MCT-based RSR, which has since been
4 abandoned.

5 MPI has filed applications concerning
6 long-term forecasts that provided no indication of major
7 actions that soon followed, actions that affected
8 premiums, net income, and rate prospects.

9 Of course, MPI itself, likely or may not
10 have had any assurance, or at least certainty, of the
11 knowledge of these particular events.

12 This hearing has again heard of major
13 differences between MPI's past forecasts of claims
14 incurred and new estimates, and we look forward to the
15 hearing of the views of the parties on what weight should
16 be placed on MPI's forecast. What weight we place on the
17 forecast is important, particularly given the magnitude
18 of the rate decreases and the rebates that are proposed.

19 Returning to the magnitude of the rate
20 decreases and the rebate being sought, it is our
21 understanding that the 4 percent rate decrease is not
22 expected to be reversed in the foreseeable future. I say
23 this in somewhat of a humorous light, because I
24 understand Mr. Palmer's condition that he placed on it
25 was sort of trumped by the president's, but if we look at

1 it on a permanent basis, and it would represent a present
2 value of pretty well \$1 billion, so C.D. Howe would be
3 pretty impressed by a premium reduction of that size.

4 As to the proposed premium reductions
5 after years of claims-incurred forecasts later reduced
6 materially, the question always has to arise is: Can the
7 pendulums not swing in the other direction?

8 Again, within respect to the proposed
9 rebates, given the differences between forecasts and
10 actual results that have been experienced over the past
11 decade, and with market uncertainty seemingly always
12 present, if a rebate is to be paid, should it be paid
13 without any further examination and in one (1) tranche?
14 And if a rebate is to be paid, by what means?

15 In the past, when a rebate's been paid,
16 both MPI and the Board has been criticized by some
17 parties for not just sort of setting them aside against
18 billings rather than issuing cheques that long. We've
19 had that debate in the past. We haven't had it here
20 again. But we should probably hear from the parties on
21 that, because if there is a rebate, there are two (2)
22 different ways of paying it.

23 Also -- and, difficult as it may be, we
24 always like to lay things out -- looking at the rebates
25 and looking at the size of the premium reduction that's

1 being sought, and the importance of public acceptability
2 and confidence in MPI in this process, do the parties
3 have any concern with the possibility of significant
4 premium decreases in a rebate in an election year?

5 Leaving those matters to the side, this
6 Board would also appreciate the parties' view with
7 respect to alternate approaches to those proposed by MPI.
8 In short, accepting that there are excess dollars
9 available, should some of the excess be committed to
10 other purposes?

11 Should the approach to motorcycles remain
12 as is and as proposed by MPI?

13 Road safety and the prevention of
14 accidents is a major matter for all parties to this
15 proceeding, and MPI invested more than \$50 million to
16 bring down the level of auto theft claims, and the
17 question arises: Should some of the excess revenue be
18 set aside for further road safety and accident (ch)
19 projects rather than paid back to policyholders by means
20 of rate reductions and/or rebates?

21 On the same subject, I think all would
22 agree that the level of accidents, fatalities and
23 injuries remain far too high. Questions about the level
24 of traffic law enforcement have been raised for years.
25 Possible approaches to reducing wildlife and livestock

1 claims have been advanced. Changes to the demerit
2 segments of the DSR has been raised as a possibility,
3 granted that they'd have to be done through regulation.

4 MPI has indicated its involvement with
5 various other parties interested in road safety and
6 accident alleviation, and spoke of further research being
7 required. Is it a time to explore ways and means with a
8 wider range of parties and persons? The prospect for
9 future rate reductions probably rests with success in
10 bringing down accidents.

11 What is the view of the parties? Should
12 the matter be left solely with MPI, which has indicated a
13 desire for that outcome and suggested that progress will
14 come if left with MPI? It must be said that it did with
15 respect to the auto-theft initiative.

16 On the matter of the investment portfolio
17 the Board would appreciate indications from the
18 Intervenors as to their comfort level with the approach
19 being taken by MPI.

20 Many, if not most, market observers accept
21 the premise that interest rates will rise. And with the
22 growth of money supply, the risk of rising inflation as
23 the recovery strengthens, assuming it does, seems to be
24 increasing as well. The panel expects that MPI and the
25 province prefer lower net income volatility, and even if

1 they accept that they do, that in the long-term, based on
2 historical experience, a portfolio with -- less immunized
3 and more leaning to equities could reasonably be expected
4 to generate a higher average return.

5 The question is: Are the Intervenors
6 comfortable with giving up returns for reduced volatility
7 in annual net income through investment experience?

8 On other general matters the parties would
9 -- the panel would appreciate the parties' views on the
10 family transfer matter, which has been canvassed again,
11 the appropriateness or not of considering red light
12 cameras and photo radar infractions in DSR scheme,
13 appropriateness of not having demerits for infractions
14 for handheld communication devices during driving. And
15 we do appreciate that these things are evolving matters.

16 In short, the panel would appreciate the
17 parties taking the time to survey the evidence from the
18 hearing and advance carefully thought out positions for
19 our consideration and closing argument. In doing so, we
20 would appreciate the parties, in advancing their
21 position, consider not only the pros of their particular
22 positions, but also address the cons as they may know
23 them.

24 The panel will look at all sides of all
25 the issues raised before coming to a conclusion as to our

1 findings and recommendations. That you can be assured
2 of.

3 Thank you for your attention. Tomorrow we
4 will receive the closing arguments of the Intervenors.
5 We're going to start at 10:00. And then on Friday, which
6 is our normal practice, we will be hearing from MPI again
7 at 10:00. We stand adjourned.

8

9 --- Upon adjourning at 3:53 p.m.

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12 Certified correct,

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17 Cheryl Lavigne, Ms.

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