

1 MANITOBA PUBLIC UTILITIES BOARD  
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67 Re: MANITOBA PUBLIC INSURANCE  
8 LOSS TRANSFER HEARING  
910  
11  
12  
13 Before Board Panel:14 Graham Lane - Board Chairman  
15 Denyse Cote - Board Member  
16 Eric Jorgensen - Board Member  
17 Len Evans - Board Member  
18

## 19 HELD AT:

20 Public Utilities Board  
21 400, 330 Portage Avenue  
22 Winnipeg, Manitoba  
23 May 17th, 2005  
24

25 Pages 882 to 1055

## APPEARANCES

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10 Raymond Oakes ) CMMG  
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16 Don Miller (np) ) Manitoba Car & Truck  
17 Carlene Olafson ) Rental Association Inc.  
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19 Robert Dawson ) CBA/MBA  
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23 Arthur Tabachneck (Np) ) Insurance Bureau of  
24 Canada  
25 Robert Ramsay (np) ) MMIC

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1		LIST OF EXHIBITS	
2	No.	Description	Page No.
3	MMIC-43	Four (4) pages from Transport	
4		Canada entitled, Road Safety	
5		in Canada 2001.	887
6	MMIC-44	Transport Canada brochure no. TP3322	
7		"Canadian Motor Vehicle Traffic	
8		Collision Statistics".	888
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1 --- Upon commencing at 9:05 a.m.

2

3 THE CHAIRPERSON: Good morning everyone.  
4 Welcome to closing statements.

5 First of all I'll call on Mr. Saranchuk.  
6 And, Mr. Saranchuk, I believe we have a couple of new  
7 exhibits as well?

8 MR. WALTER SARANCHUK: I haven't been  
9 informed of any, Mr. Chairman, but --

10 THE CHAIRPERSON: I'm guessing they're a  
11 result -- I'm guessing they're the result of  
12 undertakings.

13 Mr. Barron, we do have two (2) new  
14 exhibits, do we not?

15

16

(BRIEF PAUSE)

17

18 MR. WALTER SARANCHUK: Yes, Mr. Chairman,  
19 I'm now advised that there are two (2) additional  
20 documents to be marked in the evidence. As the next  
21 exhibit a document consisting of five (5) pages with the  
22 top page being e-mail cover sheet from Mr. Robert Ramsay  
23 of MMIC to Mr. Gerry Barron of the Public Utilities  
24 Board.

25

And the attachments appear to be two (2)

1 e-mails related to the number of injuries and fatalities  
2 by vehicle type; that's Exhibit number 43.

3 THE CHAIRPERSON: These are four (4)  
4 pages from Transport Canada entitled, Road Safety in  
5 Canada 2001, I think, Exhibit 43.

6

7 --- EXHIBIT NO. MMIC-43: Four (4) pages from Transport  
8 Canada entitled, Road Safety  
9 in Canada 2001.

10

11 THE CHAIRPERSON: Mr. Barron, are you  
12 distributing to the other parties?

13 By the puzzled look, I don't believe it  
14 was done. Would you mind photocopying it and providing  
15 it to them?

16 MR. WALTER SARANCHUK: The document  
17 attachment -- the first page of the attachment itself is  
18 Transport Canada, "Road Safety in Canada, 2001".

19 THE CHAIRPERSON: Correct.

20 MR. WALTER SARANCHUK: As Exhibit 44...

21 THE CHAIRPERSON: I believe it's an e-  
22 mail by Mr. Ramsay of May 13th but attached to it is  
23 Transport Canada's "Canadian Motor Vehicle Traffic  
24 Collision Statistics", TP3322, the brochure.

25 MR. WALTER SARANCHUK: Yes, sir, that

1 attachment is fifteen (15) pages and the top page is --  
2 not included in those fifteen (15) pages is the e-mail  
3 dated May 13th, 2005 from Mr. Ramsay to Mr. Barron;  
4 that's Exhibit 44.

5 THE CHAIRPERSON: Very good. Exhibit 44.

6

7 --- EXHIBIT NO. MMIC-44: Transport Canada brochure no.  
8 TP3322 "Canadian Motor  
9 Vehicle Traffic Collision  
10 Statistics".

11

12 THE CHAIRPERSON: Mr. Saranchuk, back to  
13 you.

14 MR. WALTER SARANCHUK: Thank you, sir.

15

16 (BRIEF PAUSE)

17

18 MR. WALTER SARANCHUK: Mr. Chairman,  
19 members of the Board, ladies and gentlemen, good morning.

20 At its special hearing held last week from  
21 May 10th to May 12th, 2005 the Public Utilities Board  
22 heard testimony addressing the appropriateness of the  
23 current methodology adopted by Manitoba Public Insurance,  
24 MPI, to assign accident costs to the vehicle class  
25 incurring those costs, that is on a first-party basis,

1 regardless of fault considerations.

2           The stated purpose for the special  
3 hearing, of course, was to consider an alternate  
4 approach, namely, possible implementation of a loss  
5 transfer system which recognizes a degree of fault for an  
6 accident in the assignment of accident costs for premium  
7 calculation purposes; that is on a third-party basis.

8           In that respect, the Board received  
9 submissions from the Insurance Bureau of Canada, IBC,  
10 Financial Services Commission of Ontario, FSCO or F-S-C-  
11 O, the Motorcycle and Moped Industry Council, MMIC,  
12 Manitoba Public Insurance and Mr. Brian Pelly, the  
13 Board's actuary.

14           The witnesses who testified at the hearing  
15 spoke to those submissions and were cross-examined by  
16 Board Counsel, Counsel for the representatives and --  
17 sorry, counsel and representatives for the Intervenors  
18 and Counsel for MPI.

19           The written submissions and Information  
20 Requests pertaining to them formed part of the  
21 documentary evidence at the Hearing. As well, the Board  
22 received in evidence, for information purposes only,  
23 correspondence sent by Saskatchewan Government Insurance,  
24 or SGI, the Insurance Corporation of British Columbia,  
25 ICBC, and SAAQ, the Societe de L'Assurance Automobile du

1 Quebec, relative to the assignment of loss costs under  
2 their respective automobile insurance plans.

3           At its hearings dealing with MPI's annual  
4 general rate applications over the course of at least the  
5 last decade the Board has heard protestations from  
6 representatives of the Coalition of Manitoba Motorcycle  
7 Groups, known as CMMG, over MPI's current practice of  
8 assigning accident costs.

9           CMMG, and latterly MMIC, have long  
10 asserted that the methodology is unfair and detrimental -  
11 - discriminatory to motorcyclists. Over the years,  
12 however, in the absence of compelling reasons to the  
13 contrary, the Public Utilities Board has not required MPI  
14 to change its current approach.

15           As it stated it would in its Order 148/04,  
16 following MPI's General Rate Application last year, the  
17 Board called this special hearing to deal with the issue  
18 specifically, with the intention of arriving at a final  
19 conclusion once and for all.

20           Of particular importance too, is the  
21 observation by the Board, that loss transfer goes beyond  
22 motorcycles, potentially to impact the other motor  
23 vehicle classes as well.

24           As Board Counsel, I take no position in  
25 the matter. My role today is rather to summarize at a

1 high level the evidence advanced by the parties for the  
2 Board's consideration.

3 Dealing firstly with the Insurance Bureau  
4 of Canada, or IBC, its report is submitted, or was  
5 submitted through correspondence to the Board and to  
6 Board Counsel, and appears at Tab 1 in the Book of  
7 Documents, being Exhibit 19.

8 The testimony on behalf of IBC, was given  
9 by Mr. Arthur Tabachneck, the Manager of Statistical  
10 Research and Development. He testified that the Canadian  
11 Loss Experience Automobile Rating, or CLEAR system, is  
12 unique to Canada and provides an equitable system for  
13 rating automobiles, first-party coverage; that is  
14 collision, comprehensive and accident benefits, and is  
15 designed to make sure those assigned ratings equate to  
16 the actual loss costs.

17 He indicated that in Ontario, due to the  
18 nature of the first party accident benefits, based on the  
19 no-fault system there, there is a dislocation of claims  
20 costs with motorcyclists bearing higher accident benefit  
21 claims costs.

22 Ontario has a loss transfer system, and  
23 collects statistical data on loss transfer, which is  
24 limited to commercial vehicles, private passenger  
25 automobiles and motorcycles.

1                   Mr. Tabachneck observed that loss transfer  
2 data from the Ontario experience is limited to claims  
3 frequency and does not look at accident benefit severity  
4 -- severity in its accident benefit rating.

5                   He stated that it was currently looking at  
6 -- that is IBC was currently looking at the possibility  
7 of developing a severity model, but to date there was not  
8 sufficient credible data.

9                   IBC, through its witness, indicated that  
10 Ontario's data, which includes its third party loss  
11 transfer mechanism, does not adversely affect the CLEAR  
12 rating data. And also stated that if a loss transfer  
13 scheme similar to Ontario's were adopted in Manitoba,  
14 that similarly would not have an adverse impact on CLEAR  
15 data.

16                   Not directly addressed by IBC, but as an  
17 aside, more so gleaned from FSCO'S, that's Financial  
18 Services Commission of Ontario's evidence in particular,  
19 the description of the fact -- a description of the  
20 Ontario system of loss transfer, on the basis that it is  
21 essentially a third party loss transfer in favour of  
22 motorcycles, which enjoy a one-way transfer of accident  
23 benefit costs exceeding two thousand dollars (\$2,000) to  
24 either the private passenger or commercial vehicle  
25 classes, to the extent motorcyclists are not at fault in

1 an accident.

2 Accident benefits incurred by the private  
3 passenger vehicle class, can be assigned to the  
4 commercial vehicle class, but not the motorcycles.  
5 Commercial vehicle accident benefit costs are not  
6 assigned at all under Ontario's loss transfer plan.

7 Another participant, as invitee at this  
8 special hearing, was the Financial Services Commission of  
9 Ontario, known as FSCO and its report appears in the  
10 evidence as Tab 2 in the Book of Documents.

11 Testimony was given by its Director of  
12 Automobile Insurance Services Branch, Ms. Darlene Hall.

13 FSCO provided some insight into the  
14 reasons for the introduction in 1990 of a loss transfer  
15 mechanism in Ontario, for claims costs as they relate to  
16 accident benefits.

17 Loss transfer was introduced in  
18 conjunction with the move away from the Tort based system  
19 to a no-fault system. With that shift there was a  
20 recognition of significant cost pressures on motorcycle  
21 rates and concerns arose above the affordability and  
22 availability of motorcycle insurance.

23 In terms of large commercial trucks over  
24 forty-five hundred (4,500) kilograms, there was the  
25 concern that a switch from the Tort to no-fault system

1 would result in heavy commercial trucks paying less for  
2 accident benefits under a no-fault system, unless there  
3 was some cost transfer mechanism such as loss transfer.

4 FSCO confirmed that loss transfer was  
5 introduced to meet those public policy concerns. The  
6 FSCO report filed in evidence describes the loss transfer  
7 system on Ontario. In the first instance, the first loss  
8 transfer -- sorry, the loss transfer mechanism pertains  
9 to motorcycles, snowmobiles, all terrain vehicles and  
10 large commercial trucks over forty-five hundred (4500)  
11 kilograms.

12 In accidents involving snowmobiles,  
13 motorcycles and ATV's accident benefit costs are paid by  
14 the first party insurer which is then indemnified by the  
15 insurer of the second party involved in the accident in  
16 accordance with the degree or percentage of fault  
17 assigned to the second party vehicle driver.

18 This loss transfer occurs after the first  
19 two thousand dollars (\$2,000) in accident benefits have  
20 been paid out. Cheques are passed between insurance  
21 companies and the process is essentially invisible to the  
22 insureds.

23 In instances where the motorcyclist is  
24 responsible for a motor vehicle accident, the accident  
25 benefit claims costs of the other parties are not

1 transferred to the insurer of the motorcyclist.

2 In the case of large commercial trucks  
3 involved in accidents with private passenger vehicles  
4 indemnification by commercial vehicle insurers for  
5 accident benefit costs paid by private passenger vehicle  
6 insurers is required based on the degree or percentage of  
7 fault on the part of the truck drivers.

8 Again, this loss transfer only occurs  
9 after the first two thousand dollars (\$2,000) in accident  
10 benefits have been paid out. The fault for accidents is  
11 determined based on a series of fault determination rules  
12 set out by regulation under the Ontario Insurance Act.

13 FSCO's witness stated that the current  
14 loss transfer system is operating smoothly in Ontario as  
15 far as can be determined with the general acceptance of  
16 the public.

17 Evidence was also given on behalf of the  
18 Motorcycle and Moped Industry Council or MMIC whose  
19 reports appear at Tab 3 of the Book of Documents. The  
20 testimony was given by its actuarial advisor, Mr. Liam  
21 McFarlane, and Mr. Robert Ramsay, MMIC's President.

22 They shared the view that the introduction  
23 of the PIPP or personal injury protection plan in  
24 Manitoba has resulted in a material decrease in claims  
25 costs for automobile drivers and a material increase in

1 claims costs for motorcyclists.

2 MMIC said this contributed to an increase  
3 in motorcycle rates of over 300 percent over the past ten  
4 (10) years, while insurance rates for those driving  
5 private passenger vehicles have risen by less than 20  
6 percent during that same time.

7 MMIC contended that the introduction of no  
8 fault in Manitoba, that is the change in the automobile  
9 insurance delivery mechanism in 1994, namely the PIPP  
10 system, shifted costs to motorcyclists that previously  
11 under the Tort system would not have been assigned to the  
12 motorcycle group.

13 Mr. Ramsay asserted that the change in  
14 delivery mechanism from a Tort system to a no-fault  
15 system should not change the total costs for rate groups.  
16 It should only impact the cost of delivery.

17 MMIC maintained that the cost of insurance  
18 should be apportioned to the vehicle class based on fault  
19 determination. MMIC asserted that this approach is  
20 proper, sound public policy which has been accepted in a  
21 vast majority of jurisdictions, not only in Canada but in  
22 North America.

23 MMIC recommended that Manitoba implement a  
24 loss transfer mechanism for motorcyclists and other  
25 classes similarly affected as appropriate. MMIC stated

1 it would be very easy to implement a loss transfer  
2 mechanism in Manitoba and would result in more equitable  
3 treatment of motorcyclists with very little impact on  
4 drivers of private passenger vehicles.

5           The implementation of loss transfer would  
6 not be in conflict with actuarial principles, MMIC  
7 maintained. And the actuary for MMIC agreed with the  
8 suggestion that if loss transfer were implemented rates  
9 should be determined based on full actuarial rates and  
10 the currently existing 15 percent rate cap should be  
11 eliminated.

12           For its part, Manitoba Public Insurance  
13 participated by submission of a report which appears at  
14 Tab 4 in the Book of Documents and by way of testimony  
15 given by Ms. Marilyn McLaren, its President and Chief  
16 Executive Officer, and Mr. Don Palmer, MPI's Actuary.

17           MPI indicated that its current system  
18 classifies risk by insurance use, territory, vehicle  
19 characteristics and driving record of the registered  
20 owner.

21           MPI stated that in its view, the current  
22 system treats all motorists and vehicles similarly and  
23 equitably, and is fair and non-preferential.

24           Since the current system makes appropriate  
25 use of generally accepted means of assessing the

1 likelihood of claims cost frequency and severity, MPI is  
2 of the view that the first party assignment of costs  
3 encourages customers to choose safer vehicles with lower  
4 repair costs.

5           In terms of the implementation of a loss -  
6 - loss transfer mechanism, MPI stated that a loss  
7 transfer system may make some sense in some  
8 jurisdictions, but not in Manitoba.

9           In other parts of the country,  
10 affordability and accessibility are very serious issues.  
11 They are not in Manitoba, according to MPI.

12           MPI provides guaranteed access to  
13 automobile insurance, and broad comprehensive coverage  
14 available on a universal basis, which is not the case in  
15 other jurisdictions according to MPI's evidence.

16           For the majority of vehicles, light trucks  
17 and passenger vehicles, the risk associated with the  
18 vehicle is determined based on the Insurance Bureau of  
19 Canada's Canadian Loss Experience Automobile Rating  
20 System, which I referred to earlier.

21           MPI stated that the clear system is a well  
22 designed, robust and reliable system implemented to  
23 evaluate the different risks that different vehicles  
24 bring into the insurance system.

25           Clear rate groups are established based on

1 first party losses, including an injury component with no  
2 consideration of loss transfer. MPI reiterated the fact  
3 that IBC does not have a model that differentiates risk  
4 based on third party liability.

5 In dealing with possible implementation of  
6 a partial loss transfer mechanism, MPI claimed that due  
7 to the lack of a credible third-party model, the  
8 Corporation can not implement full loss transfer.

9 MPI stated problems with the  
10 implementation of loss transfer at the insurance use and  
11 territory level would not meet the test of fairness and  
12 reasonableness.

13 It maintained of that MPI's rate making  
14 methodology allocates costs at a much finer level of  
15 detail than the major class level with costs being  
16 allocated to discreet insurance use and territory  
17 groupings.

18 Applying loss transfer at the major use  
19 level would fail, a key test of actuarially sound rate  
20 making, MPI contended, by ignoring the information  
21 gathered in MPI's system which is at the insurance use  
22 and territory level.

23 MPI has stated that implementation of a  
24 partial loss transfer approach at the major class level  
25 would produce significant dislocation. In many

1 circumstances the dislocation would bear no relationship  
2 to the actual costs incurred by the insurance use and  
3 territory groupings.

4 MPI stated it is simply bad public policy  
5 to charge a rate to a group that is not reflective of its  
6 costs.

7 The last witness testifying before the  
8 Board was Mr. Brian Pelly, the Board's Actuary, and  
9 briefly the points that he conveyed were that the issue  
10 of loss transfer is not an actuarial issue but one of  
11 public policy.

12 And with the use of appropriate, reliable  
13 data, rates under a loss transfer scenario could be  
14 considered to be actuarially sound.

15 In concluding Mr. Chairman and Board  
16 Members, I would suggest that in its consideration of the  
17 issue of loss transfer, the Board will likely be  
18 concerned with the following issues.

19 Firstly, an actuarially sound and  
20 statistically driven approach; secondly, a level of  
21 public acceptability; thirdly, administrative  
22 feasibility; fourthly, good public policy, and last but  
23 not least, whether a mechanism meets a universal --  
24 universal test of fair, reasonable, non-preferential and  
25 not unfairly discriminatory treatment.

1                   In order to assist the Board in its  
2 deliberations, it would be appropriate and beneficial for  
3 each of the parties to this Hearing to address those  
4 criteria in closing remarks.

5                   Those are my comments, Mr. Chairman.

6                   THE CHAIRPERSON: Thank you, Mr.  
7 Saranchuk.

8                   So, leaving aside Mr. Saranchuk and MPI,  
9 we'll follow the order of the appearances in the  
10 procedural outline and we'll begin with the Consumers  
11 Association of Canada/ Manitoba Society of Seniors, Mr.  
12 Williams.

13  
14 CLOSING COMMENTS BY MR. BYRON WILLIAMS:

15                   MR. BYRON WILLIAMS: Yes, thank you, and  
16 good morning, Mr. Chair and members of the Board.

17                   I know that Ms. Desorcy will be joining us  
18 a little bit later this morning so I'll try and bring her  
19 presence to our attention when she pops in.

20                   Just for the Board's convenience, I'll  
21 probably be referring to three (3) pieces of material in  
22 the record: One will be the transcript from Wednesday,  
23 May 11th, 2005, specifically page 382; secondly, will be  
24 the transcript from Tuesday, May 10th, page 10; and the  
25 third reference we'll make will be to the CAC/MSOS Book

1 of References, which is the document cleverly titled  
2 CAC/MSOS Book of References dated May 10th, 2005. And  
3 I'll bring it to your attention when I'm coming to them.

4           As you may be aware, in the course of  
5 representing my clients in a regulatory proceeding I meet  
6 with them frequently for the purposes of getting  
7 instructions.

8           Usually in the course of a hearing like  
9 this, I'll meet with them three (3) or four (4) times to  
10 brief them on the issues and to get their sense of the --  
11 the recommendations they would like me to make on their  
12 behalf to the Board.

13           And usually, as well, there's some  
14 telephone conversations and some e-mail conversations or  
15 e-mail correspondence as well. And, of course, prior to  
16 closing argument I confirm my final instructions from the  
17 clients.

18           And usually by the time we get to closing  
19 argument or the day before closing argument there are no  
20 surprises. I expect by that time that I will know what  
21 my clients are going to tell me.

22           Well, yesterday I met with my clients at  
23 about 9:07 in the morning and I got a couple of  
24 surprises. The first was that Ms. Desorcy from CAC who's  
25 a bit of a night owl was actually on time and, in fact,

1 early.

2                   So, I think that suggested, to a certain  
3 degree the importance with which she considered this  
4 issue. The second surprise I got was from both my  
5 clients; not because they had changed their mind, they  
6 hadn't, but because I got the strong sense from them that  
7 while they were committed to the advice that they were  
8 going to give to the Board, they didn't really like to  
9 give it.

10                   And that's perhaps for the first time in  
11 my clients' experience when they feel strongly about an  
12 issue but they're also reluctant to offer the advice that  
13 they're going to give.

14                   In the Chairman's opening remarks, and we  
15 don't need to turn there, but at page 13 of the  
16 transcript, he identified six (6) issues in terms of what  
17 the Board considered would be appropriate and important  
18 to consider in the course of balancing the public  
19 interest and in determining whether to move towards a  
20 loss transfer system or to keep the current first-party  
21 system in terms of claims allocation

22                   And for my clients there were three (3)  
23 that are particularly important: Will the system be  
24 fair? Will it provide for a lower number of accidents  
25 with lower overall severity? And will the premium system

1 in place be based upon a claims costs attribution  
2 approach that is actuarially sound and statistically  
3 based?

4                   Based upon those criteria, my clients have  
5 no doubt that the current system, the first-party system  
6 of claims cost allocation is a system that will, in the  
7 final analysis prove to be more fair, have a greater  
8 impact on loss prevention and also lead to rates which we  
9 can be confident -- premiums which are actuarially sound  
10 and statistically based.

11                   But while my clients are confident that  
12 that's the right recommendation to make to the Board,  
13 they don't like to give it and they don't like to give it  
14 for two (2) reasons.

15                   The first is that ultimately while they  
16 believe the first-party system of claims allocation will  
17 be more fair than loss transfer, they recognize it's not  
18 perfectly fair. And to a certain degree fairness is in  
19 the eyes of the beholder.

20                   In this case my clients cannot offer you a  
21 perfect solution, one that all will consider to be fair.

22                   And what struck them about this case is  
23 really that there's almost two (2) intellectual  
24 solitudes. From the perspective of the proponents of the  
25 fault based claims cost allocation, it almost defies

1 reason that there could be another system. And likewise  
2 from the perspective of MPI, it's very difficult for my  
3 client -- at least as my clients' feel, for them to  
4 understand why a fault based system would be attractive.

5           So, my clients' first regret is they can't  
6 provide a recommendation that's acceptable to others --  
7 to all others.

8           My clients also feel badly because they  
9 know that if their recommendation is accepted, it will  
10 disappoint motorcyclists, an important group of consumers  
11 who have and should -- should continue to play a central  
12 role in the deliberations of this Board.

13           So, from that perspective, my clients  
14 believe firmly in the position, but it's one that they  
15 make with some misgivings.

16           In terms of a way -- in terms of an  
17 outline, where I would like to take the Board over the  
18 course of the next forty-five (45) minutes or so, to an  
19 hour, in case you're counting, there's three (3) major  
20 issues that -- that my clients have asked me to cover.

21           And the first topic they wish me to  
22 address is really to provide the context for this  
23 decision, because in this Hearing you've heard a story,  
24 largely presented by MMIC, a story of two (2) systems.  
25 One (1) system MMIC talks about is the first-party claims

1 cost allocation system in Manitoba, a system which it  
2 says is inherently discriminatory, and biased and unfair  
3 towards motorcyclists.

4           And I think the conclusion you might draw  
5 from the MMIC story is that that first-party claims costs  
6 allocation is really the roots -- at the root of all the  
7 cost pressure being experienced by motorcyclists in  
8 Manitoba.

9           MMIC has also presented another story, a  
10 story about Ontario. The -- the magic elixir, the -- the  
11 holy grail for -- for motorcyclists, the panacea to all  
12 the cost pressures faced by motorcyclists; the loss  
13 transfer system, the one (1) way loss transfer system in  
14 Ontario.

15           So, the first part of my argument on  
16 behalf of my clients will be to examine the merits of the  
17 MMIC position and the portrayal of those two (2) systems.

18           Secondly, on my clients' behalf, I'll  
19 consider the relative merits of pure loss transfer,  
20 versus the current first party claims cost allocation  
21 system. And we'll make reference to the six (6)  
22 questions the Board asked at page 13, but in particular,  
23 we'll focus upon fairness as measured by both personal  
24 accountability and accountability on behalf of the rate  
25 group or class.

1                   And secondly, we'll speak, or I will speak  
2 on my clients' behalf about the relative merits of both  
3 systems in encouraging loss prevention, reducing the  
4 frequency and severity of collisions.

5                   Now, I'll take a few minutes to just  
6 discuss the relative merits of a couple variations on  
7 those two (2) main proposals before you. One (1) -- one  
8 (1) of those variations is the asymmetrical or unilateral  
9 or one-way loss transfer system in Ontario.

10                   And the other one (1) I'll comment briefly  
11 upon is -- is the option presented by CAC/MSOS in cross-  
12 examination on Thursday evening, namely really cutting to  
13 the chase of the MMIC argument, and providing an express  
14 subsidy for motorcyclists, one (1) that is allocated  
15 across all classes in the same way as claims expense.

16                   If you're looking for themes in terms of  
17 the CAC/MSOS arguments, I think there'll be two (2), or I  
18 hope there'll be two (2) that come to your attention.

19                   The first theme relates to choice. At the  
20 end of the day when CAC/MSOS come down to the question of  
21 which system is most fair they elected for the first-  
22 party claims cost allocation system on the grounds that  
23 the predictive insurance premiums which flow from that  
24 system are more reflective of the choices of a -- that a  
25 consumer has within their power. They're more reflective

1 of those choices than the loss transfer system.

2           And I thought one of my clients put it  
3 very well. You can't choose a vehicle in which people  
4 will drive more carefully but you can choose a vehicle in  
5 which you are safer and in which there is a less  
6 probability of you being hurt in an accident.

7           The other theme which may come through in  
8 our argument -- or my argument on behalf of CAC/MSOS, is  
9 a question of what should driver decision, should it be  
10 public policy as represented by objectives such as loss  
11 prevention and fairness or are we really looking for a  
12 system that will simply provide some rate relief to  
13 motorcyclists, regardless of the public policy  
14 implications?

15           I'm going to turn now to the first issue,  
16 the contextual issue, in terms of the two stories  
17 presented by MMIC. And I think the starting point for  
18 that issue is a question posed by the Chairman at page 9  
19 of the transcript, or an observation, and you don't need  
20 to turn there.

21           But the Chairman noted at page 9 that:  
22           "Unlike the case for other vehicles,  
23           premiums for motorcycles have risen  
24           dramatically, soared in fact, even with  
25           increases from 1994 levels of 300

1                   percent or more, the average motorcycle  
2                   rate has still to reach the level  
3                   prescribed by actuarial data."

4                   And this significant nature of the -- the  
5 growth in motorcycle premiums was also commented on by  
6 the MMIC actuary, Mr. McFarlane, at page 185 of the  
7 transcript.

8                   And his explanation, and that's one (1)  
9 concurred in by MMIC, I believe, is that the driving  
10 force behind this rate pressure has been PIPP. And he,  
11 along with Mr. Ramsay of MMIC, had no difficulty in  
12 coming to the conclusion, at page 189 of the transcript,  
13 that the no-fault system has negatively impacted  
14 motorcyclists.

15                   As a solution, MMIC point to the loss  
16 transfer system and, in particular, they point to  
17 Ontario, the unilateral one-way loss transfer system in  
18 Ontario, as the solution to the cost pressures  
19 experienced by motorcyclists.

20                   And at page 10 of Mr. McFarlane's evidence  
21 dated November 12th, 2004 he leaves the implication that  
22 an Ontario-like solution to Manitoba's problems might  
23 reduce the pure premium for motorcyclists by about 42  
24 percent.

25                   And when asked at page 372 of the

1 transcript to give a sense of the order of magnitude, Mr.  
2 McFarlane talked about imposing a cost of maybe ten  
3 dollars (\$10) per private passenger in order to achieve  
4 savings of four hundred dollars (\$400) for motorcyclists.

5           In summary, MMIC suggests that the no-  
6 fault system, coupled with first party claims costs  
7 allocation has had a harsh and unfair impact upon  
8 motorcyclists, driving that 300 percent rate increase.

9           They portray loss transfer as a solution,  
10 the panacea, the all-healing policy option for  
11 motorcyclists. And the question that my clients pose is  
12 have MMIC -- has MMIC properly diagnosed the roots of  
13 this issue and assuming they have, is loss transfer the  
14 -- the answer?

15           Based upon my clients' review of the  
16 record, it's their view that MMIC has failed to properly  
17 diagnose both the roots of the cost pressure upon  
18 motorcyclists and the -- and, as well, the role of loss  
19 transfer as a all-healing policy option.

20           And ironically, much of the evidence for  
21 my clients' conclusion has come from Mr. Ramsay himself,  
22 the admitted lobbyist and media spokesman for the  
23 motorcycle industry, and that's at page 378 and 379 of  
24 the transcript.

25           First of all the answer to the suggestion

1 that loss transfer is the magic fix, the holy elixir  
2 comes from Mr. Ramsay, because he -- when he takes us  
3 through a portrayal of the motorcycle insurance situation  
4 in Ontario in 2004, just one (1) year ago at page 380 of  
5 the transcript he portrays the situation as being in  
6 crisis.

7                   He notes that -- and this is at page 381,  
8 that in 2002, the rate increase for motorcyclists  
9 increased between 15 and 20 percent, in 2003 the increase  
10 on average was between 18 and 25 percent, and with  
11 regards to 2004, although the fact was not provided by  
12 Mr. Ramsay, but Mr. McFarlane, the actuary for MMIC,  
13 noted that Primmum, P-R-I-M-M-U-M, the Underwriter for  
14 the MMIC Open Road Insurance Program, increased premiums  
15 for motorcycles, on average, by 25 percent in January  
16 2004: Average increases in 2002, fifteen (15) to twenty  
17 (20); average increases 2003, eighteen (18) to twenty-  
18 five (25); 2004 by the motorcyclists industry's own  
19 insurer, 25 percent.

20                   So, in Ontario, the home for unilateral  
21 one-way loss transfer, there's a very difficult situation  
22 for motorcyclists. And at the same time, and Mr. Ramsay  
23 noted this at a couple pages in the transcript, pages  
24 387, 388 as well as 390 and 391, there's an availability  
25 issue. Three (3) insurers dominate 75 percent of the

1 market. And the rest of motorcyclists in Ontario are  
2 forced to resort either to the Facility Association, and  
3 the exceedingly high rates within the Facility  
4 Association, or to use insurers who will only insure  
5 motorcyclists on the basis of tide selling, as Mr. Ramsay  
6 described it.

7           The agreement that they will only insure  
8 motorcyclists, yet they also agree to insure their house  
9 or their car with the insurance company as well.

10           So, the answer to whether loss transfer is  
11 the -- the solution, the sole solution, the magic  
12 solution would appear to be no, based upon the evidence  
13 of Mr. Ramsay.

14           Is there something we can learn from Mr.  
15 Ramsay though, about why it's not the magic fix. Are  
16 there parallels we can draw between the rapid escalation  
17 of costs in Ontario in recent years, and the rapid  
18 increase in costs in Manitoba, and that can help us to  
19 understand the cost pressures that the Chairman spoke of?

20           CAC/MSOS believe that there are. And in  
21 particular they direct the Board's attention to the  
22 transcript, page 382 of the Hearing, and you don't need  
23 to -- to dig them up, but also Exhibits 29(a) through  
24 29(e) of the record, and in particular Section -- Exhibit  
25 29(a), which gives a lot of help in diagnosing the cost

1 pressure in Ontario.

2           And in Exhibit 29(a), you'll see quotes  
3 attributed to leading figures in the Ontario Insurance  
4 Industry, who suggest that the real driver of costs in --  
5 in loss transfer Ontario were accident benefits, because  
6 motorcyclists were far more likely to be badly injured in  
7 an accident than car drivers.

8           And you'll see quotes that suggest that in  
9 loss transfer Ontario, if a motorcyclist for example,  
10 lays down a bike on the road, the likelihood of injury is  
11 far higher than for a driver behind the wheel, wearing a  
12 seat belt.

13           And Mr. Ramsay, if you care to check,  
14 confirmed that these were suggestions that were part of  
15 the debate in Ontario, and that's at page 382 of the  
16 transcript.

17           Mr. Ramsay also confirmed that in reaction  
18 to the crisis in the motorcycle industry and loss  
19 transfer Ontario, his organization, the MMIC, was  
20 lobbying for changes. They were lobbying for heftier  
21 deductibles and for the availability of policies with  
22 reduced benefits for motorcyclists, to assist in  
23 affordability and availability.

24           So these are the lessons we can draw from  
25 Mr. Ramsay. We can observe that in a no-fault

1 environment, even with loss transfer, there will be  
2 serious costs and pressures upon motorcyclists because  
3 (a), they are more likely to be injured, (b), they are  
4 more likely to be seriously injured, (c), in a no-fault  
5 environment, with relatively generous third-party  
6 benefits, there are likely to be more at fault  
7 motorcyclists eligible for benefits and for a relatively  
8 higher level of benefits than they would have been under  
9 the Tort system.

10                   And I might add, and I found Mr. Ramsay to  
11 be a very helpful witness, we can also learn from him  
12 that the cost pressures -- the cost crisis being placed  
13 upon motorcyclists, it's not just a Manitoba issue, it's  
14 not just an Ontario issue, is acknowledged by him at  
15 pages 386 and 387 of the transcript, in just the two (2)  
16 to three (3) years preceding 2004 motorcyclists averaged  
17 50 percent in rate increases.

18                   After learning from Mr. Ramsay that loss  
19 transfer is not the magic elixir, we can now try and  
20 understand the puzzle in Manitoba. What has been driving  
21 the Manitoba motorcycle cost pressures over the past  
22 decade?

23                   The starting point for our analysis we  
24 have to go a little -- back a little farther than Mr.  
25 McFarlane was prepared to do in his.

1                   The starting point is back in 1993 where  
2 MPI identified and acknowledged that -- that  
3 motorcyclists would require an 80 percent rate increase  
4 to be at their actuarially indicated rate, and that  
5 reference appears at page 615 and 663 of the transcripts.

6                   So, even before the move into no-fault,  
7 there were extraordinary cost pressures upon  
8 motorcyclists because their rates at that point in time  
9 did not reflect their costs.

10                   And the existence of this shortfall,  
11 that's not just a claim by MPI, that was expressly  
12 recognized by this Board which, in a decision upheld by  
13 the Manitoba Court of Appeal, rejected the Corporation's  
14 go slow approach to motorcycle rate increases in the move  
15 to a no-fault environment.

16                   The Manitoba Public Utilities Board told,  
17 in recognition of the shortfall in terms of statistically  
18 driven and actuarially sound rates, directed Manitoba  
19 Public Insurance to raise motorcycle rates going into no-  
20 fault.

21                   So, that's one of the key factors in terms  
22 of we trying to understand that 300 percent rate  
23 increase. And the other one, and I don't want to  
24 belabour the point, but is just the serious risk of  
25 injury in terms of motorcyclists, the increased

1 likelihood of injury in the case of an accident and the  
2 increased severity of an injury in the case of an  
3 accident.

4                   And I do -- well, without belabouring the  
5 point, I do want to identify the transcript references  
6 where this appears because I think it's significant that  
7 it's not just MPI saying that.

8                   These observations come from Ontario, they  
9 come from MMIC itself, they come from Transport Canada,  
10 in Exhibit 43, that was filed today and there's  
11 overwhelming evidence from Manitoba as well.

12                   I can't pronounce his name properly, I  
13 don't think, but at page 41 of the transcript Mr.  
14 Tabachneck observed that drivers of motorcycles tend to  
15 suffer the most severe injury in multi-vehicle accidents.

16                   At page 87 and again at page 115, Ms.  
17 Hall, speaking for the FSCO from Ontario, spoke to both  
18 the probability and severity of injuries in which  
19 motorcyclists were involved.

20                   She noted that people that drive these  
21 vehicles are more susceptible to injuries, at page 87.  
22 She also noted at page 131 that the higher risk of injury  
23 leads to more serious injury and higher benefits.

24                   And Mr. Ramsay, on behalf of MMIC at page  
25 352 through 354 of the transcript, acknowledged the

1 likelihood of more serious injuries when motorcycles were  
2 involved and also the likelihood of injuries. And he  
3 noted that this observation extended to single vehicle  
4 accidents as well.

5           Exhibit 43, which the Board was generous  
6 enough to forward yesterday to us, there's a cite which  
7 appears on page 1 of 4, which would be the second page in  
8 the exhibit, appearing after the e-mail from Mr. Ramsay.  
9 The headline is, "Motorcyclists Accounted For One (1) in  
10 Eighteen (18) Fatalities."

11           "Transport Canada observes that  
12 motorcycle registrations in Canada have  
13 decreased from a high of five hundred  
14 and ten thousand (510,000) in 1983, to  
15 three hundred and eighteen thousand  
16 (318,000) in 2001.

17           In 2001 there was one (1) motorcyclist  
18 for every fifty-seven (57) motor  
19 vehicles registered. Nonetheless,  
20 motorcyclists still accounted for  
21 almost 5 percent, almost one (1) in  
22 twenty (20) of Canada's road user  
23 fatalities in 2001."

24           And there is Manitoba evidence to -- to  
25 demonstrate the vulnerability of motorcyclists to serious

1 injury. And I went through this in cross-examination  
2 with -- with MPI on Thursday evening, and in particular I  
3 would direct you to the CAC/MSOS Book of References, Tab  
4 5. I'm not really sure you need to turn there, but  
5 that's where I'm referring to. The second table in that  
6 -- in that tab discusses the relative severity of  
7 motorcycle injuries to all purpose passenger or pleasure  
8 vehicles, and the numbers are striking.

9           Injury severity for pleasure vehicles, for  
10 example of seventy-six hundred dollars (\$7,600), for  
11 motorcyclists thirty-three thousand (33,000). About four  
12 (4) times as high.

13           Likewise, if you go to the fourth table on  
14 page 3 of that Interrogatory Response, you see the  
15 percentage of physical damage claims with an injury, and  
16 you see four (4) pleasure passenger vehicles, it's about  
17 13 to 14 percent. For motorcycles it's 53 percent.

18           And again, in Exhibit CMMG-MPI-219 from  
19 last year's Hearing, there's also stark evidence, and --  
20 and the Chairman comments upon this on Thursday evening,  
21 in terms of the single vehicle claims as a percentage of  
22 total claims. And you see for '01, '02, and '03  
23 insurance years, for vehicles like pleasure vehicles the  
24 three (3) year average was 17.6 percent, almost 18  
25 percent. For motorcyclists it was 50 percent.

1                   So, when you go back to that MMIC story,  
2 when you look at the Ontario experience, when you look at  
3 the unique Manitoba data, you can start to understand the  
4 roots of the pressure on motorcycle rates; it started  
5 back in '93/94, because motorcycle rates were  
6 understated, or were -- they were not recovering their  
7 costs.

8                   It's a function of the no-fault system  
9 itself, to the extent that there are a greater degree of  
10 accident benefits, and -- and it's a function of the fact  
11 that motorcyclists are more likely to be injured.

12                   If you want to understand the mistaken  
13 weight which we would submit that MMIC placed upon loss  
14 transfers, the be all and end all cure for the rate  
15 pressure experience by motorcyclists we think -- or I --  
16 we would submit -- I would submit on behalf of my clients  
17 that that is borne out by Mr. Palmer's calculations. I  
18 think that's about page 758 of the transcript.

19                   When he discussed taking Mr. McFarlane's  
20 42 percent pure premium and plugging it back into the MPI  
21 rate making methodology, Table TI-2 and he disclosed that  
22 42 percent to pure premium, and that translated into  
23 about a 4 percent rate increase, or excuse me, I  
24 misspoke, a 4 percent rate decrease.

25                   So the point is, that there are other

1 factors driving motorcycle costs, primarily driving  
2 motorcycle costs and that loss transfer as a magic remedy  
3 is unlikely to -- to achieve it.

4           So, having established to the  
5 satisfaction, at least, of my clients that loss -- that  
6 the absence of loss transfer is not the primary driver of  
7 motorcycle rate pressures and that loss transfer itself  
8 does not offer a magic elixir to rate pressures my  
9 clients would submit that the real question before the  
10 Board is still, is a good system. After all, a 4 percent  
11 rate decrease is still meaningful to motorcyclists.

12           I wonder if I could ask My Friend, Mr.  
13 Dawson, to supply me with a bit more water?

14           As I indicated previously, from my  
15 clients' perspective, in your deliberations, we would  
16 submit the two (2) issues you should give the most weight  
17 to in determining whether to stay with the first-party  
18 claims allocation system or more to a loss transfer  
19 system are fairness and loss prevention.

20           And we think they're important for a  
21 couple of reasons; 1 is, they're really the issues that  
22 are most important to my clients. They want a system  
23 that's fair. They want a system that keeps costs down  
24 and, perhaps most importantly, a system that helps to  
25 deter the tragic and serious cost of accidents on a

1 personal basis for Manitoba consumers.

2           So, they're important to my clients, but  
3 we also recommended them to your attention because we  
4 think you told us in last year's Board Order, that you  
5 thought they were important as well.

6           At page 78 of Board Order 148/04, the  
7 Board asked the question, it said:

8           "Is it fair to charge the costs of an  
9 accident to an innocent motorist as  
10 opposed to the at-fault driver?"

11           And the Board also raised the question, it  
12 noted that:

13           "MPI and CAC/MSOS both cited the bonus  
14 malice system as providing sufficient  
15 deterrence and caution and contended  
16 that the costs of accidents are  
17 effectively reduced by that system."

18           But the Board indicated it was not  
19 convinced. So those are the two (2) issues that my  
20 clients wish to particularly focus upon.

21           Starting with the fairness issue. The  
22 first question is, how do we measure fairness? And if we  
23 read both the Board Order last year and then the Board's  
24 comments at the start of this Hearing, it's described the  
25 measurement of fairness, we would submit, in a couple of

1 ways.

2                   At page 78 of last year's Board Order it  
3 said -- it posed the question as:

4                   "Whether it is fair to charge the cost  
5                   of an accident to an innocent motorist  
6                   as opposed to the at-fault driver?"

7                   It seems to be a very individual kind of  
8 accountability suggested by that question of fairness and  
9 we'll address it.

10                   And, in a way, it echoes the concern or  
11 the principle advanced by Mr. Ramsay when he suggested  
12 that loss transfer is more fair because it upheld the  
13 fundamental principle that the wrongdoer should be  
14 accountable -- should be held accountable in the  
15 allocation of costs, and that's at page 393 of the  
16 transcript.

17                   So, there's a personal element to  
18 accountability. And so -- but while CAC/MSOS -- believes  
19 it's important to measure fairness in terms of the  
20 personal accountability of the at-fault motorist, they  
21 believe that in terms of fairness the more important  
22 issue is one of class or rate group accountability.

23                   And they say that because insurance is a  
24 form of rate pool -- or risk pooling. And they say that  
25 because neither loss transfer or first party claims

1 allocation are really purporting to hold at-fault  
2 motorists directly accountable for the entire cost of the  
3 accident.

4                   Rather, both systems are about holding the  
5 class or rate group accountable. And that's why, from my  
6 clients' perspective, the question in terms of fairness  
7 was better posed by the Board at page 10 of this year's  
8 transcript.

9                   And it summarized the concern -- the  
10 fairness concern of motorcyclists as this:

11                   "Motorcyclists claim that the first-  
12 party claims allocation methodology is  
13 unfair to motorcycles based on the fact  
14 that motorcycle costs arising out of  
15 accidents where motorcyclists are not  
16 at-fault are not nonetheless  
17 attributable to the motorcycle class."

18                   And we think that's the more important  
19 question is whether -- which class should be held  
20 accountable.

21                   In terms of the two (2) elements of  
22 fairness, individual accountability and class  
23 accountability, I will start with individual  
24 accountability. And I would refer the Board to my  
25 somewhat painful cross-examination of Mr. Ramsay at pages

1 401 to 407 of the transcript. You don't need to turn  
2 there.

3                   But that's when we explored how the  
4 current system held individual at-fault motorists  
5 accountable, and then we compared about the individual  
6 accountability offered by loss transfer.

7                   And in that cross-examination, we used the  
8 example of an at-fault motorist; a private passenger, all  
9 purpose, Territory 1. And we recognized that due to the  
10 absence of credible data, loss transfer couldn't be  
11 considered down to the rate group level, so instead we  
12 looked at the way in which the individual at-fault  
13 motorist would be held directly accountable through bonus  
14 malice at either the major class level, the usage level  
15 or the territory level, versus the level of  
16 accountability imposed indirectly through loss transfer.

17                   And again, without going too far into the  
18 grizzly details, but if you'll recall, through the bonus  
19 malice system, through the direct accountability imposed  
20 by that system, we had the at fault motorist absorbing a  
21 two hundred and twenty-five dollar (\$225) cost for his or  
22 her first at-fault accident.

23                   In contrast, in terms of personal  
24 accountability through the indirect loss transfer  
25 mechanism, assuming a ten thousand dollar (\$10,000)

1 accident, we found that at the class level as a whole,  
2 the major class level as a whole, there was a whole two  
3 (2) cent impact upon that at-fault motorist. And across  
4 all purpose usage as a whole, there's approximately a  
5 three (3) cent impact. And across the all purpose  
6 Territory 1 usage, there was a five (5) cent impact.

7 Well, maybe my example was wrong. What  
8 about if I multiplied it by ten (10). What if it was a  
9 hundred thousand dollar (\$100,000) accident; a relatively  
10 serious accident? Well, in that case the accountability  
11 for that individual at-fault motorist would be fifty (50)  
12 cents, if you took it to the all purpose, Territory 1  
13 level.

14 So, in terms of individual accountability  
15 of the at-fault motorist, my clients can conclude that  
16 the existing system, the bonus malice system, is a  
17 primary vehicle for costs of accountability for the  
18 individual at-fault driver. And they would respectfully  
19 suggest that loss transfer has an indirect, almost  
20 immeasurable -- unmeasurable impact.

21 So, that leads us back to what my clients  
22 would submit is the bigger question before you; class  
23 accountability. Is it more fair to allocate the costs of  
24 that claim to the class of the at-fault motorist, or to  
25 the class of the -- of the person who was not at fault?

1 It sounds almost counter-intuitive.

2           The starting point for that, in terms of  
3 class accountability is to recognize, and this was  
4 conceded by Mr. Ramsay at page 406 of the transcript,  
5 however we -- we consider wrongdoing or who's at fault,  
6 whichever class we're talking about, within those two (2)  
7 classes, within for example, the major class of private  
8 passenger vehicles, all six hundred thousand (600,000),  
9 for any individual there's only one (1) person at fault.

10           In determining the fairness of class  
11 accountability, my clients believe it's important to  
12 consider the issue of what drives the likelihood of  
13 injury, and what drives the severity of injury, and also  
14 to consider from the class perspective, what factors lie  
15 within the control of individual members within that  
16 class.

17           It's really that matter of choice that my  
18 clients think is the most important issue. If you look  
19 at the two (2) factors that drive the cost of accidents,  
20 the frequency and severity, from a class perspective the  
21 frequency of accidents are driven by two (2) things  
22 generally, I'm speaking in broad strokes here.

23           First of all, where do we drive? Do we  
24 drive in a dense urban area where there's more vehicles  
25 or do we drive in the -- in my home -- out in the country

1 near my home town of Souris.

2           And secondly, for what purpose do we drive  
3 and how frequently? Are we choosing, using the all  
4 purpose classification, to drive at busier times of the  
5 day and to drive more frequently? Or are we choosing,  
6 using the pleasure classification, probably to drive a  
7 bit less often?

8           And both these factors are, to at least a  
9 certain degree, a function of choice.

10           The other element in the -- in terms of  
11 the likelihood of an accident is from an individual  
12 perspective, how do we drive? How I drive or how others  
13 drive.

14           But that action of individuals within the  
15 class is beyond the control of members within that class.  
16 And Ms. McLaren confirmed this at page 818, 819 of the  
17 transcript. She noted that there's no distinct  
18 relationship between the action of a particular member of  
19 any particular rating class. There's no predictability  
20 in terms of who will be at fault in a particular class.

21           If we go from the frequency issue to the  
22 severity issue, if we look at the likelihood of injury or  
23 the severity of injury, part of that is a function, from  
24 an individual perspective, of how -- who's causing -- how  
25 the person who caused the accident is driving?

1                   But, again, that's an individual choice  
2 beyond the control of anyone within that class. From the  
3 class perspective, the two (2) factors that are somewhat  
4 within the control of individual members within the class  
5 relate to the type of vehicle we choose to drive. How  
6 well protected are we? How safe are we?

7                   That's something, the likelihood of injury  
8 in terms of the vehicle we choose that can be empirically  
9 predicted, not with absolute certainty, but empirically  
10 predicted through CLEAR.

11                   So, again, looking at it from the choice  
12 perspective, that's something within the control of the  
13 vehicle purchaser. It's got a predictive element to it  
14 and it's a clear function of choice.

15                   The other factor which may drive the  
16 severity of the accident beyond the actions of the driver  
17 and beyond the particular vulnerability of the vehicle  
18 may be the other vehicle that's involved in the  
19 collision, the size of the vehicle whether it's the  
20 Firefly or whether it's the Safari or the -- the tank  
21 that Mr. Oakes was discussing driving down Portage and  
22 Main.

23                   And that's certainly something that is  
24 within the control of individual drivers, but from my  
25 understanding, based upon the record of this proceeding,

1 is that there's no predictive element to that. Ms. Hall  
2 was asked this by Mr. Saranchuk in cross-examination at  
3 page 113 of the transcript. And she said, there's no  
4 accurate way of tracking statistics for that.

5           And I believe that MPI, at the request of  
6 the Board, has been asked to look at this question on a -  
7 - has asked the Insurance Bureau of Canada to look at  
8 this question for -- on a couple of occasions and has  
9 been unsuccessful.

10           So, while there's an element of function  
11 of choice to this, there's no empirically predictable  
12 power in terms of the type of element -- in terms of the  
13 type of damage a vehicle will cause.

14           The bottom line, from my clients'  
15 perspective, is that in terms of class accountability, we  
16 can empirically predict -- project the frequency of  
17 accidents based upon our choices, where we drive and when  
18 we drive.

19           We can empirically project the likelihood  
20 of injury through the choices we make in terms of the  
21 safety of the vehicles we choose to purchase. But we  
22 can't predict fault.

23           And it's within this rubric of choice that  
24 CAC/MSOS believes that the question of fairness between -  
25 - in terms of the first-party claims allocation or the

1 loss transfer system should be decided.

2           And again, as one (1) of my clients, Ms.  
3 Desorcy succinctly put it, we can't choose a vehicle  
4 which people would drive more carefully, but we can  
5 predict an outcome and we can choose a vehicle in which  
6 we will be safer.

7           So that's that crucial element of choice,  
8 that's within the consumer's control. And that's the  
9 element that in my clients' submission, is best  
10 represented by the current first-party system.

11           So, from my clients' perspective, they  
12 believe the current system best reflects the predictable  
13 -- the consequences of the predictable choices of  
14 consumers, and they're concerned because they believe  
15 that the loss transfer systems of claims allocation mutes  
16 the predictable impact of choices. And so from their  
17 consumer perspective they consider it less fair.

18           Mr. Chairman, and Members of the Board,  
19 the second significant criteria my clients wish to look  
20 at in terms of the loss transfer first-party claims  
21 allocation question, turned on the issue of loss  
22 prevention.

23           And I won't dwell on this to a great  
24 degree, because I think a lot of the arguments flow from  
25 my first arguments in terms of fairness.

1                   But I -- I believe a starting point is to  
2 turn to the words of Mr. Pelly. And he noted he -- at  
3 page 695 of the transcript, he was asked by Ms. Everard:

4                   "And is it your view that the bonus  
5 malice system has incentive value to  
6 encourage good driving practises?"

7                   And Mr. Pelly went:

8                   "I believe that's generally held to be  
9 true."

10                  And in terms of loss prevention, it's our  
11 clients' submission that the loss transfer claims  
12 allocation process is a much less effective way of loss  
13 transfer, excuse me, of loss cost prevention, than is the  
14 bonus malice system. It's less direct and it's less  
15 tangible than bonus malice.

16                  And I believe this was suggested in fact  
17 by Mr. Pelly, and I believe it's page 715 of the  
18 transcript. He talked about loss transfer as a vehicle  
19 or a mechanism for loss prevention. He quoted, and I  
20 don't think anyone can impeach his objectivity, It's much  
21 less direct and tangible to the average policy holder  
22 than bonus malice.

23                  And again I think I would submit that the  
24 best example of that is the example that I've gone  
25 through twice now in this -- in this Hearing in painful

1 detail; the -- the impact upon a driver, of a first  
2 accident through the bonus malice system, versus the  
3 impact upon a driver of the indirect effect of loss  
4 transfer.

5                   Well, they believe that at the level of  
6 personal accountability and loss prevention, loss  
7 transfer adds very little. CAC/MSOS are firmly of the  
8 view that at the rate group level and at the class level,  
9 loss transfer claims allocation will be  
10 counterproductive, in terms of loss prevention.

11                   And to reiterate what was said previously,  
12 in their perspective, the key predictive consumer choice  
13 that is available, is in terms of the risk of the injury  
14 that you may experience. The risk, the key choice that's  
15 open to consumers, in terms of the seriousness of  
16 injuries, relates to the particular vehicle which you  
17 choose to drive in.

18                   And under the current system, the first-  
19 party claims allocation system, all other things being  
20 equal, the more vulnerable the vehicle you choose to be  
21 in is -- or you are in that vehicle to injury, the higher  
22 your insurance premiums will be.

23                   And from my clients' respectful  
24 submission, that's a good thing. It's a good thing in  
25 terms of people paying the costs that they should, in

1 terms of the risk they bring to the system and it's a  
2 good thing, because it sends the message that you're --  
3 that there will be a -- a cost to you, in terms of  
4 choosing unsafe -- excuse me, the proper word's not  
5 unsafe, but vehicles that are more vulnerable to injury.

6 My clients' believe the consumers properly  
7 informed, are rational, economical beings. And if  
8 they're aware, as many consumers are, that there are  
9 price consequences to the safety choices they make, they  
10 will act rationally.

11 In my clients' view, loss transfer acts in  
12 a counterproductive way in terms of loss prevention, by  
13 allocating costs based upon the random element of fault,  
14 and by obscuring the actual cost impact of severity of  
15 injury.

16 Mr. Chairman, if I could, I'm actually  
17 quite getting near the end, but if I could have about  
18 three (3) minutes to refresh myself, that would be most  
19 timely, or you could even make it five (5).

20 THE CHAIRPERSON: Okay. We'll take a ten  
21 (10) minute break, and we'll be back at 10:25.

22

23 --- Upon recessing at 10:15 a.m.

24 --- Upon resuming at 10:28 a.m.

25

1 THE CHAIRPERSON: Mr. Saranchuk...?  
2 Mr. Williams...?

3 MR. BYRON WILLIAMS: Thank you. Mr.  
4 Chair and members of the Panel, I'm appropriately  
5 refreshed and I'm hopeful I can speed us towards the  
6 conclusion in a greater level of comfort than I was in  
7 just a few seconds before.

8 THE CHAIRPERSON: We're pleased.

9  
10 CONTINUED BY MR. BYRON WILLIAMS:

11 MR. BYRON WILLIAMS: To -- to use a  
12 phrase that's been used often in this Hearing, I want to  
13 offer some short, snapper, kind of, arguments on a few  
14 points.

15 One of them is on the question -- the  
16 question posed by the Board at page 13:

17 "Will a premium system in place based  
18 upon claims costs attri -- claims cost  
19 attribution approach would be actual --  
20 actuarially sound and statistically  
21 based?"

22 I just have a few comments about that.  
23 The --first of all, is the -- to note the observation  
24 made by Mr. Palmer, the actuary for MPI at page 582 and  
25 583 of the transcript, who notes that in terms of

1 applying loss transfer at the rate group level, which in  
2 my clients' perspective is where if you were going to go  
3 with this system that would be the place to apply it, Mr.  
4 Palmer observed:

5                    "We don't have the credible data. It's  
6                    not just drilled down to the rate group  
7                    level. Drilled down to the individual  
8                    make/model/ model year data."

9                    He observed that there wasn't the data to  
10 -- to make -- to -- to bring it down to the rate group  
11 level.

12                   In terms of whether applying loss transfer  
13 at the major class level, upon the current MPI system,  
14 would be -- meet the test of being actuarially sound and  
15 statistically based. I think the most important and  
16 objective evidence you can have on that point is the --  
17 at page 711 of the transcript, the question posed to Mr.  
18 Pelly. And it was Mr. McCulloch asking:

19                    "Do you agree with the statement that  
20                    the major class bases does not meet the  
21                    actuarial test of establishing rates  
22                    that provide for the expected future  
23                    costs?"

24                    And Mr. Brian Pelly's reply is:

25                    "As I understand, MPI has interpreted

1                   the concept of applying loss transfer  
2                   only at the major class level, I would  
3                   agree with that statement."

4                   Now, there may be some debate between Mr.  
5 McCulloch and Mr. Oakes, in terms of whether or not it  
6 could be done under some other methodology, but there is  
7 not much evidence in this Hearing on -- on any other  
8 methodology at the major class level that MPI could  
9 apply.

10                   In terms of applying loss transfer at the  
11 territorial level or the usage level, I wish I would have  
12 posed these questions to Mr. Pelly, but I forgot. So I  
13 apologize for that.

14                   But I did pose these questions of Mr.  
15 Palmer at page 839 of the transcript. And he identified  
16 serious concerns, I would characterize his evidence, in  
17 terms of the actuarial soundness of doing so. But I'll  
18 refer you to page 839, and you can draw your own  
19 conclusions from what he said. And there are also  
20 comments on that point from Ms. McLaren at page 763 of  
21 the transcript.

22                   I also thought to ask Mr. Palmer,  
23 unfortunately not Mr. Pelly, about asymmetrical loss  
24 transfer, one-way loss transfer, unilateral loss  
25 transfer. And I asked him whether in his view it

1 accorded with Principle 4 of the -- with Statement 4 of  
2 the actuarial principles. And again, you'll have to read  
3 the question to make sure that I posed the question  
4 articulately enough and that Mr. Palmer accurate --  
5 answered accurately enough.

6                   But I believe his evidence was that it  
7 does not accord with Statement 4 of the actuarial  
8 principles. And again, I would caution, that's my  
9 interpretation of those words. So approach my  
10 characterization with caution.

11                   One (1) of the issues which was raised in  
12 the course of this Hearing by Board Counsel in his  
13 discussion with Ms. Hall from Ontario, and in subsequent  
14 conversations, was the issue of affordability. And I  
15 wanted to share with you some -- some comments from my  
16 clients on this issue, because I posed the question to  
17 the Consumers Association and to the Manitoba Society of  
18 Seniors, whether they considered this an affordability  
19 issue.

20                   And -- and they characterized the question  
21 as this:

22                   "The debate in this Proceeding is  
23 really about the affordability of a  
24 specific type of vehicle. It's not  
25 about the affordability of car

1 insurance [or excuse me] vehicle  
2 insurance per se."

3 My clients went on to note that while they  
4 believe that access to fair, competitively priced, high  
5 quality auto insurance is important to Manitobans, they  
6 don't rank it as highly, for example, as a basic  
7 necessity like electricity.

8 So, they were a little uncomfortable with  
9 the affordability debate in the way that Ms. Hall  
10 characterized it. My clients also observed that at least  
11 in 80.6 percent of the cases based upon last year's  
12 evidence, we're talking about the affordability from the  
13 perspective of someone who owns at least two (2)  
14 vehicles, one (1) being a motorcycle, one (1) being  
15 another vehicle. And that was confirmed at page 803, in  
16 terms of the reliability of that information in my cross-  
17 examination of Ms. McLaren.

18 So, my clients in no way mean to diminish  
19 the real cost impact of these rate increases suffered by  
20 motorcyclists and they certainly support motorcyclists'  
21 right to choose which vehicle they -- they choose to  
22 insure. But they want it understood that they don't see  
23 this as an affordability issue in the same way that we  
24 might see access to hydro-electricity to heat one's home  
25 or to -- to turn on one's lights in the same way.

1                   Short snapper number 3. One (1) of the  
2 arguments that was made, and I believe it was made by Mr.  
3 McFarlane at page 371 of the transcript, was when you  
4 allocate the loss transfer class -- costs of the  
5 motorcycle class across a large pool, a major class such  
6 a private passenger, there's a relatively small impact.

7                   He observed, at page 371, that there's a  
8 motorcycle for every one hundred (100) cars. So if you  
9 spread that loss for a pool a hundred (100) times as  
10 large, the average impact would be relatively small.

11                   My clients have two (2) concerns with that  
12 statement. One (1) is, you could pretty much make -- you  
13 know, given the sheer magnitude of the private passenger  
14 class, you could make that argument in terms of any kind  
15 of costs that you'd like to allocate and they think that  
16 that's a dangerous kind of analytical approach to adopt.

17                   They certainly, in the context of auto  
18 insurance, have no objection to paying their just and  
19 reasonable costs. But they'd like to limit -- limit it  
20 to their just and reasonable costs and not the costs of  
21 others.

22                   The other point though, and it's a  
23 significant point, is that even though the impact upon  
24 the class as a whole will be relatively small, the impact  
25 upon specific vehicle owners within that class will be

1 very large or may -- excuse me, I misspoke, may be very  
2 large.

3                   Now, my clients want -- want to make clear  
4 that they've endorsed serious rate -- or premium  
5 dislocation in the past. In the adoption of the CLEAR  
6 system my clients were strong advocates of a relatively  
7 aggressive approach in terms of CLEAR.

8                   But that was rate dislocation with a  
9 purpose. Rate dislocation driven towards more  
10 actuarially sound, more statistically driven rates. Rate  
11 dislocation that my clients could justify to their  
12 members as clearly directed at loss prevention; is  
13 clearly directed at providing better information to  
14 consumers.

15                   My clients cannot say the same thing about  
16 the rate dislocation as a consequence of loss transfer.

17                   If you have any questions about the  
18 significance or potential significance of this, I direct  
19 your attention to page 704 and 705 of the transcript,  
20 again, Mr. Pelly.

21                   And he's commenting at lines 14 to 22 and  
22 I'm just paraphrasing. If all -- and he's talking about  
23 full loss transfer:

24                   "If all classes of vehicles and  
25                   insurance uses and territories were

1                   encompassed, then I think you would  
2                   probably see a lot of categories  
3                   subject to fairly significant  
4                   dislocations and you'd need to address  
5                   that."

6                   Going on on page 704 and 705, Ms. Everard  
7 put to him the question, Well, what about partial loss  
8 transfer; that would result in less dislocation?

9                   And Mr. Pelly suggested that it probably  
10 did. But there may still be significant dislocation that  
11 needs to be addressed.

12                   And, again, going back to my previous  
13 point, Ms. McLaren said this best at page 656 and 57 of  
14 the transcript:

15                   "In my clients' perspective this would  
16                   be dislocation without a proper public  
17                   policy purpose."

18                   She spoke of dislocation of rates at the  
19 insurance use territory level for factors other than  
20 fault or other than the vehicle choices by the people in  
21 those groups or the insurance use or the territory  
22 choices. The financial impact would not be related to  
23 any of the choices they made about what to drive, where  
24 to use it, how, under what circumstances they use it; any  
25 of those things.

1                   Short snappers 4 and 5, I think. There  
2 was some discussion in this Hearing through questions  
3 posed by Board Counsel in terms of whether MPI was social  
4 insurance or pure insurance. And presumably it's on a  
5 spectrum.

6                   But my clients would submit that one (1)  
7 of the great strengths of the MPI program is that it's  
8 tended towards the pure insurance type of program; that  
9 doesn't mean that there are not meaningful social policy  
10 objectives that flow from public ownership through  
11 investment, through many of the good works that MPI does  
12 in the community.

13                   But from my -- my clients' perspective,  
14 MPI works best if we keep its function relatively simple,  
15 providing cost effective, fair, basic insurance, in a  
16 program that's universally accessible and -- and that  
17 from their perspective, is -- is the proper purpose of  
18 Manitoba Public Insurance.

19                   There was also a bit of discussion kind of  
20 going to the social purpose of MPI, about the role that  
21 environmental issues should play. And my clients  
22 listened with some interest when I portrayed the  
23 discussion that took place in the Hearing last week on  
24 this subject.

25                   But, as a cautionary note, they have a few

1 cautionary words to the -- the Board on this subject. If  
2 we're look -- there hasn't been a lot of evidence on the  
3 -- the environmental impact of -- of this issue, and if  
4 we're looking at the issue in terms of small footprints,  
5 they'd ask the question, is it better to have -- thank  
6 you, Mr. Dawson -- is it better to have one (1) car, or  
7 is it better to have a car and a motorcycle?

8           Those are -- I don't think we have an  
9 evidentiary record to determine that question. Or to use  
10 one (1) of my clients' examples, is it better to have a  
11 motorcycle and a second vehicle, a car, or is it better  
12 to have a car and then to use public transit -- transit?

13           These are issues that we -- my clients are  
14 not satisfied have been fully addressed. And they would  
15 caution the Board about moving from pure insurance  
16 purposes to -- to other -- to other factors.

17           And at the end of the day, and they're --  
18 they're not satisfied of this question, they would ask  
19 you to ask yourselves, is there an environmental cost to  
20 insurance?

21           In my clients' perspective, certainly if  
22 we wanted to reflect environmental costs in terms of  
23 vehicle purchases, there's some sense to that, whether  
24 it's appropriate to impute environmental costs to the  
25 purchase of insurance, they believe is a debate that

1 should be more fully canvassed before the Board walks  
2 down that path.

3           Administrative ease was another question  
4 posed by the Board. And my clients don't have a lot of  
5 comments about that, except to draw the Board's attention  
6 to a comment by the Insurance Bureau of Canada, between  
7 pages 44 and 47 of the transcript.

8           And the witness for the Insurance Bureau  
9 in those pages, spoke about how it looked at the  
10 frequency of injury, but that it was trying to develop a  
11 model based upon severity of injury, in terms of more  
12 fairly reflecting accident benefit costs.

13           And certainly my clients support that  
14 venture and they're hopeful that with more data from  
15 Quebec, that that may be of great, great assistance.

16           But the Insurance Bureau witness noted,  
17 and that's at page 47, if that is adopted, then the  
18 adoption of full recognition of fault would likely result  
19 in a major conflict.

20           Again, I don't pretend or nor do my  
21 clients to be experts on the -- the administration of  
22 CLEAR, but that's a quote that we would direct to your  
23 attention, and you can interpret it as you see fit.

24           The final comments by my clients relate to  
25 variations on the pure loss transfer and the existing

1 first party claims allocation system.

2 I believe it was the evidence of Mr.  
3 Ramsay that he favoured the Ontario model, the  
4 unilateral, the one-way, the asymmetrical loss transfer  
5 model.

6 My clients cannot go strongly enough on  
7 the record in suggesting to you that they believe that  
8 such a system, where costs are transferred out of  
9 motorcyclists for at-fault accidents related to private  
10 passenger, but are not transferred back in, with relation  
11 to at-fault accidents caused by motorcyclists, would be  
12 fundamentally unfair and inappropriate.

13 And they asked me to use the strongest  
14 words that I'm capable of and those were -- those were  
15 them. They would also observe that if you're trying to  
16 look at loss transfer as a loss prevention mechanism,  
17 then any limited, indirect, intangible impact it might  
18 ever have in a pure loss transfer form, much of it is  
19 lost if you only have asymmetrical or one-way loss  
20 transfer.

21 And don't take my word on it, take the  
22 word of Mr. Pelly in his response to CAC/MSOS  
23 Interrogatory 2-E where he spoke of, on his -- that  
24 unilateral loss transfer would mitigate the loss  
25 prevention objectives. And he also confirmed that at

1 page 717 of the transcript.

2 In terms of such a unilateral one-way  
3 approach, my clients would note that in Ontario such a  
4 process was brought in by legislation and through  
5 regulation and they believe that if such an approach,  
6 which they consider to be discriminatory in the  
7 regulatory sense, was brought forward they would suggest  
8 that it should be done by express legislative direction.

9 Late on Thursday, and this, Mr. Chair and  
10 members of the Panel, I believe is my second last point,  
11 late on Thursday, through cross-examination, we posed to  
12 MPI an alternative scenario -- or I posed to MPI on  
13 behalf of my clients an alternative scenario.

14 I suggested to them, what if rather than  
15 imposing loss transfer with the dislocating effects that  
16 it has, what if we just recognized the -- if there was  
17 felt by the Board a need to provide an express subsidy to  
18 motorcyclists, why not recognize that subsidy and then  
19 allocate it as we might allocate claims expenses across  
20 the other classes.

21 Ms. McLaren, I believe, at page 835  
22 suggested that if the Board had to go down this path that  
23 this approach made some sense to me. I'm sure her client  
24 will have -- or her Counsel will have some comments about  
25 this approach which was put to her as well -- or he may.

1                   My clients said some comments to me about  
2 that approach. I did do it with instructions but it  
3 wasn't an approach they endorsed at the time and they  
4 don't endorse that approach. They endorse the current  
5 system of allocating claims costs.

6                   They do observe though that if the Board  
7 felt the need to do something for motorcyclists that from  
8 this -- their perspective this would be a better way to  
9 go. It would be transparent recognition of a subsidy.  
10 It would not have the dislocating effect upon what they  
11 consider to be a good mechanism in terms of allocating  
12 claims costs that the first-party system has.

13                   So, it's not a system that they endorse.  
14 But they see it as the lesser of two (2) public policy,  
15 in quotation marks "evils" and I think "evils" is a wrong  
16 word but they see it as the lesser of two (2) unpalatable  
17 scenarios.

18                   Just to close on this point, one of the  
19 reasons why my clients do not support an express subsidy  
20 is, again, going back to the point, they don't consider  
21 this an affordability issue in the way that hydro-  
22 electricity is an affordability issue.

23                   They consider this to be the affordability  
24 of a specific type of vehicle. And so they don't see a  
25 subsidy in these circumstances to be appropriate.

1                   The final points on behalf of my clients,  
2 Mr. Chair and members of the Panel, relates to a comment  
3 made by Ms. Hall at page 130 of the transcript.

4                   And in discussion with Mr. McCulloch, she  
5 agreed that loss transfer in Ontario was a political  
6 decision. And at other parts in the transcript she  
7 talked about the system in Ontario and said:

8                   "I haven't heard loud screams lately."

9                   And that's at page 124/125. And questions  
10 were posed to her by My -- My Friend on behalf of CMMG,  
11 talking about the outcry and suggesting a need for  
12 reform.

13                   And from my clients' perspective, consumer  
14 voices should be heard. And to the extent possible with  
15 an appropriate public policy framework that should be  
16 addressed.

17                   But they would ask the Board to -- to  
18 recognize that this is really a decision about public  
19 policy, it's not about stifling the outcry, it's about  
20 doing the best thing for all consumers that the Board can  
21 -- can do, in a very difficult task it has, in balancing  
22 the public interests with the primary objectives, in my  
23 clients' perspective, of a system that's fair and that  
24 also focuses upon loss prevention.

25                   Subject to any questions the Board may

1 have, I can just indicate that my clients'  
2 recommendations are to -- to stick with the existing  
3 system, in terms of first-party claims allocation. I can  
4 indicate that they will be making an application for  
5 costs, but mindful of the time, they will do that in  
6 writing, in a timely matter, unlike what I've done in the  
7 recent past.

8 Thank you, Mr. Chairman, and Members of  
9 the Board, for your patience.

10 THE CHAIRPERSON: Thank you, Mr.  
11 Williams, for such an extensive and thorough closing  
12 remarks.

13 Hearing no questions from My Colleagues,  
14 we'll move on to Mr. Oakes.

15 Mr. Oakes...?  
16

17 CLOSING COMMENTS BY MR. RAYMOND OAKES:

18 MR. RAYMOND OAKES: Thank you, Mr.  
19 Chairman, Members of the Board, ladies and gentlemen.

20 I wanted to start by first expressing the  
21 CMMG's appreciation of the opportunity to deal with this  
22 significant issue in a forum such as this, as well for  
23 the hard work of all the participants, the way the Board  
24 has rolled up its sleeves, and as well the other Board  
25 Counsel, the Corporation and the witnesses that we heard.

1                   It was an excellent forum of fact finding.  
2 We had detailed, extensive reports of an experienced  
3 actuary from Toronto, Mr. Liam McFarlane, with respect to  
4 his twenty (20) years experience, ten (10) of which are  
5 in the motorcycle insurance section of the industry.

6                   We had the brief, but very fair and  
7 balanced logic of Mr. Pelly, a gentleman we don't often  
8 get the opportunity of hearing from.

9                   And we had two (2) non-expert witnesses,  
10 one (1) of them, Dr. Tabachneck, I think was more modest  
11 in terms of his expertise, and of course Ms. Hall, with  
12 the opportunity of living with the Ontario experience for  
13 a number of years.

14                   Some comment about the MMIC, which  
15 provided some very, very informative material to this  
16 Board, Mr. Williams called Mr. Ramsay a lobbyist. I  
17 think it's important to correct the record and to reflect  
18 that Mr. Ramsay is a part of a very large motorcycle  
19 insurance in -- in Canada, and he gives us the benefit of  
20 that expertise.

21                   The CMMG of course has understood,  
22 appreciated and lobbied for loss transfer since the early  
23 1990's. We first came to these Hearings in 1992, and  
24 became immediately aware of the issue, mostly through  
25 Ontario's fair and exhaustive review of all of the

1 stakeholders, when it introduced loss transfer, which is  
2 quite a marked departure from MPI's involvement in -- in  
3 loss -- in no-fault.

4                   And certainly I appreciate that the answer  
5 to the Government, with respect to the introduction of  
6 that kind of legislation are forced to deal with it, and  
7 frankly, didn't have a lot of time to do that. But  
8 certainly a marked departure between that and the Ontario  
9 experience.

10                   In fighting for loss transfer for some  
11 thirteen (13) years, the analogy in the discussion  
12 related to loss transfer, that the CMMG has often thought  
13 about was the ancient mythical creature called the hydra.  
14 The Hydra was a beast with multiple heads which regrew  
15 each time they were cut off. The loss transfer issue is  
16 like that mythical Hydra, it seems to evolve and regrow  
17 justifications every time that it's examined.

18                   A long time ago, ten (10) years ago, say,  
19 the Corporation would say, well, loss transfer won't help  
20 you because you're very far from rate sufficiency so even  
21 if we gave you the 40 percent loss transfer it wouldn't  
22 affect your rate.

23                   Of course, now, we grow closer, after 300  
24 percent increases, not surprising, but we now grow closer  
25 to rate self-sufficiency and if we accepted the

1 calculations of Dion Durrell then some 42 percent  
2 reduction would, in fact, have a decrease to the premiums  
3 that motorcyclists are paying at this time.

4           When we got closer then, of course, then  
5 the Corporation would come with a new justification.  
6 Inherent risk became the new battle cry of the  
7 Corporation. Well, we heard the testimony of an actuary  
8 who's done primarily motorcycle insurance for the last  
9 decade and he's never heard the term 'inherent risk'  
10 before, and he testified to that.

11           And even in the material produced by the  
12 Corporation this year, they acknowledge that automobiles,  
13 and in fact all vehicles, are inherently risky The new  
14 cries this year, having known that the inherent risk  
15 argument wouldn't cut the mustard, we heard, Well, it's  
16 unfair to seniors.

17           There was a new rallying cry. It  
18 certainly took me by surprise because I've never known  
19 the Corporation to be sensitive to the needs of seniors  
20 at all. Ontario they have discounts for seniors.  
21 Certainly on the benefits side, the seniors were paying  
22 for the IRA or IRI, the income replacement insurance, for  
23 younger people when they weren't collecting but paying  
24 the same premium, so that rallying cry took me by  
25 surprise.

1                   The next one (1) was equally without basis  
2 and we found out the loss transfer, at least according to  
3 the Corporation, was going to be unfair to people in the  
4 rural parts of Manitoba. And there was a very, very  
5 limited justification based on the fact that apparently  
6 they make less money in rural Manitoba; no consideration,  
7 of course, of cost of living or any of those things.

8                   But that was the new head of the Hydra  
9 which didn't take much effort to be cut off.

10                  Mr. Chairman, before going through the  
11 flaws in the Corporation reasoning in great detail, let  
12 me first clarify the coalition's position on loss  
13 transfer. The Coalition's position is that the cost  
14 should be assigned to each respective insurance grouping  
15 based on the costs caused by the grouping.

16                  Costs imposed on any particular insurance  
17 grouping from other groupings, should be maintained in  
18 the group that was responsible. This is a clear and  
19 precise approach to fairness and equity. You do not pay  
20 for something that your group did not cause.

21                  In the Coalition's view, costs should  
22 always be transferred for all insurance groupings and not  
23 just motorcycles.

24                  While this is the purest form, we do  
25 submit that the -- there are other possibilities open to

1 the Board. These would include loss transfer for only  
2 some groups or only for the PIPP coverage or adopting the  
3 correction of the unintended consequences of the PIPP  
4 approach which was put forward for examination by Counsel  
5 of the CAC/MSOS.

6 The Coalition is somewhat supportive of  
7 these lesser alternatives since they, of course, at least  
8 partially eliminate the unfairness of the current  
9 approach.

10 Now, Mr. Chairman, to deal with the Hydra.  
11 When we first started discussions of loss transfer many  
12 years ago, one (1) of the arguments, as I've indicated,  
13 is that motorcycles were inherently risky.

14 In Appendix A, page 6 of its position  
15 paper, MPI again states that motorcycles are unique.  
16 When questioned by the CMMG relating to the definition of  
17 inherent risk, MPI provides a classical definition of  
18 expected loss costs, not of a term 'inherent risk'.

19 It is the probability of loss times the  
20 amount of loss. In response to CMMG/MPI-3, MPI notes  
21 that:

22 "Inherent risk or risk is the basis of  
23 all rate making. Thus, there is  
24 nothing unique about inherent risk as  
25 defined in the context of motorcycles.

1                   Motorcycles are risky, as are cars,  
2                   trucks, vans, sport utility vehicles.

3                   Mr. Ramsay, in his evidence, pointed out a  
4 more acceptable and classical view of risk, which is the  
5 probability of a claim measured by claims frequency. In  
6 this regard, passenger vehicles and motorcycles are quite  
7 similar with motorcycles, of course, having less  
8 frequency. And we saw introduced, the Exhibit 43, the  
9 Canadian Motor Vehicle Traffic Collision Statistics,  
10 which show the percentages relative to involvement --  
11 percentage of fatalities and serious injuries by road  
12 users and I'll leave you to read that.

13                   There was a similar review of frequency at  
14 page 257 of the transcript. Board Member Mr. Evans  
15 keenly appreciated the -- the data that was produced in  
16 the examination of Mr. Liam McFarlane about the  
17 percentage frequency of involvement in accidents.

18                   The second head that was grown to defend  
19 the status quo was based on economics. The Corporation  
20 filed rather dated information with respect to the impact  
21 of loss transfer on vehicle classes. Full loss transfer,  
22 according to the MPI data appears to result in slightly  
23 (0.6 percent) lower rates for private passenger vehicle,  
24 higher rates for commercial vehicles and lower rates for  
25 motorcycles.

1                   The MP results for private passenger  
2 vehicles agree generally with findings of other  
3 participants at the Hearing and I'm referring to the  
4 fiscal data as well as Mr. McFarlane's analysis; small  
5 impacts on the private passenger class.

6                   At the insurance use and territory level,  
7 the Corporation suggests that shifts would occur that are  
8 unfair due to varying economic circumstances of  
9 territories and insurance uses. As shown in the chart,  
10 page 3 of the MPI loss transfer position paper, premiums  
11 would decrease about 4 million in Territory 1 while  
12 Territory 2 would rise about 3 million and Territory 4  
13 would rise about 1 million.

14                   Given that there about three hundred and  
15 seventy-five thousand (375,000) vehicles in Territory 1,  
16 three hundred and thirty-five thousand (335,000) vehicles  
17 in Territory 2 and eighteen thousand (18,000) HDA  
18 powered vehicles in Territory 4, we're talking about a  
19 rate of change that is in the range of four (4) or five  
20 (5) cups of coffee for those vehicles.

21                   The distribution of changes actually  
22 improves under loss transfer. The Corporation provided  
23 Exhibit 3, and comments on page 4 of its submission, that  
24 the distribution of rate changes is higher with loss  
25 transfer than under the current approach.

1                   The Coalition was perplexed by this  
2 result, having prepared a table showing the distribution  
3 of changes and found that there's more winners under loss  
4 transfer than the status quo; nearly three hundred  
5 thousand (300,000) who receive no change or rate decrease  
6 compared to two hundred and fifty-four thousand (254,000)  
7 under the current approach.

8                   Increases were not too different between  
9 the current and loss transfer approach, although there  
10 were fewer increases under loss transfer. The Coalition  
11 questioned the approach used by the Corporation and  
12 received that the response to CMMG/MPI-11, which showed  
13 the formula used by the Corporation.

14                   The Corporation used by the -- Corporation  
15 was incorrect. On cross-examination we addressed that  
16 somewhat within the confines of the abilities of expert  
17 evidence in these Hearings and suggested the appropriate  
18 formula for the group data provided to those in  
19 attendance at the Hearings.

20                   As described in the response to PUB/MPI-7,  
21 the loss transfer effects and the distribution table were  
22 not dampened with capping, which would result in less  
23 rate change than shown. The overall conclusion drawn is  
24 that the -- based on the information provided by the  
25 Corporation, the range of rate changes is likely to be

1 similar and, perhaps, smaller under full loss transfer  
2 than the current approach.

3           The Corporation also reminds those present  
4 the rate volatility should not increase under loss  
5 transfer, which was a matter canvassed in -- in last  
6 year's Hearings. The reference was pages 768 and 69 of  
7 last year's transcript, that wasn't an issue that was  
8 debated at length in these Hearings.

9           According to MPI, Winnipeggers would be  
10 winners and non-Winnipeggers losers if full transfer was  
11 adapted, the third head of the hydra.

12           An equally persuasive argument is that due  
13 to the absence of loss transfer, Winnipeggers are, in  
14 fact, subsidizing insurance rates for non-Winnipeggers,  
15 since they are paying for costs they did not bring upon  
16 themselves. The Corporation relied on some limited  
17 economic data to buttress this argument, stating that  
18 Winnipeggers have higher incomes and better vehicles, as  
19 measured through higher rate groups than people outside  
20 of Winnipeg.

21           The Corporation in that vein provided  
22 material suggesting the based on median incomes  
23 Winnipeggers are relatively better off than non-  
24 Winnipeggers. Therefore they conclude that reassigning  
25 costs would be a burden to non-Winnipeggers.

1                   Even though the burden is small, the  
2 coalition was curious as to why this new term median  
3 income data was selected and we searched previous rate  
4 applications and rate making methodologies, could find no  
5 use of this term 'median' rather than what the  
6 corporation uses which is averages. And that was  
7 confirmed during cross-examination.

8                   The difference, in any event, no matter  
9 which data use shows a difference of either some sixteen  
10 hundred dollars (\$1,600) or some four thousand (4,000)  
11 which is inconsequential given the difference in living  
12 costs amongst regions.

13                   Clearly on economic factors, the  
14 Corporation's argument is not correct. Regional  
15 imbalance would not increase if the cross subsidization  
16 from Winnipeg to other territories was eliminated by  
17 applying losses on a responsibility basis.

18                   Next, head of the MPI argument against  
19 loss transfer is that pleasure use would be adversely  
20 affected. This would affect retirees who have no earned  
21 income that would be protected by PIPP.

22                   As noted in CMMG Interrogatory 6, the  
23 Corporation has no direct evidence that pleasure use is  
24 predominantly used by retirees. Data provided by the  
25 Corporation suggests that slightly more than one-third

1 (1/3) of vehicles registered in pleasure use were owned  
2 by persons sixty-five (65) or older who may or who may  
3 have not been retired.

4                   The Corporation declined to respond as  
5 they did with approximately two-thirds (2/3) of our  
6 interrogatories that a response to CMMG Interrogatory on  
7 this point would not be germane.

8                   The question was germane since it was  
9 designed to drill down further on who the pleasure use  
10 vehicle owners are. If pleasure use vehicles also have  
11 all-purpose insurance, it provides valuable information  
12 from a policy's perspective.

13                   This would indicate that 33 percent of  
14 pleasure use owners who are over sixty-five (65) many are  
15 likely retired since they have a vehicle insured and many  
16 still are working if they have a vehicle registered as  
17 all-purpose.

18                   In that case what they would lose on the  
19 one hand we pointed out they would gain through lower  
20 rates on the all-purpose vehicles.

21                   The Corporation in setting up their straw  
22 man arguments against loss transfer appear to mistake the  
23 impact of loss transfer with a gap in their  
24 classification plan. If retirees are unable to receive  
25 the same benefits as other Manitobans because they are

1 retired and no longer have insurable incomes, the  
2 classification plan should reflect in the same manner  
3 that this is a different unique risk classification.

4 Ms. Hall again in cross-examination  
5 indicated that discounts for retirees are commonplace in  
6 Ontario. And we'd suggest that if they were really the  
7 champion of the retired, they would certainly be  
8 designing a simple criteria as an input to the rating  
9 process and it would be found at the broker's office.

10 The -- the next argument made by the  
11 Corporation that the current approach helps consumers  
12 make wise choices to assist in minimizing risk to  
13 individuals and property. This theme was also weaved in  
14 various responses to information requests such as PUB-  
15 4(a) to (c).

16 This approach leads to different rates for  
17 good and bad drivers, different rates for territories and  
18 insurance uses and different rate groups.

19 Information was provided by the CMMG based  
20 on the 2002 CAA vehicle ownership survey. That survey  
21 showed that insurance rates and rating mechanisms were  
22 not even on the most remote radar screens the consumers  
23 when they make vehicle choices.

24 The Corporation tried to confirm that  
25 assignment of costs on a first-party basis as a way of

1 encouraging this wise consumer behaviour that this  
2 pointed to for a number of years was not based on any  
3 supporting studies in their possession.

4           The Corporation confirmed that they could  
5 not provide any proof whatsoever to support their belief.  
6 Yet a current -- continues to argue that consumers choose  
7 vehicles based on these lower costs and they responded in  
8 that fashion and the PUB Interrogatory's 1 and 2-A.

9           This is merely hypothesis of the  
10 Corporation, unsupported at best. Untested hypothesis  
11 are not useful for sound public policy formulation.

12           Even with respect to the cross-examination  
13 of Ms. McLaren, her buying decisions fly in the face of  
14 this concept, surely the Corporation -- the head of the  
15 Corporation with access to its own website about  
16 vulnerable vehicles, would have chose -- wouldn't have  
17 chose a vulnerable vehicle, had they found that own logic  
18 convincing.

19           The facts are, unfortunately, and Mr.  
20 Williams fails to appreciate this in his discussion on  
21 this topic, is that a choice of vehicle is no indication  
22 of your opportunity to be hurt. If you choose an  
23 automobile you can be hit by a truck. If you choose a  
24 truck, you can be hit by a larger truck.

25           There's a certain random -- randomness

1 with respect to that issue. And to depart -- to move  
2 from that proposition to the proposition that those  
3 victims should pay for the costs of the wrongdoers  
4 injury, misses the point entirely.

5           When a vulnerable person has physical  
6 trauma visited upon them, the system should not condone  
7 and impose a double-whammy by making those vehicles pay  
8 for the wrongful acts of another. The wrongdoer is the  
9 one (1) that brings the risk to the system.

10           We heard quite a bit of testimony about  
11 CLEAR. As noted by Mr. Pelly, loss transfer is only of  
12 marginal relevance to CLEAR, and CLEAR is merely a  
13 ranking system with relativities.

14           Mr. Pelly indicated the relativities are  
15 not directly used by MPI. Mr. Pelly's evidence confirmed  
16 which -- that which Mr. Tabachneck had indicated to us.  
17 Vehicle rankings do not change due to loss transfer.  
18 They would still be provided by CLEAR, and still be  
19 useful for the assignment of rate groups.

20           MPI suggested for the Corporation to adopt  
21 loss transfer that would somehow jeopardize the CLEAR  
22 system as developed by IBC. The IBC witness on page 57  
23 of the transcript, testified that MPI's data is about 5  
24 percent of the total CLEAR data, which is an  
25 insignificant portion of the total.

1                   Adding confusion to the perspective of  
2 this Corporation's response to PUB-2(d). The Corporation  
3 implies that loss transfer would somehow affect our costs  
4 from rate group perspective are assigned to a Chevy  
5 Suburban and Pontiac Firefly. With respect to rate  
6 group, the assignment is unchanged regardless of how  
7 costs are assigned, as CLEAR rate groups are what use,  
8 not some fault based hybrid.

9                   As well, the rate line would not change,  
10 since all costs are reflected in the rate line  
11 adjustment. The only thing that would change would be  
12 the assignment of costs by insurance uses and territory.  
13 These would change to reflect the responsibility for the  
14 accident, and create greater equity.

15                   Further, in cross-examination, the CMMG  
16 elicited from the Corporation that CLEAR rate groups are  
17 used in Tort Provinces such as Alberta, where losses are  
18 transferred. Public policy in these jurisdictions  
19 supports both CLEAR and the transfer of claim costs. We  
20 heard from Ms. Hall in that regard as well, where she  
21 indicated if collision were added to loss transfer in  
22 Ontario, then CLEAR would remain in use.

23                   The inconsistency with the first nature  
24 party of CLEAR argument is actually irrelevant to  
25 motorcycles, since CLEAR rate groups are not used as set

1 out in CMMG Interrogatory 36.

2 Even if encouraging owners to purchase  
3 vehicles that minimize risk is the goal, it may not be  
4 achieved via CLEAR. Mr. Tabachneck was explicit in his  
5 testimony at pages 63 and 64 of the transcript. Simply  
6 put, the CLEAR system assigns higher collision rate  
7 groups to vehicles with advanced safety systems like  
8 airbags, anti-lock brakes, traction control and similar  
9 systems.

10 Remembering that collision groups run from  
11 one (1) to ninety-nine (99) and accident benefit groups  
12 run from one (1) to five (5), a lower accident benefit  
13 rate group will not offset the higher collision rate  
14 group, since MPI combines them for its rate groups.

15 If the MPI objective is to encourage  
16 greater adoption of lower risk vehicles, then they should  
17 not be using CLEAR rate groups in the manner they are, as  
18 safer vehicles will often have higher rate groups and  
19 rates.

20 And of course that's a, somewhat of a  
21 double edged sword, as we heard from Mr. Tabachneck's  
22 evidence on my cross-examination, that sophisticated  
23 safety systems result in higher repair costs for those  
24 vehicles.

25 Basing continuation of the current system,

1 based on the consumer choice and consistency with CLEAR  
2 are simply not supported by MPI past practice, other  
3 expert opinion, or approaches in other jurisdictions.

4           A fifth approach the Corporation uses to  
5 support the existing system is consistency with the rate  
6 making methodology; that is, every component of the rate  
7 setting system, including rating groups, should be first  
8 party based or, alternatively, loss transfer based.

9           We heard from actuaries, such as Mr.  
10 Pelly, this was not necessarily a requirement for rates  
11 to be actuarially sound. The Corporation does not  
12 suggest that assigning costs on a responsibility basis  
13 would violate rate making principles, nor was that the  
14 testimony of Mr. Pelly or Mr. McFarlane.

15           Mr. McFarlane deals with that at page 729  
16 of the transcript, and we talked about was it driving it  
17 from the top and he says:

18           "I don't think it's radically different  
19 than what MPI does now, other than I've  
20 taken the top step off and started at  
21 the major class level and then  
22 analysing the experience beneath it to  
23 build a provincial indication.

24           Question: And this alternate approach  
25 that you've just described, is that

1                   accepted in other jurisdictions?

2                   Mr. Pelly: I would say it's commonly  
3                   applied. Sure."

4                   We heard contrary -- as a contrast with  
5 that, we heard contradictory descriptions of the MPI  
6 approach, as being bottom-up from Ms. -- Ms. McLaren, and  
7 top-down from Mr. Palmer.

8                   Top-down being that claims costs are  
9 forecast at the overall Manitoba level, and these are  
10 driven down to the major use level. Then they are  
11 further driven down to territory and insurance use level.

12                   Full transfer wouldn't work, according to  
13 Mr. Pelly, if driven down from the major use level. The  
14 Corporation describes the first party approach as:

15                   "treating all motorists and vehicles  
16                   similarly and equitably."

17                   First full loss transfer, as supported by  
18 the Coalition, also treats motorists similarly and  
19 equitably.

20                   The Corporation states its approach is  
21 reasonable. I'd submit their reasonableness is best  
22 tested through the lens of the person on the street. The  
23 Coalition believes that if the person on the street were  
24 asked if their rate groups should include costs that  
25 their group was not responsible for, the answer would be:

1 that is unreasonable.

2           The Corporation confirms in  
3 Interrogatories 14 and 17 that it does assign  
4 responsibility on each and every claim, and that is  
5 needed to assign -- or each and every collision claim,  
6 and that is needed to assign the appropriate bonus-malice  
7 rating.

8           Under loss transfer, nothing changes and  
9 the bonus-malice system will continue to work as today.  
10 We heard Mr. Williams today talk about how the two  
11 hundred and twenty-five dollar (\$225) bonus malice charge  
12 is such -- a much more effective system than having a  
13 result by loss transfer.

14           His example used ten thousand dollar  
15 (\$10,000) losses and he went so far as to extrapolate to  
16 a hundred thousand dollar (\$100,000) loss.

17           Well, Mr. Chairman, in the motorcycle  
18 experience, we get concerned with large losses that may  
19 approximate \$2 million, and we don't look at just the  
20 effect on the eight hundred (800) or seven hundred and  
21 fifty thousand (750,000) vehicles across the province.

22           We look at those seventy-five hundred  
23 (7500) motorcycles, and the effect that they would have,  
24 and suggest that his examples with respect to fifty cents  
25 (\$.50), and the like, are totally inapplicable to the

1 dealing with the issue at hand, where the CMMG is saying  
2 that loss transfer could result in as high as a 42  
3 percent reduction in the premiums.

4           On page 8 of its position paper, the  
5 Corporation argues that:

6           "The approach used by the Corporation  
7           saves times and costs in resolving  
8           liability."

9           We're the first to admit that lower  
10 administration costs are a desirable goal, however, we  
11 should be reminded that liability assignment is the  
12 cornerstone of the justice system, as well such small  
13 refinements as the bonus-malice system.

14           What the -- what it appears the  
15 Corporation is saying is that there is some looseness in  
16 how liability is assigned, in order to speed the  
17 processing of claims.

18           This is confirmed in the response to PUB  
19 Interrogatory 3-B which indicates in some incidents that  
20 responsibilities do not add up to 100 percent.

21           We -- adding further to this mystery  
22 around liability assignments, is the information with  
23 respect to fault charts. Last year is shown on page 793  
24 of that transcript, which we certainly did this year.

25           Mr. Bedard testified there were no

1 definitive fault charts by the Corporation, and he went  
2 to indicate and -- that he showed the factors that the  
3 Corporation used.

4                   They use precedent, they use commonsense,  
5 there was no reflection of fault charts at all in his  
6 answer. This year, of course, Ms. McLaren's evidence was  
7 quite different than that.

8                   Perhaps this -- efforts in cost reduction  
9 is the reason we're seeing strange results for single  
10 vehicle accidents for the Corporation. As Mr. Ramsay  
11 testified, he was startled by the high level of  
12 motorcycle single vehicle acts in Manitoba. These are  
13 well beyond the results of studies that he was quite  
14 familiar with, including the quite famous Hert (phonetic)  
15 report, or studies by Canadian organizations such as the  
16 Traffic Injury Research Foundation.

17                   The higher the ratio of single vehicle  
18 accidents, the smaller the rate reduction effect of loss  
19 transfer for motorcycles are, and I wonder if that's  
20 coincidental.

21                   If the MPI data overstates single vehicle  
22 accidents, it will produce a relatively small, yet  
23 material, reduction in motorcycle rates under loss  
24 transfer.

25                   These -- this is also at odds with the

1 information produced by Mr. McFarlane and FSCO. Even  
2 under arduous cross-examination by Mr. Saranchuk, Mr.  
3 McFarlane indication their reduction would be material.

4 FSCO's response is described by Ms. Hall  
5 with respect to the effect of loss transfer on motorcycle  
6 premiums, this summer around 20 percent.

7 I think the Board has to be careful to  
8 take a judicial type of assessment of the quality of the  
9 evidence that's been adduced at this hearing.

10 MPI did not produce an actuarial report.  
11 Sure, it appended a report of Mr. Christie which is  
12 referred to in CMMG circles as the water cooler report.  
13 It's in that report, Mr. Christie talked to, and the  
14 Corporation wouldn't tell us how, or who, or when, but  
15 talked to a number of cronies and other insurance  
16 organizations, and produced a -- a very short summary of  
17 what's happening in other jurisdictions.

18 The loss transfer position MPI put forward  
19 as their evidence, certainly wasn't an actuarial report,  
20 it wasn't produced entirely under the control of Mr.  
21 Palmer.

22 It -- the Corporation failed to answer  
23 two-thirds of the interrogatories of -- of the CMMG,  
24 again contributing to the lack of -- of evidence which  
25 was directly within the control of the Corporation to be

1 produced at these hearings, and instead relied on a  
2 repeating fallacious justifications made necessary,  
3 because the Corporation has adhered, we would say  
4 blindly, to this concept for a number of years.

5 I would suggest that the Board should  
6 prefer the balanced testimony, certainly of Mr. Pelley,  
7 the more extensive testimony and actuarial report of Mr.  
8 McFarlane, the only detailed actuarial report dealing  
9 with the impact of loss transfer, and with people with  
10 experience in many systems, in many jurisdictions.

11 Mr. McFarlane's evidence was not disputed  
12 or shaken even with the cross-examination of Mr.  
13 Saranchuk and Mr. McCulloch. Mr. McCulloch, of course,  
14 couldn't shake his testimony even relying on such almost  
15 Biblical references, such as the August pages of the  
16 Winnipeg Sun.

17 The final myth to deal with arises by  
18 virtue of the CAC position and the interrogatory number 3  
19 that they put forward. Their questioning is:

20 "if loss transfer mechanism is adopted,  
21 will policy holders be impacted by the  
22 randomness of bad drivers that happen  
23 to purchase the same type, make and  
24 model as their vehicle?"

25 The Corporation's response is "yes". This

1 makes sense as it is their view of the principle of  
2 classification. Every level of the classification plan,  
3 including the vehicle level, has good and bad drivers in  
4 it, creating homogenous groups of good and bad, or  
5 fortunate and unfortunate, is the fundamental principle  
6 of pooling.

7                   For example, farm trucks in Territory 2,  
8 currently have the good farm truck drivers and the bad  
9 farm truck drivers. Loss transfer does not change this  
10 fundamental pooling concept. All it does -- all it does  
11 is assign cost to the pool based on who is responsible  
12 for those losses.

13                   Ms. Hall of FSCO confirmed the biased  
14 nature insurances about cross-subsidization. Her  
15 comments successfully shattered the mist that somehow  
16 loss transfer is bad cross-subsidization and that is  
17 inappropriate.

18                   Mr. Pelly made a similar comment. If  
19 there's bad cross-subsidization, there's no worse case in  
20 Manitoba than a group of owners who pay no premiums, and  
21 yet have claims in the \$1.5 million range annually. And  
22 I'm speaking about the extra-Provincial trucking industry  
23 in Manitoba. And the Board heard representations by way  
24 of presentations on last Wednesday night.

25                   Ms. Hall also provided information on

1 public reaction to loss transfer in Ontario, private  
2 passenger vehicles have not complained or reacted in a  
3 negative fashion. This is likely due to the minimal  
4 impact on private passenger vehicle rates. It appears  
5 there's been little reaction from commercial vehicle  
6 owners as well.

7           Ms. Hall indicated that when motorcycles  
8 were invited to the table, so to say, when the amendments  
9 were contemplated on Ontario, it was due to the large  
10 increase in rate, something in the nature of three (3) to  
11 four (4) times higher.

12           Ms. Hall also testified if the size of  
13 increase was expected for a large vehicle group like  
14 private passenger vehicles, there would have been some  
15 serious negative publicity, in contrast MPI testified  
16 that the motorcycles were not brought to the table during  
17 the process leading up to no-fault being introduced in  
18 Manitoba.

19           The OAIB report was public knowledge long  
20 before the Province of Manitoba embarked on the no-fault  
21 experience, and certainly would have been available to  
22 MPI.

23           The failure to consult motorcyclists is  
24 surprising, since the Corporation had information that  
25 motorcycle rates would be adversely affected. Instead of

1 taking proactive steps as in Ontario, MPI chose the  
2 course of doing nothing.

3           They stood on the side lines with no  
4 discussion with the motorcyclists, and only generic  
5 information was sent to the group as part of the mass  
6 mailings to Manitobans. And Ms. McLaren confirmed that  
7 the mass mailings didn't have anything to do with  
8 motorcycle insurance.

9           Ms. McLaren and Mr. McFarlane and Ms.  
10 Hall, both noted that motorcyclists were the group most  
11 adversely affected by the change in Ontario. Ontario  
12 responded with consultation and a plan that has resulted  
13 in good public policy that prevented harm to the  
14 industry.

15           The CAC through a rather lengthy  
16 hypothetical argument, put to Mr. Ramsay relating to a  
17 car and a motorcycle colliding where the car is at fault,  
18 attempting to show that somehow loss transfer incorrectly  
19 punishes -- punishes the innocent members of the larger  
20 car grouping. That is the motorcyclists and all other  
21 members of the insurance classification the car is  
22 insured in, say all purpose, are innocent.

23           To follow this line of reasoning, we would  
24 have to fall into the old trap that a person who has  
25 never had a claim or been a long while without a claim,

1 should pay nothing for insurance.

2           Some members of the motorcycling community  
3 that have been claim free for many years I'm sure would  
4 have support that concept. We all know better that after  
5 many years of these Hearings. Insurance by its nature is  
6 a pooling of homogenous risks and the premium paid is for  
7 the potential of the loss occurring to the insured.

8           The hypothetical also suggests if losses  
9 were transferred, the impact would be negligible on the  
10 large group, so it would have little effect in terms of  
11 sanctioning inappropriate driving. The CAC is concerning  
12 -- is correct, concerning the low rate effect in support  
13 of -- of the -- the minimal cost on other drivers. What  
14 it's lacking in their discussion is of course the impact  
15 is huge for the small class, in this case motorcycles.

16           The Manitoba insurance ind -- motorcycle  
17 industry has experienced hardship. Mr. Ramsay's  
18 statistics make that clear. Street motorcycle sales are  
19 rising in Canada, but falling in Manitoba. Fewer  
20 motorcycles sold, means fewer jobs in those industries;  
21 fewer motorcycle repair jobs and other related services.

22           In summary, Mr. Chairman, Members of the  
23 Board, the Coalition's position is that full loss  
24 transfer should be adopted. Loss transfer the CMMG  
25 believes, particularly to the person on the street, is

1 fairer, equitable and reasonable.

2           The Coalition can envision -- envision a  
3 number of approaches in this regard, due to the variety  
4 of possibilities in implementation. If the Board were to  
5 chose this route, the CMMG suggests a third party be  
6 brought in to work with MPI and the Intervenor to  
7 develop the potential methodologies.

8           These could be reviewed after the 2000  
9 rate hearings but not later than the 2007 Rate  
10 Application.

11           Mr. Chairman, we know that it's difficult  
12 to get someone to do a task that they have decided they  
13 don't want to do. I have two (2) teenagers at home and I  
14 run into that constantly.

15           Once the Board has wrestled with this very  
16 difficult decision and made a decision, hopefully  
17 favourably in terms of implementation, likely the  
18 challenges will not seem as daunting as the Corporation  
19 has indicated in this last Hearing that they are able to  
20 make this change, they've said so for many years.  
21 Previously they've indicated they're philosophically  
22 opposed.

23           We'd like to thank the Board for its  
24 consideration during this special Hearing and the  
25 cooperation of Board counsel, the Corporation, our fellow

1 Intervenors and those other interested parties who  
2 provided information to this process. Thank you.

3 THE CHAIRPERSON: Thank you, Mr. Oakes,  
4 for your strong and direct presentation.

5 Do any of my colleagues have anything?

6 MS. DENYSE COTE: Yes, Mr. Oakes. I  
7 believe you mentioned in your ending comments about the  
8 implementation that you thought that a third-party could  
9 come in to work with MPI and the Intervenors.

10 What kind of expertise would you envisage  
11 that third-party to have?

12 MR. RAYMOND OAKES: Well, I was referring  
13 to some of the comments of the MMIC and their eagerness  
14 to work with the Corporation. I think that they would  
15 work together with the firm of actuaries that -- that  
16 they worked with for a number of years.

17 The concern being that only MPI has the  
18 data, and I think that in order to properly test the  
19 statements of the Corporation, certainly given some of  
20 the inconsistencies in the application of single motor  
21 vehicles and some other issues that certainly cause the  
22 CMMG some concern, we think there should be some  
23 independence to that process.

24 MS. DENYSE COTE: Thank you.

25 THE CHAIRPERSON: Thank you, again, Mr.

1 Oakes.

2 Mr. Roberts, the Manitoba Used Car Dealers  
3 Association?

4

5 CLOSING COMMENTS BY MR. NICK ROBERTS:

6 MR. NICK ROBERTS: Thank you, Mr.  
7 Chairman, Members of the Board.

8 First, let me thank the PUB, other  
9 Intervenors and MPI for the opportunity to present the  
10 Manitoba Used Car Dealers Association position on loss  
11 transfer.

12 As these hearings on loss transfer  
13 progressed, it seemed to me that this became an issue  
14 about loss transfer for motorcycles and motorcycles only,  
15 Possibly because the motorcycle group has brought up loss  
16 transfer year after year and has been the driving force  
17 on this issue.

18 If our association had been aware of the  
19 positive effect that loss transfer would have on the  
20 dealer plate pool, we also would have been equally vocal  
21 about the benefits of loss transfer.

22 We want to make it abundantly clear that  
23 our members are also in favour of loss transfer. Our  
24 association represents automobile dealers from the  
25 smallest operations to the largest and, as such, we

1 believe we represent a reasonable cross-section of the  
2 views of dealers across Manitoba.

3           As ratepayers, we tested the current  
4 system that MPI uses to assign costs against the  
5 benchmark set by the Board. Those tests were that the  
6 system be fair, reasonable, non-preferential and not  
7 unfairly discriminatory.

8           We believe the current system does not  
9 meet these tests. We also find it wanting from the car  
10 dealers' perspective on -- on plain commonsense grounds.

11           MPI, in its submission, focusses on  
12 fairness or equity and reasonableness. In our final  
13 decision we also focus mainly on these two (2) tests.

14           To help us, we decided to consult the  
15 dictionary to ensure that we had precision in our  
16 interpretation of these.

17           According to Miriam Webster's Dictionary,  
18 'fair' can take on a variety of meanings including:

19                   "Being marked by impartiality and  
20                   honesty. Free from self-interest,  
21                   prejudice or favouritism. Conforming  
22                   with the established rules."

23           At MUCDA we believe that MPI believes it  
24 is conforming with these definitions of 'fair'. There's  
25 no belief on our part that they are being partial or

1 dishonest or engaging in simple self-interest.

2           We suppose that they believe they are  
3 conforming to established rules. Those rules, however,  
4 were established by MPI and we believe are unsound. MPI  
5 hinges its belief that the rules are correct on two (2)  
6 primary beliefs; that since the MPI plan is primarily a  
7 first party plan, so consistency necessitate assignment  
8 of costs for rating on a first-party basis.

9           Second, that doing so will provide  
10 incentive to Manitobans to manage their affairs in a  
11 manner that reduces risk through the choices they make.

12           From the material filed at the hearing and  
13 evidence from experts, we heard clearly that we are  
14 talking -- what we are talking about is how costs are  
15 allocated. To our ears, there was nothing suggested by  
16 the Corporation or other experts that assigning costs on  
17 a loss transfer basis would violate actuarial or other  
18 rate-making principles.

19           The nature of the MPI plan does not force  
20 automatic assignment of costs for rate setting on that  
21 basis, it is an approach that MPI chose. Given their no-  
22 fault plan's reliance on the Quebec system, we are  
23 intrigued that they did not rely on Quebec's rating  
24 approach when assigning costs for no-fault; that is,  
25 assignment on a fifty-fifty (50/50) basis as described by

1 Mr. Christie in the document attached to the MPI position  
2 paper.

3           We heard, during our examination of the  
4 Corporation that used car dealers are at the mercy of the  
5 marketplace providing a valuable service to Manitobans.  
6 As such, used vehicle -- used car dealers are not able to  
7 simply choose to sell low-risk vehicles. In order to  
8 earn a livelihood, they must sell vehicles that they  
9 public wants. These may be what are classified by the --  
10 as high risk by the Corporation.

11           So, from a risk control perspective, the  
12 assignment based on first-party does not work for  
13 dealers. Dealers who chose vehicles that they want to  
14 sell in order to keep insurance rates low for dealers is  
15 not likely to be in business very long, quite simply,  
16 since these may not be the vehicles that the public  
17 wants.

18           Dealers are also thwarted in managing the  
19 risk of persons that take dealer vehicles for test  
20 drives. The most a dealer can ask for is a copy of the  
21 prospect's driver's license and accompany them on a test  
22 drive.

23           Dealers in terms of care, custody, and  
24 control are different than most other uses. Dealers, by  
25 necessity, have to allow many strangers to drive their

1 vehicles. This is unlike a privately owned car where the  
2 number of drivers is few and likely to be either family  
3 members or a friend or neighbour of the owner.

4 MPI also makes a fairly strenuous effort  
5 to link the necessity for the status quo on the need for  
6 it to match the methodology used by the IBC to assign  
7 rate groups. The CLEAR system is based on first-party  
8 data, therefore the Corporation argues it must assign  
9 costs to individual insurance uses and territories on a  
10 first-party basis.

11 During the information request process,  
12 MUCDA/MPI Interrogatory 4, the Association solicited from  
13 the Corporation that CLEAR does not apply to dealers,  
14 simply since dealers are not assigned rate groups.  
15 Therefore, this argument does not hold for dealers.

16 We also learned from MUCDA/MPI  
17 Interrogatory 5 that the dealer-plated vehicle is not the  
18 same as other vehicles. A plate for a car is put on a  
19 car. This type of vehicle risk is relatively stable and  
20 this aids using rates for risk control.

21 For dealer-plated vehicles the dealer  
22 plate may be on various -- varies from cars to trucks to  
23 motorhomes to buses and is not stable and not meeting the  
24 concept of risk control that MPI uses to support a first-  
25 party assignment of costs.

1                   So, the rules, while consistently applied,  
2 do not work for dealers. In fact, they are unfair for  
3 dealers. It could be said they are preferential toward  
4 privately owned vehicles and discriminate against dealers  
5 as they fail to account for the characteristics of the  
6 dealer pool. Consequently, assignment of costs based on  
7 those rules is unfair for dealers.

8                   The second test was whether the existing  
9 approach is reasonable, meaning that it is in accordance  
10 with reason. Reason has many interpretations, but in  
11 this context, perhaps, a sufficient ground of explanation  
12 or a logical defence or something that supports a  
13 conclusion or explains a fact.

14                   Suppose a dealer allows a potential  
15 customer to take a dealer-plated vehicle for a test  
16 drive. That person has an accident and say they were not  
17 at fault. And, let's say that the accident cost \$2  
18 million in injury costs. As things stand today, those  
19 costs would be assigned to the dealer class, even though  
20 the driver and the dealer were not responsible.

21                   Even as Mr. Oakes said, if we asked a  
22 person on the street, they would suggest that the  
23 assignment of costs in this manner is unreasonable.

24                   We saw from the 2005 Rate Application,  
25 material and from examination of the Corporation's

1 witnesses, that there is a significant amount of cost  
2 charged to the dealer class that fall into this category;  
3 for example, \$6.7 million in 1996 alone.

4           In cross-examination, the Corporation  
5 confirmed this is up to one-third (1/3) of all costs,  
6 serious loss costs for dealers. This in turn creates a  
7 much higher rate.

8           Let's further examine the case of the  
9 driver of a dealer-plated vehicle we just talked about.  
10 Suppose the person is twenty (20), has no vehicle, and  
11 relies on their parents' car. Suppose they have an  
12 accident in the dealer car and they are not at fault.  
13 The costs are charged to the dealer class and the rates  
14 go up.

15           Since it is a small pool, rates will  
16 likely go up a lot. Similarly, if they were driving mom  
17 and dad's car, the costs would be charged to the  
18 respective pool, and rates would also go up, but only a  
19 bit.

20           That is, from a rate perspective, the  
21 system prefers a -- large risk pools since large losses  
22 are spread over a larger base.

23           As well, it is more likely for large  
24 classes to have matching losses with other vehicles in  
25 the class. The large size of all-purpose car pool, for

1 example, suggested there are lots of times when all-  
2 purpose cars have a collision with another all-purpose  
3 car, in which case transferring losses is not needed.

4           For a small pool like dealers, having  
5 dealer cars collide with one another, would be a very  
6 rare event.

7           As an aside, in terms of risk management,  
8 notice the private vehicle owner receives preferential  
9 treatment. Mom and dad do not lose their discount since  
10 neither of them are responsible, even though they had  
11 care, custody and control of the vehicle.

12           The twenty (20) year old receives the  
13 driver's license accident surcharge instead. The dealer  
14 in this case, if they are a fleet, will have a change in  
15 their fleet rating, potentially losing discounts. The  
16 individual owner does not. The individual vehicle owner  
17 thus is treated preferentially, relative to dealers.

18           Perhaps the solution is to have claims  
19 costs for dealer-plated vehicles, where the dealer  
20 principal is not involved, treated like pedestrian or  
21 cyclist claims.

22           Finally, MUCDA members believe common  
23 sense should prevail. If one were to tell a person on  
24 the street that their insurance rates are going up due to  
25 an accident caused by someone else, they would find it

1 questionable, if not unbelievable.

2           Let's take the current system to a logical  
3 conclusion: Suppose that the bonus malice system was  
4 based on the same principle with losses assigned on a  
5 first-party basis. That is, if you are involved in an  
6 accident, then you should be sanctioned. It does not  
7 matter whether you were at fault; you were in an  
8 accident. Good risk management practise is that you  
9 should do everything to avoid accidents and you didn't,  
10 therefore, your rate is now higher.

11           Would this make common sense to the  
12 public? Would it be acceptable to the public? Perhaps  
13 for private insurers where customers can choose another  
14 company, but not for a monopolist public insurer.

15           During the hearings, MUCDA asked about the  
16 treatment of dealer-plated vehicles in other provinces.  
17 In other provinces such as Alberta, costs are not  
18 assigned in the same manner as Manitoba, since they are  
19 Tort jurisdictions with losses assigned to the  
20 responsible party.

21           On a comparative basis, the Manitoba  
22 method charges all costs to the dealer instead. On a  
23 relative basis, this means that rates are higher for  
24 Manitoba car dealers than they should be, relative to the  
25 situation in other provinces.

1                   We learnt from our cross-examination that  
2 it is relatively easy for a Manitoban to get a short-term  
3 policy and buy a vehicle in another province, and bring  
4 it to Manitoba. The overall consequence is that it  
5 leaves Manitoba dealers at a competitive disadvantage,  
6 relative to dealers in other provinces, adversely  
7 affecting the industry.

8                   MUCDA knows that there was special rate  
9 relief provided to the extra-provincial industry, or  
10 excuse me, extra-provincial trucking industry, due to its  
11 unique characteristics and competitive disadvantage  
12 issues. While not exactly the same, the situations are  
13 similar.

14                   To conclude, when we entered this process,  
15 MUCDA was firmly stacked up with those who support full  
16 loss transfer. We remain committed to loss transfer as  
17 the only approach that meets the Board's test, plus its  
18 common sense.

19                   We however, during the course of this  
20 review, have come to conclude regardless of how loss  
21 transfer is applied, or not applied to all other groups,  
22 dealers are different and loss transfer is a necessity  
23 for fair treatment of dealers.

24                   In this case we visualize loss transfer  
25 potentially only applying to dealers. Dealers are not

1 seeking that all their costs be transferred, merely the  
2 claims for which they are not responsible, be transferred  
3 out on a percent-responsibility basis. Dealers are  
4 willing to accept transfers in on the same basis.

5 Dealers have unique circumstances that I  
6 discussed earlier, those being: A requirement to sell to  
7 the public what they want; limited ability for risk  
8 management relative to other vehicle classes, due to the  
9 nature of the dealer business; no rate groups.

10 The MUCDA is not amenable to an approach  
11 discussed by CAC/MSOS Counsel with MPI toward the end of  
12 the Hearings, unless the group -- groups of vehicles  
13 considered is thoroughly analysed to include all  
14 insurance uses, whether there was an unintended  
15 consequence of no fault introduction. This in our  
16 opinion, would include dealers.

17 The MUCDA was perplexed during the  
18 Hearings at MPI's response to several Information  
19 Requests, particularly those related to updated effects  
20 of the impact of loss transfer on dealer plates.

21 At last year's Hearings, the Corporation  
22 came forth with a significant error in dealer plate data,  
23 which was used to justify a substantial rate -- rate  
24 increase for dealers. Before this Hearing, we by  
25 necessity, were forced to use information from the

1 Corporation, that was based on that incorrect data.

2 From our first round Interrogatory  
3 Question 2, from the 2005 GRA, the response was that the  
4 data error was \$5.7 million. Or put another way, a 50  
5 percent error. A large amount.

6 During our cross-examination, Mr. Palmer  
7 called the amount insignificant. In my books \$5.7  
8 million is a very significant amount.

9 The Corporation attempted to sell the lack  
10 of analysis on the basis that relatively, things would  
11 not change. We, however, are unconvinced as simple  
12 common sense tells us that if the old analysis was based  
13 on bad data, then the results had to be incorrect.

14 The failure to provide updated  
15 information, even though the Corporation runs twenty (20)  
16 plus rate scenarios each year, was perplexing to us. The  
17 lack of information added substantially to the work  
18 burden for the Association, and leads one to wonder how  
19 proper policy making can be done without accurate  
20 indications of the effect of the change.

21 I'm not sure how Government bodies make  
22 policy decisions, I can only speak for how private  
23 organizations make decisions.

24 I know using old, incorrect data, would  
25 not be acceptable when more up to date information is

1 available.

2                   And with that, Mr. Chairman, I conclude  
3 our submission.

4                   THE CHAIRPERSON:    Thank you, Mr. Roberts.  
5 Very interesting.

6                   We'll move on now to Mr. Dawson for the  
7 Bar Association.

8                   Mr. Dawson...?

9                   MR. ROBERT DAWSON:    With your permission,  
10 Mr. Chairman, I'd like to move to a more central location  
11 to save the Members of the Panel having to crane  
12 throughout my submission.

13                  THE CHAIRPERSON:    No problem.

14

15                                       (BRIEF PAUSE)

16

17 CLOSING COMMENTS BY MR. ROBERT DAWSON

18                  MR. ROBERT DAWSON:    Thank you, Mr.  
19 Chairman.

20                        On behalf of the Manitoba Bar Association,  
21 I'd like to remind the Panel that my client takes no  
22 position with respect to the issue of loss transfer, by  
23 that I mean that we are neither in favour of the adoption  
24 of any loss transfer system, nor do we by implication,  
25 necessarily support the current system being retained.

1                   Having said that, I can say that the gist  
2 of my presentation today will be to argue that loss  
3 transfer, as it's been proposed in various ways before  
4 this Board, is philosophically ill suited to adoption in  
5 Manitoba.

6                   But, having said that, I remind the Board  
7 that there may be overriding public policy  
8 considerations, such as those raised by earlier  
9 Intervenors in their closing submissions, that would make  
10 this philosophical objection less important or even  
11 irrelevant.

12                   I propose to provide a framework for the  
13 Board to analyse the specific recommendations, and my  
14 special focus will be upon the rights, interests and  
15 expectations of Manitobans, as those issues underlie this  
16 discussion.

17                   And that touches upon three (3) of the  
18 several issues that the Chairman set out, or rather Mr.  
19 Saranchuk set out on behalf of the Board, as being issues  
20 that the Board would like assistance on. Specifically I  
21 think that my comments will relate to points 2, 4, 5,  
22 namely whether or not the submissions or the changes or  
23 decision not to change, would be publicly acceptable or  
24 whether or not the outcome of these Hearings would make  
25 good public policy, and whether any rate setting

1 methodology or mechanism would result in fair,  
2 reasonable, non-discriminatory and non-preferential  
3 rates.

4 I'd propose to do this in -- under three  
5 (3) headings, and despite the fact that my introduction  
6 is almost longer than the rest of the submissions, I  
7 think it's useful to outline where we're going.

8 The first question that I'd like to cover  
9 is, what does legislative intent tell us about these  
10 rights, interests and expectations of Manitobans.

11 Secondly, what do other jurisdictions have  
12 to teach us about rate setting. And thirdly, despite  
13 what will undoubtedly sounds like a challenging and  
14 controversial question, is this, that is the Public  
15 Utilities Board, even the right forum in which to effect  
16 any change or to make a decision to preserve the status  
17 quo.

18 And for the convenience of the Panel  
19 Members, I'll tell you that I will make reference to  
20 transcripts and exhibits but I suggest that unless the  
21 Board wants to, there's really no need to turn to them.  
22 I do this simply for the purposes of establishing a later  
23 reference if the Board would like to review what I'm  
24 saying.

25 And of course, it certainly does not

1 require that I should invite the Board to interrupt me at  
2 anytime with any questions or comments.

3           So, let me turn to the first point that I  
4 want to talk about and that deals with the question of  
5 what legislative intent may tell us about the rights,  
6 expectations and concerns of Manitobans.

7           We've heard throughout this Hearing four  
8 (4) catch phrases. That is that Manitobans have a right  
9 to have fair, reasonable non-discriminatory and non-  
10 preferential rates. But, these concepts really I suggest  
11 to you, are profoundly unhelpful.

12           It would be as if I suggest to you that I  
13 stood up right now and declared 'I like pie'. That may  
14 give you a rough idea of what I like but it doesn't tell  
15 you what kind of pie I like, how big of a slice I'm  
16 expecting, where I'd like it served, what utensils I'm  
17 going to require.

18           In short, for those of us who have gone  
19 through a background in philosophy will recognize that  
20 concepts like fair, reasonable, non-discriminatory and  
21 non-preferential; these are generally considered to be  
22 high level or first order goals.

23           And on their own they're completely  
24 helpless in terms of guiding our discussion. I'm going  
25 to suggest to you that we can put meaning into these

1 terms by looking at among other things what is the intent  
2 that underlies the legislation that sets up the current  
3 scheme or that would be impacted by any changes that  
4 we're proposing under loss transfer.

5 I had originally intended to spend a  
6 considerable amount of time reporting to this Board my  
7 findings on the legislative history of the legislation  
8 but that was before I knew that Dr. Evans would be  
9 joining the Panel.

10 And I'll suggest that the Board has a far  
11 better source than any second-hand report that I might  
12 make based upon my review of answered Hansard legislative  
13 committee discussions; reports such as the USCU  
14 (phonetic) Commission as well as the decisions of this  
15 Board simply by consulting Dr. Evans.

16 So, both to save time as well as to deal  
17 with something that's much more relevant, I'll suggest  
18 that we move directly to something that may be of more  
19 assistance to the Board.

20 Of course legislative intent can be found  
21 certainly in those kinds of primary sources that I made  
22 reference. But we are also fortunate in that the courts  
23 will occasionally turn to the legislative scheme and ask  
24 the question of what is it's purpose.

25 There have been relatively few such

1 decisions in Manitoba but one that is particularly useful  
2 for this discussion arose in 1997. It's a Manitoba Court  
3 of Appeal Decision and the style of cause is Macmillan  
4 and Rural Municipality of Thompson.

5 I normally at this point would pause and  
6 hand out the case except that the facts are really quite  
7 irrelevant and there are simply two (2) paragraphs that  
8 deserve the attention of the Board.

9 The facts by way of very brief background  
10 was a dispute as to whether or not injuries had been  
11 sustained as a result of the operation of a motor  
12 vehicle. Clearly if in fact the Court found that there  
13 were a finding that a motor vehicle had caused the  
14 injuries, then the injuries would be covered under the  
15 MPI scheme.

16 So, the facts as I say, are quite  
17 irrelevant. The case goes on at length to deal with  
18 whether or not the automobile discussion was relevant.  
19 But I want to turn the court -- this Panel's attention  
20 specifically to paragraph 54 where Madame Justice Helper  
21 makes the following comment.

22 "I have concluded that the legislature  
23 created an all encompassing insurance  
24 scheme to benefit, or to rather, to  
25 provide immediate compensatory benefits

1                   to all Manitobans who suffer bodily  
2                   injuries in accidents involving an  
3                   automobile."

4                   Now, I have to say when I read that  
5                   statement, that sounded to me like the usual platitude  
6                   that a judge makes to throw out some comment that makes  
7                   it sound like they've done some work.

8                   This is fact I suggest to you, is a rather  
9                   profound statement. Whether intended or otherwise, I'm  
10                  going to draw out what I'm going to suggest to you are  
11                  three (3) nuggets of guidance.

12                  First Madame Justice Helper makes  
13                  reference that the scheme as being an all encompassing  
14                  insurance scheme. This suggests that attempts to draw  
15                  parallels upon SGI's approach, allowing opting out in  
16                  favour of Tort, may at least, based on this comment, run  
17                  counter to the underlying philosophy of the legislation.

18                  I will have more to say about this as I  
19                  close, but that's the first point that I think we need to  
20                  look at.

21                  The second one (1) relates to the notion  
22                  of providing compensatory benefits to all Manitobans.  
23                  This gives rise to an implicit balancing act, namely that  
24                  premium pricing has to obviously be sufficient in order  
25                  to pay compensation to all Manitobans. But, there'd have

1 to be some sort of control on compensation that could be  
2 paid, it can't be open ended, it can't be indeterminate.

3                   Therefore, it follows that MPIC ought to  
4 try and reduce both the frequency and severity of  
5 accidents in whatever it can pursuant to the scheme, and  
6 the key way in which it can do that is through rate  
7 making methodology.

8                   The third nugget that I extract from Madam  
9 Justice Helper's comment, deals with her use of the  
10 notion of compensation. She said, if you remember, that  
11 the scheme is designed to provide, and I quote, immediate  
12 compensatory benefits to all Manitobans.

13                   She did not write, which she could have,  
14 that it was an all encompassing insurance scheme, to  
15 punish those who caused Manitobans to suffer bodily  
16 injuries and accidents involving an automobile.

17                   I make much of this distinction, that is  
18 she deals with compensation not punishment, because as I  
19 should briefly argue, that has a big bearing on where we  
20 can go under the legislation.

21                   I've had the opportunity to review the  
22 presentations that were made before this Panel on  
23 Wednesday evening, and I noticed that a number of the lay  
24 presenters would not agree with me that the thrust of the  
25 legislation is not compensatory, but rather they would

1 suggest I think, that it is punitive.

2 I point for example, to the comments of  
3 Mr. Bach at page 472, line 18, where he said:

4 "I feel that MPIC should first go after  
5 the driver's instead of the vehicles."

6 That was echoed again by Mr. Arjoon, if  
7 I'm pronouncing his name correctly, who apparently  
8 related to the Board that he had been involved as a  
9 motorcyclist in an accident and said at page 464, line 9:

10 "What I find illogical is, when it came  
11 time to pay my wages and for the  
12 replacement costs of my motorcycle, it  
13 came out of our pool."

14 This is again another statement suggesting  
15 that the purpose ought to be to punish the wrongdoer, not  
16 so much the compensation. Mr. Arjoon here is not  
17 complaining that he got compensated, that he got money  
18 for his injury, that his motorcycle was fixed. He's  
19 complaining that he ended up having to pay for it, and  
20 that the wrongdoer, as far as he sees it, got off scott-  
21 free.

22 And it's not just the presenters that said  
23 this. Mr. Ramsay said at page 182, line 10, "we",  
24 meaning his group:

25 "Believe cost of insurance should be

1                   apportioned to the vehicle type, based  
2                   upon fault determination. We believe  
3                   that it is the fair approach to this  
4                   issue."

5                   Well, with respect, that's an approach,  
6 but based upon the comments of Madam Justice Helper, at  
7 least at paragraph 54 of the MacMillan Decision, it seems  
8 not to be the Manitoba approach.

9                   Clearly this approach demonstrates, that  
10 is the comments Mr. Ramsay made, demonstrates a bias in  
11 favour of, or perhaps coming out of a Tort or fault based  
12 environment. And this harkens back to some of the  
13 comments that My Learned Friend, Mr. Williams, made in  
14 the opening of his comments, namely that there is an  
15 ideological divide almost, separating those who are used  
16 to a Tort based system from here in Manitoba.

17                   I'm going to suggest to the Board that  
18 MPIC's witness in fact got it right. You'll remember  
19 that Mr. Palmer, while being cross-examined by Mr.  
20 Saranchuk, said at page 617, line 21, "we're", meaning  
21 MPIC:

22                                 "We're in the business of compensating  
23                                 losses."

24                   I suggest to you that that statement makes  
25 clear the understanding on behalf of MPIC, that they

1 recognize they're in the compensation business, they're  
2 not in the punishment business.

3           Of course some may say, but, yes, they  
4 have this bonus malice system, but we all know that that  
5 operates very separately from the way in which premiums  
6 themselves are actually going to be set. Bonus malice  
7 doesn't impact upon the rate setting methodology.

8           And, I suggest to you that this is  
9 correct. And, if you took a course in the philosophy of  
10 law, which sadly it may seem to some of you on the Panel  
11 I'm now giving, you would know that -- and, I will submit  
12 to you as it is fact, that is primarily concerned with  
13 identifying a wrongdoer and imposing liability on that  
14 person.

15           Tort is primarily concerned with  
16 punishment, it is not primarily concerned with  
17 compensation and common sense, even from those who aren't  
18 lawyers, would immediately recognize this as being true.  
19 You would know, for example, that the liability that a  
20 wrongdoer under a Tort system may have to pay, has no  
21 necessary connection with the actual loss that is  
22 suffered.

23           Consider, for example, the notion of  
24 punitive damages that can arise in Tort, this is extra  
25 bonus cash for the wrongdoer. It has no connection with

1 the actual loss that was sustained. It is an attempt, as  
2 its name implies, to punish the wrongdoer.

3 Tort system can work in the other  
4 direction as well. It can argue that the wrongdoer  
5 should pay less than the cost of the loss that the victim  
6 has sustained, and that's through the concept of  
7 contributory negligence.

8 These are notions that are philosophically  
9 underpinning the Tort system, supporting the view that  
10 Tort is primarily there to punish, not necessarily to  
11 compensate.

12 The notion of loss transfer itself, I  
13 further submit, is tied inextricably to the notion of a  
14 Tort system, not a system whose primary purpose is  
15 compensation.

16 The leading, or one (1) of the leading  
17 European texts is written by Christian Von Bar, the  
18 English translation is "Common European Law of Torts" and  
19 in volume 1, which was published in 1998 at page 510 we  
20 have the following observation:

21 "The concept of transferred loss is  
22 intended to prevent someone appealing  
23 to rules whose purpose is not to  
24 protect that person, but to protect  
25 others."

1                   Now, let's pause and make sure we grab  
2 that meaning.

3                   Of course, loss transfer operates,  
4 normally, to prevent the wrongdoer from hiding within the  
5 class of others and escaping any punishment.  
6 Philosophically then, that protection that loss transfer  
7 would normally afford -- well, without loss transfer,  
8 philosophically, without the protection of loss transfer,  
9 is what I'm trying to say, punishment would not be  
10 possible, and therefore loss transfer actually flows, I'm  
11 submitting, from the notion of a Tort-based system.

12                   But of course, we all know that there's no  
13 Tort here in Manitoba anymore, and that then means that  
14 if we are going to adopt loss transfer in Manitoba, we  
15 should not fool ourselves into thinking, I submit, that  
16 it is somehow an extension of the existing legislative  
17 intent. Rather, it must be adopted boldly as saying  
18 that it merely is a cost control.

19                   There is a group that is complaining its  
20 rates are too high; what can we do to help them? Well,  
21 loss transfer may be an answer.

22                   Now, of course, Ontario has been described  
23 as, in the words of My Friend Mr. Williams, the magic  
24 elixir, and I'm going to suggest to you that -- under the  
25 heading that -- I have a second heading that I'm using

1 that what do other jurisdictions have to teach us about  
2 the non-consensual imposition of loss transfer; I'm going  
3 to suggest to you that Ontario has nothing to teach  
4 Manitoba.

5 I've already talked to you about the  
6 distinction of Tort being, of course, an Ontario-based  
7 system too, and how Tort does not apply really, of  
8 course, in Manitoba; but I think that it's important to  
9 review the historical background of the Ontario decision  
10 to adopt loss transfer.

11 We know, of course, that Ontario seems to  
12 be this magic elixir, because as Mr. Tabachneck said, at  
13 page 43 line 19, the Ontario loss transfer data has no  
14 affect upon the CLEAR system; that seems to be our  
15 biggest problem here in Manitoba. We want CLEAR, but we  
16 don't want to skew that data.

17 And, of course, in Ontario loss transfer  
18 has no effect upon CLEAR, because it's triggered only  
19 after the two thousand dollar (\$2,000) premium, therefore  
20 since clear only tracks frequency, the frequency claims  
21 count is always going to equal one (1), whether or not  
22 there's loss transfer. So it sounds great.

23 We know from Ms. Hall, that the liability  
24 crisis arose in Ontario, and this at page 99, line 19 of  
25 the transcript:

1 "And it led to the creation of First  
2 Government Committee to examine the  
3 issue, and it was followed by the  
4 Osborne Report and then there  
5 wasn't..."

6 And she correctly identifies it:

7 "...a Reference Hearing from the  
8 Government of the day to, shall we say,  
9 the Ontario version of the Public  
10 Utilities Board, the Ontario Automobile  
11 Insurance Board."

12 There was a conference at the University  
13 of Laval in 1998, entitled, Vingt ans D'assurance sans  
14 Egard a la Responsabilite, twenty (20) years of  
15 insurance, or no fault insurance, at which, Bruce  
16 Feldthusen, gave a presentation entitled, Have the  
17 Politics of Rate Regulation Produced a better No-Fault  
18 Regime for Ontario.

19 And that paper, and that paper was  
20 subsequently reprinted in the 1998 Volume 39, of Les  
21 Cahiers de Droit, page 437 -- 473 rather.

22 And the conclusion of that author was that  
23 this initiative in Ontario largely emerged as a result of  
24 the lobbying efforts, first of insurers, as well as  
25 lawyers.

1                   In terms of the insurers, and the lawyers  
2 having been the impetuous, Ms. Hall tells us at page 165,  
3 line 16, that she was not aware of any consumer group  
4 involvement prior to the public hearings, that's because  
5 no public -- no public consumer group was complaining at  
6 that particular point.

7                   It was a problem, but it wasn't the kind  
8 of problem that I'm about to describe.

9                   Ms. Hall went on to say at page 82,  
10 line 12 that:

11                   "Without the change that loss transfer  
12 introduced, insurers might not have  
13 been able to sell insurance for special  
14 -- specialty vehicles or insurance  
15 might not have been affordable".

16                   But it was the insurers who were bringing  
17 this forth, and if we pause and ask the question: Why  
18 would the consumer groups not have been complaining, the  
19 logic I think is as follows.

20                   Of course, the problem without loss  
21 transfer is that each insurer, of course, is trying to  
22 reduce its claims costs. Under loss transfer, the first  
23 party insurer is entitled to recoup those costs from the  
24 party at fault.

25                   Translation: We don't have to pay, the

1 other party's insurer has to pay. And that's of course  
2 after the two thousand dollar (\$2,000) deductible, or  
3 premium threshold.

4                   That then leads insurers who find the  
5 majority of their insured are causing claims, or at  
6 fault, to essentially lead to dump those wrongdoers. It  
7 makes perfect sense, I insure those who don't have to get  
8 -- who don't file claims, I dump those who cost me money,  
9 and then they have developed this marvellous PR  
10 development of the Facility Association, which of course  
11 is a pool of all of the insurers who get together, and  
12 they're not feeling sorry for the wrongdoers at this  
13 point, they are, as Miss Hall says, at page 107, line 9,  
14 they're charging, quote:

15                   "Premiums are amongst the highest in  
16                   the market."

17                   So, if you're stupid enough as a person  
18 who seeks insurance, to have been denied insurance, and  
19 you still want to go out on the road under loss transfer,  
20 well, we have a place for suckers like you and it's  
21 called, 'The Facility Association'.

22                   The fact about the result of loss transfer  
23 in Ontario happened to be affordable, to some extent, for  
24 consumers; I suggest to you it was quite incidental, it  
25 was a happy benefit, it was almost a PR coup, but that's

1 not the purpose.

2 Ms. Hall also made reference at page 167,  
3 line 6, to the fact that:

4 "Other jurisdictions were investigated  
5 as to the appropriateness of their  
6 systems of loss transfer."

7 And she pointed out, as it's set out at, I  
8 think it's Tab 2 in the Appendix, that these were six (6)  
9 American jurisdictions: New York, Michigan, New Jersey,  
10 Kentucky, Hawaii, and another one.

11 I've had a look at some of the details  
12 that were there, and I refer to a paper again written by  
13 Stephen Sugarman entitled, Quebec's Comprehensive Auto  
14 No-Fault Scheme and the Failure of Any of the United  
15 States to Fault, which appears again in the Les Cahiers  
16 de Droit, in the 1998 Volume at page 303.

17 Guess what? In those jurisdictions that,  
18 remember, they were picked by the government, the Board  
19 was told which jurisdictions to look at, in those  
20 American jurisdictions that they were asked to look at,  
21 guess who had started the idea of dealing differently  
22 with certain categories of claims; it was the insurers.

23 It was the lawyers, because the lawyers,  
24 of course, want to keep the tort system going as much as  
25 possible. I suspect I'm going to have to move out of the

1 jurisdiction after saying that.

2           It seems logical, given the fact that  
3 Ontario is located right next door to Quebec, which had a  
4 perfectly operating system, that you would necessarily,  
5 as this Board indeed has done, looked at Quebec.

6           Why did they not? I suggest to you that  
7 we can draw the inference that clearly the purpose of the  
8 Ontario system was not designed to protect the interests  
9 of consumers, it was not designed to make an affordable  
10 system, it was designed to come up with a system that  
11 would most benefit the insurance companies, to allow them  
12 to continue doing business as usual in a Tort-based  
13 system.

14           And, indeed, Ontario and the American  
15 system preserves the concept of fault which certainly  
16 would be the expectation of those jurisdictions, and  
17 that, again, echoes back to the comments that Mr.  
18 Williams made about the ideological divide.

19           Any jurisdiction that is seriously  
20 concerned about its citizens and their ability to handle  
21 insurance, clearly is going to do what happened in  
22 Manitoba, they're going to take over the insurance  
23 companies.

24           You're going to do like Quebec, you're  
25 going to create a monopoly; that's the most effective way

1 to control the way in which costs, and the entire  
2 insurance industry is obviously run.

3           And that I needn't dwell on because that  
4 clearly relates to the legislative history in Manitoba.  
5 But I think it's telling, and I suggest to you that for  
6 that very reason alone, the magic elixir that appears to  
7 be Ontario is really, in many ways, of a poisoned dark  
8 child of the insurance industry.

9           So where should we be looking if not  
10 Ontario? If I had had this Board's budget, the one  
11 jurisdiction that I would have been most interested in  
12 looking at would have been New Zealand. And it would  
13 have been a very specific time frame that I would have  
14 wanted to look at. And I'm hoping that it might have also  
15 involved an all expense paid trip to New Zealand, but  
16 that's a whole separate issue.

17           In 1974, the New Zealand government  
18 created the Accident Compensation Corporation. And I'm  
19 going to speak in the period prior to the changes that  
20 began in 1992, in New Zealand, when essentially this  
21 whole system fell apart.

22           But that Accident Compensation  
23 Corporation, as probably members of this Panel know, had  
24 a very broad scope of coverage. It covered all  
25 accidental personal injury; that meant that not only did

1 motor vehiclists get covered, so did pedestrians, so did  
2 the man who was out golfing and accidentally stubbed his  
3 toe.

4                   Everything was covered; workers'  
5 compensation. Premiums were collected from four (4)  
6 categories, employers, employees, motor vehicle owners,  
7 and taxpayers, and with the exception of employers, the  
8 premium rate was flat.

9                   So that meant that all workers paid a  
10 percentage based upon their income. All motor vehicle  
11 owners paid, what I think we would recognize in Canada as  
12 essentially a gas tax, all taxpayers paid a percentage  
13 based on their income, and only employers paid a premium  
14 that was related to the risk inherent in the industry  
15 that they were, of course, engaged in.

16                   Note that this is a monopolistic  
17 jurisdiction, and note arguably that loss transfer was  
18 introduced. Despite my earlier comments that seemed to  
19 attack loss transfer, it should be noted then that it can  
20 be done in a monopolistic jurisdiction.

21                   The suggestion that I have is, is that  
22 maybe it ought not to be done because it does not mesh  
23 with Manitoba's underlying philosophy of the legislation  
24 but, nonetheless, New Zealand shows us that it can be  
25 done.

1                   The argument, I guess would be, that every  
2 Manitoban -- or any Manitoban driver, or perhaps insured,  
3 would pay a flat rate, which simply would divide the  
4 number of premium, or the number claims costs, by the  
5 number of cars and off we go.

6                   I can hear the heads spinning at the CLEAR  
7 Bureau. I can see poor Mr. Palmer curling into a fetal  
8 position and crying. This, obviously, would cause  
9 tremendous problems, it is, however, an option that  
10 presents itself.

11                   And it's important to note, despite having  
12 now almost suggested that New Zealand is the new elixir,  
13 that this whole system collapsed.

14                   It coincided with the introduction largely  
15 of a conservative government in 1992, but there had been  
16 significant cost reductions and trimmings on the benefit  
17 plan.

18                   The other area that we might have looked  
19 at, of course, would have been Quebec and it's  
20 unfortunate that the reply from Quebec was not to send a  
21 representative, but rather to have a handwritten note  
22 that said Linda's not available to talk to you, but since  
23 you're obviously not going to think of it yourself, have  
24 a look at our legislation. That really wasn't all that  
25 helpful and I -- I know that every effort was made.

1                   It's unfortunate in many ways because, of  
2 course, Quebec would have potentially been useful to us  
3 to a certain extent. Again, it's another monopolistic  
4 jurisdiction, but of course, it only covers bodily  
5 injury.

6                   It could have been a model for our  
7 discussion, so long as we would then have taken into  
8 account the differences that would have been necessary  
9 because, of course, MPIC extends well beyond merely  
10 bodily injury.

11                   Mr. Tabachneck, at page 63 line 4, had  
12 said that CLEAR members would certainly like third party  
13 ratings, because they have a concern over the risk posed  
14 to other insured, by certain vehicles, but his problem,  
15 as he said, was at page 39 line 14:

16                   "We have never been able to get enough  
17 data representative of third party  
18 coverage."

19                   So, that poses more of a -- a difficult  
20 problem.

21                   However, there's a certain elegance to the  
22 Quebec approach, at least in the context of bodily  
23 injury. Some might say that there's an arbitrary  
24 division, you simply take the number of vehicles that  
25 were -- or the number of claims, rather, arising out of

1 an incident, and then divide the cost of the overall by  
2 that number, and you assign it appropriately to each  
3 class.

4                   That may make sense, because  
5 philosophically you might say, well, a life is a life,  
6 and all lives should be valued equally regardless of  
7 blame, perhaps. So, that's Quebec.

8                   There are two (2) more to consider and  
9 that -- the next one deals with Saskatchewan, again,  
10 another monopoly, and again, one that is trying to deal  
11 with the problems that are presented to it, and it has  
12 selected the notion of opting out in favour of Tort.

13                   That's actually a rather workable  
14 solution. Some might argue that it undermines the  
15 philosophy of creating a compensatory system for the  
16 benefit of all Manitobans. Certainly lawyers would be  
17 pleased to assist those who would pursue the Tort system,  
18 and the fact that it has been introduced in a  
19 monopolistic jurisdiction such as Saskatchewan, and  
20 presumably has not impacted its use of CLEAR and other  
21 rate settings, again suggests that this is something that  
22 could be done. Public policy considerations will  
23 determine, in the Board's mind, whether it should be done  
24 in this Board -- in this province, but that's something  
25 to consider.

1                   And then the last one is something that  
2 Mr. Williams devised, and I'm going to call it, "The  
3 Arbitrary Sum" when he asked Ms. McLaren at page 135 line  
4 15, if it would be possible simply to retain the current  
5 rate making methodology, but transfer a sum in  
6 recognition of the unintended consequences of no-fault,  
7 as an express and transparent cost, allocating it to the  
8 rate base in a manner similar to the way in which claims  
9 are allocated.

10                   Ms. McLaren said, at page 836 line 3, that  
11 it certainly would be a significantly less distorting,  
12 than full loss transfer, but she then went on to caution  
13 us at line 16 of that same page:

14                   "We could all spend, all kinds of time  
15                   every October, talking about how much  
16                   the amount should be this year."

17                   That seems to fly in the face of this  
18 Board's initial pronouncement that you want to settle  
19 this decision once and for all. So, that's the problem  
20 with the arbitrary sum.

21                   In closing, I'd like to just raise one (1)  
22 question, which prior to May 5th I might have gone on at  
23 great length, and that is the question of whether this is  
24 a process of change or no change, is one that should be  
25 done in this forum.

1                   Prior to the Manitoba Court of Appeal's  
2 decision on May 5th, which was an Application for Leave  
3 by the Consumers' Association in connection with this  
4 Board's decision relating to a Centra Gas application, I  
5 might have been more keen on suggesting that this is not  
6 necessarily the correct form, for legal reasons.

7                   I have to say that that decision, coupled  
8 with earlier decisions, would lead me to rather readily  
9 agree with the comment that Ms. McLaren had made when I  
10 asked her about jurisdiction, that this Board certainly  
11 can basically do whatever it chooses.

12                   And the good news, for those of you who  
13 are sitting on the Board, is that the decision of the  
14 Manitoba Court of Appeal, although not terribly well  
15 reasoned, essentially sets up such a high threshold for  
16 anyone who would ever dare try and challenge this Board's  
17 decision on any point, that a client would either have to  
18 have an awful lot of money, or an awful lot of courage,  
19 to attempt to do so.

20                   That means, certainly, this Board has the  
21 power to do it; ought it to do so? We know that Ms.  
22 Hall, in her cross-examination, had described the move  
23 from Tort to no-fault as being an Ontario political  
24 decision, a radical change.

25                   It was, I note, a decision that came about

1 as a result of a government initiative, a directed  
2 reference hearing. And while this Board may very well  
3 have the power to do so, I suggest that even though loss  
4 transfer may not be a well understood notion, it may be a  
5 question on which legislative initiative would be more  
6 appropriate than essentially what, to the public might  
7 consider, almost a closed hearing.

8                   It certainly is not a closed hearing; this  
9 board has made every effort to canvass that. But, we  
10 know that this Hearing is not being covered in the  
11 newspapers, we know that there are no members of the  
12 public here.

13                   It simply isn't the sexy issue that will  
14 grab that kind of interest. It could be made into a more  
15 interesting discussion, one that would involve the  
16 political representatives of the day.

17                   I simply draw that to this Board's  
18 attention on that point. So in closing I've suggested to  
19 you that loss transfer really is the offspring of a Tort  
20 system, and it's philosophically ill-suited to a  
21 monopolistic jurisdiction.

22                   It arguably, therefore, would be that it  
23 would distort the rights, expectations, and interests of  
24 Manitobans, as those rights, interests, and expectations  
25 are set out in the statutory scheme.

1 I caution the Board, however, to note that  
2 there's plenty of reason, public policy reason, that may  
3 say, we wish to override those considerations. So this  
4 in no way undermines the view that the Board -- the Bar  
5 Association has taken up, namely, no position.

6 They are all -- are other alternatives  
7 with respect to loss transfer, and I've canvassed those,  
8 and I can leave that with the Board for its  
9 consideration.

10 In one (1) line, I'll simply say that the  
11 -- the Bar Association intends, as we're required to say,  
12 pursuant to the Board's rules, to make an application for  
13 costs, we're prepared to put that in writing in due  
14 course.

15 And on behalf of my client, the Manitoba  
16 Bar Association, we certainly appreciate the opportunity  
17 and hope that we've been of assistance to this Board.

18 Failing any questions, that concludes my  
19 submission. Thank you.

20 THE CHAIRPERSON: Thank you, Mr. Dawson.  
21 A very interesting survey. Thank you.

22 Any questions?

23 Mr. McCulloch, if I may, and in no way  
24 intending to rush you, sir, how long do you think you  
25 will take in your closing remarks?

1                   MR. KEVIN MCCULLOCH:    There are one (1)  
2 or two (2) minor items that I need to get some direction  
3 from Ms. McLaren on, but I really anticipate not taking  
4 more than 45 minutes, and in all likelihood, less than  
5 that.

6                   THE CHAIRPERSON:    Very good then.  We'll  
7 break for twenty (20) minutes and we'll come back at  
8 approximately twenty (20) minutes to 1:00 for Mr.  
9 McCulloch's closing statement.

10                  MR. WALTER SARANCHUK:    Just before we  
11 break --

12                  THE CHAIRPERSON:    Mr. Saranchuk...?

13                  MR. WALTER SARANCHUK:    Yes, Mr. Chairman.  
14 Just before we break, maybe just for the record, out of  
15 an abundance of caution, we should have the question  
16 posed of any other Intervenor, who might be represented  
17 here, whether there are questions for any closing remarks  
18 that will be made.

19                  THE CHAIRPERSON:    Ms. Olafson, do you  
20 have anything to say?

21                  MS. OLAFSON:    No, thank you.

22                  THE CHAIRPERSON:    It's fine.  We heard  
23 you.  Thank you.  Thank you, Mr. Saranchuk.

24                  Okay.  We will come back together again in  
25 about eighteen (18) minutes.  Sorry to rush you.  It's a

1 busy day and Mr. McCulloch, I must say, you have to take  
2 the time that you require to take.

3

4 --- Upon recessing at 12:20 p.m.

5 --- Upon resuming at 12:50 p.m.

6

7 THE CHAIRPERSON: Thank you, everyone.  
8 Mr. McCulloch, it's now your turn.

9

10 CLOSING COMMENTS MR. KEVIN MCCULLOCH:

11 MR. KEVIN MCCULLOCH: Thank you, Mr.  
12 Chairman, Members of the Board. I want to say it at the  
13 outset that this entire Hearing has been something of a  
14 different experience for me, from what is usually the  
15 situation in a General Rate Application. And it was  
16 brought home right at the outset, when Mr. Saranchuk  
17 didn't put any onus questions to the MPI witnesses and --  
18 and the burden of proof question didn't come.

19 And, obviously, the reason for that is  
20 that the Corporation's role in this sort of a special  
21 hearing is somewhat different than it would be at -- at  
22 the general rate application where we're coming forward  
23 with a proposal purporting something and -- and having to  
24 support it.

25 The other situation that strikes me as

1 being somewhat different is that normally in a general  
2 rate hearing when it comes to final submission, I spend a  
3 couple of days before preparing some nicely organized,  
4 well-written notes and arguments and then on the day of  
5 the submissions I spend my time scrambling to try to  
6 correct the outrageous statements coming from  
7 Intervenors.

8           This is different in this hearing as well.  
9 Certainly, from my point of view, much of what both Mr.  
10 Williams and Mr. Dawson said in -- in submission reflect  
11 positions that are taken by the Corporation and,  
12 therefore, that enables me to, perhaps, avoid detail that  
13 I would otherwise have gone into.

14           I don't intend to repeat all of the detail  
15 that both those gentlemen referenced in -- in making  
16 their submissions, although I do want to highlight the  
17 points that, from MPI's point of view, were in agreement  
18 with the positions taken by Mr. Williams and Mr. Dawson.

19           Now, the stated purpose, obviously, for  
20 this special hearing as set by the Board, was to examine  
21 the concept of loss transfer, but from a public policy  
22 point of view. And I, too, Mr. Chairman, have noted your  
23 opening remarks on page 13 of the transcript and want to  
24 address the six (6) points that you, on behalf of the  
25 Board, identified as being the criteria to which you

1 would be judging the issue of loss transfer.

2 I'll run through them very briefly. The  
3 first one, the question: Will the premium system that  
4 is based on the claim cost attribution approach selected  
5 by -- be representative of an actuarially sound and  
6 statistically based approach? Is the system fair? Will  
7 it be fair?

8 Can the system, old one or the new one,  
9 provide for a lower number of accidents with a lower  
10 overall severity?

11 Will the system be administratively  
12 feasible? Will the system be comparable to approaches in  
13 other jurisdictions and will the approach be acceptable  
14 to the majority of MPI's policy holders?

15 So, these are the public policy  
16 considerations that the Board has indicated it will be  
17 using to test any loss transfer proposal that it might  
18 consider. I'm going to come back to those six (6) a  
19 little later in -- in the presentation, because I think  
20 it's worthwhile at this point emphasizing that the issue  
21 of loss transfer has been before this Board for many  
22 years and it's MPI's position that in those previous  
23 hearings and in those previous applications, the Board  
24 was also looking at public policy considerations.

25 So, that the idea of looking at public or

1 loss transfer from a public policy point of view is  
2 certainly not new to this particular Hearing.

3           Also, we all conceded that the true test  
4 of a loss transfer system was not an actuarial one and  
5 I'll be making further comment on that later in the -- in  
6 the -- in the -- in the presentation.

7           What I would like to do very briefly is to  
8 refer back to four (4) previous Board orders and I'll  
9 only be referring to portions from each of those orders.  
10 I have copies of the pages involved that I'll supply to  
11 Mr. Barron at the conclusion of my submission in the  
12 event the Board Members want to refer back specifically  
13 to those -- those orders.

14           The first one and -- and also the reason  
15 that I refer back to those prior orders is that I don't  
16 believe the Board can look at this issue of loss transfer  
17 in a vacuum. I think that the past history is relevant  
18 and I think what's more, the Corporation has the right to  
19 rely on guidance and direction that it has been given by  
20 previous Board orders.

21           Now, the first order that I wish to refer  
22 to is Order Number 154-98, Board Order dated  
23 December 1st, 1998. And at page 83 the Board  
24 specifically ordered MPI to respond at the next General  
25 Rate Application, to CMMG Recommendations, related to



1           an adequate system of merit/demerit  
2           points and accident surcharges, will  
3           sufficiently penalize those drivers who  
4           cause accidents."

5           But I'd suggest, Members of the Panel,  
6 that that statement addresses one of the criteria that  
7 you have identified for this Hearing:

8           "An adequate system of merit/demerit  
9           points and accident surcharges, will  
10          sufficiently penalize those drivers who  
11          cause accidents."

12          A reference to the bonus malice system."  
13          The Board goes on to state, in that Order,  
14 that:

15                 "The Board is of the view that choosing  
16                 the type of vehicle to drive, is an  
17                 individual's choice and responsibility.  
18                 The Board recognizes common sense  
19                 dictates, that the risk of personal  
20                 injury, an individual assumes, by  
21                 operating a motorcycle, or a smaller  
22                 passenger vehicle, compared to  
23                 operating larger vehicles, is greater."

24                 So, we can argue all we want, whether  
25 that's a statement about inherent risk, or whether it's a

1 statement about inherent vulnerability, but nonetheless,  
2 it's a very clear statement, that individuals by their  
3 personal choice, can impact the risk that they bring to  
4 the system.

5 The Board states that:

6 "In its view, this is to be a personal  
7 choice and as a consequence, the risks  
8 of this choice must also be personal."

9 Addressing, I would suggest, the fairness  
10 issue that appears in the criteria.

11 "The Board considers that on balance,  
12 the existing system..."

13 Talking about the first party assignment  
14 of loss.

15 "...is fair, reasonable, non-  
16 preferential and is not unfairly  
17 discriminatory. The Board will not  
18 require the Corporation to change its  
19 methodology to encompass the loss  
20 transfer model."

21 Now some four (4) years later, in 2002,  
22 Order Number 203-02, at page 54, again the Board  
23 identifies the fact that back in '99 it had suggested  
24 that -- that the study be -- be taken, and that the Board  
25 reasoned that the basic principle, in Manitoba's no-fault

1 plan, was and should continue to assign costs to the use  
2 that incurs the costs.

3           And they again emphasize their -- the fact  
4 that this involves a personal choice, so two (2) must be  
5 the assumption of the risk; the choice of the vehicle is  
6 personal, the assumption of the risk is also personal.

7           But it goes on to say that:

8           "The Board recognizes that it's been  
9           almost four (4) years since the  
10           previous study, and that while the  
11           principles, in their view, are still  
12           correct, the Board required MPI to  
13           review the matter of loss transfer and  
14           to report its recommendations at the  
15           next GRA."

16           And again the Board gave the Corporation  
17 some direction as to where it expected to go with that  
18 review. The report had to provide, at a minimum, the  
19 rationale for the current system, identifying advantages  
20 and disadvantages, a contrast with the loss transfer  
21 implicit in the fleet rating program, legislative and  
22 practical barriers to implementation of a loss transfer  
23 system, a summary of practices in other jurisdictions,  
24 both private and public, and the estimated administrative  
25 and other costs to implement a loss transfer system.

1                   So, that was ordered in November of '02.  
2 And by the time the Corporation came to the general rate  
3 application hearing in October of '03 that study had been  
4 filed with the Board.

5                   And in dealing with it the Board, at the  
6 outset, indicates that it appreciates the work undertaken  
7 by MPI to produce the report pursuant to the prior order.  
8 Especially it appreciates the calculations required to  
9 produce the indicated required rates by major class if  
10 loss transfer were adopted.

11                   I'm suggesting to the Board that the  
12 Corporation had the right, when it received this Order in  
13 December of 2003, to be satisfied that it had met the  
14 requirement placed on it by the Board in the previous  
15 year; that it had produced a study that responded to the  
16 issues raised by the Board and that the Board was  
17 accepting of that report.

18                   In this Order the Board makes a few more  
19 comments about the issue of loss transfer. They indicate  
20 that the information provided by the Corporation shows  
21 significant rate dislocation for most motor vehicles at  
22 the major class level.

23                   And it goes on to say that:

24                   "More compelling reasons must be  
25                   advanced before the Board will order

1 MPI to abandon the current system of  
2 assigning costs to the major class  
3 where those claims are incurred on a  
4 first party basis."

5 It goes on to talk about CLEAR. It says:  
6 "The CLEAR system assesses risk on a  
7 first party basis and makes no attempt  
8 to assess the extent to which a  
9 particular vehicle may damage another  
10 vehicle if involved in multi-vehicle  
11 collisions."

12 That was confirmed again at this hearing  
13 by both the IBC representative and by witnesses for MPI.  
14 CLEAR rate groups -- sorry, CLEAR rate group assignments  
15 are linked directly to the first party principle. Thus,  
16 determining credible rate groups on an at fault basis for  
17 loss transfer would not be possible.

18 Again, confirmed in evidence before this  
19 hearing. The Board goes on to state that it agrees with  
20 MPI that this inability to have a credible assignment to  
21 rate groups on an at-fault basis, they agree with MPI  
22 that this is the single greatest impediment to  
23 introducing loss transfer.

24 And that to try to do so would be an  
25 incongruous situation in rate making. They go on to deal

1 with another one of the criteria that this Board has  
2 identified as something it wants addressed.

3           The Board then, and we're talking December  
4 of '03, was of the view that loss transfer would not  
5 provide any additional incentive to drive more carefully.  
6 The merit discount program already targets drivers with  
7 poor driving records. Loss transfer can only be  
8 implemented on a territorial and insurance use level, not  
9 according to vehicle make, model and model year.

10           And the element of randomness in the  
11 causation of accidents is only to a minimal extent that  
12 MPI could communicate individual responsibility or  
13 individual choice through vehicle premiums.

14           So, again, indicating that through the  
15 loss transfer method doesn't bring with it the personal  
16 responsibility that the Board has recognized must be a  
17 part of rate making methodology and a part of the  
18 assignment of costs.

19           Once again, in December '03 the Board  
20 stated that it's not persuaded to adopt loss transfer as  
21 part of the rate making methodology.

22           Now, obviously, this Board has decided  
23 that it wanted to hear a more focussed presentation on  
24 the issue of loss transfer and that's why we've spent the  
25 last three and a half (3 1/2) going on to four (4) days

1 providing that.

2           However, I think there are still great  
3 value to be drawn from the findings of these previous  
4 Boards and I would seriously ask the Board to give those  
5 findings the weight and the credibility to which the  
6 Corporation believes they deserve.

7           Let's return then to the six (6) criteria  
8 which the Board has set for this Hearing:

9           "Will the system be actuarially sound  
10           and statistically based if it includes  
11           a loss transfer component?"

12           We've been told by the actuaries that  
13 whether there's a loss transfer system or no loss  
14 transfer system that the rate making methodology can  
15 still be actuarially sound. But, we've also been told  
16 that loss transfer cannot be applied and therefore can't  
17 be actuarially correct down to the level of MPI's  
18 existing rate making methodology.

19           So, it was the evidence of Ms. McLaren  
20 that if -- if you have detailed significant information  
21 that you use to set rates and you can't drive the loss  
22 transfer information down to that level, if you apply a  
23 loss transfer you are, in effect, not using the system to  
24 the full degree to which it's been developed over the  
25 years.

1                   We've also been told that there would be  
2 an adverse impact on the classification system, so there  
3 is an element of damage that a loss transfer system would  
4 do to the rate making methodology. It's not possible to  
5 bring it down to the rate group level and both Mr. Pelly  
6 and Mr. Palmer have confirmed that.

7                   So, while overall the rate making  
8 methodology can still be actuarially sound, it's not  
9 without problems from an actuarial point of view.

10                   Fairness. On a very simple level, one  
11 could argue that assigning loss cost based on fault is  
12 fair, but I would suggest that that's, perhaps, too  
13 simplistic an approach as to what constitutes fairness.

14                   PIPP benefits are first-party losses and  
15 it's largely for that reason that the Corporation has  
16 stayed with the position that they should be assigned on  
17 a first-party basis. There is an element of choice when  
18 one chooses to operate a motor vehicle that puts them at  
19 a greater vulnerability.

20                   And this is an issue that -- I don't know  
21 how successful I was, but I was trying to canvass, I  
22 believe with -- it might have been with Mr. Ramsay, that  
23 if you are -- if you concede the fact that motorcyclists  
24 are more vulnerable, they are prone to suffer injury more  
25 often and to suffer greater injury where they're -- where

1 they're involved in a collision or, if it's a single  
2 vehicle accident, it -- it's just the nature of the  
3 beast, if you will.

4                   If you take the situation where it's an  
5 automobile accident, motorcycle accident where the  
6 automobile is responsible and you -- you transfer that  
7 entire cost to the automobile group, to the private  
8 passenger class, then you have totally escaped putting  
9 any responsibility on the motorcycle driver for the risk  
10 that he brought to that situation merely by being on the  
11 bike that day.

12                   So, that negates the element of choice,  
13 the idea that in an insurance and compensation scheme,  
14 people ought to be responsible for the choices they make.

15                   It also brings up the issue of  
16 subsidization and we've talked about the fact that  
17 transferring a loss means that the private passenger  
18 class and certainly those individuals in the private  
19 passenger class who weren't responsible for the  
20 particular collision that's being transferred, will be  
21 subsidizing the motorcycle pool.

22                   I think it's important to point out  
23 information that's come before this Board many times in  
24 the past is that the private passenger class and, indeed,  
25 the other -- other major class groups under the MPI

1 system have been subsidizing motorcycles for ten (10) --  
2 twelve (12) years. The -- the very capping of the  
3 motorcycle rate at 15 percent means that the balance of  
4 the actuarially required rate has to be made up by these  
5 other groups.

6           So, we're in a situation where  
7 subsidization has been going on for a considerable  
8 period of time. There's the possibility that as  
9 motorcycles are brought to rate adequacy, that cross-  
10 subsidization will no longer be required, but if you go  
11 to a loss transfer system or if you go to the  
12 alternatives suggested by Mr. Williams and I'll deal with  
13 that later, but if you go to that alternative, then what  
14 you're saying loud and clear is that this Board believes  
15 that other classes must continue to subsidize the motor  
16 vehicle class.

17           It's as clear and as simple as that. And  
18 that raises other issues of fairness.

19           The third issue, will the system, whether  
20 it's with loss transfer or without loss transfer, reduce  
21 the number of accidents or the severity of the accidents?

22           Again, it all fits in with the, and we'll  
23 call it, the inherently vulnerable position that  
24 motorcyclists are in. And certainly while there is not  
25 only no evidence to suggest that loss transfer would have

1 a positive impact on the driving habits of the class to  
2 which the losses are being transferred, I would suggest  
3 that there is actually strong evidence to suggest that it  
4 would have the opposite impact.

5           Because the private passenger vehicle is  
6 so large, we've been told that the impact of transferring  
7 losses from the motorcycle class into private passenger  
8 vehicle would be negligible.

9           Over the years, we've heard it described  
10 as the cost of a latte, the cost of a couple of cups of  
11 coffee, the cost of five (5) cents or ten (10) cents  
12 depending on which of Mr. Williams' examples you use.

13           But that's hardly the sort of cost  
14 implication that is going to have an impact on people's  
15 driving. Leaving the losses in the motorcycle class, I  
16 would suggest, on the other hand, should have a direct  
17 impact on how those people operate those vehicles and how  
18 safety conscious they are.

19           And that's recognizing the fact that a  
20 considerable number of accidents, based on the evidence,  
21 are single vehicle accidents. It may even assist in  
22 their ability to avoid injury and collision in multi-  
23 vehicle accidents. But, from a single-vehicle accident  
24 point of view, I don't think you can -- you can question  
25 that leaving the costs in the motorcycle class would have

1 an impact on their driving behaviour.

2           You know the Corporation has said that in  
3 its view bonus malice, the merit/demerit system, is the  
4 appropriate way to penalize those who are responsible for  
5 accidents.

6           And when I read that excerpt from the  
7 prior Board Order, I think you'll recall I put the  
8 emphasis on the word 'adequate' because I know this  
9 Board, last year, said that it wasn't particularly  
10 persuaded by the fact that the bonus malice system would  
11 have that positive impact on frequency and severity.

12           But, I think that you also have to keep --  
13 or take into account, the Corporation has indicated for a  
14 number of years now that it does feel it can do a better  
15 job in the area of bonus malice and one of the  
16 impediments in doing that better job was the fact that  
17 DDL, the driver license functions, were lodged over with  
18 the Government and the vehicle insurance was lodged with  
19 MPI.

20           And the statement was made at last year's  
21 Hearing that when those two (2) are joined we feel that  
22 one (1) of the real advantages of the merger will be the  
23 opportunity to beef up the bonus malice system and to  
24 make it much more responsive.

25           So, in response to your comment from last

1 year that you weren't particularly convinced that bonus  
2 malice was doing it, I'd ask you to consider that the  
3 Corporation has indicated the intention to improve the  
4 bonus malice and that really that bonus malice is the  
5 best way to bring personal responsibility to the issue of  
6 automobile insurance.

7                   The other point I would make is that part  
8 of the argument that seems to be put forward by CMMG to  
9 support a loss transfer system is that, well, it's such a  
10 minor impact on the personal -- or the private passenger  
11 vehicle class that you don't really need to be concerned  
12 about fairness.

13                   I think fairness comes into play no matter  
14 how much personal or individual impact we're talking with  
15 respect to the private passenger vehicle class. You  
16 can't just override fairness by saying, well, it's only  
17 the cost of a latte.

18                   Would the system be administratively  
19 feasible? Again, I think that there's been admission on  
20 behalf of MPI, not only in this Hearing, but previously  
21 that -- that, yes, we would have the wherewithal, or the  
22 Corporation would have the wherewithal to administer a  
23 loss transfer system.

24                   Obviously, the type of loss transfer  
25 system that may or may not be implemented, could have an

1 impact on the administration, and until you know exactly  
2 what system might be implemented, you really can't give a  
3 definitive answer on the administrative cost, but from a  
4 principle point of view, I don't think there's any doubt  
5 that it is administratively feasible.

6           The criteria was -- indicated that  
7 whatever system may or may not be considered here, would  
8 have to be compared or comparable to other jurisdictions.  
9 And we're really, to some extent, all over the map on  
10 this one.

11           We've heard about some American  
12 jurisdictions, only very briefly, that seem to have some  
13 -- some rather draconian provisions in their loss  
14 transfer systems, in that accident benefits for  
15 motorcyclists are either reduced or -- or non-existent.

16           Up until Mr. Oakes' presentation today, I  
17 would have anticipated that CMMG was coming forward with  
18 a Ontario Model, is what it's been called, namely an  
19 asymmetrical one-way transfer from motorcycles to private  
20 passenger vehicles.

21           It appears, from what he said this  
22 afternoon, that in fact CMMG would support a full loss  
23 transfer system. Again, there hasn't been a whole lot of  
24 definition as to what constitutes a full loss transfer  
25 system, but that's the position that was taken.

1 I also think that our comparison to the  
2 Ontario Model, with the evidence that was given here,  
3 indicates that the Ontario Model is not working, and this  
4 is another point where I certainly agree with -- with Mr.  
5 Williams.

6 There had been significant premium  
7 increases over the last number of years and there's  
8 ongoing discussion about the potential of reducing  
9 benefits for motorcyclists. It's clear that at the time  
10 the no-fault, or, sorry, the loss transfer provisions  
11 were put in place in Ontario, that there were significant  
12 issues of affordability and availability.

13 You know for certain that availability is  
14 not an issue in Manitoba, and I would suggest that from -  
15 - even with the increase that has occurred in motorcycle  
16 rates over the last ten (10) years or so, affordability  
17 is really not an issue in Manitoba either.

18 It was interesting that, and I don't fault  
19 her for it, the lady from FSCO, Ms. Hill, said that one  
20 of the reasons she thought loss transfer was working well  
21 in Ontario was because she wasn't getting any complaints.

22 I can tell you that that test is not  
23 sufficient when MPI judges its customer service and the  
24 programs that it provides to Manitobans. I guess there  
25 are times when we might get -- like to get away with that

1 sort of a test, but it's certainly not the way the  
2 Corporation runs its business, based on whether or not  
3 we're getting complaints.

4                   The final point that -- the criteria that  
5 the Board had identified is: Would a loss transfer  
6 system be acceptable to the majority of MPI's policy  
7 holders?

8                   And that's a tough one, because clearly,  
9 the Board is not able to hear from the majority of MPI's  
10 policy holders. It can hear from, as it has, Intervenors  
11 who represent segments of the Manitoba Society. And  
12 obviously Mr. Williams, through the two (2) clients that  
13 he represents, CAC and MSOS, brings the largest group of  
14 policy holders to this discussion, but that's really, in  
15 -- in looking at that criteria, is the -- the most  
16 definite information that -- that you have before the  
17 Board.

18                   Obviously, CMMG and the Manitoba Used Car  
19 Dealers Association, bring a different view, however,  
20 certainly from point of CMMG, that's a view that has been  
21 around for a considerable period of time.

22                   So, it doesn't come as a surprise, either  
23 to the Board I'm sure, or to the Corporation, that they  
24 maintain that it would be acceptable, at least to  
25 motorcyclists, but certainly they have not provided any

1 information that would indicate the majority of MPI's  
2 policyholders would support a loss transfer system.

3 I want to move to highlighting a few  
4 points from both the other witnesses and the presenters.  
5 And, again, I don't want to belabour any of these points.  
6 I just want to make it clear to the Board that these are  
7 issues that MPI supports or issues that MPI would like  
8 the Board to address.

9 Dealing with Mr. Pelly's evidence, the two  
10 (2) major points, as far as the Corporation is concerned,  
11 is that Mr. Pelly agreed that due to the fact that IBC  
12 does not have a model that differentiates risk on a  
13 third-party basis, full loss transfer at the vehicle rate  
14 group level was not possible.

15 And that supports findings from the  
16 previous Boards that I've -- that I've referenced. Mr.  
17 Pelly also agreed that implementing loss transfer on a  
18 major class basis does not meet the actuarial test of  
19 establishing rates that provide for expected future  
20 costs.

21 It's one (1) of the potential actuarial  
22 impacts that -- that I referred to earlier. And this,  
23 again, responds to Board criterion number 1.

24 Mr. McFarlane; the only point that I would  
25 stress to the Board from -- from Mr. McFarlane's evidence

1 is that when questioned, both by Mr. Saranchuk and by  
2 myself, as to why the bodily injury Tort threshold costs  
3 were included in his calculation, he conceded that taking  
4 them out would have a -- an impact on the 42 percent  
5 projected savings that he had calculated based on having  
6 those costs included in there.

7                   So, he did, under cross-examination,  
8 concede that taking those costs out would have an impact.  
9 I would suggest to the Board that when you consider the  
10 nature of the costs that are included in that BI Tort  
11 threshold award they, indeed, should be taken out.

12                   I did ask Mr. McFarlane about that impact  
13 and he agreed with me that it would lower his expected  
14 savings, if you will; the 42 percent. And I also asked  
15 him about the -- whether, actuarially, rates had been  
16 adequate for motorcyclists prior to the implementation of  
17 no fault.

18                   And, of course, he didn't have any  
19 personal knowledge of that, but I did ask him whether if  
20 the 1993 application had indicated an actuarially  
21 required rate of 80 percent for motorcycles, that would  
22 mean that the motorcycle rates at that time were  
23 inadequate.

24                   And he conceded that that was correct.  
25 Now, the reason for putting that question to him was to

1 lay the foundation for the evidence that Mr. Palmer  
2 brought to the Board.

3           Mr. Palmer talked about the fact that you  
4 had to distinguish between pure premium and premium and  
5 that only where motorcycle rates were adequate would  
6 those two (2) be the same.

7           So, that in Mr. McFarlane's report, when  
8 he talks about premium savings of 42 percent, and pure  
9 premium savings of 42 percent, that would only hold up if  
10 it had been proven that the actuarial rates -- sorry,  
11 that the motorcycle rates were actuarially adequate prior  
12 to the calculation being done. And as we know, that  
13 wasn't the case.

14           I want to address very quickly the  
15 discussion that was held with respect to the Manitoba  
16 Health Agreement. There was -- Mr. Palmer was questioned  
17 about that and it was suggested that the agreement that  
18 Manitoba Health and MPI entered into back in 1994 or 1995  
19 really was another example of loss transfer.

20           Well, I don't agree with that  
21 categorization of the agreement. I think it was -- it's  
22 quite clear that the purpose of entering into the  
23 agreement with Manitoba Health, as stated by Mr. Palmer,  
24 was that the Government of the day wanted to ensure that  
25 the introduction of no-fault would be revenue neutral as

1 far as Manitoba Health was concerned.

2 In previous years, in the Tort regime,  
3 Manitoba Health had a subrogation authority -- a  
4 subrogation right to claim medical expenses where medical  
5 services were being provided to individuals who were  
6 injured in an automobile accident. They could claim or  
7 reclaim those expenses against the liable party's  
8 coverage.

9 But, when the agreement was entered into  
10 there was no agreement to transfer actual medical costs  
11 on a claims-by-claims basis. The agreement merely set up  
12 a formula that would continue the pre-PIPP recovery level  
13 that Manitoba Health was enjoying prior to the  
14 introduction of PIPP. There were many elements in that  
15 pre-PIPP recovery where Manitoba Health would not get any  
16 compensation.

17 For example, if -- if third-party  
18 liability coverage was -- was insufficient to compensate  
19 the injured individual, Manitoba Health stepped aside and  
20 didn't recovery anything, so it's quite different from a  
21 pure or true loss transfer system; the Manitoba Health  
22 Agreement.

23 I also take considerable issue with  
24 comments from -- particularly MMIC that the Tort system  
25 is a loss transfer system. And it appeared to me they

1 were expounding the Tort system as -- as a much superior  
2 means of loss transfer.

3 I think you have to take cognizance of the  
4 fact that the Tort system was, at best, a limited means  
5 of transferring losses, the main limitation being the  
6 coverage limits held by the responsible party.

7 If the responsible party carried two  
8 hundred thousand dollars (\$200,000) third-party liability  
9 and the injured party got a judgement for \$1 million, the  
10 responsible party's insurer would pay two hundred  
11 thousand (200,000) and the injured plaintiff would be  
12 left to try to collect the balance, if he could, from the  
13 other party.

14 The transfer between the insurance  
15 companies was the two hundred thousand (200,000), so it  
16 was limited Tort loss transfer. They didn't transfer the  
17 million as loss experience in the liable party, they only  
18 showed the two hundred thousand (200,000). So, there are  
19 definite constraints in looking at the Tort system as a  
20 loss transfer method, and, obviously one that this Board  
21 couldn't address in any event.

22 I want to deal with the alternative  
23 scenario that Mr. Williams presented at -- at the end of  
24 his presentation and -- and we talked about it briefly  
25 previously, the idea that his clients don't endorse this

1 approach. However, if for some reason the Board feels  
2 there must be some sort of subsidy or support given to  
3 the motorcycle group that you do it on the basis of a  
4 lump sum and that lump sum would be distributed as other  
5 claims costs are distributed in MPI's rate making  
6 methodology.

7 I can tell the Board that, for a number of  
8 reasons, the Corporation does not support this proposal.  
9 I believe Mr. Williams identified it as the lesser of two  
10 (2) unpalatable scenarios and the Corporation doesn't  
11 want to put any unpalatable scenario before the Board.

12 And, I think one (1) of the main reasons  
13 and the main concerns with it is, number 1, it -- it is a  
14 clear subsidy to the motorcycle class.

15 Number 2, it won't put an end to the  
16 question, because two (2) years down the road I can  
17 envisage representatives coming forward and saying, Well,  
18 you know, the twenty thousand dollars (\$20,000) you gave  
19 us back in 2005 is -- is no longer adequate; we think it  
20 should be twenty thousand and five hundred (20,500) and  
21 here's our actuarial report that supports that.

22 It -- it's not going to put an end to the  
23 issue and -- and I think it's -- it's -- while I  
24 appreciate the sincerity of Mr. Williams and -- and his  
25 clients in putting it forward, it isn't something that --

1 that MPI can ask the Board to adopt.

2           Mr. Oakes made a few points that I think  
3 need to corrected. In his cross-examination, he seemed  
4 to be critical of -- of the Corporation for coming  
5 forward in its report that was filed as part of our  
6 evidence, coming forward with different types of loss  
7 transfer scenarios.

8           I understood him to say that in the past  
9 we had only discussed and looked at the Ontario model of  
10 loss transfer. Though I can tell this Board that the  
11 reason the Corporation brought forward these different  
12 scenarios, the full loss transfer, in, out, asymmetrical,  
13 bi-symmetrical, whatever you want to call them, was that  
14 the intention was to look at loss transfer as a whole.

15           And the Corporation felt that it had to  
16 bring forward a number of possible loss transfer  
17 scenarios so that at the same time it could identify to  
18 the Board the pitfalls that the Corporation saw with each  
19 of those models.

20           So it wasn't a matter of -- of trying to  
21 switch horses and -- and create more complex issues, it  
22 was a matter of wanting to make sure that the Corporation  
23 was ready to respond to all of the potential loss  
24 transfer scenarios that it might face.

25           The other complaint that I think were --

1 or complaints that were unjustified with respect to the  
2 evidence provided by the Corporation, dealing with, for  
3 example, retirees and the potential impact that it might  
4 have on rural versus -- versus city members, again, was  
5 nothing more -- it wasn't being brought forward as a  
6 reason not to go to loss transfer, these scenarios were  
7 being brought forward so that the Board would understand  
8 the implications and the ramifications that different  
9 loss transfer scenarios might cause.

10                   And another point that I just want to  
11 correct Mr. Oakes on, because he seemed to be making an  
12 issue of it is, I don't believe I put the -- the Winnipeg  
13 Sun article to MMIC's actuary, Mr. McFarlane, I believe I  
14 put it to Mr. Ramsay.

15                   I wasn't looking for an actuarial opinion  
16 on -- on the accuracy of a Winnipeg Sun article.

17                   The other issue that Mr. Oakes raised was  
18 he talked about the fact that under CLEAR sophisticated  
19 safety systems, that are put in the newer vehicles,  
20 create higher repair costs, and therefore, these vehicles  
21 with the sophisticated safety systems incur higher  
22 premiums.

23                   The converse of that is, that these  
24 systems reduce injury costs, and therefore, overall the  
25 impact is a reduction in premium for those vehicles that

1 have sophisticated safety systems, it's -- it's not a  
2 matter of driving the cost up. The other point I think  
3 that should be made is that Mr. Oakes seemed to be  
4 commenting adversely on the fact that the MPI had not  
5 filed an actuarial report as part of its material.

6 I think that clearly the response there is  
7 that we started on the premise that this was not an  
8 actuarial issue; that it was to be determined on the  
9 basis of public policy.

10 From my point of view, Mr. Pelly was  
11 called for a very limited actuarial purpose, largely to  
12 confirm the fact that this wasn't an actuarial issue and  
13 to talk about implications.

14 So we didn't see this as -- as an issue  
15 that was going to be resolved through filing an expert  
16 actuarial report. Obviously, we produced Mr. Palmer to  
17 answer questions in that regard, but I don't think we  
18 should be criticised for that element of -- of the case.

19 The only comment I wanted to make, with  
20 respect to Mr. Roberts and some of the comments that he  
21 made on -- on the dealers' situation, I think it should  
22 be noted that if you look at the assessment of loss  
23 transfer filed by the Corporation, dealers in Territory 1  
24 would incur a 16 percent increase if loss transfer were  
25 implemented.

1                   And the class to which dealers belong, the  
2 commercial class, would also as a -- as a class,  
3 experience a significant increase in premium.

4                   So it's not as if a loss transfer for used  
5 car dealers would automatically result in a reduction in  
6 -- in their premiums.

7                   I think it's well to note that his -- his  
8 comment with respect to Quebec, and preferring the way  
9 that they split injury costs, must be looked at in light  
10 of the fact that injury benefits is all that the SAAQ  
11 provides.

12                   MPI obviously provides coverage all across  
13 automobile insurance lines, and that's why the first  
14 party cost-allocation methodology works for the Manitoba  
15 context; the Manitoba experience.

16                   One final item: Mr. Roberts seemed to  
17 indicate that small pools were -- were somehow  
18 disadvantaged because of their numbers, by virtue of the  
19 size of the pool. Well, I think there's been plenty of  
20 evidence before this Board, that the Corporation  
21 acknowledging that it's dealing with a small pool,  
22 applies techniques to ensure that they won't be  
23 disadvantaged.

24                   So the Corporation, for example, uses  
25 multi-year averaging, capping of large losses,

1 credibility weighting, and calculating losses and rates  
2 by unit, which works to the advantage of the small pool,  
3 and eliminates the disadvantage that they might otherwise  
4 suffer.

5                   One final comment on Intervenor's  
6 Presentations: Mr. Dawson, I -- I must say, and I -- I  
7 said this to him at the break, brought something of a new  
8 interpretation to the -- the case, Macmillan and Meek  
9 versus the RM of Thompson, and however, since he's  
10 brought it up, I think it is also worthy to note that in  
11 that Decision, looking at the PIPP No-Fault Program,  
12 Justice Helper, who wrote the decision, took the approach  
13 that in this new program, you don't look to the cause of  
14 the accident, you look to the cause of the injury, and  
15 that is the basis of the first party no-fault approach to  
16 compensating injuries.

17                   So once you're satisfied that the injury  
18 was caused by an automobile, or by the use of the  
19 automobile, fault goes out the window, it's -- it's  
20 irrelevant. The issue is: was it caused by an  
21 automobile, by the use of an automobile, and if so,  
22 you're entitled to compensation.

23                   And that's an interesting approach that I  
24 would suggest, also supports the position that in  
25 assessing rates based on no-fault claims, fault should

1 not be brought into the equation through the loss-  
2 transfer method.

3                   Moving to my conclusion, I indicated that  
4 the issue of loss transfer has been before this Board on  
5 numerous occasions, it's been the subject of debate,  
6 evidence and deliberation, it's been examined from a  
7 public policy point of view, and the comments and  
8 findings which I have quoted from earlier decisions,  
9 clearly establish that fact.

10                   We have once again, through this hearing,  
11 which the Corporation also acknowledges as being a -- a  
12 helpful step in isolating the issue of loss transfer, and  
13 looking at it outside the parameters of a general rate  
14 application, when you can be more focussed.

15                   The Corporation feels that there has been  
16 no compelling reason presented, in this hearing, to  
17 justify the direction to move to a loss transfer hearing  
18 -- or sorry -- loss-transfer mechanism, and to abandon  
19 the first party cost allocation methodology.

20                   As I say, there's -- we've listened to  
21 seven (7) witnesses, spent the better part of four (4)  
22 days hearing -- including Final Submissions, and there  
23 has been no new evidence, no change in -- in prior  
24 positions, that I suggest would warrant the Board making  
25 such a move.

1                   It is noted that in the Order from last  
2 year's hearing, the Board indicated that while it hadn't  
3 heard any new arguments, it was hearing the same  
4 arguments presented, perhaps a little more forcefully  
5 than it had in the past, and that would probably account  
6 for the involvement of -- of MMIC.

7                   But at the end of today, I think we have  
8 to take the same approach that, we've heard no new  
9 evidence, and merely repeating the same evidence, and  
10 saying it a little louder or saying it in a slightly  
11 different way, doesn't justify the Board on a public  
12 policy consideration moving to direct a loss transfer  
13 mechanism; and that is the Corporation's position. Thank  
14 you.

15                   THE CHAIRPERSON: Thank you, Mr.  
16 McCulloch.

17                   Before I close the Hearing, Mr. Saranchuk,  
18 can you think of anything we've missed?

19                   MR. WALTER SARANCHUK: Not that I'm aware  
20 of, sir.

21                   THE CHAIRPERSON: All right. This  
22 concludes the public hearing phase of the Special Hearing  
23 arising out of Board Order 148-04. The Board appreciates  
24 the participation of all those that were present during  
25 all or some of the hearing.

1                   I want to also express the Board's  
2 appreciation for the efforts of the Board Counsels, the  
3 Board Advisors, and the staff.

4                   I would like to specifically note the  
5 contribution of Ms. Candace Everard who put in a lot of  
6 time and helped organize the hearing in the pre-hearing  
7 phase, it was most helpful.

8                   With respect to the gathering and listing  
9 of evidence, the Board is satisfied that one (1)  
10 objective of 184 has been met in this regard, that we  
11 have a sufficient amount of evidence to consider.

12                   As to our objective of this process ending  
13 the debate, that is our goal. MPI cannot be faced, year  
14 after year, with a continuous return to the, if you want  
15 to call it, some of the basic founding principles of  
16 their cost allocation design. So hopefully, we can sort  
17 through this and come to an Order that will resolve this  
18 matter.

19                   We will reflect, ponder, review the  
20 evidence, and we will come to a decision which will be  
21 issued in due course. Thank you, everyone.

22  
23 --- Upon adjourning at 1:45 p.m.

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Certified Correct,

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Carol Wilkinson, Ms.

