# BRITISH COLUMBIA UTILITIES COMMISSION

**IN THE MATTER OF THE UTILITIES COMMISSION ACT**
**R.S.B.C. 1996, CHAPTER 473**

**And**

## Re: Insurance Corporation of British Columbia
## 2013 Revenue Requirements Application

**Vancouver, B.C.**
**February 7, 2014**

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# PROCEEDINGS

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**BEFORE:**

**Bernard Magnan,**

**Panel Chair/Commissioner**

**Liisa O'Hara** **Commissioner**

**Richard Revel** **Commissioner**

## VOLUME 3

**Allwest Reporting Ltd.**
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## APPEARANCES

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|---|---|
| P. MILLER | Commission Counsel |
| M. GHIKAS | Insurance Corporation of British Columbia |
| A. ROSS | Canadian Direct Insurance Inc. |
| L. MUNN | Insurance Bureau of Canada |
| B. FLEWELLING | Automobile Insurance Committee of the Canadian Bar Association. |
| S. KHAN | B.C. Pensioners' and Seniors' Organization *et al* (BCSPO) |
| F.J. WEISBERG | Toward Responsible, Educated and Attentive Driving (TREAD) |
| L. WORTH<br>J. QUAIL | Cope Local 378 |
| G. ADAIR | Self |
| R. LANDALE | Self |

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For Mr. Weisber:
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1 **CAARS**
2 VANCOUVER, B.C.
3 February 7th, 2014
4 **(PROCEEDINGS RESUMED AT 9:00 A.M.)**
5 THE CHAIRPERSON: Please be seated.
6 **ICBC - PANEL 1**
7 **WILLIAM WEILAND, Resumed:**
8 **ANDREW LOACH, Resumed:**
9 **CAMILLE MINOGUE, Resumed:**
10 **NATALIE TAYLOR, Resumed:**
11 **ROB WILSON, Resumed:**
12 THE CHAIRPERSON: Good morning, and I believe, Ms. Khan,
13 you're up to bat.
14 **CROSS-EXAMINATION BY MS. KHAN (Continued):**
15 MS. KHAN: Q: Good morning, panel.
16 MS. TAYLOR: A: Good morning.
17 MR. WILSON: A: Morning.
18 MS. KHAN: Q: Panels. The first IR I'd like to refer
19 you to is BCPSO's IR No. 2, 11.2. So in response to
20 that IR, you said that
21 "Wage loss and occupational duties may have
22 some correlation to the rate of legal
23 representation, based on the complexity of
24 assessing and proving an economic loss. For
25 example, in calculating the value of lost
26 income, some forms of income are not easily

1 quantified and may be more speculative,
2 seasonal or based on other economic or
3 external factors which can fluctuate
4 greatly, even between income earners in the
5 same field of work, and this can make a
6 period of disability more difficult to
7 quantify, thereby making settlement
8 discussions more complicated."
9 So the question I have is, if loss of
10 future income enters into the calculation of claims
11 costs, do claims by people with higher incomes that
12 are not so easily quantified present more scope for
13 exaggerated claims?
14 MS. TAYLOR: A: No, I would not characterize it that
15 way. I think the discussion in the IR talks about the
16 complexities of evaluating wage loss. I don't believe
17 it is in relation to higher earners versus other
18 various groups. So I would not say that is accurate.
19 MS. KHAN: Q: What about for people with more
20 complicated incomes? For example, people who are
21 self-employed. Is it true that there is a possibility
22 for more exaggeration in those situations?
23 MS. TAYLOR: A: I wouldn't characterize it that way, in
24 terms of exaggeration. It is a more complex
25 investigation when people are self-earners. The
26 resources that go into investigating that might be --

have more requirements in that field, but I wouldn't necessarily relate it to exaggeration.

MS. KHAN: Q: Okay. And what would you relate it to, then?

MS. TAYLOR: A: Just the complexities of -- if I may, by way of example, just put it -- if somebody works in a position where they're an hourly -- they get paid hourly, and their T-4s truly reflect that, that is less complex than somebody who is self-employed and their business records may be more complex to evaluate.

MS. KHAN: Q: And so somebody who is, let's say, for example, a lower-income person who is receiving some form of government benefits, say, disability benefits, and it's -- they have a straight amount of income every month, that would be very simple to deal with, I would assume.

**Proceeding Time 9:04 a.m. T2**

MS. TAYLOR: A: Yes, as would, you know, as I just summarized, somebody who is an hourly wage earner, that too is much easier to evaluate.

MS. KHAN: Q: In your response to BCPSO 6.2 you described fraud scheme reports. Can you describe what those are, when they'll be introduced?

MS. TAYLOR: A: Sorry, could you please refer me to that?

1 MS. KHAN: Q: Sure, it's BCPSO 6.2.
2 MS. TAYLOR: A: Which round? Is that the first?
3 MR. GHIKAS: Second.
4 MS. KHAN: Q: Second, I think it's the second, yes.
5 MS. TAYLOR: A: Thank you.
6 MS. KHAN: Q: Yes.
7 MR. LOACH: A: So these reports, in terms of the fraud
8 scheme reports, this relates to some of the discussion
9 we had yesterday where we are working collaboratively
10 with the Special Investigations Unit to identify what
11 kind of information is useful in identifying schemes,
12 in order to build initially some reports when we get
13 data from the new system to help provide them feedback
14 and identify where investigations would be fruitful.
15 And then that feeds into the iterative process. So in
16 terms of when these reports will be available, that's
17 something that we're already kind of working with them
18 on prototyping, and as the new system stabilizes we'll
19 be providing and then improving those reports with the
20 SIU.
21 MS. KHAN: Q: With those reports then, would the scope
22 of those reports also include exaggerated claims?
23 MR. LOACH: A: Conceptually it will. I can't speak to
24 what would be initially provided versus what might be
25 included later. But that's certainly within the scope
26 of what we expect to try and identify and investigate.

1 MS. KHAN: Q: Okay. So you are defining fraud fairly
2 broadly then. You're not limiting it to -- or you're
3 not excluding exaggeration from your definition of
4 fraud.
5 MR. LOACH: A: No, I think we're trying not to exclude
6 anything where there's value in investigating, and --
7 yeah.
8 MS. KHAN: Q: Now, we talked, you talked a little bit
9 yesterday about the KPMG report out of Ontario. It's
10 referenced at BCPSO 2.6.6. It says that -- and I'm
11 not quoting from that particular -- I don't think I'm
12 quoting from that particular IR response, but it says
13 that Ontario insurers noted the problem posed by
14 organized crime in relation to auto insurance.
15 What's your experience here regarding how
16 organized crime in B.C. has affected auto insurance
17 loss costs?
18 **Proceeding Time 9:09 a.m. T03**
19 MR. WILSON: A: I would say that our experience in B.C.
20 is that certainly there is organized fraud. We also
21 look at other areas of fraud and identity theft as we
22 cover off in BCPSO 6.6.
23 So while we have a broader scope that looks
24 also at identity theft, vehicle identification, we
25 certainly recognize that there is some extent of
26 exaggeration on individual claims which would possibly

1 progress as you go through the claim. And there is
2 also organized fraud, which might include material
3 damage or body shops, might include therapists, might
4 include some of the same areas that Ontario looked at.
5 In B.C. we do have a dedicated team that
6 looks at organized fraud as well -- or what you would
7 call fraud rings, as well as individual exaggeration
8 and fraud.
9 MS. KHAN: Q: And is that part of the Special
10 Investigation Unit?
11 MR. WILSON: A: That's correct.
12 MS. KHAN: Q: Do you have a sense of how organized
13 fraud, how that's affected auto insurance loss costs?
14 Not asking for exact figures, just trying to get a
15 sense, generally, about how costs have been affected.
16 MR. WILSON: A: As we stated in our responses, the
17 difficulty with measuring that is that fraud, in its
18 nature, and particularly organized fraud, they --
19 their sole goal is to go undetected. So, I don't
20 think ICBC or any insurance company can accurately say
21 that fraud is 10 or 15 or 20 percent. And even
22 Ontario and the KPMG report, which looked quite
23 closely at organized fraud, was only able to get to a
24 9 to 18 percent estimate.
25 So, to go on the record and say that we
26 feel it's this degree, I think, is impossible.

1 MS. KHAN: Q: What about for the organized fraud,
2 though, that you have detected -- been able -- been
3 successful in detecting? How much -- what proportion
4 of loss costs do you estimate that would be affecting?
5 MR. WILSON: A: The difficulty with estimating loss
6 costs is -- I'll speak to it in terms of measurement
7 and deterrence. In one case, for example, you may
8 find a ring of eight or ten people that, say, for
9 example, it's a staged accident. By finding that
10 ring, and closing down those claims, there is zero
11 payments. So it's not like theft, where you've had
12 something stolen, you know what the amount is, and you
13 recover it. By identifying it early and closing it
14 down, it's hard to assess.
15 MS. KHAN: Q: Right.
16 MR. WILSON: A: In addition to that, there is a
17 deterrence factor. So, where there is organized
18 crime, our experience is typically that it's within a
19 community. And when you are successful in taking down
20 a larger ring, and you get media attention, and there
21 is either criminal convictions or there is
22 significance civil penalties, the feeling is that that
23 deters fraud in that community. It becomes too big of
24 a risk. And ICBC certainly believes that with some of
25 the media attention we've got in the past, with some
26 of the attention that our Special Investigation

department gets, that organized crime looks at ICBC as more of a risk, more of an organized or difficult company to perpetrate fraud on. That doesn't mean they won't do it, and it certainly doesn't mean we won't keep looking, but the best we can do is to try and identify it and use these criminal convictions and civil lawsuits as a deterrence.

**Proceeding Time 9:13 a.m. T4**

MS. KHAN: Q: Can you give us an idea of how much organized fraud you may have been able to deter? That you know about.

MR. WILSON: A: In terms of organized fraud where our Special Investigation Unit has taken cases to Crown counsel and either received permission to charge or we've negated or stopped claims, it's possible. And again I can check on the break, but we may be able to see how many investigations we've seen through. Again it would be hard to then take that and extrapolate a savings, but I should be able to get a number of investigations that we've taken and consequences or outcomes.

**Information Request**

MS. KHAN: Q: Thank you. Now, you've noted the differential in loss costs, recent loss cost trends in areas outside of the Lower Mainland versus Greater Vancouver. Do you think that the differential might

be related to organized or planned fraud?
MS. TAYLOR: A: Could you give me the citation of that one?
MS. KHAN: Q: I will look for that and get back to you.
MS. TAYLOR: A: Okay, thank you.
MS. KHAN: Q: Can do that at the break.
MS. TAYLOR: A: Thank you.
MS. KHAN: Q: So in response to BCUC IR No. 2.195.1, and I'll just wait for you to turn there.
COMMISSIONER O'HARA: Could you repeat that, Ms. Khan, please?
MS. KHAN: Yes, it's BCUC IR No. 2.195.1.
COMMISSIONER O'HARA: Thank you.
MR. WILSON: A: We have that.
MS. KHAN: Q: Okay, thanks. So in response to that IR you said that ICBC doesn't equate the provision of ineffective or non-warranted treatment with fraud. However, if there are suspicions of an intent to defraud, ICBC's Special Investigations Unit will investigate the vendor or stakeholder conduct.

So rather than being fraud, is that a -- is ineffective or non-warranted treatments an example of exaggeration?
MR. WILSON: A: I wouldn't classify ineffective or non-warranted treatment as exaggeration. And what we've stated in this case is that when we refer to working

1 with our service providers, there are some medical
2 service providers that within their own community may
3 apply more treatment, may treat an injury for longer.
4 That speaks more to -- perhaps the quality of their
5 treatment -- may speak more to the quality of their
6 treatment. It may speak more to their techniques.
7 Where there is fraud in terms of treatment,
8 it would be more akin to you were being billed for
9 treatments that they never gave. You were being
10 billed for tests that were never given. Those types
11 of billings would go to our Special Investigations
12 Unit.
13 The other type of claim illustrates not
14 necessarily fraud but ICBC's challenge with trying to
15 standardize what an acceptable level of treatment is.
16 And we have another way of dealing with that and
17 that's dealing through the associations or getting
18 another medical opinion.
19 So I'm not saying that there aren't two
20 treaters that might treat one person a different
21 amount of times, but I don't think that that's fraud.
22 I equate fraud with improper billing, or attributing
23 an injury knowingly to an accident that you knew was
24 not a cause of this accident.
25 MS. KHAN: Q: And when you mention you work with the
26 associations, I assume you mean the professional

1 organizations for chiropractors or physiotherapists.
2 Is that what you're referring to?
3 MR. WILSON: A: That is correct.
4 **Proceeding Time 9:18 a.m. T05**
5 MS. KHAN: Q: Now, I understand that you do work with
6 the Ministry of Justice and the Attorney General, and
7 Ministry of Transportation and Infrastructure, when
8 dealing with potential fraud. Do your auditors, when
9 you're -- when they're reviewing claims, request
10 hospital admission records, for example? To ensure
11 that that treatment has -- was received as stated? Is
12 that part of your investigation process?
13 MR. WILSON: A: Yes, it can be. By auditors, do you
14 mean adjusters or claims handlers versus forensic
15 auditors?
16 MS. KHAN: Q: Yes.
17 MR. WILSON: A: Okay. If a customer says that they
18 went to hospital, typically the adjuster would ask for
19 the hospital records. If there is some concern that
20 the injuries may not have been caused by the car
21 accident, then ICBC may ask for hospital records, may
22 ask for a GP's opinion.
23 MS. KHAN: Q: I'd like to turn to another BCPSO IR.
24 It's 2.6.3. So here, you quoted the KPMG survey,
25 saying that surveys of public attitudes towards
26 insurance fraud are likely to have limited usefulness

in assessing the extent of fraud. Do you agree that attitudes towards fraud could provide insight as to what to investigate in order to estimate the extent of fraud?

And I'm just asking whether they could provide some insight, not whether they would be determinative of the extent of fraud.

MR. WILSON: A: I believe if we asked the right questions, it would -- it could provide some insight. In the KPMG reports, the types of questions asked, I don't believe, would add any insight to the information we already have.

MS. KHAN: Q: In your opening statement, I believe in response from -- in response to one of the questions from one of the Commissioners, you noted the relationship between rising claims costs following the economic downturn, I believe in 2008 to 2009, with the rise in unemployment. Do you recall that?

MS. MINOGUE: A: Commissioner Revel asked about that.

MS. KHAN: Q: Yes. And you recalled making that connection?

MS. MINOGUE: A: I mentioned that there is some -- there are some statements in the literature that do indicate that long-term employment could be connected with a propensity to claim more.

MS. KHAN: Q: And we noted that there was a significant

rise in costs starting in 2008/2009, which coincided with the economic downturn and the rise -- sudden rise in unemployment. I am assuming, though, that what you're saying is that in 2008/2009, the sudden rise wasn't necessarily related to long-term unemployment, but perhaps more immediate -- the more immediate effects of the downturn and the unemployment.

MS. MINOGUE: A: In fact in 2008 and 2009 we were having favourable trends and not adverse trends at that point in time. And that's why we had a favourable forecast variance, and we in fact decreased rates. So, it wasn't right on the heels of the recession that we felt the increased cost pressure. Right during the recession, we put forward evidence that the miles driven had decreased, and so people were driving less, so there was lower claims frequency as a result.

And now we're seeing the frequency is coming in higher than what we would expect from our downward trend. So we've seen kind of a swing from one side of the trend line to the other, as we come out of the recession.

MS. KHAN: Q: So you reference some literature about the correlation between long-term unemployment and the rise in costs. Are you able to produce some of that literature for us?

**Proceeding Time 9:24 a.m. T6**

MS. MINOGUE: A: I didn't use the word correlation and I'm -- you know, I was asked about something on the fly. I responded as to something that I'd seen in passing. It is fairly, I guess, understood that long-term unemployment can cause people to --

COMMISSIONER REVEL: If I may interject, as I recall, I asked whether there was a causal relationship, and Ms. Minogue indicated that that was not possible to determine.

MS. KHAN: Q: Would you be able to produce the literature that you referenced about whether it's just a link?

MS. MINOGUE: A: Right, okay. So just to be clear, I didn't reference specific literature, but I could go back and look at some of the general insurance literature that's out there and try to find something that has a reference to that. It's probably not specifically around bodily injury and tort. It's probably more in the realm of first party accident benefits. I don't know, Mr. Weiland, did you want to --

MR. WEILAND: A: Yes, that's correct, Ms. Minogue. Usually unemployment is more -- unemployment rather is more attached to accident benefits coverage, first party coverage.

1 MS. KHAN: Q: Okay, thank you.
2 MR. GHIKAS: Perhaps I could just seek clarification if
3 my friend is asking for an undertaking on that or not.
4 MS. KHAN: Q: I am, yes. Are you able to do that,
5 then, just to clarify?
6 MS. MINOGUE: A: We'll do an internet search for you.
7 **Information Request**
8 MS. KHAN: Q: Okay, thank you.
9 THE CHAIRPERSON: If I might interject, when would you
10 expect to be able to provide that undertaking?
11 MS. MINOGUE: A: Can have it by Tuesday?
12 THE CHAIRPERSON: Is that all right?
13 MS. KHAN: Oh yeah, that's fine.
14 THE CHAIRPERSON: That's fine?
15 MS. KHAN: Thank you.
16 THE CHAIRPERSON: Thank you.
17 MS. KHAN: Q: So if policy holders believe that they're
18 paying too much for basic auto insurance, could this
19 have implications concerning future fraud or
20 exaggerated claims?
21 MS. MINOGUE: A: I think that would require speculation
22 on our part to answer that question, and I'd rather
23 not speculate.
24 MS. KHAN: Q: Now, I'm going to take you to BCUC IR
25 2.195.3. There you say that you believe that the SIU
26 resources are successfully supporting the business

1 priority of managing claims costs, and that they serve
2 as a strong deterrence factor for fraudulent or
3 exaggerated claims. Absent specific research into
4 public attitudes towards auto insurance fraud, what is
5 that express belief based on?
6 MR. WILSON: A: That belief is based on our experience
7 in claims and knowing where potential fraud occurs,
8 working with our SIU departments and our staff to
9 detect fraud, looking at years of history of our SIU
10 unit. Through integration with our SIU officers in
11 the claim centres, we use the claims intelligence and
12 experience, as well as our special investigation team.
13 They also work with law enforcement and other
14 insurance fraud agencies across Canada, and their
15 combined knowledge helps our executive every year
16 determine where to resource and where to prioritize.
17 And I respect your comment about customer
18 surveys
19 **Proceeding Time 9:29 a.m. T07**
20 And I respect your comment about customer
21 surveys, but when I look at the Insurance Bureau of --
22 or the KPMG report, it's an expensive survey, and I
23 don't disagree that asking customers what their
24 beliefs are on fraud are -- could be valuable. But
25 ICBC has a strict position on fraud. That's not going
26 to change depending on the percentage. We know that

1 policy-holders will not permit fraud, and they will
2 not support it.
3 The KPMG study looked at opinions around --
4 do people believe that customers may exaggerate their
5 length of treatment, their disability, that they may
6 make fraudulent claims after the accident occurred, or
7 that accidents -- for accidents that did not occur.
8 Through our work with the police
9 enforcement agencies and other insurance company, and
10 in claims, we know that that happens. We also -- they
11 also asked customers whether they thought that there
12 was insurance fraud, and if it did affect claims
13 costs. And 86 percent of the people thought there was
14 insurance fraud. Well, we know there is insurance
15 fraud.
16 So, it goes to my earlier question about --
17 to do a proper study, and to spend the time and money
18 to get the analysis you want, is expensive. It's
19 resource-intensive. And you need to ask the right
20 questions.
21 We already have the benefit of the KPMG
22 study, which I think validates some of the things that
23 we already believe to be true. And we have the
24 experience of our SIU officers, our claims staff and
25 their contacts within the insurance and law
26 enforcement.

1 So I believe that based on all of those
2 discussions and those annual discussions on -- are we
3 properly managing fraud, I believe we're doing an
4 effective job, and I walked through that yesterday,
5 about how we're adapting to our new claims structure,
6 and how we're getting ready for the new system, which
7 will provide us an extra enhancement.
8 MS. KHAN: Q: Okay, thank you. Now, I am going to
9 reference a few -- a couple of IRs here. I don't know
10 that you need to turn them. I'll read the quotes out
11 first and then you can decide whether you need to turn
12 to them both.
13 In response to BCPSO 1.11.2, you said that
14 you haven't analyzed the probability of legal
15 representation versus wage loss, occupational duties
16 or type of employment, claimant age or vehicle book
17 value. And then in response to BCPSO 1.11.2, you said
18 that some forms of income aren't easily quantified,
19 and may be more speculative -- This is the quote I
20 referred you to earlier. Maybe more speculative
21 seasonal or based on other economic or external
22 factors which can fluctuate greatly, even between
23 income earners in the same field of work.
24 So, you -- and I believe that earlier,
25 correct me if I'm wrong, but I believe that earlier
26 this morning, you confirmed that wage earner claimants

1 cost ICBC less in terms of -- like, specifically,
2 hourly or salaried or fixed income earners cost ICBC
3 less in terms of determining lost income compensation
4 than those who do not work on a salaried or hourly
5 basis. Those with more complicated incomes. If so,
6 if that is the case, do you plan to work -- do you
7 plan to factor this in somehow to rate design? Does
8 that -- do you view that as being a valid basis for
9 looking at different ways to calculate policy costs --
10 MR. WILSON: A: I think --
11 MS. TAYLOR: A: I'd just like to clarify our discussion
12 earlier. What I was discussing was the issue of the
13 complexities of investigating a claim. The resources
14 and the simplicity of one versus the other. But I
15 would not -- all investigations form part of our
16 allocated and operating expenses, so I don't -- I
17 would not make that connection with that.
18 MR. WILSON: A: Ms. Khan, could you clarify, when you
19 say more expensive, do you mean investigating and
20 assessing the claim, or the value of the loss?
21 MS. KHAN: Q: Investigating and assessing.
22 MS. TAYLOR: A: Yes. So, I think that's what I was
23 referring to. It may take more time, but there is no
24 -- we're not -- that's not in relation to the rate
25 design as you noted.
26 THE CHAIRPERSON: Thank you, Mr. Ghikas. I will remind

1 everyone that rate design is off the table.
2 MS. KHAN: Yes.
3 THE CHAIRPERSON: Please be careful when you're making
4 those references, if you would, please. Thank you.
5 **Proceeding Time 9:35 a.m. T08**
6 MS. KHAN: Q: You talked about the -- you talked quite
7 a bit about the low velocity impact program yesterday.
8 And I just wanted to clarify, then. Is the higher and
9 earlier payment of benefits under the streamlining
10 strategy, is that intended as one of the alternatives
11 to the LVI program?
12 MR. WILSON: A: No.
13 MS. KHAN: Q: Or a replacement of the LVI program in
14 some way?
15 MR. WILSON: A: No, no, that's not correct.
16 MS. KHAN: Q: So has the LVI program been replaced by
17 anything? Is there anything of a comparable nature?
18 MR. WILSON: A: There is. What we've done is we've
19 taken the committee process out, and we've taken out
20 the measurement of the vehicle speed change through
21 isolators. What we have done is, we've had -- we've
22 given that responsibility to adjusters to assess the
23 claim on its merits. And we've given them the tools
24 and training to assess those claims. Looking at the
25 damage to the vehicle, looking at what the other party
26 says, what the witnesses say, looking at the own

1 person -- or the claimant's statement, their evidence,
2 their medical information.
3 So the adjuster still looks at a claim, and
4 if there are conflicting issues or issues which do not
5 support the claimant's allegation of injury, then they
6 would still look at those. So the spirit of the
7 program hasn't changed.
8 MS. KHAN: Q: All right. Okay. In response to BCPSO
9 2.18.1 -- I can wait for you to turn to that. BCPSO
10 2.18.1.
11 So there you've listed several firms who
12 offer plaintiff financing services. Were those firms
13 identified on the basis of their advertisements? Or
14 were you just familiar with them as financing -- my
15 question is, have you observed that any of their
16 advertisements contained representations that may
17 encourage legal representation for situations in which
18 it might not be necessary? Like, are they sort of
19 aggressively trying to drum up business against ICBC
20 that might be for unwarranted situations.
21 MR. WILSON: A: I believe this IR spoke to the legal
22 system and the proliferation of loans, or the easy
23 access to loans. And what we simply pointed out
24 through a combination of our knowledge of companies
25 and simply looking on the internet is that there are
26 financing companies available. We didn't -- and I

1 would not make an allegation that they're improperly
2 financing or encouraging anything. We're simply
3 saying that it is not difficult for a plaintiff to
4 finance their case. There are means of getting loans,
5 so it's not a case of only the rich can afford to
6 litigate, so to speak.
7 MS. KHAN: Q: Okay. Now, you talked yesterday about
8 high litigation costs for legal represented claims,
9 and that of course mediation isn't always an option.
10 The parties have to agree. Is arbitration an option
11 as a way to deal with cases that don't suit direct or
12 mediated settlements, but which might not require a
13 full tort process in court? And pardon my -- you
14 know, lack of detailed knowledge about the --
15 MS. TAYLOR: A: So for our UMP coverage, the
16 arbitration would be the recourse. In the tort
17 system, it would be our legal court system. So the
18 Supreme Court *Rules* would apply to that. So the UMP
19 does apply -- our UMP coverage does apply to the
20 arbitration.
21 MS. KHAN: Q: But full tort claims have to go through
22 the court process, and it's not possible for ICBC and
23 a claimant to agree to an arbitration process?
24 **Proceeding Time 9:41 a.m. T9**
25 MS. TAYLOR: A: That would be correct. The other areas
26 where arbitration may be on first party losses, so if

1 a customer or claimant does not accept a total loss,
2 for example, the UMP -- sorry, the arbitration is an
3 avenue there as well.
4 MS. KHAN: Q: Okay, thanks.
5 MR. WILSON: A: Just to clarify, total loss is when
6 your vehicle is written off and we assess the value.
7 And if someone disagrees with what we assess the value
8 at, they go to arbitration under the regulations.
9 Also under the regulations, if you do not -- if you
10 get hit by someone who doesn't have enough coverage
11 and you access your underinsured motorist protection,
12 which is not -- which is above their coverage, then
13 it's a different set of regulations and it gets
14 arbitrated, not mediated. Those are the two cases
15 that apply.
16 COMMISSIONER REVEL: Ms. Khan, may I interject to get
17 clarification?
18 MS. KHAN: Yes.
19 COMMISSIONER REVEL: You raised a question that my ears
20 pricked up to a little bit. You asked concerning the
21 litigation of cases, and I believe Mr. Wilson said
22 that it was not difficult for somebody to get
23 representation, legal representation. Are you privy
24 to, or do you have any sense of what percentage of
25 that litigation is done based on -- by counsel taking
26 a percentage of any assignment?

1 MR. WILSON: A: In my 22 years' experience I've never
2 seen a counsel work on a fee basis. They've all
3 worked on a contingency fee basis.
4 COMMISSIONER REVEL: Thank you very much.
5 MS. KHAN: Q: And following up to that, have you -- do
6 you have a sense of what percentage of plaintiffs are
7 getting financing through the companies you mentioned
8 in BCPSO 18.1, 2.18.1, or similar such financing
9 companies?
10 MS. TAYLOR: A: Because that would be -- we would not
11 have that information. That information would be
12 between the plaintiff and their counsel, and the
13 plaintiff and these companies that have been
14 referenced, so we would have no information on that.
15 MS. KHAN: Q: Okay, so that's a solicitor-client
16 privilege issue. And so you wouldn't have a sense of
17 -- you don't have a sense of how many plaintiffs are
18 actually getting financing through those companies
19 then.
20 MS. TAYLOR: A: No, we do not.
21 MS. KHAN: Q: In BCPSO IR 2.10.2, we asked there
22 whether represented claims should be considered
23 indicative of dissatisfied customers. In response you
24 said that the legal representation rate shouldn't be
25 relied on on its own to measure service quality. We,
26 of course, agree with you that as a standalone it

1 wouldn't be a comprehensive indicator of customer
2 satisfaction. But is it reasonable that some
3 proportion of those representations result from
4 customers feeling either dissatisfied with ICBC
5 settlement offers, or because they feel intimidated
6 because dealing with a claim is a novel experience?
7 So I'm just wondering, are those potential factors?
8 MR. WILSON: A: Yes, those are potential factors. In
9 the last paragraph of BCUC 154.4 we discuss that. We
10 discuss that there certainly are areas where customers
11 can be frustrated with ICBC, either with
12 communication, access to benefits, understanding the
13 process, feeling that an offer was unfair, and that's
14 what the focus of our manager reviews, many of our
15 initiatives are geared towards trying to reduce those
16 frustrations where it's our choice on how we manage
17 the process on the people that we put into the process
18 to handle the claims, and the way we train them. And
19 those are areas that we believe are within our
20 influence, and we certain do recognize that customers
21 can be dissatisfied with the service they receive from
22 us through our training, through our systems and
23 through just lack of consistency in handling 44,000
24 files with 500 adjusters in 38 offices. That
25 absolutely is an ongoing area for us to tackle.
26 MS. KHAN: Q: Okay, and so you do that through manager

reviews, following the completion. How do you conduct those manager reviews?

MR. WILSON: A: Starting at a high level we look at systemic issues. So we look at the benefits of a centralized team like the call centre where we can resolve issues quicker. We look at first phone call. We have customer surveys which survey a person at different points in the life of file, and we can use those surveys to go back to the issue. And if a lot of customers are finding dissatisfaction with not returning phone calls or not understanding the process, for example, we would address that system across our culture.

Where it points to a certain adjuster, we can see that adjusters may have lower customer satisfaction. They may also have higher legal representation rate.

**Proceeding Time 9:47 a.m. T10**

The two may not correlate, but it certainly points us in the right direction. And that's how we use reports to focus the adjusters on -- and their managers on the right files. So when we look at authority and manager reviews, that's not a bad thing. That's a good thing, if you've got the tools to say, "Where do we need more coaching and help?"

MS. KHAN: Q: Now, this question may relate to my

1 ignorance of how the system works with litigation of
2 ICBC claims, but in response to BCUC 112.3, I don't
3 think you need to turn there, but you -- it shows that
4 taxable costs paid out by ICBC to be over a hundred
5 million dollars. Do you collect any money? Does ICBC
6 collect any money in taxable costs and disbursements?
7 MS. TAYLOR: A: Yes, we do. So, taxable costs and
8 disbursements are paid to the successful litigant. If
9 it goes to trial, if the successful litigant is ICBC,
10 the plaintiff would have to pay our costs.
11 Throughout the negotiation of the claim, if
12 it's negotiated prior to settlement, the *Rules* of
13 Court do direct the costs and disbursements that are
14 payable to the plaintiff.
15 MS. KHAN: Q: So how much money is ICBC collecting
16 annually in rough terms, in terms of taxable costs and
17 disbursements?
18 I didn't see a reference in it to -- a
19 reference to it in the materials, but we could have
20 just missed it.
21 MS. TAYLOR: A: So, we would not record what we have
22 been paid on that front. Many times it's an offset.
23 If you can imagine, by way of illustration, if a file
24 -- if we make a formal offer at a point in time, or a
25 plaintiff makes a formal offer at a point in time, and
26 the subsequent outcome, the successful party beats

that offer, the costs are to that point in time. So, to your question of how much we collect, it's typically an offset as well, and we don't -- we could -- we do have information, I believe, in the IRs about how much we spend on costs and disbursements. But I would not be able to articulate to you how much we have received as an offset on costs and disbursements.

MS. KHAN: Q: So it's not recorded anywhere? You don't track it?

MS. TAYLOR: A: In that sense, no.

MS. KHAN: Q: Now, I see that you -- we see that you've created a dedicated Punjabi claims -- Punjabi-language claims line. And I think that's great, a great idea, really good move. Is it staffed with Punjabi-speaking claims staff, adjusters for example? Or is it staffed with a Punjabi interpreter who isn't trained to actually handle claims? Can you describe how it works?

MR. WILSON: A: It's an interpreter who works with the claims adjuster.

MS. KHAN: Q: Okay. So, there still is the -- everything that's said on the line still has to be translated, interpreted, back and forth between the caller and the adjuster?

MS. TAYLOR: A: Yes, that would be correct.

MS. KHAN: Q: And do you not have any -- or is it not

1 possible to have a claims adjuster who actually speaks
2 Punjabi?
3 MS. TAYLOR: A: Where possible, we do encourage that.
4 That is of course not always possible. One of the key
5 changes that -- we've had the translation lines
6 services available for years. The added focus we've
7 had is, we had some concerns about early
8 representation. And part of that also, through
9 business leaders and our staff, we've experienced the
10 ability for a customer to report their claim to us is
11 very challenging.
12 And so the translation services on this
13 Punjabi line is now available at the point of when
14 they first make their claim. So that's a significant
15 change in that. So that was a challenge for us. And
16 throughout the claims process, if that interpreter is
17 required, those services are available.
18 **Proceeding Time 9:52 a.m. T11**
19 MS. KHAN: Q: Okay. Do you have claims adjusters,
20 then, who do provide services in Punjabi directly to
21 claimants?
22 MS. TAYLOR: A: If -- where available that is, that is
23 possible, yes.
24 MS. KHAN: Q: Okay.
25 MR. WILSON: A: I'd just like to add to that that at
26 this point, customers go to the location closest to

them, or they deal with ICBC over the phone. So it's random. We have -- obviously within the community we may have more South Asian or Cantonese or Mandarin adjusters. So that the chance of getting the right adjuster is better. But part of -- we talked a little bit about our new system yesterday, and one of the benefits of that is that you can still go to -- if you want to drive to an office and speak to an adjuster, you can. But one of the benefits is that you immediately get transferred to the next available person with that skills. So those skills could be in handling injury claims but they could also be potentially that you get a Cantonese, a Mandarin or a Punjabi speaking adjuster.

MS. KHAN: Q: Okay. And so you do make efforts to try to connect people with an adjuster who can speak the person's first language.

MR. WILSON: A: We do, yes. And within the office it's not uncommon for another adjuster to help out, if say down the road there's an interview that they want to discuss something, certainly within an office adjusters will call on other adjusters to help.

MS. KHAN: Q: And you plan to roll out a similar service to the Punjabi claims line, I believe in Cantonese and Mandarin. When do you anticipate this will be implemented? The dedicated line.

MS. TAYLOR: A: I believe that the end of 2014 is the estimated time that we are hoping to implement that.

MS. KHAN: Q: Okay. Now, the Special Direction IC-2 gives ICBC specific authorization to set discounted or preferential basic insurance rates for people who are 65 and over, and people with disabilities. Now, you do offer discounted rates for people 65 and older. And do you have any discounted or preferential rates for people with disabilities?

MS. MINOGUE: A: We do. There is a 25 percent discount, as there is with the senior's discount.

MS. KHAN: Q: Pardon? Could you please repeat that?

MS. MINOGUE: A: There is a 25 percent discount for people with disabilities.

MS. KHAN: Q: And what are, what are -- again, pardon my ignorance, but what are the eligibility criteria for that?

MS. MINOGUE: A: I'm not finding it offhand, but there is and there are eligibility requirements and we could undertake to bring that forward.

**Information Request**

MS. KHAN: Q: Thank you. That would be great.

So, subject -- I have to go and find the reference for that question and I can come back perhaps after the break with clarification on the IR reference for the question I was going to ask earlier

1 this morning. But other than that, those are my
2 questions.
3 THE CHAIRPERSON: Okay.
4 MR. KHAN: Thank you.
5 THE CHAIRPERSON: Thank you, Ms. Khan. Mr. Miller.
6 MR. MILLER: I believe Mr. Weisberg is next, Mr. Chair.
7 **Proceeding Time 9:57 a.m. T12**
8 MR. GHIKAS: Mr. Chairman, the information on the
9 criteria for the disability discount is in the
10 rebuttal evidence to Mr. Landale's evidence, and it is
11 on --
12 MS. TAYLOR: Page 2.
13 MR. GHIKAS: Page 2. So if Ms. Khan had further
14 questions on that, perhaps we could deal with that
15 rather than jumping up and down.
16 MR. WEISBERG: Good morning, Mr. Chairman.
17 THE CHAIRPERSON: Good morning, Mr. Weisberg.
18 MS. KHAN: I think they are.
19 MR. WEISBERG: Mr. Hearing Officer, I've distributed them
20 to ICBC already.
21 THE CHAIRPERSON: Thank you very much.
22 MR. WEISBERG: It will be 11-5 if we go in sequence.
23 THE HEARING OFFICER: Exhibit C11-5.
24 **(PACKAGE OF DOCUMENTS, FIRST ONE ENTITLED "AN OPEN**
25 **LETTER TO CUSTOMERS FROM INTERIM CEO MARK BLUCHER"**
26 **MARKED EXHIBIT C11-5)**

**CROSS-EXAMINATION BY MR. WEISBERG:**

MR. WEISBERG: Q: Panel, in advance this morning I've provided, through your counsel, a very small package of materials. The first document in that package is a communication titled "An open letter to customers from interim CEO Mark Blucher". It's dated August 30th, 2013. Are you familiar with that document? I take it you are.

That letter is important to TREAD because of the very few documents in this process that are written for policyholders, this one actually says right in the title that it's specifically intended for customers. And looking at the interests of ICBC's customers is precisely why TREAD is participating in this process.

For further clarity, this document, part of what's now been marked as Exhibit C11-5, was also referenced by ICBC in a number of responses to TREAD IRs in the 2013.1 series, and those included 3.7, 3.8, 3.9, 3.10, and 3.12. So I think it's already been well identified in the proceeding. And again, that was Exhibit C11-5.

Can you tell me, panel, what was the primary intent of Mr. Blucher's open letter to customers?

MS. MINOGUE: A: I believe that the primary intent is

to let customers know that if we're going to be asking for rate increases, that we better -- we are holding ourselves accountable to the public, to let them know why we would need an increase, and bring forward the evidence for that increase. That's the point that he makes in that. He also points out that there is -- the nature of the product, that there are certain pressures on our products as a result of bodily injury costs.

MR. WEISBERG: Q: Okay, thank you. And you will agree with me that the letter was made public simultaneously with the filing of the application that's now being reviewed in this proceeding, on August 30th.

MS. MINOGUE: A: Yes.

MR. WEISBERG: Q: Thanks. Do you think the letter did a good job informing ICBC's customers of the full implications -- and by that, I mean primarily the cost implications, of the proposed 4.9 percent basic insurance rate increase?

MS. MINOGUE: A: I think it did a very nice job for a general letter to the public, yes.

MR. WEISBERG: Q: And it's a little more specific than that, because it is a letter to customers, as opposed to the general public. Agreed?

MS. MINOGUE: A: Yes.

MR. WEISBERG: Q: Thanks. Do you agree with Mr.

1 Blucher's statement in the opening paragraph that says
2 "We also know your main concern is how much you pay
3 for your insurance." Do you agree with that?
4 MS. MINOGUE: A: I'm sorry, which paragraph are you in?
5 MR. WEISBERG: Q: It's in the first paragraph.
6 MS. MINOGUE: A: Oh.
7 MR. WEISBERG: Q: It's the second sentence.
8 MS. MINOGUE: A: Oh, okay. Yes, I see that.
9 MR. WEISBERG: Q: And you agree with that?
10 MS. MINOGUE: A: I think in terms of a customer's
11 relationship to ICBC, yes, they care a great deal
12 about how much they pay for insurance. They also care
13 that their claims are paid fairly, and timely. It
14 depends on where they are in their relationship with
15 ICBC at the time. But given that most people in any
16 given year aren't having a claim, I would say that's a
17 fair statement to represent the general customer base
18 in any given year.
19 **Proceeding Time 10:04 a.m. T13**
20 MR. WEISBERG: Q: Okay, and then again, it's a bit more
21 specific than I think what you've characterized it.
22 It's ICBC's view that a customer's main concern is how
23 much you pay for your insurance. Do you accept that?
24 MS. MINOGUE: A: Can you repeat that, please?
25 MR. WEISBERG: Q: I'm saying that what we can take away
26 from that sentence is that ICBC believes that a

1 customer's main concern is how much they pay for
2 insurance.
3 MS. MINOGUE: A: Yes
4 MR. WEISBERG: Q: Agreed. Okay. And when Mr. Blucher
5 is referring to how much you pay for your insurance,
6 who do you think he has in mind there?
7 MS. MINOGUE: A: You being the customer.
8 MR. WEISBERG: Q: Which customer?
9 MS. MINOGUE: A: The customer reading the article.
10 MR. WEISBERG: Q: Okay. And no parsing of particular
11 customers? Because you do have different categories
12 of customers. And by that I mean you have customers
13 that purchase Basic insurance, you have customers that
14 purchase Basic and Optional, right?
15 MS. MINOGUE: A: Yes, that's true.
16 MR. WEISBERG: Q: And so what the intent of my question
17 was to get at was in saying "you", is he addressing
18 that to all customers or only to those who carried
19 both Basic and Optional with ICBC?
20 MS. MINOGUE: A: He's addressing all customers.
21 MR. WEISBERG: Q: Okay, thanks. And can you agree with
22 me that 4.9 percent is never mentioned in the letter
23 to all customers?
24 MS. MINOGUE: A: That is correct.
25 MR. WEISBERG: Q: And can you agree as well that 11.2
26 percent is never mentioned in the letter?

1 MS. MINOGUE: A: That's correct.
2 MR. WEISBERG: Q: And can you just explain for the
3 record the significance of 4.9 percent and 11.2
4 percent in the context of an open letter to customers?
5 MS. MINOGUE: A: Well, 11.2 is the rate change that we
6 applied for and had accepted in our last rate
7 application, the policy year 2012 application that was
8 effective February 1st, 2012. And the 4.9 is the next
9 rate increase that's effective November 2013. And so
10 those would be the two successive rate increases that
11 customers would experience. And that's why he is
12 pointing out the cost pressures that we're
13 experiencing, because on the heels of this letter will
14 be the application to the Commission. He did not --
15 I'm assuming that he did not put the numbers in there
16 because the application was not filed at the moment
17 that this was put in with the press, and that the
18 application itself would be, in essence, the press
19 release of the 4.9 percent.
20 MR. WEISBERG: Q: Sorry, you're assuming that because
21 the application which is dated the same day and which
22 you don't -- I haven't heard any evidence from you
23 about the relative timing of when this went live, and
24 when the application was filed.
25 MS. MINOGUE: A: Yes.
26 MR. WEISBERG: Q: So are you guessing about that

1 timing?
2 MS. MINOGUE: A: Yeah, I am. And you know, truthfully,
3 I'm not the person to be asking these questions
4 because the actuarial department is not involved in,
5 nor is the claims department involved in the press
6 releases and the timing of releasing information to
7 the public. So I have to apologize. I just answered
8 on my assessment of what must have happened, and in
9 terms of when we released and why and so forth, that
10 would probably be -- well, it's not best directed at
11 the actuaries.
12 MR. WEISBERG: Q: Is it a question for Panel 2? Or is
13 there no one on either panel that can respond to that?
14 MS. MINOGUE: A: I think Panel 2 would be better
15 equipped to answer that.
16 MR. GHIKAS: Ms. Prior can deal with those questions.
17 MR. WEISBERG: Thank you.
18 THE CHAIRPERSON: Thank you, Mr. Ghikas.
19 MR. WEISBERG: Q: I'll continue, and if you want to
20 defer it to Panel 2 of course that's your right and
21 I'll leave it to you to do that. But just going back
22 to the second sentence there, about the main concern
23 of a customer being knowing how much you pay for your
24 insurance. Doesn't the 4.9 percent proposed increase
25 for the application filed the day of this letter, and
26 the 11.2 percent increase which was the last increase

1 that ICBC received, seem important in that context?
2 MS. MINOGUE: A: I would agree that the rate changes
3 for the customers are experiencing is important.
4 **Proceeding Time 10:09 a.m. T14**
5 MR. WEISBERG: Q: Is there any mention in the letter,
6 that you're aware of, of scenarios that would -- that
7 specify at least a range of rate increases over a few
8 subsequent years?
9 MS. MINOGUE: A: There is reference to our -- a new
10 approach to rate smoothing in the reference --
11 referenced in the letter.
12 MR. WEISBERG: Q: Okay. So ICBC has, what, about two
13 million customers?
14 MS. MINOGUE: A: Three million.
15 MR. WEISBERG: Q: Three million. I was off by a
16 million. Sorry. Three million. And do you think a
17 good many of those customers, if they happened upon
18 this letter, they would understand what rate smoothing
19 was, and what that would mean in terms of a likely
20 range of rates in the next few years?
21 MS. MINOGUE: A: Well, I don't think that was the
22 intention here, to know exactly what the range is.
23 Only that I think the intention here was to try to
24 give the policyholders some sense of comfort that
25 we're looking out proactively for -- keeping their
26 rates in a predictable range, and so I -- and again,

you're asking my opinion, and this is not the official word again. Best to ask the panel 2. But just by reading that, clearly he's not giving an indication of what the ranges might be, and furthermore we don't have estimates of what the ranges of rates will be. That's highly dependent on future events and how the trends start to evolve. So -- or continue to evolve. So we don't as a general rule try to forecast out what our rate changes will be, because we just simply can't predict that accurately that far out.

So what he's trying to do here is give, again, a sense of comfort that we're looking out for these -- the volatile rates, and trying to take some sort of action that gives us an ability to smooth through the volatility for our customers.

MR. WEISBERG: Q: Let's go back to what you agreed was the ICBC's view of the main concern of a customer. It wasn't "Provide me with some comfort," it was, "I want to know how much I will pay for my insurance." Right?

MS. MINOGUE: A: Yes, I agree.

MR. WEISBERG: Q: Do you think that the communication as a whole is helpful for providing customers with an understanding of the predictable range of rates in the next few years?

MS. MINOGUE: A: Again, I'd like to repeat, I don't think that was the intention of his letter. His

1 letter was not to give a predictable range of the
2 rates in the future.
3 MR. WEISBERG: Q: Okay, I'll leave that for argument.
4 The application of the provisions of the
5 Special Direction, IC-2. Does that not change ICBC's
6 approach in terms of being able to predict at least
7 within a range what the rates are likely to be in the
8 next few years?
9 MS. MINOGUE: A: So I know that you are thinking about
10 the requirement B, specifically, in IC-2, the new
11 amendment, one of the new amendments in IC-2, where it
12 limits the rate increases to be within 1.5 percentage
13 points of the prior year's rate increase. And I also
14 understand that a number of your IRs explored
15 expanding out that range to a broad range of potential
16 increases. I think it's very misleading to look at
17 those ranges just expanded out, without any
18 consideration of cost drivers.
19 Clearly, if ICBC were in a situation where
20 we're continually hitting the upper end of that range,
21 expanded out many years, we would stop and we would be
22 in an unsustainable situation in terms of -- think
23 about it. If you're always taking rate increases at
24 the max end of that rate change band, you're going to
25 be running toward a cost, and your premium will not
26 cover costs, and you'll be continually depleting

capital.

So that it's not a practical way to look at this rate smoothing, is these bands that limit the rate changes going out too far, because it would never -- we would stop, and go to Treasury Board and say, "We're in a situation where this is -- we're not covering our costs."

So, I kind of -- I have a problem with that approach of analyzing the rate smoothing. The thing is, with or without the new rate smoothing framework, you'll -- if you had escalating costs, you're going to have high rate changes. It doesn't matter that there is this band of -- around the rate changes. And it's not -- and those rate change bands aren't meant to be predictions of what we think rates will be, either. So, one's got to look at that as well.

**Proceeding Time 10:16 a.m. T15**

MR. WEISBERG: Q: I wasn't suggesting that the band represents a prediction. I think that -- let me finish.

MS. MINOGUE: A: I think you were, actually.

MR. WEISBERG: Q: Fine. The rate change band is a statutory limitation on how much an increase can change from an increase in the preceding year, correct?

MS. MINOGUE: A: Yes.

1 MR. WEISBERG: Q: And so, as a consequence, it creates,
2 in the absence of legislative change, a predictable
3 band once you know the starting point. Correct?
4 MS. MINOGUE: A: Yes, and I think that it's good to
5 look at it only one year at a time.
6 MR. WEISBERG: Q: The further you go out, the further
7 the potential for error in that range, would you
8 agree?
9 MS. MINOGUE: A: I wouldn't even call it error. I
10 would say the further the speculative nature of that
11 being any kind of indication of what the rate changes
12 would be increases.
13 MR. WEISBERG: Q: So as of August 30th, 2013, ICBC
14 certainly knew that it was proposing a 4.9 percent
15 rate increase, correct?
16 MS. MINOGUE: A: We did.
17 MR. WEISBERG: Q: And because of the effect of the 6.6
18 percent rate exclusion, is it fair to say that ICBC is
19 fairly confident that out of this hearing the
20 Commission will direct a 4.9 percent rate increase?
21 MS. MINOGUE: A: I do not say that we -- it's up to the
22 Commission's approval and every time we have suggested
23 the 4.9 we have said "subject to Commission approval".
24 We are very mindful that this is before the Commission
25 and it's not a *fait accompli.*
26 MR. WEISBERG: Q: That's good. But still, the 4.9

1 percent is what you've proposed and put forward the
2 most compelling rationale available, after all your
3 analysis, and that's what you came up with.
4 MS. MINOGUE: A: We believe that to be the case. We
5 believe we have good evidence for the 4.9 percent.
6 MR. WEISBERG: Q: So going forward to look at 2014
7 which is going to be filed in less than three months,
8 it's not really going out dangerously far to predict
9 what that rate, or at least the proposed rate, is
10 likely to be, is it?
11 MS. MINOGUE: A: For 2014 it is not. And we have said
12 that very plainly in our information request
13 responses, because of the 6.6 lost cost forecast
14 variance that's been deferred. In my opening
15 presentation I mentioned that that starts as a basis
16 for your 2014 rate change. The fact that you have 6.6
17 right in there as cost initially, and knowing that the
18 rate ceiling is 6.4, it's highly likely that we are
19 going to be filing for a 6.4 in the next application.
20 MR. WEISBERG: Q: In the IR series from TREAD, there
21 was a lot in retrospect, perhaps too much for me,
22 about the effects of the rate change band and
23 scenarios going out. One of the things that I asked
24 for was a worst case scenario and a best case
25 scenario, and I acknowledge that what came back from
26 ICBC was helpful in guiding me into how to properly

1 look at this, but one of the responses said that the
2 worst case scenario, and that would be where each year
3 the rate increase would be at the highest allowable
4 amount in terms of specifically 1.5 percentage points
5 higher than the previous year's approved increase, and
6 ICBC suggested that would occur only in an
7 extraordinary circumstance, and the reference for that
8 was TREAD IR 3.3 in the first series.
9 Can you agree with me that, given the
10 mandatory rate change band of plus or minus 1.5
11 percentage points, that the best case scenario which
12 is when rates go lower, or increase by less every
13 year, that that would be equally extraordinary, or is
14 it only the worst case scenario that would be
15 extraordinary?
16 MS. MINOGUE: A: I think that hitting the lower bound
17 at this point year after year, so for example, 2014 at
18 3.4 percent, the rate change would be at the floor, is
19 far more unlikely than being at the ceiling, given
20 that we have a 6.6 percent base to start the year off
21 with. And so just by virtue of next year alone being
22 at the floor, yeah, I mean that's even more
23 extraordinary than hitting the ceiling.
24 MR. WEISBERG: Q: Okay. That's what I thought. The
25 reason I'm asking is that the responses don't indicate
26 that. They suggest that it would be extraordinary to

1 reach a set -- or to encounter a set of circumstances
2 that led to the maximum increase each year, but
3 there's no comment in terms of the extraordinary --
4 **Proceeding Time 10:22 a.m. T16**
5 MS. MINOGUE: A: Yeah, let's be clear.
6 MR. WEISBERG: Q: Yeah.
7 MS. MINOGUE: A: There's extraordinary circumstances
8 and then there's, you know, with respect to rate
9 smoothing.
10 MR. WEISBERG: Q: Yeah.
11 MS. MINOGUE: A: Which we've defined in terms of --
12 we've described in terms of when we would have to go
13 to the Treasury Board. And then there's the
14 extraordinary circumstances, little "e" common usage
15 of the term outside of the rate smoothing framework
16 and that it would be unusual but not extraordinary
17 circumstance per se that would trigger us going to the
18 Treasury Board.
19 If we had favourable trends, then we could
20 go forward within the rate smoothing framework and,
21 you know, extraordinary circumstances within the rate
22 smoothing framework are when rate pressures are so
23 extraordinary that the rate smoothing framework can't
24 handle it. So that's what, and maybe we call it a big
25 "E" Extraordinary circumstances versus -- let's not
26 get confused with the terminology here. That would

just -- the low trends wouldn't be pushing us out of the rate smoothing framework.

THE CHAIRPERSON: Mr. Weisberg, I'm mindful of the time. We're about five minutes away from when we would normally have a break. So if you could determine when you think you might want to stop around that point, when would be a good break for you.

MR. WEISBERG: Thank you very much, Mr. Chairman, I'll do that and I expect to be very close to the five minutes.

THE CHAIRPERSON: Thank you.

MR. WEISBERG: Q: Again. of the 3 million potential readers of Mr. Blucher's letter, 3 million being the number of customers, how many of those would you expect would understand from the letter that basic insurance rates are never allowed to decrease unless the government were to change Special Direction IC-2?

MS. MINOGUE: A: I don't believe that is in the letter. Let me mention, however, that I think most people have a common understanding that there's inflation on costs and that things that are susceptible to inflationary pressures don't generally decrease. So that that specific item wasn't mentioned. I'm not thinking that's a deficit in the letter.

MR. WEISBERG: Q: Okay. But that specific item of course goes beyond a general understanding of the

1 public about how inflationary pressures work. Here
2 we're talking about a certain unknown, and by ICBC at
3 least understood legislative requirement, right?
4 MS. MINOGUE: A: Well, he didn't --
5 MR. WEISBERG: Q: Well, he didn't, he didn't say that.
6 You --
7 MS. MINOGUE: A: He didn't -- he put a lot of things in
8 that were in IC-2. For example he didn't put the
9 capital management targets in either.
10 MR. WEISBERG: Q: That may be my point. It was a
11 letter to customers to help them understand how much
12 they have to pay. So knowing that the price can never
13 go down, wouldn't that be important to understand how
14 much I will probably have to pay?
15 MS. MINOGUE: A: I'm failing to -- I think what he has
16 in this letter is -- it's a wonderful communication to
17 the customers, and again I think that most people
18 don't expect, when there's inflation on costs, for
19 things to go down. I think that the omission of that
20 point is not a big deal.
21 MR. WEISBERG: Q: Okay, and you think it's not a big
22 deal. You buy gas in Vancouver, I take it,
23 occasionally? Why would I bring up that example?
24 MS. MINOGUE: A: I have an electric car.
25 MR. WEISBERG: Q: I'll move on. A clever answer. Then
26 you can be forgiven for not understanding that prices

sometimes go down as well as up. I forgive you entirely and I admire your answer.

Mr. Chairman, why don't we take a break on a smile?

THE CHAIRPERSON: Good place to stop, Mr. Weisberg.

MR. WEISBERG: Thank you.

**(PROCEEDINGS ADJOURNED AT 10:27 A.M.)**

**(PROCEEDINGS RESUMED AT 10:45 A.M.)** **T17**

THE CHAIRPERSON: Please be seated.

Mr. Weisberg, you have your follow-up to the electric car, I believe.

MR. WEISBERG: Thank you, Mr. Chair.

Q: Panel, we'll be -- in the next series of questions I have, they will still sort of arise from Mr. Blucher's letter. So if you can keep it at hand, we don't have to go into enormous amount of reference to it, but that will be the starting point.

In the third paragraph of that letter, Mr. Blucher notes that for 80 percent of customers, they will see an average increase of less than a dollar a month. Now, a phrase like "less than a dollar a month" is a late-night infomercial technique used sometimes to minimize an annual or a total cost. Can we agree, in expressing it in other terms, that we're talking about twelve bucks a year? $12 a year?

MS. MINOGUE: A: I think -- well, I would agree that

one dollar times twelve months would be $12 a year.
MR. WEISBERG: Q: All right. And that annual cost increase of approximately $12 for 80 percent of customers, that's an average, correct?
MS. MINOGUE: A: That is correct.
MR. WEISBERG: Q: And can I assume, then, that about half of the customers who carry both basic and optional coverage with ICBC are likely to face a rate increase of less than $12 per year? I'm just assuming it's a straight mathematical average. Is that --
MS. MINOGUE: A: Okay. Can you repeat your question?
MR. WEISBERG: Q: Yeah. I'm just wondering, then, if that's -- the average is $12 a year, then does that mean that about half of that 80 percent group that it applies to, half of them will pay less than $12 a year?
MS. MINOGUE: A: You know, I can't recollect if the distribution is symmetric or not, and it depends on that.
MR. WEISBERG: Q: Mm-hmm.
MS. MINOGUE: A: It's probably roughly half. Roughly.
MR. WEISBERG: Q: Okay. And if it's roughly half, then of course roughly half will pay more than $12 a year for the same group, right?
MS. MINOGUE: A: Assuming -- yeah.
MR. WEISBERG: Q: Okay, thanks.

1 MS. MINOGUE: A: Symmetry.
2 MR. WEISBERG: Q: Okay. So --
3 COMMISSIONER REVEL: Excuse me, Mr. Weisberg. May I
4 interject for clarification?
5 MR. WEISBERG: Of course.
6 COMMISSIONER REVEL: Is that an average, or is it a mean?
7 MS. MINOGUE: A: Well, the average would be the sum
8 across all the differences divided by the total number
9 of policies.
10 COMMISSIONER REVEL: Yes.
11 MS. MINOGUE: A: So, mean and average, we are using as
12 the same.
13 COMMISSIONER REVEL: Okay. Thank you.
14 MR. WEISBERG: Q: That 80 percent figure leaves another
15 mass of people. Let's call them the great unwashed.
16 They are the 20 percent of ICBC customers who choose
17 not to carry optional coverage with ICBC. Agreed?
18 Not about the unwashed part, but just who
19 the 20 percent are.
20 MS. MINOGUE: A: Thank you for clarifying, because I
21 didn't want to agree to that, for sure. But, yeah, 20
22 percent would experience the full 4.9 percent rate
23 change.
24 MR. WEISBERG: Q: Okay. And so how much of a rate
25 increase should they expect to face in dollars per
26 year? There is an amount given for 80 percent of

1 customers, but there is no indication of what the 20
2 percent can expect.
3 MS. MINOGUE: A: I don't have that information in front
4 of me, but it would be a 4.9 percent increase on what
5 they currently pay.
6 MR. WEISBERG: Q: So what I'm looking for is not the
7 percentage amount, but the average dollar amount per
8 year.
9 MS. MINOGUE: A: Right, I under --
10 MR. WEISBERG: Q: That would equate to what is provided
11 for the 80 percent. So, would you undertake to
12 provide that to me?
13 MS. MINOGUE: A: We can undertake --
14 MR. WEISBERG: Q: An equivalent amount stated in
15 dollars per year for the 20 percent of customers.
16 **Information Request**
17 MS. MINOGUE: A: Yeah, so -- yeah, we do know that the
18 current average premium -- and this is across all
19 customers, basic or optional, the current average
20 premium is $768. Now, the basic-only customers, that
21 average may be different, and we can take a look. But
22 at least for, you know, a placeholder, you could take
23 4.9 percent times the current average of $768, and we
24 can undertake to see if we can get a more accurate
25 figure for you.
26 MR. WEISBERG: Q: Okay. And to put hopefully a little

more shape around the undertaking, what I'm looking for is stated in terms of dollars per year. The equivalent of the average increase for the 80 percent, like, whatever assumptions went into that to get to the $12 per year. Apply the same and tell me that for the 20 percent.

**Proceeding Time 10:51 a.m. T18**

MS. MINOGUE: A: Mm-hmm.

MR. WEISBERG: Q: Thank you. Does the -- I am just wondering about the fact that Mr. Blucher's letter which you confirmed at the outset of this line of questions applied to all customers, including those who purchased only basic insurance, they are told nothing in terms of the dollar impact of the rate increase for then, and I'm hopeful that it's not because those customers are in any way less valued by ICBC because they chose not to carry optional coverage with the Corporation.

MS. MINOGUE: A: No, I wouldn't -- I think we care about all of our customers equally.

MR. WEISBERG: Q: Good. And Mr. Blucher's letter also was not intentionally meant to exclude such customers, was it?

MS. MINOGUE: A: I don't believe so. You are asking my opinion and in my opinion I don't think it was meant to exclude the other customers, no.

1 MR. WEISBERG: Q: Okay, and to put it in the context, I
2 again return to his second sentence in the letter
3 saying: We know your main concern is how much you pay
4 for your insurance, but for 20 percent of ICBC's
5 customers, they are not told, even for this year, how
6 much to expect either in percentage terms or in dollar
7 terms. Do you agree?
8 MS. MINOGUE: A: It's not said in this letter, no.
9 MR. WEISBERG: Q: And again, I assume that the reason
10 they are not mentioned and why they are not provided
11 with some indication of the rate increase they should
12 expect is not because their group includes only one in
13 every five customers, and that ICBC considers that to
14 be a small and insignificant group.
15 MS. MINOGUE: A: I think that in the spirit of, you
16 know, writing an article that speaks to the general
17 base of our customers, who mostly carry optional, he
18 was speaking to the, you know, the vast majority when
19 he wrote this letter. You know, I can't speak to --
20 like I mentioned it's better to probably ask these
21 questions of panel 2. I was not involved in any of
22 the discussions around how to -- what to put in this
23 press release. I know that when you put those things
24 out you have to make -- deliver choices about what to
25 include or exclude, because there's, you know, space
26 constraints. So I can't speak to why things were

1 included or excluded.
2 MR. WEISBERG: Q: Okay, I'll thank you for that
3 guidance. I'll take that up with panel 2, then.
4 Thanks.
5 MS. MINOGUE: A: Okay.
6 MR. WEISBERG: Q: I was -- as a member of that group,
7 the 20 percent of customers who carry only basic
8 insurance with ICBC, I was curious then about the rate
9 impact for my own coverage, so I checked it. And for
10 rate class 21 my base cost was $1,452 and after
11 applying the largest available discount, my actual
12 cost was $828. Can you accept those figures only as
13 notionally correct? Because I'm not purporting here
14 to put evidence on the record, but does that accord
15 with your expectation for that rate class? Or do you
16 need more information?
17 MS. MINOGUE: A: I'll accept that.
18 MR. WEISBERG: Q: Okay. And do you agree with me,
19 subject to check if you want, that 4.9 percent of $828
20 is approximately $41? And you probably should check
21 it, because I'm good at rough math, but not --
22 MS. MINOGUE: A: I'll accept that.
23 MR. WEISBERG: Q: Thank you. And you agree that in my
24 case, which I'm saying is only illustrative, the rate
25 increase will be about 3.4 times higher than the
26 average increase cited by Mr. Blucher in the letter to

1 all customers?
2 MS. MINOGUE: A: I would agree that that's about 3 and
3 a half dollars per month.
4 MR. WEISBERG: Q: Okay, and that -- do you agree that
5 it's about 3.4 times higher.
6 MS. MINOGUE: A: Yes.
7 MR. WEISBERG: Q: Okay, thanks. If my basic rate
8 insurance is about average for my group, and I think
9 in your evidence already you have indicated that it
10 might be slightly higher than average, do you agree
11 that the 20 percent of customers who choose not to
12 carry optional coverage with ICBC will generate nearly
13 as much incremental basic insurance revenue as the 80
14 percent of customers who carry both basic and option?
15 And that is assuming that the 4.9 percent proposed
16 increase is approved.
17 **Proceeding Time 10:58 a.m. T19**
18 MS. MINOGUE: A: I wouldn't want to confirm that until
19 I actually saw the numbers of the undertaking, and
20 computed that to be the fact. But --
21 MR. WEISBERG: Q: Could we --
22 MS. MINOGUE: A: We don't know that that's true at this
23 point.
24 MR. WEISBERG: Q: Okay.
25 MS. MINOGUE: A: Yeah.
26 MR. WEISBERG: Q: So you've agreed to add that to the

same undertaking, is that fair to say? Or an additional undertaking? I don't care how you characterize it. Counsel?

MR. GHIKAS: May I just seek clarification on what the undertaking is, from my friend?

THE CHAIRPERSON: Certainly, Mr. Ghikas.

MR. WEISBERG: Certainly. So, Mr. Chairman, we don't at this point know what the average annual cost for the 20 percent of customers who carry basic only is.

MS. MINOGUE: A: Can I --

MR. WEISBERG: Q: Yes, of course.

MS. MINOGUE: A: This might -- I just want to just seek clarification that this is outside of the scope of the hearing, because you're actually, you know, mixing revenues between basic and optional. And actually all basic customers are getting --

MR. WEISBERG: Q: Uh-uh. Uh-uh.

MS. MINOGUE: A: -- 4.9 percent rate increases. And that press release is referring to the net effect. So you're asking about the overall revenue that the Corporation is taking in, and what --

MR. WEISBERG: Q: I'm not. And in fact, my point is that I think that the mixing of optional and basic was done by Mr. Blucher in his letter. Let's go to that third paragraph of his letter. And he said,

"We're also able to reduce our optional

1 rates, which will lessen the impact on our
2 customers. As a result, about 80 percent of
3 customers - those who purchase their full
4 personal vehicle insurance with ICBC - will
5 see an average increase of less than a
6 dollar a month."
7 So, now, after talking about this for as
8 long as we have, the record will show, we found that
9 the dollar a month isn't what it appeared to be,
10 because it's not about the change in basic rates.
11 It's about the net effect. And I agree with you that
12 that shouldn't be in here. But it's not me that put
13 it in, it's Mr. Blucher's communication to all
14 customers that put it in.
15 MS. MINOGUE: A: Mr. Blucher was speaking to the
16 overall Corporation, though. He wasn't keeping his --
17 he wasn't limiting his comments to only the basic
18 insurance when he wrote that. And again, maybe this
19 whole line of questioning should go to the second
20 panel, because they're much more versed in -- the
21 communications that went out. I remember there was
22 one particular communication that actually helped
23 customers see what the contribution was between the
24 basic and the optional. And what the net effect would
25 be.
26 And so, anyway, I think that what you're

1 asking is a little -- it's not looking exclusively at
2 basic, but it's mixing the contribution to our overall
3 revenue between basic and optional. And I think we
4 should be looking at the contribution to our basic
5 revenue from the different customers. And it should
6 be about 80/20, when you restrict your attention just
7 to the revenue coming from the basic insurance. Plus
8 or minus a little.
9 MR. WEISBERG: Q: And that is precisely, Ms. Minogue,
10 what I'm trying to get to. I'm trying to get to the
11 contribution to basic insurance revenue. Full stop.
12 But realizing that that revenue will come from two
13 different, I'll call them "categories" of customers.
14 One who buy basic and optional, and one who buy only
15 basic. And the introduction of optional revenues into
16 that, it's not something I introduced, it's Mr.
17 Blucher's letter that introduced it. And I want to
18 address another point, you say. You said that you
19 think that the letter was generally to all customers,
20 but the paragraph immediately before the very short
21 paragraph that we're looking at, says,
22 "That's why we want to let you know about
23 our requirement to file an application today
24 for a basic insurance rate increase with the
25 B.C. Utilities Commission, our first
26 application since 2011."

1 So I think in that context it's quite clear
2 that what we're talking about is basic insurance.
3 Don't you?
4 MS. MINOGUE: A: But he's also saying in the third
5 paragraph that the impact on people who buy their full
6 personal auto insurance with ICBC -- so he's qualified
7 the third paragraph.
8 MR. GHIKAS: May I just rise, Mr. Chairman? I think now
9 we're just debating what it says on the page, and it
10 doesn't seem to me to be particularly constructive to
11 argue about what it says and what it doesn't say on
12 the page.
13 Ms. Minogue has indicated that the crafting
14 of it can be spoken to by Ms. Prior, and so perhaps my
15 friend can direct future questions about what was and
16 what was not the intent with respect to this document
17 to the second panel.
18 MR. WEISBERG: Mr. Chairman, fair comment from my friend.
19 I certainly dipped my toe into argument, and I will
20 try to pull my toe back from that. What I am left
21 with is, I am content to, where identified by this
22 panel, to take up my questions with panel 2.
23 What I do want to explore is undertakings
24 that may assist me in making that cross-examination,
25 when it occurs, more efficient. There is already an
26 undertaking on the record before we all embarked on

1 this diversion. We were about to set the terms of
2 either a second undertaking or expand the first. And
3 with your leave, I'd like to return to that point.
4 MR. GHIKAS: And I would very much appreciate
5 clarification on both -- as I understand it, the basic
6 rate increase is a 4.9 percent increase, and it
7 applies to all basic customers, whether or not they
8 take optional insurance. So, what was confusing me
9 somewhat, Mr. Chairman, is the average that people pay
10 would be the same across all basic -- it's an average
11 of all basic customers. And then you're adding 4.9
12 percent to it. So if my friend could clarify the
13 nature of the undertakings, it would be greatly
14 appreciated, from my perspective.
15 **Proceeding Time 11:05 a.m. T20**
16 MR. WEISBERG: Mr. Chairman, the facts that have been
17 established already this morning in the cross-
18 examination are these, that however characterized, 80
19 percent of customers, those that carry both basic and
20 optional will pay approximately $12 a month as a
21 result of the 4.9 increase if approved. We don't know
22 about the 20 percent, how much the equivalent increase
23 will be for them on average. The one indication that
24 we have is from my illustrative example, which was
25 accepted by the panel, subject to their checking, that
26 it would equate to, all assumptions being the same,

about 3.4 times higher.

What's dirtying the water a bit is this mixing of optional rate decreases and basic rate increases which results in a net amount, which is what this dollar a month, or $12 a year really is.

THE CHAIRPERSON: Mr. Weisberg, I believe you asked the question of the panel, of Ms. Minogue, to provide you with an undertaking to -- provide you with the information that would show the dollar increase -- if I heard you correctly, the dollar increase on the basic insurance and how much that would equate over an annual period, is that correct?

MR. GHIKAS: On average.

THE CHAIRPERSON: On average.

MR. WEISBERG: Yes.

THE CHAIRPERSON: I think that's the question on the floor, is it not?

MR. GHIKAS: And Mr. Chairman, the answer is also on the floor. It's BCUC 161.1, Attachment A, and it has a breakdown by coverage of what the average basic customer will see in terms of a rate increase when the 4.9 percent is applied.

COMMISSIONER REVEL: Was that 161.1?

MR. GHIKAS: Yes, first round, BCUC 161 --

MS. MINOGUE: A: I think round 2.

MR. GHIKAS: Sorry, it's round 2. 161.1, Attachment A.

1 THE CHAIRPERSON: So if I read this correctly, there is a
2 $38 increase based on the Attachment A to 161.1. It
3 would go from 768 to 806 dollars on average. So could
4 we all agree that $38 is the -- if I've done my math
5 correctly, it's a $38 increase.
6 MS. MINOGUE: A: Yes.
7 THE CHAIRPERSON: Does that answer your question, Mr.
8 Weisberg?
9 MR. WEISBERG: It does. Thank you, Mr. Chairman.
10 THE CHAIRPERSON: So we don't need the undertaking.
11 Okay, if you could continue, Mr. Weisberg.
12 MR. WEISBERG: Q: Thank you. So the $38 a year average
13 increase for basic customers, that figure is exclusive
14 of any netting effect of a decrease in optional rates?
15 MS. MINOGUE: A: That is correct.
16 MR. WEISBERG: Q: Okay. And the $12 a year, or
17 approximately $12 a year that we spoke of earlier this
18 morning, that, to be clear, was a net amount taking
19 the effect of a basic increase and subtracting the
20 decrease in optional rates. Is that correct?
21 MS. MINOGUE: A: That's correct.
22 MR. WEISBERG: So Mr. Chairman, thank you very much for
23 your helpful guiding through this.
24 THE CHAIRPERSON: Any time, Mr. Weisberg.
25 MR. WEISBERG: I may take you up on that more than you
26 wish, but thank you.

1 MR. WEISBERG: Q: So $38 is a more helpful figure in
2 terms of the annual dollar impact for the average
3 customer who takes basic insurance, agreed?
4 MS. MINOGUE: A: Yes.
5 MR. WEISBERG: Q: Okay.
6 THE CHAIRPERSON: Excuse me, Mr. Langdale?
7 MR. LANGDALE: Could I just jump on the back of the
8 question --
9 THE CHAIRPERSON: Well, if you would talk to counsel,
10 please, for --
11 MR. LANGDALE: Oh, I'm sorry.
12 THE CHAIRPERSON: He can answer your questions, okay?
13 Thank you. Sorry, Mr. Weisberg, please proceed.
14 MR. WEISBERG: I'm glad that the request finished with --
15 on the back of the question not on the back of the
16 person asking. But Mr. Chairman, I'm just taking a
17 moment. The welcome, but unexpected clarification of
18 $38 allows me to move forward in my questions. I just
19 have to silently go through them and I will be just a
20 moment.
21 **Proceeding Time 11:12 a.m. T21**
22 Q: Mr. Blucher's letter also notes that it is "our
23 first application since late 2011", and that may
24 create an impression in some readers that ICBC took
25 some positive steps that held off a rate increase for
26 two years. Would that be the proper inference?

1 MS. MINOGUE: A: I don't have an opinion on what people
2 might have inferred from that. There is a number of
3 things a person could infer from that.
4 MR. WEISBERG: Q: What do you think was Mr. Blucher's
5 intention in saying "it's our first application since
6 late 2011".
7 MR. GHIKAS: I think, Mr. Chairman, we should part this
8 issue for Ms. Prior, and she will do her best to deal
9 with it.
10 THE CHAIRPERSON: Could you do that, Mr. Weisberg?
11 MR. WEISBERG: Q: Thank you. Ms. Minogue, you've been
12 quarterbacking the panel for all of my questions so
13 far. A new area within this letter again, I just want
14 to know if you want to defer that to panel 2 as well.
15 I intend to ask some questions about the lack of
16 mention of rate increases in subsequent years. So
17 policy year 2014 and forward. Should I take that up
18 with panel 2 as well?
19 MS. MINOGUE: A: Yes.
20 MR. WEISBERG: Q: Thank you.
21 MR. GHIKAS: I should note, Mr. Chairman, that if Mr.
22 Weisberg has questions about what would be causing
23 those, he should be putting them to this panel, but
24 with respect to interpreting the document itself, it
25 should go to the second panel.
26 MR. WEISBERG: Thank you for the clarification, Mr.

1 Ghikas.
2 MR. WEISBERG: Q: In the ninth paragraph, and I realize
3 this is totally unhelpful because you have to count
4 down with your finger as I did, but the ninth
5 paragraph talks about lawyers. It begins "There are
6 also various factors", which is a nice segue from my
7 friend's guidance.
8 "There are various factors contributing to
9 the increase in cost of injury claims we pay
10 out but one particular contributing factor
11 here in B.C. is an increase in lawyer-
12 represented claims and resulting higher
13 legal and medical costs."
14 Mr. Blucher seems to be suggesting that that
15 particular factor is somehow unique to B.C. Is that
16 ICBC's view?
17 MR. WILSON: A: That's not how I read it. I think he's
18 being very specific to some of the cost drivers in
19 British Columbia for B.C. auto insurance.
20 MR. WEISBERG: Q: Okay, so by that answer are you
21 suggesting that increase in lawyer-represented claims
22 is an industry-wide or jurisdiction-indifferent
23 phenomena?
24 MR. LOACH: A: We actually have some evidence on this
25 point in the response to BCUC 103.1. If I could refer
26 you to the second last paragraph in that response.

MR. WEISBERG: Q: Yes.

MR. LOACH: A: And I'll read it here:

"With respect to legal representation, ICBC has acknowledged that recent growth in legal representation has put pressure on claims cost in B.C. ICBC does not have access to data regarding legal representation rates or costs in order to make valid comparisons to the legal climates in other jurisdictions."

So to make those comparisons is not something that we have the information to really support. So that's -- and I think that speaks to why when we do talk about it, we talk about what's happening in B.C., because that's where we have information.

MR. WEISBERG: Q: Ms. Minogue, a series here on the longer-term rate impacts on customers, but I believe you already indicated to defer such questions to panel 2. There's not a discussion in Mr. Blucher's letter about what to expect beyond this current application.

MS. MINOGUE: A: Okay, and to clarify what Mr. Ghikas's point was is that any interpretation as to motivations for what's in the letter or what's not in the letter would go to Ms. Prior, but matters of trends or ICBC's expectations of the future and how the actuaries view that, go to this panel.

**Proceeding Time 11:18 a.m. T22**

MR. WEISBERG: Q: That's very helpful, the way you put it, thank you.

Can this panel speak to the point of the capital framework being intended to keep rates more stable and predictable?

MS. MINOGUE: A: Yes.

MR. WEISBERG: Q: Okay. I have in my hand a deck of homemade cards. They're in a fetching called pumpkin spice colour. On the cards is written a single number between 1 and 10. I'm going to hold up one with the face away from the witness panel and I would like you to predict the number before I show it to you. And the gallery members can participate if they wish by simply smiling enthusiastically if they're able to predict the number.

MR. QUAIL: We could flash our fingers.

MR. WEISBERG: Q: That would be cheating. Is everyone ready?

MR. QUAIL: Magic.

MR. GHIKAS: Good theatrics, Mr. Chairman. I'm not sure it's actually probative, but good theatrics. Thank you.

MR. WEISBERG: Q: The number was 8. You can decide if you predicted that or not. My point in the theatrics, and I did have a point, was to show that unless someone has a reasonable amount of information

available to them and knows the rules of the game, they can't reasonably predict things. And Mr. Blucher's letters refers to the capital framework helping to make rates more stable and predictable.

In the context of the communications made to customers about this application, do you believe that it's true that the capital framework, to this point at least, has made rates more predictable?

MS. MINOGUE: A: Okay, your orange pumpkin spice 8, that's clearly a situation where you have no information, although I have to say I did have the information from the peanut gallery.

MR. WEISBERG: Q: Curses.

MS. MINOGUE: A: I didn't want to disappoint you, so, by getting it right. But that is a point in that if you do have information that you can make better predictions. And so what Mr. Blucher did put forward in that letter was that in the future, the rate changes will be limited with a range around, you know, around the prior year's rate change. And so to that degree it makes it more predictable for customers in terms of where their rate change would be in the future.

MR. WEISBERG: Q: Okay. And I also was exploring with you in my question about the effect of sort of knowing what the rules are, the rules of the game. And I had

a little cheat prepared for you, if we would have gotten to it, where the number was 639, but it is between the numbers 1 and 10. And that was just to illustrate that if you don't know the rules and you can't hardly expect an average customer of ICBC to be familiar with the intricacies of Special Direction IC-2, and there are a number of rules contained within that. Agreed?

MS. MINOGUE: A: There are a number of rules contained within IC-2, and I guess -- I have to protest just a little bit because -- no, a lot, because ICBC endeavours to make things open and transparent to our policy holders, and that's ingrained in our culture. So we don't try to be tricky about things and we've done our utmost to try to bring forward to the Commission an explanation of the rates moving framework that's clear and is not in any way sneaky with some sort of hidden kind of, you know, interpretation of what it means to be between two numbers. And so I just want to make sure that it's on the record that we've done our utmost to be clear and not tricky, as that example I would call, is.

MR. WEISBERG: Q: And I accept your comments, of course. You did say you put that in the context of what you put to the Commission, and do your comments apply equally to what you've put out to customers of

ICBC in terms of the information available to them?

MS. MINOGUE: A: Well, I think you're putting a lot of stock in this one open letter.

MR. WEISBERG: Q: I am putting a lot of stock --

MS. MINOGUE: A: Because there are other -- yeah, but there are other communications, don't forget. And, you know, we did explain our rate change to our customers on our website. We posted that. And I'm sure there were other press releases. I'm not remembering them off the top of my head but I do know that there is usually a number of articles that come out, because they get distributed to us to see what's out in the press. And I know that there was a lot of communication to make sure our customers knew what was coming, and it was communicated well in advance of the effective date. So.

**Proceeding Time 11:24 a.m. T23**

MR. WEISBERG: Q: I'd like to move through and to make this convenient for all, I just want to move through the TREAD information requests in sequence. Follow-ups. Not every one, of course, but a number of them. So if you can turn to the 2013.1 series for TREAD, to 1.1.

And I'd just like to clarify there what ICBC believes to be outside the scope.

MS. MINOGUE: A: Where is 1.1?

1 MR. WEISBERG: Q: So I'm wondering what exactly it is
2 that B.C. believes is outside the scope of this
3 application. Is it the concern about a Commission
4 direction regarding an inter-jurisdictional agreement
5 made by government? Or is it suggesting that
6 discussion of such an agreement is out of scope?
7 MS. MINOGUE: A: Could you direct this to panel 2,
8 please?
9 MR. WEISBERG: Q: Sure.
10 MS. MINOGUE: A: Around, you know, penalty points and
11 -- yeah, this kind of thing would go to our expert on
12 panel 2.
13 MR. WEISBERG: Q: Thank you.
14 MR. GHIKAS: Presuming it's within scope of the
15 proceedings, Mr. Chairman.
16 MS. MINOGUE: A: Yeah. Yeah. We could answer that
17 question.
18 MR. WEISBERG: Q: Yes. Well, my -- I think I'm
19 entitled to ask about ICBC's views of what's out of
20 scope. So I'll do that with panel 2.
21 THE CHAIRPERSON: Thank you, Mr. Weisberg.
22 MR. WEISBERG: Q: Let's go to TREAD 1.4, and until I
23 advise otherwise, we'll just stay in the first series,
24 the 2013.1 series. In the small package of materials
25 that I've provided, and which have been marked
26 collectively as Exhibit C5-11, there are three

1 documents in addition to the letter from Mr. Blucher.
2 Now, these are excerpts. They are in no way put
3 forward as being the complete document.
4 Mr. Chairman, my apologies. I have been
5 advised that I have mis-spoken, and the correct
6 exhibit number was C11-5.
7 So to identify these documents, there is a
8 single page that is indicated at the top to be from
9 the New York State Department of Motor Vehicles.
10 There is another single page document which is the
11 Quebec Regulation respecting the reciprocal agreement
12 between the state of New York and Quebec, concerning
13 driver's licences and traffic offenses. And there is
14 one that's titled "New York speeding ticket fines".
15 And I apologize for the inadvertent promotion of
16 somebody's 800 number. That wasn't my intent. There
17 are two pages in that document.
18 Take what time you need to review those,
19 but do you now agree that there appear to be existing
20 reciprocal agreements between North American
21 jurisdictions, specifically New York, Ontario, and
22 Quebec, for out of jurisdiction violations?
23 MS. MINOGUE: A: It appears to be the case from these
24 exhibits.
25 MR. WEISBERG: Q: Okay. And I phrased that carefully,
26 as it appears, because if you need to, you certainly

1 should check the veracity of that.
2 Will ICBC commit to looking into a similar
3 arrangement with Alberta and Washington, and address
4 the issue in the next RRA?
5 MS. MINOGUE: A: This is a question for panel 2.
6 MR. WEISBERG: Q: Thank you. Let's move on to TREAD
7 3.6, page 2. I hope we can deal with this one
8 quickly. It's a small change, I think, that's
9 required. From the second paragraph, it says "ICBC
10 believes that it is likely the PY-2014 rate change
11 will be 6.4 percent." That response is dated November
12 8th. Can you agree with me that that -- that ICBC's
13 view has changed in that regard, and it's better to
14 describe that as now highly likely?
15 MS. MINOGUE: A: Likely, highly likely, either is good.
16 MR. WEISBERG: Q: Oh, you're an actuary. Can't you be
17 more precise than that?
18 MS. MINOGUE: A: I may have said "highly likely"
19 before. I generally try to edit out adjectives in the
20 hearing, but I didn't that time. So, yeah. Likely.
21 Highly likely.
22 MR. WEISBERG: Q: Are you saying they're the same
23 thing? It's -- I mean, it's not just your view.
24 MS. MINOGUE: A: One is more specific than the other.
25 MR. WEISBERG: Q: Isn't that a degree of certainty, or
26 certitude?

1 MS. MINOGUE: A: Look, we've put in here that -- okay.
2 Let me let people draw their own conclusions. The
3 other elements of the rate, which we know claims costs
4 grow and with inflation, so they don't usually shrink.
5 Those other elements of the rate indication have to
6 sum up to minus 0.2 percentage points, and you've
7 already -- you're already starting with a 6.6 lost
8 cost forecast variance, and then inflation on claims
9 costs on top of that. Very likely the rate change to
10 cover costs will be greater than 6.6 percent. And
11 subjecting it to the rate ceiling, it's going to be
12 6.4. So, I -- you know, unless there is something
13 very unusual that happens that suddenly reverses cost
14 trends, which I do not see on the time horizon, it's
15 going to be 6.4 percent.
16 Given the 4.9 is approved, okay, I should
17 qualify that.
18 MR. WEISBERG: Q: Of course.
19 MS. MINOGUE: A: Thank you.
20 **Proceeding Time 11:32 a.m. T24**
21 MR. WEISBERG: Q: Thanks.
22 TREAD 3.7, please. Actually let's just
23 move to 3.9, please, the second page. And the first
24 full paragraph there says in part:
25 "That said, ICBC has not communicated to
26 customers any specific details around future

1 insurance rate increases as it doesn't know
2 what those rate changes will be."
3 And that response, of course, was dated November 8th.
4 Given what you've just said, Ms. Minogue, about the
5 expectation for the 2014 proposed rate, haven't your
6 words now contradicted with that sentence there?
7 MS. MINOGUE: A: Right. I should clarify that the 6.4
8 does depend on the Commission's approval of 4.9. So
9 perhaps my words got a little ahead of myself and I
10 apologize. The 6.4 is predicated on 4.9 percent
11 approval, and if that isn't approved, if it's
12 something different, then the 2014 rate change would
13 be 1.5 percentage points added to the Commission's
14 approved rate change.
15 MR. WEISBERG: Q: So as of November, to state that ICBC
16 doesn't know what the 2014 rate change would be, was
17 that perhaps a bit of an overstatement?
18 MS. MINOGUE: A: No, it does depend on the Commission's
19 decision on this rate application.
20 MR. WEISBERG: Q: Of course it does.
21 MS. MINOGUE: A: Mm-hmm.
22 MR. WEISBERG: Q: Let's go to TREAD 8.2 then. So this
23 is in quite a different area. This is talking about
24 PEDs or personal electronic devices and distracted
25 driving. And part of the response states that:
26 "The networks and PED are not able to

1 determine the location or time taken to read
2 or write communications on a personal
3 electronic device or the actions taken prior
4 to initiating or receiving a call."
5 Do you agree that the networks and/or the PED itself
6 are able to determine the time and, in some cases, the
7 location that a call or message is sent or received?
8 MR. WILSON: A: That particular question should be
9 addressed to panel 2.
10 MR. WEISBERG: Q: Anything to do with PEDs should be
11 panel 2?
12 MS. MINOGUE: A: Yes.
13 MR. WILSON: A: No. We can speak to claims
14 investigation and relevance.
15 MR. WEISBERG: Q: Okay, thank you.
16 MR. LOACH: A: And we can also speak to the assumptions
17 that are used in forecasting the impacts on our
18 trends.
19 MR. WEISBERG: Q: Mr. Wilson, would this not then have
20 an impact on investigations and relevant? Doesn't it
21 address something that would be investigated? Unless
22 I misunderstood. Did you say this panel will deal
23 with relevance and investigations related to PEDs?
24 MR. WILSON: A: Yes. Yes, we will. If I can have a
25 second to read -- to look at this IR.
26 MR. WEISBERG: Q: Of course, yeah.

1 MR. WILSON: A: I correct myself. I can probably speak
2 to this one.
3 MR. WEISBERG: Q: Okay, thanks. In fairness then if I
4 can repeat the question, Mr. Wilson, if you're ready.
5 So do you agree that both -- I'll rephrase. Do you
6 agree that the networks or the PED are able to
7 determine the time, and in some cases, the location
8 that a call or message is sent or received?
9 MR. WILSON: A: I would agree.
10 MR. WEISBERG: Q: Okay. And -- okay. And do you
11 expect that experts in PED communications, assuming
12 there are such folks, could reliably estimate the time
13 taken to write a communication on a PED?
14 MR. WILSON: A: From my experience, I don't -- I
15 wouldn't be able to answer that.
16 MR. WEISBERG: Q: Okay.
17 MR. WILSON: A: I don't know how they would reasonably
18 be able to determine how long it takes someone to type
19 or to understand a communication. So no, I don't see
20 that.
21 MR. WEISBERG: Q: Okay. With all the things studied in
22 the world, I would assume that there has been some
23 studies of the fastest human reaction to enter a
24 particular key stroke.
25 MR. WILSON: A: In relation to claims, though, I don't
26 think that we would be interested in the slowest, the

quickest or the average time. I think we would be interested in was this person using a PED and was it relevant. So using statistical averages probably wouldn't help.

**Proceeding Time 11:39 a.m. T25**

MR. WEISBERG: Q: Okay. That's a fair comment. Thank you. Let's go to 15.8 in the TREAD series, please.

Mr. Chairman, I will exercise caution here. I will use the words "rate design", but I won't go into the area other than to simply ask -- well, I'll characterize the question. This is one of several responses that defers an issue to a future rate design filing.

Can the panel tell me, when does ICBC anticipate it will make a rate design filing?

MS. MINOGUE: A: Are you in Round 1 or Round 2? 15.8.

MR. WEISBERG: Q: I'm in Round 1. So it's 2013.1, TREAD 15.8. And the response ends "in a future rate design filing."

MR. GHIKAS: Questions relating to timing of future applications are probably -- well, I know for a fact they're within Ms. Prior's area. She's ultimately responsible for regulatory affairs.

THE CHAIRPERSON: Does that respond to your question, Mr. Weisberg?

MR. WEISBERG: It certainly does and I won't press it.

1 Thank you, Mr. Chairman. Thank you, counsel.
2 Q: Ms. Minogue, I think you read my mind because I'm
3 now moving to the second series, so sorry to make you
4 flip back and forth. So that's looking at the 2013.2
5 TREAD series. Let's start with 1.2. ICBC agrees that
6 the driver risk premium and driver penalty point
7 programs can have a positive impact in lowering claims
8 costs. Is that fair?
9 MS. MINOGUE: A: That's what we say in the first
10 sentence of that. That's our opinion.
11 MR. WEISBERG: Q: And why does ICBC expect that changes
12 in legislation to provide further incentives for high
13 risk drivers to improve their driving behaviour would
14 not have an impact on basic insurance rates for policy
15 years 2013 or 2014?
16 MS. MINOGUE: A: Is that a statement that you see in
17 the --
18 MR. WEISBERG: Q: It is. It's the last sentence and
19 it's a longer response, so I'll take you to it. It
20 reads:
21 "Additionally ICBC would not expect that
22 changes to legislation that would provide
23 further incentives for high risk drivers to
24 improve their driving behaviour would have
25 an impact on basic insurance rates for
26 policy year 2013 or policy year 2014 in any

1 event."
2 So my question was the basis for that expectation.
3 MS. MINOGUE: A: I would like to direct that one to the
4 second panel, please.
5 MR. WEISBERG: Q: Thank you. 2.1, that response says
6 in part that consequences such as traffic fines,
7 driver premiums, and sanctions are a strong deterrent
8 to unsafe driving behaviour. Does the panel agree
9 that initiatives that are intended to lead to improved
10 driving behaviour and road safety, and thereby lead to
11 lower claims, are within scope in this hearing?
12 MR. GHIKAS: I'll take that one, Mr. Chairman. I think
13 it's difficult to answer that on a generic basis, the
14 point being that the revenue impacts from initiatives
15 that are in place would be because they affect the
16 ultimate rate this year, would be within scope, but to
17 the extent that you're determining whether or not
18 initiatives, if changed, would have an impact on
19 revenues is a rate design issue and isn't before you,
20 particularly when the changes would require
21 legislation.
22 MR. WEISBERG: Q: I'll leave that. Let's go to 3.1.
23 Forgive me, in the back and forth I haven't kept track
24 precisely of what goes to Panel 2 and what hasn't.
25 I've made note of it but I can't remember it up here.
26 The agreements between New York, Ontario and Quebec

and the potential for a similar reciprocal agreement, is that a Panel 2 issue or can I explore it with you?

MS. MINOGUE: A: Right. So the types of initiatives that would, you know, involve road safety, definitely Panel 2.

MR. GHIKAS: Mr. Dickenson is responsible for road safety, Mr. Chairman.

THE CHAIRPERSON: Thank you.

MR. WEISBERG: Q: Thank you. And the cost aspect of that, is that a Panel 1 issue? I'll frame it better and then you can answer.

I'm wondering about the $3.8 million plus cost of the CDLA. Is that for this panel or panel 2.

**Proceeding Time 11:46 a.m. T26**

MR. LOACH: A: That would be panel 2.

MR. WEISBERG: Q: Okay.

Everything to do with the CCMTA and the CDLA will be panel 2? So, by that, I mean things like --

MR. LOACH: A: You really need to clarify.

MR. WEISBERG: Q: Okay. The status of the CDLA, is that a panel 2 issue?

MR. LOACH: A: I think everything related to the CDLA would be panel 2.

MR. WEISBERG: Q: Okay.

MR. LOACH: A: I think when you talk about CCMTA,

you'll need to clarify --

MR. WEISBERG: Q: It's broader? Okay.

MR. LOACH: A: -- what exactly you're referring to.

MR. WEISBERG: Q: Thanks. Is ICBC a member of the CCMTA?

MR. LOACH: A: Okay, that type of question would be panel 2.

MR. WEISBERG: Q: Thanks. TREAD 4.5, please, in the second series. Does the panel agree that at certain levels, basic rates will be unsustainably high for certain customers?

MS. MINOGUE: A: All right. In our response to this IR, 4.5, we clarified that unsustainability, of course, would be relative to the customer's own economic circumstance. And so it's not something, you know, when we talked about unsustainable, we're really talking about from a financial perspective, and whether revenues cover the costs. And if they don't, for a long period of time, that would be unsustainable.

Now, from a customer perspective, whether or not, you know, the rate increases are something that they can sustain year after year, that's not been within the purview of what we're -- what we've considered. Obviously in our rate application, what we're doing here is proposing the rate change that's

needed to cover costs plus an exclusion that we'll be funding from capital. So, but that said, the whole rate-smoothing framework has been put in place to limit the changes so that we're not -- so that we're -- if we do have cost pressures that may cause uncomfortable rate increases for our customers, we are able to offset them for a time and see if we can mitigate those costs. But ultimately, ICBC does have to cover its costs in order to -- for the product to be sustainable from a financial perspective.

MR. WEISBERG: Q: Thank you. That said, the rate-smoothing framework and all other circumstances would not deter ICBC from seeking rate increases above and beyond the rate change band, in certain circumstances, regardless of whether there may be unsustainable rate impacts on certain policy-holders. Correct?

MS. MINOGUE: A: In that kind of a circumstance, ICBC would seek to be -- to put a plan before the Treasury Board, and see what we could do to moderate that. If we're having unsustainable rate changes, clearly something would have to be done, and there would have to be some sort of intervention. And so we've talked about that some in our responses. But some sort of perhaps even legislative intervention that would help to offset costs and moderate costs.

MR. WEISBERG: Q: Okay. So to boil down the discussion

1 in the responses, if we can, it's ICBC's position that
2 unsustainably high rate increases is something that
3 you look at only from ICBC's perspective in terms of
4 what's needed for a secure financial footing?
5 MS. MINOGUE: A: Let me clarify. For the purpose of
6 the revenue requirement, the revenue requirement
7 application is to put forward evidence of what rate
8 increase we need in order to cover our costs. So, by
9 its very nature, the nature of a revenue requirement
10 application, that's why we have interpreted that in
11 that manner. But we definitely care about whether our
12 costs are increasing at rates that are unacceptable to
13 our customers. And that's why we undertake road
14 safety initiatives and claims initiatives, in order to
15 try and control our costs and mitigate, when we see
16 cost pressures.
17 We are always, you know, buffeted around by
18 new pressures on us, and we're always trying to keep
19 and adapt to those pressures by new initiatives. And
20 I think we've talked about a number of claims
21 initiatives today, and on the second -- or yesterday,
22 and on the second panel, you will hear about road
23 safety initiatives, that this is definitely something
24 that's an area of focus for us. And we're committed
25 to.
26 **Proceeding Time 11:52 a.m. T27**

1 MR. WEISBERG: Q: Okay. So you agree that
2 sustainability must be a balance between manageable
3 impacts for policy holders and a secure financial
4 footing for basic insurance overall.
5 MS. MINOGUE: A: I think that that would be a good
6 definition of sustainability.
7 MR. WEISBERG: Q: Thank you. The last paragraph on
8 page 2 of 3, in response 4.5, it begins "By way of
9 explanation". And the last sentence there says:
10 "To determine whether the shift in the cost
11 structure is permanent or generally would
12 require a period of time more than a single
13 year."
14 So with that sentence in mind, in the event that there
15 was a permanent positive shift in ICBC's cost
16 structure, meaning a reduction, Special Direction IC-2
17 as it stands today, would not permit a rate decrease,
18 correct?
19 MS. MINOGUE: A: Not on its own, but Special Direction
20 IC-2 does contemplate -- the government directive
21 actually contemplates that not all circumstances can
22 be foreseen by a -- you know, by this mechanism of
23 rate smoothing, and that you have to have an ability
24 to go outside of it. And so that would be where we
25 would apply to the Treasury Board to go outside of the
26 rate smoothing framework.

1 MR. WEISBERG: Q: Okay. As it stands, though, do you
2 agree that the rate change band and Special Direction
3 IC-2 may tend to dampen efforts to diligently seek and
4 achieve permanent cost reductions because of the very
5 prohibition on a decrease in rate?
6 MS. MINOGUE: A: I couldn't agree with that at all.
7 Knowing it's a primary focus of ours in a management
8 of ICBC, it's ingrained in management culture to focus
9 on cost containment and always finding and adapting to
10 new cost pressures, and we consider that part of our
11 duty to the public. I mean, we are running the
12 public auto, and that's part of what we see our duty
13 to the public to do.
14 So just because there is this rate change
15 band, that's not there to make -- that's not the
16 intent of that. The intent really is that when
17 there's adverse volatility, only in that circumstance
18 -- and that's in our proposed capital management plan,
19 only when there's adverse loss cost forecast variance
20 are we suggesting, you know, offsetting that. And
21 that gives us time -- when we set our rates below
22 cost, that gives us time to address any new cost
23 pressures and then possibly mitigate or reverse them.
24 So in fact, if anything, it gives us that
25 breathing room to do this without subjecting our
26 customers to rate increases in case we can't

1 communicate.
2 MR. WEISBERG: Q: So my focus is particularly on the
3 effect of the special direction prohibiting a decrease
4 in rates without the intervention of Treasury Board,
5 and I'm wondering if that might not have the
6 unintended effect of dampening efforts to look for and
7 achieve permanent cost reductions, because it doesn't
8 appear to be anticipated or provided for.
9 MS. MINOGUE: A: The nature of the basic insurance
10 product is that the long-term trend is positive. It
11 increases over time. There is inflation on costs and
12 -- that are driven by things like medical cost
13 inflation, increased utilization of medical services,
14 more innovative medical technology. All of these
15 things create cost pressures upward. We also talked
16 about the upward pressure of the increasing rate at
17 which claims are litigated. And all of these
18 underlying impacts make it very unlikely in a longer
19 term perspective for rates to decrease. There may be
20 periods of time, for example, when we had the
21 recession and people were driving less, where it
22 looked like the trend might have been turning, but as
23 we saw, the thing reversed and it went back to an
24 upward trend. It was only a short-term drop in the
25 cost level only to return.
26 And so I think that this no decrease is

1 recognizing the fact that in the long term you expect
2 increases on cost because it's an inflationary type
3 drivers underlying it. So any time that you would
4 take a decrease, you would only, in the future, have
5 to take more of an increase to catch up from having
6 done that, and we've just lived through that, and I
7 think that IC-2 and having that provision in there of
8 no rate decreases addresses that, and it's an attempt
9 to keep rates more stable and predictable.
10 **Proceeding Time 11:58 a.m. T28**
11 MR. WEISBERG: Q: Thank you.
12 MS. MINOGUE: A: You would agree that if we had not
13 taken the minus 2.4 percent, that 11.2 would have been
14 less. So it's in recognition of that fact, that that
15 actually adds volatility to the rates, and so putting
16 the provision in takes away that issue.
17 MR. WEISBERG: Q: Thank you.
18 Mr. Chairman, noting the time, if it's your
19 wish to take a break, it suits the flow of my cross-
20 examination either way. Commissioner.
21 COMMISSIONER O'HARA: May I just ask one follow-up
22 question of Ms. Minogue before we take a break?
23 THE CHAIRPERSON: Yes.
24 COMMISSIONER O'HARA: A number of times during this
25 cross-examination you have raised the potential of a
26 visit with the Treasury Board, and this application

that we have now before the Panel, so it's asking for the one rate increase which is 4.9 for the current year and then the approval of the capital management plan within the constraints and the rules of the new amended IC-2.

But clearly, you really want to manage with that, and you have been quite persuasive how it's going to work. But then you painted the doomsday scenario when the claims go through the roof and you start depleting the capital plan to the point that you have to go to the Treasury Board.

So do you have a plan to do these projections on a multi-year basis, how are we doing, so that you can, on proactive basis go to the Treasury Board? Like can you describe how you are going about it?

MS. MINOGUE: A: Right. We do have -- what we do when we look into the future, we don't have kind of best estimates of where we think the trends are going because it's too far out to say with certainty, but what we do do are scenarios, and we have some scenarios of projections out into the future. For example, if frequency were to stay flat and not return to the downward trend line, what that would look like, and if, for example, we have an assumption in our rate application, that the spike in representation that our

1 claims initiatives are working to offset it, and we
2 believe that we'll be able to offset it., The
3 scenario in the application is, well, what if they
4 can't offset the additional cost pressures of
5 increased representation.
6 So you've got a couple of scenarios in
7 there, and what we've done is projected out what the
8 impact will be on rates. And so to the degree that we
9 can foresee what kind of things would drive us to
10 those upper ends of the rate smoothing, we can try to
11 manage those issues proactively. In fact, that's what
12 we're doing right now, is proactively managing,
13 particular the rep issue, and try to get it under
14 control.
15 So again, the rate smoothing gives us a
16 time, and particular if we have enough capital, the
17 time to address it while setting costs below -- or
18 rates below costs.
19 COMMISSIONER O'HARA: Okay, thank you.
20 THE CHAIRPERSON: Okay, and on that note we'll adjourn
21 for lunch. Back at 1:30, please.
22 **(PROCEEDINGS ADJOURNED AT 12:02 P.M.)**
23 **(PROCEEDINGS RESUMED AT 1:30 P.M.)** **T29**
24 THE CHAIRPERSON: Please be seated.
25 Mr. Weisberg, the floor is yours.
26 MR. WEISBERG: Thank you.

1 **CROSS-EXAMINATION BY MR. WEISBERG (Continued):**
2 MR. WEISBERG: Q: Ms. Minogue, when we left off we were
3 discussing the possible inadvertent impact that
4 Special Direction IC-2, IC-2's prohibition of a
5 decrease in rates, might have on efforts to seek and
6 achieve permanent reductions in ICBC's cost structure.
7 I understood you to testify that in the event that a
8 permanent reduction in cost structure was achieved,
9 that there is a provision for ICBC to go to the
10 Treasury Board for approval to implement a decrease in
11 rates. Was that your evidence, or did I mis-state it?
12 MS. MINOGUE: A: I think you turned it around, quite
13 frankly.
14 MR. WEISBERG: Q: Okay.
15 MS. MINOGUE: A: So, what I indicated was that if we
16 were having cost pressures, and there was some -- and
17 it was deemed that there was some intervention
18 necessary, such as even legislative intervention, to
19 somehow permanently change the cost structure, then
20 that might lead ICBC to take a rate decrease, in which
21 case we would step out of the rate-smoothing structure
22 to do that.
23 MR. WEISBERG: Q: And is it your testimony that that
24 provision is already available and has been formalized
25 by government?
26 MR. GHIKAS: I'll have to speak to that, Mr. Chairman, it

really is a legal question and the rate provisions in the Direction itself contemplate going to Treasury Board when the capital management -- when the capital, basic capital, is going to fall below 100 percent. And so those are the circumstances that are currently contemplated in the circumstances. So to the extent that an unforeseen circumstance arose, my submission would be that a legislative change would likely be required.

MR. WEISBERG: My friend, Mr. Ghikas, I'm sure will guide me if he doesn't wish me to continue in this area. I do want to probe that a bit more. I understand that it has certainly -- there is some legal interpretation involved. But I think it goes broader than that.

Q: So I'm looking at Exhibit B-14, that was the package of materials provided by your counsel in his opening statement. And in particular, at pages 16 and 17. And that those page numbers are hand-written in the upper right-hand corner.

MS. MINOGUE: A: Is there a spare copy? I did not receive one.

COMMISSIONER REVEL: Sorry, did you say B-14?

MR. WEISBERG: I did say B-14. Unless I was --

COMMISSIONER REVEL: Oh, yes. Thank you, yes.

MR. WEISBERG: Do you have it, Commissioner?

COMMISSIONER REVEL: Yes, I do.

1 MR. WEISBERG: Q: Thank you. And so turning to hand-
2 numbered page 16, we should all find the government
3 directive related to rate-smoothing. It's a two-page
4 document. I want to look with the panel at page 2, to
5 the first paragraph there. And I think it's important
6 enough, I'll read it in.
7 "If circumstances should arise where,
8 despite the implementation of a capital
9 management plan consistent with the above
10 principles, basic capital is projected to
11 fall below the regulatory minimum
12 requirement of 100 percent MCT, as
13 determined in Special Direction IC-2, to
14 British Columbia Utilities Commission, then
15 ICBC is directed to report to Treasury Board
16 immediately and develop an appropriate plan
17 to address basic capital levels in
18 conjunction with Treasury Board."
19 My point there, Ms. Minogue, is that it
20 doesn't appear to address the other possibility that
21 basic capital might reach a point where it exceeded a
22 maximum requirement, a ceiling for MCT.
23 **Proceeding Time 1:34 p.m. T30**
24 MS. MINOGUE: A: Not that paragraph, but the paragraph
25 before.
26 MR. WEISBERG: Q: Yeah.

1 MS. MINOGUE: A: Where it gives reference to the
2 customer renewal credit.
3 MR. WEISBERG: Q: Mm-hmm.
4 MS. MINOGUE: A: And if capital were to be well in
5 excess of the capital management target, the one
6 that's being proposed for approval in this
7 application, if the capital is well in excess of that
8 target then we would give a customer renewal credit
9 upon renewal of the policy, non-refundable, non-
10 transferable credit.
11 MR. WEISBERG: Q: Thank you. And that's where I
12 thought you would go with that. I want to talk about
13 the customer renewal credit in just a second. I first
14 want to establish, though, that you agree with me that
15 there is no existing provision for a clear path to
16 lead to a decrease in rates in the event of excess
17 capital.
18 MR. GHIKAS: I can agree with Mr. Weisberg, Mr. Chairman,
19 and this section of Special Direction 3(1)(c.2), big
20 paragraph (B) which is found on page 13 of the
21 handwritten numbers. The last words in that paragraph
22 (B) are "and must not decrease existing rates." So
23 that is the answer in those circumstances.
24 MR. WEISBERG: Q: Okay, thank you. And for additional
25 clarity, because what we were talking about is the
26 potential for going to Treasury Board in some

1 exceptional circumstances, and going sort of outside
2 of what is presently contemplated. But that doesn't
3 exist in terms of a path to a decrease in rates, you'd
4 agree?
5 MS. MINOGUE: A: Well, in the scenario of the MCT
6 expecting to fall below the 100 percent that is
7 generally in the face of cost pressures that we're
8 unable to address through rates, particularly in the
9 rate smoothing, you might be in a situation where
10 you're excluding rate for a period, a number of years,
11 and it could put you at risk of falling below 100.
12 And if that situation were to arise, yes, we might go
13 to Treasury Board and out of that -- or we would go to
14 Treasury Board, and out of that outcome may come some,
15 depending on the circumstances, of course, that are
16 driving the rate pressures, might come some
17 intervention strategies or other strategies depending
18 on the circumstances, to address the cost pressures.
19 Because at some point, you know, to be a sustainable
20 insurance company we have to cover costs. And either
21 you raise rates or you do something to eliminate the
22 cost pressures, and so I think the rates moving
23 framework allows for that, and especially if you're
24 hitting the ceiling and depleting capital, it's almost
25 something that is a signal that you've got to address
26 it. It makes it -- it has its clear signals for

1 everyone, what it takes to -- you know, where the line
2 is where we have to address when issues are too much.
3 MR. WEISBERG: Q: So without a direction to go to
4 Treasury Board in the event that accumulated capital
5 exceeds the ceiling, the intended solution is the
6 customer renewal credit. Would you agree?
7 MS. MINOGUE: A: Yes.
8 MR. WEISBERG: Q: Okay. And it's what Mr. Ghikas in
9 his opening statement, I think, referred to or
10 described, helpfully, I think, as a relief valve. Do
11 you recall that?
12 MS. MINOGUE: A: I'm not sure if that was the exact
13 word, but yeah. It allows the release of capital, a
14 one-time release of capital, and to benefit the
15 customers on a one-time basis.
16 MR. WEISBERG: Q: Okay. The phrase stuck in my mind
17 whether it's correct or not because of the imagery
18 that it conjures up. Of all this wealth building up
19 within ICBC until the pressure is so great that the
20 walls burst and it rains down on the policy holders.
21 The difference, though, with the customer renewal
22 credit, and going to effect a decrease in rates, is
23 that the revenue that ICBC can grow accustomed to
24 relying on won't change. Right? There's some rebate
25 back to customers. But the revenue that comes in
26 doesn't change. Agreed? Under a customer renewal

1 credit scenario.
2 **Proceeding Time 1:39 p.m. T31**
3 MS. MINOGUE: A: That's correct. I think you have
4 interpreted the thing properly.
5 MR. WEISBERG: Q: Yeah.
6 MS. MINOGUE: A: And let me remind you that we are in
7 -- we have an inflationary product. And if capital
8 were to, you know, jump up to be well above the
9 capital management target, it's not because we
10 intentionally built it up there. Not to that level.
11 It will arise from inadvertent circumstances. For
12 example, very favourable investment returns, for
13 example, that, you know, just normal variation in
14 investment returns, you can end up with 15 percent
15 addition to your MCT level, just in one year, from
16 normal favourable volatility.
17 So there is things of that nature that
18 could cause you to be well above your target, and so
19 if those things happen, the capital -- the customer
20 renewal credit allows us to share that favourable
21 benefit with our customers without adjusting the rate
22 level.
23 MR. WEISBERG: Q: It wasn't the inadvertent events that
24 I was focused on so much as the advertent events, such
25 as achieving a significant and permanent reduction in
26 the cost structure. And in that event, as we have

1 established in our dialogue now, that there is not a
2 path to a decrease in rates. There is a path to a
3 customer renewal credit.
4 My question then is, might that assured
5 revenue stability lead to decreased rigour in ICBC
6 diligently seeking cost reductions? Because that flow
7 of dollars coming in has no provision to ever go down.
8 And that risk element, might it affect how ICBC looks
9 at its costs?
10 MS. MINOGUE: A: Again, I can't agree with that, that
11 ICBC would not try to do everything it can to keep
12 rates as low as possible for our customers. Bearing
13 in mind, you know, we have always -- the rates -- the
14 change in cost level for the basic product has been
15 about 2 percent per year for a long time, and recently
16 we did -- we have been experiencing what seems to be a
17 permanent and significant shift upwards.
18 In this business, I can't think of a time
19 in ICBC's experience where we have actually kind of
20 reversed the cost trend. It's always been upward.
21 Maybe very short-term volatility, where we were able
22 to take a rate decrease. But it wasn't something
23 where we were significantly -- where we were able to
24 shift the cost trend significantly downward.
25 And again, you know, the pressures on rates
26 are upwards. They're -- and it -- I guess it is

conceivable that there is some sort of -- again, I have to hearken back to legislative interventions. I can't, in my experience, think of any other way to make a permanent and significant shift downward in costs without that kind of approach.

MR. WEILAND: A: And that is generally true in every Canadian jurisdiction for automobile insurance, that costs go up from year to year. And absent some kind of legislative intervention, they're going to continue to go up.

MR. WEISBERG: Q: Well, perhaps due to the Ministry of Finance's review of ICBC, and perhaps not, but throughout the materials ICBC seems fond of identifying a purported $50 million in cost savings. Are you suggesting, Ms. Minogue, that that will be very fleeting in terms of the change in costs? Or can we assume that it's a relatively permanent and positive change?

MS. MINOGUE: A: Well, we're talking about operating expenses now. And those are a very small portion, relative to the overall, and those are within our control. And we do work to control them, and the $50 million is a testament to that, that we have really worked to contain our operating costs.

So, you saw in the opening presentation the factors that lead to the 4.9, and one of the first

1 bars that was favourable was a 0.6 percent favourable
2 impact on the rates. And that's what -- that's from
3 the changes in the cost containment of the operating
4 expenses have contributed.
5 So we can really tighten down the operating
6 expenses all the more, but it does have limited impact
7 on the overall rate. That overriding driver of costs
8 is the bodily injury claims trends.
9 **Proceeding Time 1:45 p.m. T32**
10 And the factors driving those costs are
11 things that have a lot of upward inflationary force
12 on, and again I have to emphasize the medical cost
13 inflation, increased utilization, medical technology,
14 increased representation and so on. There's a number
15 of factors that are very hard to mitigate, and even to
16 consider reversing them is even more a big challenge.
17 Of course we would love to and we're looking for ways
18 to control our claims costs, and our claims division
19 is very proactive about looking at various
20 alternatives in how to do that. But that's a
21 challenge and I would suggest that to actually reverse
22 some of these cost trends is something that is not
23 easy to do, and unlikely.
24 MR. WEISBERG: Q: Let's move to TREAD IR 5.1. It's
25 actually 5.1-3 in the response. All of these
26 questions are in the second round, so that's the

1 2013.2 series. And within that response I want to
2 look at page 2 and in particular at the last two lines
3 of the response in 5.2 beginning partway through the
4 sentence, "Allowing ICBC time to address those
5 pressures before deciding whether it must impact
6 customers' basic insurance rates."
7 So is it not an overstatement to suggest
8 that the rate smoothing framework allows ICBC time to
9 address cost pressures before deciding whether it must
10 impact customers' basic rates?
11 MS. MINOGUE: A: I'm sorry, I'm not understanding your
12 question. Are you asking for confirmation of that
13 sentence?
14 MR. WEISBERG: Q: No, I'm asking if that sentence is an
15 overstatement. Or a misstatement perhaps.
16 MS. MINOGUE: A: No, that statement is accurate.
17 MR. WEISBERG: Q: Okay.
18 MS. MINOGUE: A: I think that's an accurate statement.
19 MR. WEISBERG: Q: Is the effect of the framework not to
20 virtually ensure and require that impacts, i.e.
21 increases in customer basic rates will take place at
22 least through policy year 2016?
23 MS. MINOGUE: A: I'm sorry, can you rephrase the
24 question, please?
25 MR. WEISBERG: Q: So the part of that sentence that I'm
26 focused on is it says whether it must impact

1 customers' basic insurance rates, as if there's some
2 question about --
3 MS. MINOGUE: A: Where is the word "whether"? Can you
4 point that out?
5 MR. WEISBERG: Q: Sure.
6 MS. MINOGUE: A: Oh, "whether", okay, sorry. I
7 apologize.
8 MR. WEISBERG: Q: Was it my intonation that threw you
9 off?
10 MS. MINOGUE: A: Yeah.
11 MR. WEISBERG: Q: I'm sorry. "Whether" with an H. I
12 could do this all afternoon.
13 MS. MINOGUE: A: That's what we're all worried about.
14 MR. WEISBERG: Q: *Touché.* You're with me on the
15 "whether"?
16 MS. MINOGUE: A: Yes.
17 MR. WEISBERG: Q: Let's talk about the "whether". The
18 effect then, I'm saying, of the framework is to
19 virtually ensure and require that impacts, i.e.
20 increases, in customers' basic rates will take place
21 at least through premium year 2016. And I'm saying
22 that because the expectation, of course qualified by
23 what the Commission chooses to do, is that 4.9 percent
24 for this year seems like a reasonable expectation for
25 ICBC at least.
26 You've told me that there's a high

likelihood that at least the applied-for amount in 2014 will be 6.4. And then we can start to apply the effect of the rate change band, and knowing that if it was 6.4, which is fairly presumed to be the applied-for increase, that 4.9 would be the lowest increase in 2015.

So without taking you deeper down that path, it seems to me that the rates moving framework doesn't raise the question of whether basic rates will be impacted. It virtually assures that they will be impacted, at least for those few years that I've mentioned. Would you agree with that?

MS. MINOGUE: A: I can't because -- and it's because these future rate changes depend on what the lost cost trend will be.

MR. WEISBERG: Q: Okay.

MS. MINOGUE: A: And if the frequency trend continues to flatten out, that's an added cost pressure that's not contemplated in what you're saying. And so this -- if frequency returned to the downward trend line, you're right. There would be -- there will be impact that -- the impact of this rate exclusion will be brought back in by virtue of the floor on the -- a rate change floor. But it depends on the circumstances. Again if the frequency goes flat, I wouldn't agree with that statement at all. It depends

on how trends evolve.

**Proceeding Time 1:52 p.m. T33**

MR. WEISBERG: Q: I missed the last part of what you said. I don't think I agree, but I'll deal with that in argument.

MS. MINOGUE: A: Which part was that?

MR. WEISBERG: Q: I think -- I wasn't suggesting anything about the trend line in frequency changing whatsoever, only that the effect of the rate-smoothing framework for the next few years can reasonably be expected to result in an increase each year.

MR. WEILAND: A: I believe that's largely a function of the starting point, which is the 11.5 percent rate increase before the exclusion of the lost cost forecast variance. That's not a structure of the rate-smoothing arrangement.

MR. WEISBERG: Q: No, but the effects of the rate-smoothing framework is that if 4.9 percent increase is the outcome of this proceeding, then we know that a decrease in rates in the next year is not possible. It's only how much of an increase there will be. Isn't that correct?

MR. WEILAND: A: The rate-smoothing framework allows us to use basic capital for a period of time to see whether or not the impact of the upward trends can be mitigated in some fashion.

1 MS. MINOGUE: A: Let me see if I can help you, Mr.
2 Weisberg.
3 MR. WEISBERG: Q: Please. I'll accept all help.
4 MS. MINOGUE: A: Because I think I know where you're
5 going, and I do think that the trends and where the
6 trends are going, is relevant to your question.
7 Because you're asking whether or not it is an
8 inevitability -- tell me if I'm right here -- an
9 inevitability that the 6.6 percent will be taken into
10 rates by virtue of the rate floor. I think that's
11 kind of what you're getting. Because 6.4, then the
12 most -- it has to be at least 4.9 the following year,
13 and so forth.
14 MR. WEISBERG: Q: Essentially, yes.
15 MS. MINOGUE: A: I grant you that. Okay. And if the
16 trends are favourable, yes, you're absolutely right.
17 We will bring in the 6.6. It will occur. But if the
18 trends are unfavourable, we won't recoup it, because
19 we have these other trends that we're going to be
20 covering costs with, through the rate changes.
21 MR. WEISBERG: Q: Okay.
22 MS. MINOGUE: A: So is that clear?
23 MR. WEISBERG: Q: We're getting there.
24 MS. MINOGUE: A: Okay.
25 MR. WEISBERG: Q: I think part of the disconnect, or
26 maybe all of the disconnect is -- I'm focused, as you

might expect, on the impact on ratepayers. And you have that as one of your focuses, but not the only one.

MS. MINOGUE: A: Can I just clarify to the Commission? Because I think there is some -- and I felt this going through the IRs too. I think there is a little confusion about that being the rate-smoothing framework, and that being an aspect of the rate-smoothing framework. In fact, before the rate-smoothing framework, our mandate was to -- the Commission's mandate was to set rates according to costs, and to set rates according to accepted actuarial practice. And with rate-smoothing, that still is in place, but there is this exclusion component where you can smooth out volatility over time.

So it's not the rate-smoothing framework itself that you're having issue with, I think. I think you're having issue with just the fact that our costs are going up. Is that -- I mean, you're framing in rate-smoothing world, but I think -- am I misunderstanding?

MR. WEISBERG: Q: No, it's --

MS. MINOGUE: A: It seems like it's putting a layer of complexity on the discussion.

MR. WEISBERG: Q: It's not even that. It's just that

1 statement about saying before deciding whether it must
2 impact customers' basic insurance rates. I think what
3 it should have said is before deciding how much it
4 must impact, because when I look at the effect of the
5 rate change band, and the Special Direction, and the
6 applied-for rate this year, I don't see how -- and
7 taking into account your other evidence -- how there
8 can be anything other than rate increases through
9 2016. Unless we face some extraordinarily wonderful
10 circumstances that would not push rates up.
11 MS. MINOGUE: A: And I think you're right. I think
12 your analysis on the rate-smoothing is correct, that
13 -- well, in all likelihood will be a 6.4 or
14 thereabouts. And the following year, the smallest
15 rate change that we could have would be about 4.9, or
16 thereabouts. And the following year would be, you
17 know, one and a half off of that. 3.4, or
18 thereabouts, depending on the 4.9 of course being
19 approved now.
20 MR. WEISBERG: Q: Okay.
21 MS. MINOGUE: A: So, your analysis is correct.
22 **Proceeding Time 1:57 p.m. T34**
23 MR. WEISBERG: Q: I guess another way of saying that,
24 and hopefully a clearer way, would be to say if we
25 replace the word "whether" with "if", and just to
26 understand the term, but it still would be better to

1 say how much it must impact the rates because of what
2 I've explained already, that through 2016,
3 extraordinary circumstances aside, we are all
4 expecting that the rates will be moving upward.
5 MS. MINOGUE: A: Right. Well, let me just clarify that
6 in that little phrase, whether it must impact
7 customers' rates, it's really specific to whether we
8 must impact customers' rates with that 6.6 percent.
9 So it's not talking in general about impacting their
10 rates, but additionally impacting with that 6.6 that's
11 been excluded. Or, you know, more generally, in any
12 situation where you're doing rate exclusion, whether
13 you have to bring to rate exclusion in to the future
14 rates.
15 MR. WEISBERG: Q: So we can agree, or -- at the moment.
16 MS. MINOGUE: A: I think we're agreeing just fine.
17 MR. WEISBERG: Q: Good. Let's leave that.
18 For the next question I'm not sure that
19 we'll even need to go to a reference. It's just
20 confirmation of, I think, an important point. The
21 full 2013 rate exclusion of 6.6 percent, it must be
22 removed in policy year 2014. Is that correct?
23 MS. MINOGUE: A: Oh, do you mean -- when you say
24 remove, the exclusion must be removed, so it must be
25 put back in? Is that what you mean? You're talking
26 about 2014?

1 MR. WEISBERG: Q: Let's go to Exhibit B-13, page 18.
2 So I was wanting to look at B-13, page 18. There are
3 two slides on that same page and let's look at the
4 first one, the carry-forward of the rate exclusion.
5 And it says, "Must include 6.6 percentage points," and
6 then in the box it says, "Removal of prior year's rate
7 exclusion." And that's where I took the word
8 "removed" from.
9 So in 2013 it's zero, but things change a
10 bit in 2014 as I understand. And so my question is:
11 This year for 2013, the rate exclusion is minus 6.6
12 percent. And so in calculating the rate change to
13 cover costs for 2014, that 6.6 percent must be dealt
14 with. Is that correct?
15 MS. MINOGUE: A: That's the starting point, yes.
16 MR. WEISBERG: Q: Okay.
17 MS. MINOGUE: A: It must be dealt with. So our rates
18 are right now, what we're proposing is 6.6 percentage
19 points too low to cover costs.
20 MR. WEISBERG: Q: Yes.
21 MS. MINOGUE: A: And so when we start our analysis to
22 compute the rate change to cover costs for next year,
23 we bring that back in and then add any cost pressures
24 and give any credit for any benefits to cost.
25 MR. WEISBERG: Q: Okay, thank you.
26 I'm going to move then to TREAD 6.2 in the

1 second series, and in particular we'll start with
2 Figure 1 which is on page 3 of 5. And I confess that
3 when I look at pages like this for not very long my
4 head begins to swim, and so my question may be off
5 base. But in the line that says "E MIN" representing
6 empirical minimum, under the year 2015, is that an
7 error? I'm asking that because the definition of
8 empirical minimum rate change is that it's calculated
9 by subtracting 1.5 percentage points from the prior
10 year's rate change. So would that not be 2.9?
11 MS. MINOGUE: A: Okay, I'm trying to -- you're on
12 Figure 1 under --
13 MR. WEISBERG: Q: Yeah, I'm on Figure 1 and then
14 there's -- not the graph but the table below it.
15 MS. MINOGUE: A: Mm-hmm.
16 MR. WEISBERG: Q: And it has the base scenario and then
17 under that "E MIN", "E MAX", "E MIN", "E MAX". So I'm
18 looking at the "E MIN", the empirical minimum, and I'm
19 looking in the column for 2015, and it's gone up,
20 which I thought was not what that scenario was doing.
21 I thought it was taking 1.5 percentage points off each
22 year. Am I missing something or is that in error?
23 **Proceeding Time 2:04 p.m. T35**
24 MS. MINOGUE: A: Yeah. That's the point we were trying
25 to make in our responses to your requests, Mr.
26 Weisberg --

1 MR. WEISBERG: Q: Yeah.
2 MS. MINOGUE: A: -- is that it's not a simple expansion
3 of the --
4 MR. WEISBERG: Q: Okay.
5 MS. MINOGUE: A: Of the ranges by one and a half. It
6 actually depends on what your trends are underlying,
7 and what your rate indication is, relative to what
8 your rates were less the year before. So, this
9 picture is just depicting, doing what you're
10 suggesting, just expanding out the ranges with the
11 light grey shade and then a more -- using our business
12 assumptions around where we think trends are, this --
13 the darker dashed lines indicate what's more likely.
14 So --
15 MR. WEISBERG: Q: Sorry. I'm focused on the table, Ms.
16 Minogue.
17 MS. MINOGUE: A: Right.
18 MR. WEISBERG: Q: Okay.
19 MS. MINOGUE: A: And the graph above is a depiction of
20 the --
21 MR. WEISBERG: Q: I understand.
22 MS. MINOGUE: A: Mm-hmm.
23 MR. WEISBERG: Q: So, what appears in the columns under
24 each of the premium years, is that not the rate change
25 for that year? So, and I assume it is because 2012,
26 we know the rate change was 11.2 percent. And that's

what it is. And the assumed -- at this point, for 2013, is 4.9. And then the base is 6.4. So I think that tracks for me. It's just that that one box doesn't seem to follow things. Because if 3.4 is the rate change for 2014, in the E MIN scenario, and going by the definition of what it is, you subtract 1.5 percent, percentage points, from that. I just can't follow how we get to 4.9.

And if I'm making a stupid error, please point it out. But I just honestly don't follow that.

MR. WEILAND: A: Is it not 6.4 minus 1.5?

MR. WEISBERG: Q: Well, no. I don't think -- I mean, it would be 6.4 if 6.4 was in the preceding box. But it isn't. It's 3.4.

MS. MINOGUE: A: Well, okay. So this is a scenario based on the rate changes in our business assumptions. And so the first line of the base scenario --

MR. WEISBERG: Q: Yeah.

MS. MINOGUE: A: You know, so remember how the rate-smoothing works. You look at your last year's rate change, and then you add plus or minus one and a half, to get the rate change band. So in order to get the empirical minimum and the empirical maximum, it's -- you have to look back to the prior year rate change, which would be on the top line, and then that would -- and then it's the band around those two. Those two

1 points.
2 MR. WEISBERG: Q: Okay. That's what I missed. I
3 thought that you go back to the box in the same line
4 for that scenario. So what is the -- what's the 3.4
5 percent under 2014 for E MIN? That's applying all the
6 assumptions, and you get to 3.4?
7 MS. MINOGUE: A: For 2014?
8 MR. WEISBERG: Q: Yeah.
9 MS. MINOGUE: A: Well, as you pointed out before, the
10 minimum that the rate could be is 3.4. So you take
11 the 4.9 out of the top line of the 2013 line, and you
12 subtract 1.5 from it.
13 MR. WEISBERG: Q: Hmm. I'm still not following,
14 because let's look at the T MIN line, under 2015. So,
15 if I've understood what you said, to understand that
16 1.9, I should go up to the base scenario for 2014 and
17 take 6.4 percent.
18 MS. MINOGUE: A: Well, no. Now you're switching lines,
19 though.
20 MR. WEISBERG: Q: Well -- I thought that's --
21 MS. MINOGUE: A: The T -- we're calling it the
22 theoretical. We're giving you credit for calling it
23 theoretical. That's your depiction of the maximum
24 range, okay? And so we've called it theoretical,
25 because theoretically I guess it could be that. But
26 realistically according to our business assumptions,

1 based on what we think trends are doing, it's this
2 narrower range is really a better depiction of where
3 we think the range around rates going out in the
4 future will be. Under our base scenario.
5 And so to get the theoretical max and min,
6 that's just doing that simple extrapolation of your
7 prior min point. So you -- so, for example, stay on
8 the line of T <OM.
9 MR. WEISBERG: Q: Mm-hmm.
10 MS. MINOGUE: A: To go across that, you just subtract
11 one and a half, and then finally when you get to the
12 point where it's negative, you cap it at zero, because
13 there is no rate decreases in our -- in the rate-
14 smoothing framework. So, is that clear?
15 So that empirical numbers are different
16 than the theoretical numbers. It's a different
17 algorithm. And we put the empirical ones in because
18 we think it's the proper way to look at it. And
19 furthermore, we put in the empirical max and mins for
20 a favourable and an unfavourable scenario. So
21 Commissioner O'Hara, you know, asked us about how we
22 look at things. We actually look at these different
23 favourable and unfavourable forecasts. And here, this
24 depicts the unfavourable and the favourable forecasts.
25 MR. WEISBERG: Q: Can we agree that in the event that
26 the Commission approves the proposed increase of 4.9

1 percent for 2013, that both the empirical minimum and
2 the theoretical minimum scenarios can be disregarded
3 as improbable?
4 MS. MINOGUE: A: For which year?
5 **Proceeding Time 2:10 p.m. T36**
6 MR. WEISBERG: Q: I'm just saying those scenarios as a
7 whole. I mean if they start out right and then
8 presumably they go wrong.
9 MS. MINOGUE: A: According to our current forecasts of
10 where trends are going I think they are -- in my
11 professional opinion I think they are unlikely, unless
12 there is some intervention that can change class.
13 MR. WEISBERG: Q: Okay, thanks. And I genuinely
14 apologize to the hearing room for my confusion about
15 that point, but I accept what you said about it. I
16 didn't follow it from the table.
17 Let's go to Figure 3 which is a page over.
18 And in the written response it says that ICBC would
19 propose to remove the rate change floor and the
20 indicated rate change was set equal to 1.9 percent.
21 So this is in the circumstances of the favourable
22 scenario, and my question is to whom would ICBC
23 propose to remove the rate-change floor. I assume it
24 would be to the government, is that right?
25 MS. MINOGUE: A: It would require stepping out of
26 regulation, so it would have to be to government.

MR. WEISBERG: Q: And that would necessarily require a change in the legislation.

MS. MINOGUE: A: To the regulation.

MR. WEISBERG: Q: Okay, yeah. What is the earliest date that ICBC contemplates it would possibly propose to remove the rate-change floor? And to put it in more context, the part I didn't read says that:

> "Note, that under the favourable scenario in premium year 2015…"

and then it goes on to say ICBC would propose to remove the rate-change floor.

MS. MINOGUE: A: Yeah, so in that scenario that would be when we propose. I mean, as I -- it's not a matter of when, it's a matter of under what conditions, and so in the conditions of the favourable scenario, and that's where we have -- you know, some of the class pressures are mitigated or reversed, then we would do that. But it's not -- it's not a matter of when, it's a matter of the circumstances being right and the cost pressures being alleviated.

MR. WEISBERG: Q: Okay, I agree with you that the trigger for you doing that is a result of the cost pressures that need to be alleviated. I don't agree that it's not a matter of when, because once the "if" question is answered, yes, we do need to do that, it's appropriate in the circumstances to do it. Then there

is a question about when and it's important because that sets in motion a timeline. I'm assuming it's not instantaneous that there's a meeting held at ICBC's headquarters and that rate-change floor is removed.

MS. MINOGUE: A: Right.

MR. WEISBERG: Q: So I'm beginning with the date that -- the earliest date that you would propose to remove it, and then I want to explore what's the likely timeline from there.

MS. MINOGUE: A: That's a matter that I'm not equipped to speak to. Our CFO who is in charge of the regulatory matters is on panel 2 and could better address those kind of questions than I.

MR. WEISBERG: Q: And that's true for -- I described the whole timeline, so that whole series I should take up with panel 2 if I wished --

MS. MINOGUE: A: In terms of particularly around when -- yeah, stepping outside of the rate smoothing framework and that kind of activity, yes, that would go to panel 2.

MR. WEISBERG: Q: Thank you. This, I think, may be appropriate for this panel though. Would an abrupt change, and the abrupt change I'm talking about is if you look at in the table under figure 3, 2014 has a rate increase of 6.4 percent, and 2015 has a rate increase of 1.9 percent. Would that abrupt change not

be inconsistent with the overall objectives of rate smoothing?

MR. GHIKAS: Mr. Weisberg, could you point out where the 1.9 is coming from?

MR. WEISBERG: Q: So figure 3 has a graph and a table. Looking at the table, under the first line, that says "Favourable", so for that scenario, if we go to 2014 we see a 6.4 percent rate increase. And in the next column, 2015, we see 1.9 percent. And it wouldn't be correct to characterize it as a rate decrease, because they are both increases albeit one is smaller than the other.

MS. MINOGUE: A: Correct.

MR. WEISBERG: Q: But there still is a differential between the two of 4 and a half percentage points.

MS. MINOGUE: A: That's right, and while rate smoothing does hold the rate changes between plus or minus 1 and a half percent, percentage points of the last year's rate change, of concern more to customers would be the increases over the prior year rate change rather than going in lower. And so while it's abrupt in terms of looking at rate changes, it's a difference in two rate changes, that's not of as much concern to us because customers would, quite frankly, probably welcome a 1.9 as opposed to a -- you know, if you went strictly by the formula 4.9. So I'm not -- I don't think that's

a concern.

MR. WEISBERG: Q: Okay, I don't disagree at all with what you said about customers would welcome a relatively smaller increase than a larger increase.

MS. MINOGUE: A: And that's why we -- yeah, and I just want to emphasize, that's a situation where, you know, the rate smoothing -- and government has recognized in the directive this thing. You can't make it work for all circumstances but you know, largely it will work well. But in the cases where it does kind of get at the higher rate level than you need, I think it makes a lot of sense to step back and reset it, and I think -- well, and that's what this figure 3 scenario does indicate, is that that seems to be the thing that we should do, that not intentionally set rates higher than we need. When rates are backed up sufficient to cover costs.

**Proceeding Time 2:18 p.m. T37**

MR. WEISBERG: Q: But it doesn't seem inconsistent with the objective of rate smoothing to only, two years into the process, be adjusting a rate increase by 4.5 percent, which is 3 times what the rate-change band leads everyone to expect would be the maximum change for a year. Do you see my point?

MS. MINOGUE: A: Okay, well, it's 2 and a half times or by a factor of two and a half times less, but the

thing is that what we are presenting here is a favourable and an unfavourable scenario.

MR. WEISBERG: Q: Mm-hmm.

MS. MINOGUE: A: And so we are trying to indicate kind of on the edges of what we think will happen, and so, you know, it's not -- well, you just said two years in or three years in. That's under a certain kind of scenario at the margins of what we thing are going to happen. So we don't think it's going to happen that way but it could.

MR. WEISBERG: Q: Will you try to make it happen?

MS. MINOGUE: A: I think our claims folks are making every effort to get things under control and in fact it's a corporate priority to get the bodily injury claims costs under control and our folks in road safety are working very hard around distracted driving and doing what we can. I mean, we are all rallying around this and I just can't emphasize enough. And it's really a team effort on the part of our Corporation. So yeah, we're going to try and do it.

MR. WEISBERG: Q: Good. Mr. Wilson, let's go to TREAD 10.1 in the second series. And the topic discussed in that response is back to personal electronic devices. It's 10.1 in the second series.

So Mr. Wilson, will ICBC commit to consulting with network carriers to improve ICBC's

1 understanding of the types of data and the potential
2 implications of that data that might be obtained by
3 consent or through legal procedures in the appropriate
4 circumstances?
5 MR. WILSON: A: Without deflecting your question to
6 panel 2, which is what I am going to do, can I have a
7 moment, please.
8 MR. WEISBERG: Q: Yes, go ahead.
9 MR. WILSON: A: In claims, what I can say for claims is
10 we are very committed to investigating claims and
11 where relevant, investigating PED or anything that
12 would increase liability and that would lead us to
13 holding someone liable or not liable properly. In
14 terms of deterring it, or what we would like to know
15 about our abilities to understand PED devices, that is
16 panel 2 and I can tell you in my conversations with
17 him that pre-empting their evidence, yes, they are
18 very committed to everything we can do around PED
19 devices that would help reduce crashes or help deter
20 people from irresponsible behaviour or distracted
21 behaviour.
22 MR. WEISBERG: Q: Okay. Well, well done, sir, because
23 you've deferred it to panel 2 but you've also put
24 something helpful on the record, so nicely done.
25 Yeah, that's good. That was helpful.
26 10.3 in the TREAD series, and I think

again, Mr. Wilson, this is your purview and perhaps again to panel 2. We'll see.

It says that in the context of consultations with network carriers that I've just raised the point, it says that ICBC does not believe such consultations would assist with the majority of claims investigations. And so implicit in that is the possibility that there might be a minority of claims investigations where it would be of assistance. Can you comment on that?

MR. WILSON: A: I believe where PED devices are relevant is in two circumstances. One is where there is some evidence that somebody was using a PED device, that we asked them and they denied the use, and that the use of the PED device contributed or caused the accident. In those cases it's relevant that we get the information, and what the information can tell us, once we obtain it, it's helpful. And it's helpful, the more we know about emerging technology the better. We are limited in those cases in terms of obtaining evidence to, again, those three factors.

**Proceeding Time 2:24 p.m. T38**

There has to be some recognition that it was used. There's a denial that it's used and it actually contributed to liability.

Another area where PED devices, PED records

are very helpful to ICBC is in fraud or staged accidents, where you might have two cars that are crashing and allegedly it's a crash but there is some indication that the people know each other. And you can compel PED records and if you find out, for example, that they were texting each other prior to the accident or -- the more we know about what we can get through PED, certainly the more it helps our fraud investigation.

Those are two very distinct areas that we're investigating today, where we are compelling those PED records. And Panel 2 will speak in more detail with you because that's more their area, but the more we can find out from carriers, the more we can leverage the technology, the better.

MR. WEISBERG: Q: It's wonderful to hear that. So you -- yeah, okay. That's fine. Thank you, Mr. Wilson.

13.1. That, and this is again in the TREAD second series. This response is -- the request begins discussing PEDs and in particular the disclosure and discovery policy. I'm more interested in part of the response that leads in a slightly different direction. It says:

> "ICBC is in the early stages of developing a comprehensive response to the issue of driver distraction."

1 Mr. Wilson, is that your area as well for purposes of
2 this panel, or is it something that should be deferred
3 entirely to Panel 2?
4 MR. WILSON: A: I believe that's Panel 2.
5 MR. WEISBERG: Q: Okay. Thanks. Just over the page,
6 TREAD 13.2:
7 "Will ICBC commit to reviewing information
8 regarding other jurisdictions' and/or
9 insurers' disclosure and/or discovery
10 policies, and the extent of any measurable
11 deterrent effects arising from such
12 policies, and address those issues in the
13 next revenue requirements application?"
14 MR. WILSON: A: That's also Mr. Dickenson on Panel 2.
15 MR. WEISBERG: Q: Okay, thank you. TREAD 15.1. Ms.
16 Minogue, this is the $50 million in reduced operating
17 costs that we spoke of earlier this afternoon. That
18 $50 million is derived in the context of the
19 Corporation, not of basic insurance alone.
20 MS. MINOGUE: A: Correct.
21 MR. WEISBERG: Q: Okay. And in the quoted passage,
22 which itself is from a response to another IR, it says
23 that as part of that $50 million, that there is
24 expected to be a further $9 million reduction in
25 budgeted costs in 2013. So here we are on the
26 calendar in 2014. Have the actuals been made

1 available within the Corporation at this point to
2 determine whether that further $9 million was an
3 achieved savings or reduction?
4 MS. MINOGUE: A: That would be to Panel 2, that
5 question.
6 **Proceeding Time 2:30 p.m. T39**
7 MR. WEISBERG: Q: Okay, thank you.
8 Mr. Chairman, there has been some hue and
9 cry from the folks in the hearing room insisting that
10 I enter this as an exhibit. I have exercised my
11 discretion and I won't. And I advise everyone
12 happily, I think, that I am now finished my questions.
13 And I thank you, panel.
14 THE CHAIRPERSON: Thank you, Mr. Weisberg. Mr. Miller?
15 MR. MILLER: Mr. Chair, while Mr. Weisberg is clearing
16 the podium, Ms. Khan intends to resume her cross-
17 examination.
18 THE CHAIRPERSON: Thank you.
19 **CROSS-EXAMINATION BY MS. KHAN (Continued):**
20 MS. KHAN: Q: Good morning -- or good afternoon. So, I
21 just wanted to follow up with a few questions which
22 you may or may not be able to answer. I have had some
23 discussions with Mr. Ghikas about this over the break,
24 and so I'll just see what you can answer and what
25 you're not able to answer.
26 It's relating to the disability discount

1 that ICBC offers on basic auto insurance. So I took a
2 look at Mr. Landale's -- at ICBC's rebuttal evidence
3 to Mr. Landale. If you can pull that out, actually,
4 it might be helpful. It's Exhibit B-12.
5 So there it says, a few paragraphs down, so
6 first you talk about the seniors' discount, and then
7 there's the disability discount. And so it says that
8 "there is a provision for a further 25 percent savings
9 for persons -- people with disabilities. If you have
10 been approved for a fuel tax refund under the B.C.
11 government fuel tax refund program for people with
12 disabilities, you may also qualify for a 25 percent
13 discount on your basic Autoplan, even if you don't
14 drive the vehicle."
15 Do you happen to know why eligibility for
16 the 25 percent discount -- and I should preface this
17 with the comment that these are not meant to be
18 hostile questions in any way. I'm certainly -- I'm
19 simply trying to get a bit more information about the
20 program, and see if there is any ways that we could
21 perhaps hone the program to make it slightly more
22 accessible for people with disabilities.
23 So why is eligibility for the 25 percent
24 discount tied to whether a person with a disability
25 has been approved for a fuel tax refund under the B.C.
26 government's fuel tax refund for people with

1 disabilities program?
2 MS. MINOGUE: A: I can't speak to exactly why that was
3 the eligibility criterion. But I just should say in
4 general, in insurance, one of the principles around
5 rating variables is that it's verifiable. And so
6 disabilities is something that there is probably a
7 broad spectrum, and where do you make the cut-off?
8 Because this is a substantial discount, and in fact in
9 effect is subsidizing the individual. We have in
10 prior analyses have determined that it is not, you
11 know, covering its costs with the disability discount.
12 So, you want to be careful and make sure
13 that it's a very well defined set of customers. So, I
14 don't have the answer to that as to why that
15 particular criterion. It's also a rate design type
16 question. So I just didn't come prepared to answer
17 that. But I'm sure there is a historical reason why,
18 and it's around trying to have something verifiable.
19 **Proceeding Time 2:36 p.m. T40**
20 MS. KHAN: Q: Okay. Yes, no, and I can appreciate, of
21 course, you don't want to be just granting the
22 disability discount to anyone who says they have a
23 disability. You need to have it based on some kind of
24 a formal and rigourous criteria.
25 Do people who are applying for this
26 disability discount, do they need to prove annually --

prove that they are still a person with a disability and that they still qualify for the fuel tax refund program? Do they need to prove that on an annual basis?

MR. MILLER: Mr. Chair, although we do allow some latitude, I'm really concerned that we are straying purely into rate design matters now.

MS. KHAN: Yes, I can certainly -- I see that the concern. However, I think that in this case, the program is already in place and we are certainly -- we are simply trying to get a sense of whether the program could be tweaked a bit in order to make it a bit more accessible for people with disabilities. And given the context that we are in, where rate increases are -- we are looking at a big rate increase, big potential rate increase through this application and potentially large rate increases in the coming years, and as far as I'm aware there is no rate design scheduled on the horizon, in the near or not so near future.

So I'm simply looking at this as a way to try and get a bit more information so that we could look at whether the program could be made a little bit more accessible.

THE CHAIRPERSON: I guess my concern, and I'll take up from what Mr. Miller said, is looking more at the

1 design of the program and eligibility rather than the
2 potential impact of the rate increase on basic
3 insurance. So that's where my concern is, Ms. Khan.
4 MS. KHAN: I can see that and I understand it. And
5 certainly I'm looking at it just simply from the
6 perspective of people with disabilities who may -- in
7 terms of increasing potential eligibility for the
8 program or make it more accessible. That's all. And
9 I'm not trying to interfere with -- I'm not trying to
10 get into actual rate design issues.
11 MS. MINOGUE: A: Well, I don't know the answer to your
12 question, so -- and I am wholly unprepared to answer
13 questions on that matter.
14 THE CHAIRPERSON: Ms. Khan, the Panel is of the opinion
15 that this is really not related to the matter at hand,
16 and that is, while we are not -- while we recognize
17 the importance of this, it really doesn't speak to the
18 rate increase that we are examining. It's more an
19 eligibility criteria and how that can be or cannot be
20 changed, and that's really not part of the rate
21 increases. It is more of a rate design question, so.
22 MS. KHAN: Q: Can I ask the panel, when do you -- does
23 ICBC have any plans to file a rate design application,
24 and if so, when? What's the timeframe that you are
25 looking at?
26 MS. MINOGUE: A: Ms. Prior on panel 2 can answer

1 questions around timing of applications.
2 MS. KHAN: Q: Okay, all right. Okay, thank you. I
3 won't pursue this. I wont' attempt to pursue this any
4 further.
5 THE CHAIRPERSON: Okay, thank you, Ms. Khan. Mr. Miller.
6 MR. MILLER: Thank you, Mr. Chair. I believe Mr. Adair
7 is next. For the participants in the room that have
8 not yet notified. There has been a slight change in
9 the order of cross-examination to accommodate Mr.
10 Adair, and we thank CDI for that.
11 MR. ADAIR: I know this whole event is shocking, but
12 that's it.
13 **CROSS-EXAMINATION BY MR. ADAIR:**
14 MR. ADAIR: Q: Thank you very much. So first off, it
15 seems that one of the issues that's been discussed is
16 that ICBC, through the claims group, have a real
17 interest in keeping claims low, is that correct?
18 MR. WILSON: A: Can you clarify what you mean by
19 "keeping claims low"?
20 MR. ADAIR: Q: Well, as low as possible.
21 MR. WILSON: A: Claims costs or claims volume?
22 MR. ADAIR: Q: Claims cost. What you pay for claims.
23 MR. WILSON: A: Well, I think what we've tried to get
24 out through our evidence is that ICBC has to balance
25 costs and we have to have costs controlled and cost
26 containment for our 3 million policy holders. At the

1 same time we can't do it at the expense of offering
2 less than an acceptable level of product and service.
3 So within that framework, yes, we are
4 trying to keep costs low.
5 **Proceeding Time 2:41 p.m. T41**
6 MR. ADAIR: Q: So what you're saying is, in addition to
7 try and keep costs low, you're also trying to keep
8 claims fair for those people that have a claim.
9 MR. WILSON: A: That's a very good way of putting it,
10 yes.
11 MR. ADAIR: Q: Okay. And however, the other discussion
12 was that you're also, when you buy insurance, the
13 insurance is there to protect the at fault person,
14 because in effect I cause an accident, you guys come
15 in and step on my place and say, "Okay, I'm trying to
16 protect the at fault person."
17 MS. TAYLOR: A: That is correct, yeah. That is
18 correct.
19 MR. ADAIR: Q: And so the question is: How do you
20 balance that then, that if you're trying to keep
21 claims low by protecting the at fault and litigating
22 to protect the at fault person, and to balance that
23 with being fair to the innocent person in the
24 accidents? So does that mean that you make a fair
25 payment -- or a fair representation to the innocent
26 party in effect and say, "Yes, we're going to pay you

1 exactly what's due to you"? Do you take that position
2 from claims point of view? Or do you say, "How much
3 can I keep them low"?
4 MS. TAYLOR: A: Well, I think in the scenario you
5 describe, what we want to do is make fair and
6 reasonable offers and balance that with our
7 requirement to defend our defendant and the policy
8 holders. So yes, I would agree with you. That's that
9 delicate balance.
10 MR. ADAIR: Q: So, okay.
11 MS. TAYLOR: A: I believe there is an IR that we
12 discuss that.
13 MR. WILSON: Q: If we turn to Round 1 BCUC 104.4, --
14 and perhaps a better response to Mr. Adair's question
15 is 105.5, Round 1 BCUC.
16 MS. TAYLOR: A: In this particular IR we're discussing
17 this balance that we strike in providing a fair and
18 reasonable offer, and also protecting the interests of
19 our defendant. So if you look at paragraph 3, this is
20 where we talk about what we want to do is evaluate
21 each claim by assessing the facts and basing the
22 particulars of each case. And so I think this is a
23 good description of what our adjusters are required to
24 do on each file, and it is to provide reasonable and
25 fair settlements, and also balancing the impact to our
26 defendant in that case.

1 MR. ADAIR: Q: And so that means you don't give too
2 large a settlement that's -- as being unfair, in
3 effect.
4 MS. TAYLOR: A: Our settlements are based on the
5 evaluation of the facts that we have in front of us,
6 and the evaluation is based on that. So in this
7 scenario that you are describing, the plaintiff, or
8 the customer in this case, must prove their loss. And
9 I think that's an important element also to bring
10 forward into this discussion.
11 MR. ADAIR: Q: So that would mean that if they didn't
12 have a lawyer, your adjuster would help them get to
13 that point?
14 MS. TAYLOR: A: The adjuster would help them understand
15 the information that they are required to fairly
16 evaluate their claim, yes.
17 MR. ADAIR: Q: Okay. So therefore, having a lawyer
18 help you shouldn't necessarily make any difference in
19 the settlement. If you're being fair in the first
20 place and you're being fair in the second place, then
21 this issue that comes up about claims going up because
22 more people are getting lawyers seems to be in the
23 opposite direction of that, because if you're being
24 fair you should be fair in both cases.
25 **Proceeding Time 2:46 p.m. T42**
26 MR. WILSON: A: When we talk about fair compensation

with or without a lawyer, first I'd like to say there is two things that we have to look at. One is that it's not an apples-to-apples comparison. And I'll talk about that in a second. Meaning there is case-by-case differences, in an unrepresented and a represented case.

And also that there are extra costs of litigation which become part of what we pay on a represented claim. Part of what ICBC pays on behalf of the defendant, and the net -- it doesn't form the entire net compensation that goes to the claimant. So the claimant does not get all of the costs that we pay. Some goes to the process of litigation.

MR. ADAIR: Q: Well, I'm not a lawyer, I'm an accountant. So, just so you know that I'm not taking my own position on this.

MR. WILSON: A: Okay.

MR. ADAIR: Q: The circumstances of -- from that point of view is that the injured party pays for his lawyer out of his settlement. So that has nothing -- no impact on what you do, other than the fact -- depending how far you push it towards mediation or towards going to court, the costs go up, because if you can have an award of costs against you as part of the process.

So to the extent that claims are settled

early, those things don't build up, because as -- if ICBC pushes closer to the trial dates before they settle, then everybody goes out and gets the experts, and those costs go up, I agree on that. However, maybe the costs for the injured party stay the same, except their net -- what they get net is not as much. But maybe they needed that help.

Yes. You were going to say something?

MR. WILSON: A: You raise a couple of points. One is that the more ICBC pushes people towards trial, the costs go up. And I think that we've heard that from a few people. We've heard that allegation. I disagreed with it yesterday, and I disagree with it today. By nature, when I talk about apples and apples, an injury claim or a person who is injured, if you take two people that say are in the same crash, and even the same job, if, say, they're both accountants. They can --

MR. ADAIR: Q: Don't pick on the accountants.

MR. WILSON: A: Say they're both lawyers. All things being equal, you can still have two very different reactions. And there can be an uncomplicated case, where really there is nothing in dispute. Somebody is injured. They get treatment. And they recover. And they want to settle their claim. There can also be a number of factors which are in dispute, or where there

is a greater degree of uncertainty that -- an obvious one would be a soft-tissue injury versus a catastrophic injury. It could be an injury where you're not sure whether what you're currently suffering is from the accident or from other factors.

The more things are in dispute, the more likelihood there is to go to a lawyer. The more uncertainty there is, the more likelihood there is. And so those issues which are in dispute increase the costs of litigation, because you have experts trying to determine what the answer is. That is not ICBC driving people towards trial, it's -- there are some cases which we expect to get litigated, or represented, simply by the issues or the injuries in dispute.

What ICBC tries to control is the cases where it's unnecessary. There aren't issues in dispute, there is certainly not issues that we can't resolve. And when we talk about what a customer wants in terms of settlement, it's not just they want to get a fair settlement. What our customers have told us is, they also want to be treated fairly. They want to be given their benefits and their time to get better up front. And they want to be explained what their entitlements are. And when we settle a claim, they want us to make it very clear what we're paying for.

And to the effect that we don't do a good job at that, they may get a lawyer simply because they feel we're not meeting their needs.

**Proceeding Time 2:51 p.m. T43**

MR. ADAIR: Q: Well, and you do agree then, that as things get closer and closer to a trial date, that those other costs go up. Let's assume that you pay the injured party for his cost of salaries and all those other things, and pain and suffering equally because you're being fair in both cases. So it's all these other costs that are going up. So to the extent that those things get delayed and pushed off, and mediations aren't used, to what extent those other costs may be the main driver in costs going up since you are selling both the other stuff fairly on both sides, whether they are litigated or not. Maybe it's not answerable.

MR. WILSON: A: Yeah. I think it's a hypothetical.

MR. ADAIR: Q: So I am aware that ICBC, towards the end of the year -- you know, things get delayed, and I know several lawyers around who have found their claim settlements in December went up four fold. So if they were setting a hundred claims a month on average, or all the other eleven months, in December it was 400 claims. So obviously something happened at ICBC in the month of December and continuing into January

1 somewhat, I think. So was that you decided not to
2 delay them so much at that point, or what happened?
3 Are you trying to get the year-end in order?
4 MS. TAYLOR: A: So I think what -- we've heard a little
5 bit yesterday about -- and Ms. Minogue talked about it
6 too, in terms of our pending levels being higher, and
7 so in light of some of the big changes that we've
8 undergone in 2012 -- sorry, 2013 and facing us in
9 twenty-four [sic] with the transformation, we have
10 very much put a focus on negotiation strategies, and
11 it wasn't just December. It's something we've been
12 doing all year round. So I'm not sure if it's just
13 the particular counsel you are talking about, but this
14 had been a particular focus for us.
15 Because what we do know is that our
16 adjusters, and managers are going to be training for
17 the new claim system, and we wanted to put as much
18 focus on trying to settle some claims throughout 2013,
19 as to minimize the impact of those transitional change
20 that we're going to have on our productivity. So the
21 result of that is really related to that. But it
22 certainly was in December and it was something we put
23 a great deal of focus on for all of 2013.
24 MR. ADAIR: Q: It just wasn't a Christmas present.
25 MS. TAYLOR: A: No.
26 MR. ADAIR: Q: However, this speed up actually happened

in the later part of the year. I've talked to quite a few different lawyers in this and there was a definite speed up that happened towards the end of the year and especially in December. So is ICBC going to keep this earlier settlement going now into the future so that claims will come down because you won't have as many medical and expert costs. Is that the plan?

MS. TAYLOR: A: Well, I think early settlement -- our focus is always to settle the claim as early as possible. I think part of the negotiation strategies -- and we talked a little bit about this yesterday as mediation, and mediation is absolutely a very good tool and one of the options for us to negotiate a settlement. But there certainly are, and we found, other negotiation initiatives that have worked very well for us. And where we would meet with counsel and we would go through 20 files on one day versus one file in a mediation settlement. And so that has really been our focus, as to how to best utilize our resources, and at all times make the offer at the earliest opportunity when we have enough information to evaluate the claim.

**Proceeding Time 2:55 p.m. T44**

MR. ADAIR: Q: When a claimant -- when there is a claim with a lawyer, and they put out all the disbursements, they usually charge the claimant interest on the

disbursements leading up to the point where ICBC finally settles, which means the longer that ICBC drags it out, they get to sit on that money and invest it. Do you think claims might consider paying the interest on behalf of these claimants? Because right now they don't. Never mind. I haven't asked that before, but I just had to get it off my chest.

The other thing --

MR. WILSON: A: Sorry, did you --

MR. ADAIR: Q: I know you don't have an answer on paying interest. Someone has to take you to court.

The chart that came out showing the increase in those that litigated files, that starts at 35, I think, and goes to 45 percent -- I am always suspicious of a --

MS. TAYLOR: A: Sorry, do you have a particular --

MR. ADAIR: Q: Well, it's the one that was shown this morning.

MS. TAYLOR: A: Oh, okay.

MR. ADAIR: Q: Yeah. That, you know, it's the one that shows the number of litigated BI claims.

MS. TAYLOR: A: Yesterday?

MR. ADAIR: Q: Over the years.

MR. WILSON: A: Increasing legal representation.

MS. TAYLOR: A: Okay.

MR. ADAIR: Q: Yeah, and it starts at 35 and goes to

1 45.
2 MS. TAYLOR: A: Oh, okay. Yeah.
3 MR. ADAIR: Q: And I'm always suspicious of a chart
4 that doesn't start with a zero bottom line, that you
5 wind up going from 25 percent through 50 as opposed to
6 a chart that lets you get an idea of what that is. So
7 I think that charts that don't have the zero line at
8 the bottom, you have to be suspicious, because they're
9 trying to emphasize something in the middle. So, next
10 time you do the chart, could you go to zero? As the
11 bottom.
12 MS. MINOGUE: A: I have to speak up to that, because I
13 think that these percent increases are important, and
14 the axis, sometimes you need to choose an axis that's
15 appropriate to highlight a point. So we will not
16 commit to starting all axes at zero percent. Just so
17 you know.
18 MR. ADAIR: Q: It distorts the view of a chart, that's
19 the issue. That's an accountant's opinion.
20 MS. MINOGUE: A: It will make it look flatter, that's
21 true.
22 MR. ADAIR: Q: The -- okay. Now, and the issue, of
23 course, is that to some extent you are blaming the
24 fact that more lawyers are involved for costs going
25 up. I mean, you've said that several times. It was
26 said by -- this morning, in Mark Blucher's thing here,

he says "A contributing factor in B.C. is the increase in lawyer-represented claims." Now, if you're settling all these claims fairly, whether a lawyer is involved or not, other than as you delay them, you know, if you settled it right away, other than if you delay them, and you get more medical costs, then that shouldn't be a factor.

Secondly, I'm just going to say, other than guessing, I don't think there is a direct link. You can't say the reason why this went up was because there was a lawyer involved. Because then you'd have to say, "We'd have settled that guy less before."

MR. GHIKAS: So, on the assumption that there was a question there, perhaps the witness has an opportunity to answer, Mr. Chairman.

THE CHAIRPERSON: Thank you, Mr. Ghikas, you preempted me.

MS. MINOGUE: A: I just want to just clarify one point. In the IRs and the communication that you just referred to, it's not blaming lawyers. It's saying there is more legal representation. So I think there is a clear distinction of what that is.

MR. ADAIR: Q: Well, it says here there are various factors contributing to the increase. Injury claims, we pay out -- "one particular contributing factor in B.C. is the increase in lawyer-represented claims and

1 resulting higher legal and medical costs". So what
2 I'm saying is, it is -- you're using that as one of
3 the lead things in this whole process.
4 THE CHAIRPERSON: Mr. Adair, do you have a question with
5 that?
6 MR. ADAIR: Q: Well, what is the direct linkage? What
7 linkage do you have to prove this? Because other than
8 just saying it, what is the linkage? And if -- and
9 you lump -- and the other comment that was made
10 earlier was that lawyer-represented --
11 MR. GHIKAS: Well, let's stop right there and ask what
12 the linkage is.
13 MR. ADAIR: Q: Well, okay. All right. Yeah, what is
14 the linkage?
15 MR. GHIKAS: Mr. Chairman. What is the linkage? And I
16 think Ms. Minogue actually has an answer for that.
17 MS. MINOGUE: A: Right. BCUC round 1, 7.2. There, we
18 show the sensitivity, if you will, for every 1
19 percentage point increase in the rep rate, it
20 translates into a one and a half percent impact on the
21 bodily injury severity trend. This is a well-
22 understood phenomenon that we've documented in our IR
23 responses, and that speaks to it. So, 6 percent
24 severity trend is driven by medical cost inflation,
25 increased utilization, and the shift in the mix toward
26 more and more representation. It's a major factor in

1 that 6 percent severity trend line.
2 **Proceeding Time 3:00 p.m. T45**
3 MR. ADAIR: Q: The statement that someone made earlier
4 about represented claims are bigger than the
5 unrepresented BI claims. Well, that's right because
6 the more injured you are the more likely you are to
7 get a lawyer. So using that statement, as someone had
8 indicated earlier, I don't think is a very good
9 statistic. And the issue --
10 MR. GHIKAS: Now, now, here we go.
11 MR. ADAIR: I'm giving evidence?
12 MR. GHIKAS: He's put -- I believe Mr. Adair is giving
13 evidence and he's not actually giving it correctly, so
14 perhaps we can have Ms. Minogue actually speak to the
15 issue of what he's getting at.
16 MS. MINOGUE: A: We have evidence in the record in
17 terms of, you know, the increase in the number of
18 claims that are represented, in that there's more and
19 more soft tissue injury minor claims that are becoming
20 represented. And even that, there's still that impact
21 on the severity trend. So the data is in the record.
22 And you're throwing out big things with no evidence,
23 so --
24 MR. ADAIR: Q: Well, that's what Mr. Blucher -- I'm
25 just quoting him.
26 THE CHAIRPERSON: Mr. Adair, I believe Ms. Minogue has

1 answered your question. If you could either ask a
2 subsequent question, subsidiary question or get to
3 your next point, please.
4 MR. ADAIR: Q: In the *Vancouver Sun,* September 18th last
5 year, and this was talked about I think at the earlier
6 event, and that Mr. Adam Grossman was commented in
7 there about he claims that -- and Mr. Grossman works
8 for ICBC still?
9 MS. TAYLOR: A: Yes, that is correct.
10 MR. ADAIR: Q: After making this comment? Okay. He
11 claimed awards at trial on average are, on average are
12 30 percent less than what the claimant initially
13 demanded.
14 MR. GHIKAS: So, Mr. Chairman, I don't believe the
15 witnesses have a copy of this. So if perhaps I can --
16 THE CHAIRPERSON: Could I just make a point here? Mr.
17 Adair, if it's okay with you, if we could take a break
18 now so he could get copies of this.
19 MR. ADAIR: Sure.
20 THE CHAIRPERSON: And the panel could get a copy and have
21 a chance to read it and --
22 MR. ADAIR: Sure, and I only have a couple more minutes,
23 so that's fine, if you want.
24 THE CHAIRPERSON: Well, I think the point is that they
25 need an opportunity to read this, and given that it's
26 five after three.

MR. ADAIR: Okay. You probably read it back in September.

THE CHAIRPERSON: Then we come back to it.

MR. ADAIR: Sure, that's fine.

THE CHAIRPERSON: So 20 after 3:00, please.

**(PROCEEDINGS ADJOURNED AT 3:03 P.M.)**

**(PROCEEDINGS RESUMED AT 3:21 P.M.)** **T46**

THE CHAIRPERSON: Please be seated.

Mr. Adair. I rudely interrupted you fifteen minutes ago, so you're up again.

MR. ADAIR: I didn't notice it was rude.

THE CHAIRPERSON: Well, it wasn't meant to be rude.

MR. ADAIR: But is that the truth?

THE CHAIRPERSON: Well, that's for you and me to find out afterward.

MR. ADAIR: Q: So now we are ready to retroactively read the *Vancouver Sun* from September the 8th, now C-8-3.

THE CHAIRPERSON: Thank you.

THE HEARING OFFICER: C8-3.

**(DOCUMENT FROM *VANCOUVER SUN* WITH PHOTO ENTITLED "DRIVER SERVICES CENTRE" MARKED EXHIBIT C8-3)**

MR. ADAIR: Q: So in here there is discussion about the number of trials that was highlight, but I wasn't talking about that. Anyway, about halfway down the first page, he claimed awards at trial are, on

1 average, 30 percent less than what the complainant had
2 demanded.
3 Now, yesterday we were talking about the
4 statistics around claims and you said you didn't have
5 the information, but back here in September he seemed
6 to be indicating that by going to trial you guys were
7 saving 30 percent. But it was a -- you said it was a
8 business secret or something I think yesterday. But
9 he seems to have -- you seemed to have used it here,
10 that's all. So I'm just trying to understand that.
11 MR. WILSON: A: I think there are two issues with this
12 sentence. The first is that we did provide an
13 undertaking yesterday, I believe, to give final
14 numbers, final offers prior to trial, and we stated
15 that we didn't have the first offers and we explained
16 why we couldn't track that. And in this particular
17 quote, which the *Sun* reporter quoted or said he quoted
18 our staff member, there's a problem with the word
19 "initial".
20 For this statement to be correct, it should
21 read that the demand, or the amount demanded by
22 plaintiff going into trial was 30 percent less on
23 average than the award. So I don't want to give the
24 perception that it was the first offer. And I can't
25 say whether that was due to misinterpretation on the
26 reporter's part, but what I can say is that the

statistics we are relying on is the demand going into the trial and the offer going into trial.

You also said that we claimed that to give all of those offers and those demands would be competitively sensitive, and on an individual case, we would agree with that. On an aggregate, we are saying that overall our average offer and our average demand, I believe that if we are going publicly in stating this is the average demand, we should be prepared to go public and say, "This is the average offer."

MR. GHIKAS: Just for clarification, Mr. Chairman. I think the witness misspoke in terms of -- you got that 30 percent more and less reversed. So maybe you could just clarify again, just again -- if Mr. Wilson could just clarify again what that statement should read.

MR. WILSON: A: The statement should read that awards at trial, on average, are 30 percent less than what the complainant demanded prior to trial.

MR. ADAIR: Q: Thank you. Would you agree in looking at this statistic that it depends on which side you are looking at it? So if there's a claim that's settled for 50,000 but the lawyer demanded 100,000 and you offered 25,000, so the lawyer would say, "We got 50 percent more -- a 100 percent more than what you offered," and you could say, "Well, we got 50 percent less." So the same statistic, just depends on which

1 side you look at it. So when you are doing the
2 statistics, you're going to try to show what the offer
3 was from both sides on this process?
4 MR. WILSON: A: I would agree and that is correct.
5 MR. ADAIR: Q: All right. I quit. Thank you.
6 THE CHAIRPERSON: Thank you, Mr. Adair.
7 COMMISSIONER REVEL: If I may, panel, let me ask a
8 question. I'm interested in this general area Mr.
9 Adair has pursued, and Ms. Minogue, I'd urge you to be
10 careful, I might be lobbying another of those
11 speculative ones.
12 Assuming we had a population of
13 individuals, injured individuals with approximately
14 the same injury, okay? And the population is large
15 enough to take the variation out of it. And some of
16 that population was litigated and some of it was non-
17 litigated, settled without any difficulties
18 **Proceeding Time 3:26 p.m. T47**
19 The number I'm interested in, since after
20 all insurance is largely about the injured and the
21 injuror, which one would end up with more money in
22 their pockets after all of the costs for court or fees
23 or whatever, which party would end up with more? The
24 litigated situation or the non-litigated situation?
25 And I know that may well be speculative, but it would
26 be a helpful picture.

1 MS. TAYLOR: A: If I may answer that.
2 COMMISSIONER REVEL: Please.
3 MS. TAYLOR: A: The short answer is I'm not able to
4 answer your question, and I'll give you some of the
5 issues that relate to this inquiry. Part of the legal
6 process, we incur legal costs. So the cost of the
7 litigation as well as the costs and disbursements as
8 we've described before, as well as the cost -- defence
9 cost that we incur in the process. So we've got those
10 costs. We've also got the costs, medical costs
11 associated with the medical reports. And then
12 ultimately what is unknown is that the plaintiff in
13 most personal injury cases, and I think you asked this
14 question earlier, pays a contingency fee to their
15 counsel. And I believe in -- make sure I quote this
16 correctly here. By way of Section 8 of the *Law*
17 *Society Rules,* it sets out the authority for the *Legal*
18 *Profession Act.* So a claim for personal injury or
19 wrongful death arising out of the use and operation of
20 the motor vehicle is 33 and a third percent of the
21 amount recovered. So whether it's 20, 30 or a third,
22 ICBC does not have that information.
23 Another factor that came up, and I think
24 this was brought up just a few minutes ago, is the
25 interest on those disbursements. That too is unknown
26 to us. So ultimately the question of what gets in the

1 pockets of the represented and the unrepresented is
2 very difficult, and I think that's what Mr. Wilson was
3 talking about, the apples to oranges.
4 COMMISSIONER REVEL: No, I fully accept that there are
5 innumerable confounding aspects to this, and I just
6 wondered if you had, at a very high level, a sense of
7 if somebody were injured, whether they'd be better to
8 be litigated on their behalf or not.
9 MR. GHIKAS: The only reason I am rising, Commissioner
10 Revel, is that there are probably some individuals
11 hanging onto this at the edge of their seat. I think
12 that one of the commercial sensitivities associated
13 with this is that this is not something that you --
14 that as policy holders necessarily want to discuss in
15 a public environment like this.
16 COMMISSIONER REVEL: That's fine.
17 MR. GHIKAS: So I caution you, you know -- the witnesses
18 may be able to answer it in a way that I'm not
19 anticipating.
20 COMMISSIONER REVEL: Yes.
21 MR. GHIKAS: But I think in general terms I would just
22 make sure that everybody's sort of aware that there's
23 commercial issues.
24 COMMISSIONER REVEL: I'm more than happy to let it slide.
25 I wasn't looking for specific details. I just wanted
26 to have a sense, a broad sense as to which situation

1 served the insurer best. That was all. It doesn't
2 have to be from this -- your particular data set.
3 MS. TAYLOR: A: Yes. And I just wanted to add, I
4 think, another area that perhaps has influence on
5 those two separate groupings as we've put it. There's
6 the uncertainty. There's the type of claim. So, you
7 know, catastrophic claims are typically litigated. As
8 well as there are areas of dispute. Liability for
9 example can really sway that. So I think that makes
10 that comparison quite difficult.
11 COMMISSIONER REVEL: Thank you very much.
12 MR. GHIKAS: And just to be helpful as best as possible,
13 I mean, the Corporation could probably -- it has
14 provided some confidential IR responses already. We
15 can look to see if this specific information is in
16 those or not. But generally on this type of topic the
17 IR responses have been filed confidentially.
18 So we can look at that and perhaps,
19 Commissioner Revel, if you take a look at those, we'll
20 give you the numbers and if there's more information
21 that you wish in this general area, we could provide
22 it in confidence further for you.
23 COMMISSIONER REVEL: I'm quite happy to let that slide.
24 It was something as I listened that it struck my head
25 that it would be a very interesting, broad, general
26 idea to have, and I'm certainly able to look through

the evidentiary body myself and find it. So you need not pursue it in any way, shape or form. Thank you.

MR. GHIKAS: Thank you.

THE CHAIRPERSON: Thank you.

MR. ROSS: Thank you, Mr. Chairman. Alan Ross appearing for Canadian Direct Insurance. And I note the luck of the draw that put me in the hour before a long weekend.

THE CHAIRPERSON: And we'll hold you to that, Mr. Ross.

MR. ROSS: I have no interest in keeping you here late.

**CROSS-EXAMINATION BY MR. ROSS:**

MR. ROSS: Q: Just so everyone can have ready access to the things that I'll be referring to, all of the references that I will make are in Chapter 3, Actuarial Rate Level Indication Analysis, pages 3-2 to 3-16. For the panel, I'll be asking questions in three areas: everyone's favourite, the smart phones; lost cost forecast variance, specifically in relation to medical rehab costs; and finally finishing off on a towering crescendo on claims rated scale.

Just starting off, and I know that this was part of your evidence, I'm correct, I think, that you've created your projections based on accepted actuarial practice. That's my starting point. Is that correct?

MS. MINOGUE: A: That's correct.

1 MR. ROSS: Q: All right. Moving on to discuss smart
2 phones in particular, my first question is: What part
3 of accepted actuarial practice does intuition involve
4 itself with?
5 MS. MINOGUE: A: We call it informed judgment and it's
6 a very important aspect when there's a change in
7 environment, that you consider the factors around you
8 and how they're likely to affect the trends going
9 forward.
10 **Proceeding Time 3:34 p.m. T48**
11 MR. ROSS: Q: Okay. And the reason I raised the
12 spectre of intuition is that in paragraph 34, which is
13 at page 3-11, you've discussed mass adoption of smart
14 phones, and you have set out figures 3-6 -- 3.6,
15 excuse me, on page 3-12, which you say 3.6 provides an
16 illustration that intuitively supports the logical
17 conclusion smart phone use is putting upward pressure
18 on frequency which has the effect of cancelling out
19 the benefits of favourable influences on frequency.
20 That's what it says in paragraph 34, correct?
21 MS. MINOGUE: A: Correct.
22 MR. ROSS: Q: And we heard yesterday and this morning
23 that you're not keeping any statistics on smart phone
24 use as a contributing factor to motor vehicle
25 accidents, is that correct?
26 MR. LOACH: A: I think what we've said is that we are

1 challenged to track the contribution of the smart
2 phone use in crashes and it's not something that we
3 are systematically tracking. That's not to say that
4 there is no information that's available to us, but
5 for the most part it's not something that's
6 systematically tracked.
7 MR. ROSS: Q: Sorry, I think that was my question, that
8 you are not tracking it.
9 MR. LOACH: A: That's correct.
10 MR. ROSS: Q: Right. Now, you've referenced in your
11 material the studies, and I think you referenced the
12 study that said that somebody who is texting is 23
13 times more likely to be involved in an accident if
14 they are using a smart phone. That was done in
15 another jurisdiction, correct?
16 MR. LOACH: A: There was a driving study that resulted
17 in that statistic of 23 times increased risk while
18 operating a smart phone or similar, yeah.
19 MR. ROSS: Q: Okay, now in British Columbia you've
20 referenced the fact that in 2008 smart phones were a
21 bit of a novelty but then they've really taken off in
22 figure 3.6. But have you also taken into account the
23 fact that on January 1st, 2010 the use of smart phones
24 or PEDs while driving became prohibited?
25 MR. LOACH: A: That has been discussed in some of the
26 evidence, yes.

1 MR. ROSS: Q: Okay. Did it have any effect?
2 MR. LOACH: A: We don't have any evidence at this point
3 that that has had a significant favourable effect.
4 MR. ROSS: Q: Okay, and if you are not tracking it, it
5 would be difficult to have any evidence, correct?
6 MR. LOACH: A: I'd refer you to the response to first
7 round BCUC 15.3 and particularly the second paragraph.
8 What we note here is that while the data linking cell
9 phone use directly to crashes is not available, there
10 is evidence to suggest that distracted driving
11 continues to make a significant contribution to
12 crashes on B.C. roads and a steady contribution both
13 before and after the ban. For example, there is
14 statistics on police attended crashes where
15 distraction is listed as a contributing factor, and
16 those are supportive of the fact that we say virtually
17 unchanged between 2010 when the ban came into effect
18 and 2012.
19 **Proceeding Time 3:39 p.m. T49**
20 MR. ROSS: Q: Okay, and just -- that answer says
21 "significant and steady" contribution. Correct?
22 MR. LOACH: A: Both before and after the band, that's
23 correct.
24 MR. ROSS: Q: Right. And yet your Chapter 3 says it
25 has -- intuitively it's putting upward pressure, as
26 opposed to steady. Steady, I would interpret as being

1 a flat line, whereas upward pressure you would
2 interpret as you're banking on increased accidents.
3 An increased number of accidents.
4 MR. LOACH: A: I don't think that's correct. When we
5 talk about it in Chapter 3, we're talking about upward
6 pressure, but what we're resulting in is seeing a flat
7 bodily injury frequency line as a result. So we're
8 seeing that this is something that is a factor that is
9 logically contributing to higher frequency based on
10 increased penetration, and continued usage of smart
11 phones behind the wheel. And that this is continuing
12 to result in claims, despite other long-term downward
13 influences on the trend.
14 MR. ROSS: Q: So if I have that correctly, your model
15 is that, but for smart phones, accidents would be --
16 frequency would continue to be decreasing, but the
17 mass adoption of smart phones has leveled that out or
18 is at least partly responsible for that.
19 MR. LOACH: A: We believe it's one of the contributing
20 factors, and we have identified a couple of others in
21 here as well that we think are significantly
22 contributing, as well as discussing in some of the
23 evidence that there are, of course, a very large
24 number of factors that have some influence. But
25 certainly there is -- smart phones are one of the ones
26 that we have provided some evidence on.

1 MR. ROSS: Q: Okay. Without wanting to disagree with
2 you just on frequency, I went on ICBC's website last
3 night, under your road safety initiative, and I pulled
4 off "Police targeting distracted drivers in February".
5 So this was as of January 30th, 2014. And if I can
6 read the first paragraph, it says,
7 "Distracted driving remains the third
8 leading cause of fatal car crashes in B.C.,
9 trailing behind speed and impaired driving.
10 On average, 91 people are killed each year
11 in B.C. due to driver distractions such as
12 using a handheld electronic device behind
13 the wheel."
14 And that's the force of your driving safety initiative
15 or road safety initiative coming up in February. Is
16 that correct?
17 MR. LOACH: A: There was actually a number of road
18 safety initiatives relating to distracted driving.
19 Yes, this police targeting in February, I believe we
20 do have some involvement with. For more details on
21 that, I'd have to refer you to the second panel.
22 MR. ADAIR: Q: Right. But just continuing on, in that
23 same document, regional statistics on page 2, it
24 breaks down every year on average 31 people die in the
25 Lower Mainland in distracted driving related crashes.
26 MR. LOACH: A: That's correct.

1 MR. ADAIR: Q: All right. So that's on an average.
2 MR. LOACH: A: That's on average.
3 MR. ADAIR: Q: So that has to take over a number of
4 years. Correct?
5 MR. LOACH: A: That's correct.
6 MR. ADAIR: Q: All right. Are you aware of any
7 statistics that indicate that the number of people
8 dying in distracted driving accidents is actually
9 decreasing?
10 MR. LOACH: A: Relative to when?
11 MR. ADAIR: Q: Well, okay. I have also handed you
12 "British Columbia Ministry of Justice, Office of the
13 Superintendent of Motor Vehicles, research and data
14 unit, motor vehicle fatalities in British Columbia,
15 2008 to 2012". Okay. And if you go to the last page
16 of that, "Fatal victims of crashes involving
17 distraction." It's difficult to see but in 2008
18 distraction was causing about 85 deaths -- or caused
19 about 85 deaths province-wide and that decreased to
20 about 80 deaths in 2012. So that number actually
21 decreased and it was down in 2011 as well.
22 **Proceeding Time 3:43.m. T50**
23 MR. LOACH: A: I'm sorry, which page are you on?
24 MR. ROSS: Q: I'm on the very last page. It's table 11
25 and figure 16.
26 MR. LOACH: A: And what was the first number you

1 referred to? I'm having trouble finding it in table
2 11.1
3 MR. ROSS: Q: Table 11, 2008.
4 MR. LOACH: A: Yeah.
5 MR. ROSS: Q: 85 people died that year due to
6 distraction.
7 MR. LOACH: A: So I'm looking at table 11 two thousand
8 and -- and the number I see is 91.
9 MR. ROSS: Q: Sorry. Oh, sorry. Maybe I had the
10 number wrong. It wasn't 85, it was 91, you're right.
11 You're right. I was reading the graph which is figure
12 16, but in fact it was 91 down, and then in 2011 it
13 was 79 and in 2012 it was 81. So that number has
14 decreased, correct?
15 MR. LOACH: A: Comparing individual years shows that
16 some of the more recent ones are lower than some of
17 the older ones. We are dealing with very small sample
18 sizes when we look at the fatal crashes, and so there
19 is expected to be a fair amount of fluctuation from
20 year to year in terms of that number. We are looking
21 at, clearly here, less than 100 per year.
22 Another point relevant, in particular, to
23 the discussion of smart phones is that when you look
24 at the fatal crashes that identify distraction, and it
25 has a little bit in the footnote here as to what are
26 the coding that's used by the police in terms of

1 inattention and distraction. Only a very small number
2 of those are actually identified as having electronic
3 devices involved. And so it becomes even smaller
4 numbers if you were to try and focus in on that.
5 It's really well below the level where you
6 can identify trends by looking at kind of individual
7 year numbers and you need to have a longer period of
8 time to see whether there's a relevant difference
9 before and after any particular point.
10 MR. ROSS: Q: Right, but Mr. Loach, the fact -- the
11 point being there that the people who are tracking
12 cell phone, or smart phone use, are saying that
13 general distraction is the large majority of the
14 fatalities, the cause of those fatalities. And the
15 other -- so communication/video equipment is a Code 34
16 and they put that on there, the police put that on
17 their accident investigation sheet. A driver
18 inattentive, Code 85 and driver internal/external
19 distraction is a Code 86. Driver inattentive, Code 85
20 represents the majority of these codes.
21 So you are correct that it's a small
22 number, but the people who are tracking it are saying
23 that general driver inattention is more of a factor,
24 and it always has been.
25 MR. LOACH: A: When we talk about fatal crashes, in
26 terms of the coding that's being used by the police,

absolutely, more of them within the category of inattention and distraction are caused by -- or are coded to factors of driver inattention. Likewise within the fatalities in general, more of them are associated with non-distraction with other factors than they are with distraction. So there are all these -- you know, some factors contribute more to fatal crashes than others.

I would add that trying to extrapolate this to injury crashes is something that I would say shouldn't be done to begin with, or should be done with a great deal of caution, because the types of accidents that result in fatal crashes may be subject to significantly different influence than the types of crashes that result in more minor injuries. So the mix of causal factors is not necessarily representative of the non-fatal crashes.

**Proceeding Time 3:47 p.m. T51**

MR. ROSS: Q: Okay, but if I can take you -- two points. If I can take you back to figure 3.6 on page 3-12 of Chapter 3. You have said that Figure 3.6 provides an illustration that intuitively supports the logical conclusion smart phone use is putting upward pressure on frequency.

MR. LOACH: A: That's correct.

MR. ROSS: Q: And you're not tracking those steps.

1 MR. LOACH: A: We are tracking some statistics relating
2 to smart phones which we've referred to in a number of
3 IR responses. But specifically relating to
4 involvement in crashes, that's correct, we're not able
5 to track that.
6 MR. ROSS: Q: And the stats that you do have regarding
7 fatalities show that the number of fatalities has gone
8 down since 2008, which is the year -- if I can take
9 you back to paragraph 34 of your Chapter 3.
10 MR. LOACH: A: I would characterize it again as no
11 significant change, given the size of the numbers
12 involved.
13 MR. ROSS: Q: Right. In 2008 smart phones were a
14 novelty, but by 2011 the market penetration as a
15 percent of the available market penetration in B.C.
16 was 51 percent, and at the end of 2012 was 67 percent.
17 So you're saying, well look, there were a
18 lot of more phones and our frequency flattened out.
19 So you're making the intuitive answer or response
20 there, but the facts on fatalities don't back it up.
21 There's certainly no increase in fatalities.
22 MR. LOACH: A: Well, we're not looking in the figure at
23 fatalities. We're looking at injury claims.
24 MR. ROSS: Q: I understand.
25 MR. LOACH: A: And in terms of kind of what we're
26 basing that on, we've actually laid out the logic

1 behind that quite clearly in response to CDI 4.1,
2 where really there's three factors that underlie the
3 logic behind what we're talking about. And we've
4 provided further evidence in response to the
5 Commission's requests as well. I'll give you a minute
6 to pull that up. It's first round CDI 4.1.
7 But really, one thing that we know quite
8 clearly is that the market penetration of cell --
9 smart phones has been increasing, and you mentioned
10 the numbers. It's up to about two thirds of the
11 people in B.C. by 2012.
12 The second piece of relevant information is
13 that the risks posed to drivers by smart phones as
14 compared to traditional mobile phones, or to not being
15 distracted by a device, is greater. So more people
16 have phones and it's a risk if they're using it while
17 driving.
18 And then the third supporting piece of
19 evidence in terms of that logical chain is that
20 drivers are admitting to using smart phones while
21 driving, and this is the case in, again, multiple
22 studies. We've provided some evidence relating to an
23 American survey with 35 percent of drivers. The
24 Commission brought forward some evidence with a
25 Canadian study that had 5 percent saying that they
26 often text message on their phone while driving. That

1 study also had about 30-some percent, I think about a
2 third of people who said they had used their mobile
3 device within the last seven days.
4 So it's very clearly apparent that people
5 are using these while driving, that using these while
6 driving is a risk, and so the fact that more and more
7 people have the smart phones means that there is an
8 increase in this risk that's been occurring over the
9 last several years. And the fact that we expect that
10 to be influencing the frequency trend is the logical
11 conclusion of that.
12 The way we've presented it in Figure 3. --
13 I'm sorry, is it 3.14?
14 MR. GHIKAS: 3.16.
15 MR. LOACH: A: 3.16.
16 MR. GHIKAS: 3.6, I think.
17 MR. LOACH: A: Oh sorry, 3.6, my mistake -- is, as we
18 said, an illustration of that which demonstrates the
19 intuitive connection. But we've really used the
20 logical approach to understand that is an influence.
21 MR. ROSS: Q: And if I understood the two-part answer
22 that you gave, I said there were two things arising
23 from your answer, you said that you're not looking at
24 smart phone use in relation to fatalities because
25 they're not necessarily causing that type of accident.
26 Intuitively, people don't text when they're driving 80

1 miles an hour down the freeway, they text when they're
2 at stop signs, correct? And they should be causing --
3 my point is if texting and driving should be causing
4 more minor accidents, shouldn't it?
5 **Proceeding Time 3:52 p.m. T52**
6 MR. LOACH: A: I would hesitate --
7 MR. ROSS: Q: Intuitively?
8 MR. LOACH: A: -- to speculate on that point.
9 MR. ROSS: Q: Just use your intuition.
10 MR. WEILAND: A: People can be going at a very slow
11 rate of speed, such as 20 kilometres an hour, and
12 thinking it's safe, and causing all kinds of serious
13 injuries, if they're texting.
14 MR. ROSS: Q: All right. I'll leave that point. And
15 I'm going to move on to -- oh, sorry, yeah, thank you,
16 Mr. Miller. If I could have the "Police targeting
17 distracted drivers in February" printout from the ICBC
18 website as Exhibit C2-4.
19 THE HEARING OFFICER: Marked C2-4.
20 (PRINTOUT OF AN ARTICLE FROM THE ICBC WEBSITE TITLED
21 "POLICE TARGETING DISTRACTED DRIVERS IN FEBRUARY"
22 MARKED EXHIBIT C2-4 FOR IDENTIFICATION)
23 MR. ROSS: And 2008 to 2012 motor vehicle fatalities in
24 British Columbia statistics, Exhibit C2-5.
25 THE HEARING OFFICER: Marked C2-5.
26 MR. ROSS: Thank you for that.

1 **(DOCUMENT ENTITLED "2008 TO 2012, MOTOR VEHICLE**
2 **FATALITIES IN BRITISH COLUMBIA: STATISTICS" MARKED**
3 **EXHIBIT C2-5)**
4 MR. ROSS: Q: Now, if you could go to -- I'm going to
5 switch to the lost cost variance, and talk about
6 medical rehab severity, or if you could go to page 3-
7 4, paragraph 12, it says, "The lost cost forecast
8 variance is the difference between the lost cost
9 provision reflected in existing rates and the lost
10 costs that have emerged since the setting of the
11 existing rates." We knew that. "Lost costs have
12 emerged higher than was expected, mainly due to bodily
13 injury claims frequency and accident benefits lost
14 costs which are higher than were estimated in the
15 policy year 2012 application."
16 So those are the two things that are
17 mentioned there, correct?
18 MS. MINOGUE: A: Can you direct us to the particular
19 paragraph?
20 MR. ROSS: Q: Sure, yeah. Paragraph 12, second
21 sentence.
22 MS. MINOGUE: A: Sure, okay.
23 MR. ROSS: Q: "Lost costs have emerged higher than was
24 expected, mainly due to bodily injury (BI) claims
25 frequency and accident benefits lost costs which are
26 higher than were estimated in policy year 2012

application."

MS. MINOGUE: A: That's correct.

MR. ROSS: Q: So, I see frequency and accident benefits loss.

MS. MINOGUE: A: Mm-hmm.

MR. ROSS: Q: Accident benefits are part 7.

MS. MINOGUE: A: That's correct.

MR. ROSS: Q: Now, if you can go to page 3-9, and to paragraph 29, it expands upon that. Paragraph 29 says

> "The forecast variance is primarily due to higher than expected emergence of BI claims frequency. This has a large impact because BI costs account for over 75 percent of the basic lost cost. Accident benefits - medical rehabilitation, or MR, frequency and severity have also emerged higher than expected, contributing to the adverse forecast variance. These sources of forecast variance are explained in turn."

Now, you use the word "severity" in paragraph 29. It's not used in paragraph 12. Am I correct that in paragraph 29, when you use the word "severity", you're talking about medical rehab frequency and severity? So, medical rehab severity.

MS. MINOGUE: A: Correct.

MR. ROSS: Q: Okay. Thank you. So, if you go to

Figure 3.4, which is on the next page, 3-10, and believe me, I'm not trying to say that BI severity or awards have decreased over time. But in Figure 3.4, BI severity between policy year 2012 forecast in the 2012 application and the current application actually went down a little. Is that correct?

MS. MINOGUE: A: Right. In terms of its impact on the rate, it's not perceptible.

MR. ROSS: Q: Right. So, if you then go to --

MS. MINOGUE: A: I should say too, that's the re-evaluation of the policy or cost level. So it's not -- that's not -- it's not to say that severity has gone down. There is the 4.4 percent impact on rates from inflation on costs between policy year 2012 and policy year 2013. I just want to get that context around that statement on the record.

MR. ROSS: Q: Certainly. And actually to complete that context, I'm not trying to mislead anybody, if you go to page 3-18, Figure 3.13, your BI severity on basic is on basically that straight line and it's going up. But it is as predicted, correct?

**Proceeding Time 3:58 p.m. T53**

MS. MINOGUE: A: Correct.

MR. ROSS: Q: It's going up but it is as predicted. But if you go to page 3-14 and paragraph 38, and for a reason that's unclear to me, this is under the heading

1 "Vehicles per household no longer increasing". I
2 think you missed a heading there. But paragraph 38
3 says:
4 "In addition to the impact of higher BI
5 frequency the basic lost cost forecast
6 variance is also affected by higher M/R…"
7 being med/rehab,
8 "…lost costs that have emerged. Figure 3.9
9 below shows that medical/rehab lost costs
10 have emerged higher than the forecast in
11 policy year 2012 application due to both
12 frequency and severity in the amount of
13 approximately $10 per policy."
14 And if I'm correct on reading this, your med/rehab
15 severity has gone up from $1400 dollars to $1717 per
16 claim. Correct?
17 MS. MINOGUE: A: Correct.
18 MR. ROSS: Q: And that's about 19 percent. I'm a
19 lawyer not an actuary.
20 MR. WEILAND: A: I get 19 percent. You are saying 1717
21 and 1439?
22 MR. ROSS: Q: Yes.
23 MR. WEILAND: A: Let me check it but -- 19 percent.
24 MR. ROSS: Q: All right. And I've already asked you,
25 and just to confirm that those are payments, the
26 med/rehab are payments made under Part 7, correct?

1 MS. TAYLOR: A: That's correct.
2 MR. ROSS: Q: And you explained in paragraph 40 that
3 this was as a result of ICBC focusing on getting
4 injured customers more timely access to treatment so
5 that they can return to their lives and work. And
6 that was a focus, is that correct?
7 MS. TAYLOR: A: That is correct.
8 MR. ROSS: Q: All right. I just want to stop there and
9 ask you, if this was a planned decision by ICBC to pay
10 more medical/rehab benefits, you would anticipate that
11 the amount you paid per claim is going to increase,
12 correct?
13 MS. TAYLOR: A: Correct.
14 MR. ROSS: Q: Right, and also if you're -- I think the
15 way you've described it, Ms. Taylor, on the initial
16 contact you are asking a person, you know, "Are you
17 seeking treatment," and you are making it easier to
18 get that treatment, more people are going to get that
19 treatment. You agree with that?
20 MS. TAYLOR: A: I think what I would say is more people
21 would, in a more timely manner, go and get treatment.
22 So in the previous process there would need to be
23 authorization. So there could be the delay in the
24 start of the treatment. So I think that's an
25 important clarification.
26 MR. ROSS: Q: But if you make it easier for people to

1 do it, more people will do it, correct?
2 MS. TAYLOR: A: We hope more people take the
3 opportunity to get their treatment immediately, yes.
4 MR. ROSS: Q: Right. So when you put this structure in
5 place, two things you can anticipate were your
6 frequency was going to go up and your severity was
7 going to go up.
8 MS. TAYLOR: A: Correct.
9 MR. ROSS: Q: So in that scenario, how is it that ICBC
10 failed to predict in their rate setting for last year,
11 for the 2012 application, that their medical/rehab
12 severities and frequencies would increase?
13 Sorry, I'm going to make a bit of a speech
14 here. We heard yesterday about what the volatility is
15 in insurance markets. There is ice storms, there is
16 this, there's that, the other. You didn't mention ice
17 storms, I mentioned ice storms. But this was
18 something that was completely within your control,
19 correct?
20 **Proceeding Time 4:02 p.m. T54**
21 MS. MINOGUE: A: So in terms of -- we're just checking
22 with my colleagues in claims around the specific
23 timing around the initiative, but --
24 So we made this rate application, the
25 policy or 2012 rate application in late 2011, and at
26 that time this accident benefits initiative was not in

1 play. It was an initiative, and my colleagues in
2 claims can describe it better than I, but partly to
3 address the REP issue, but other issues as well in
4 terms of customer and addressing our customers' needs
5 and what our customers have, you know -- responding to
6 some of their feedback.
7 And so when we put this in play, it didn't
8 just impact all the new claims but even, you know,
9 existing policies that were in force, and so -- and
10 some of the claims that were sitting open, even, and
11 so that it had an impact retroactively on our book.
12 And so that's why you have that kind of an impact
13 coming through as a lost cost forecast variance on the
14 medical/rehab costs.
15 So it got put in place and in effect, and
16 it benefited every policy that was in force in claims
17 that were open.
18 MR. ROSS: Q: Okay, and if I understand your answer,
19 the decision to do it was done some time after --
20 MS. MINOGUE: A: Correct.
21 MR. ROSS: Q: Yeah, we'll have to go back and check one
22 thing, but thank you for that answer.
23 Now, just going back to paragraph 40 at
24 page 3-15, not to belabour the point, but halfway down
25 that paragraph you say:
26 "ICBC is also focusing on helping injured

1 customers get timely access to appropriate
2 treatment so that they can return to their
3 daily lives and work. While these
4 approaches are important, parts of ICBC's
5 response to facts affecting BI claims costs,
6 medical/rehab claims costs is increasing, in
7 particular for claims occurring after 2008."
8 So that would be the bump that you've just
9 talked about, Ms. Minogue, that it was all the way
10 back to that, to 2008, you made more rehab available
11 for the -- medical/rehab available to those people.
12 But that program is in place and you're
13 funding. So you now don't have to go back to 2008 for
14 claims. Those people who were on claim, or had claims
15 dating back to 2008 have already had that access,
16 correct?
17 MS. MINOGUE: A: Correct.
18 MR. ROSS: Q: All right. So in terms of terms of your
19 frequencies moving forward, you won't be dealing with
20 this bulge in the snake. Is that correct? You'll
21 only be dealing with the new claims.
22 MS. MINOGUE: A: Our forecasts for the policy year 2013
23 reflect that.
24 MR. ROSS: Q: Okay. Well, you say here:
25 "As a result of re-estimation of the latest
26 historical data points, and the intentions

1 that ICBC will continue to emphasize the
2 proactive management of customers' injuries,
3 it is expected these costs will continue to
4 increase."
5 But if the initial costs that you've
6 suffered in the last couple of years was dating back
7 to the old policies because you got people on stream
8 with more med rehab, that should flatten, shouldn't
9 it, as opposed to continue to increase? Your
10 frequencies will decrease on med/rehab.
11 MS. MINOGUE: A: Our frequencies will decrease? I'm --
12 MR. ROSS: Q: Sorry, sorry, "frequency" is the wrong
13 word because you were -- you had the med/rehab claims
14 already. You just paid more of them. But because
15 you've taken out that bulge in the snake from all of
16 those claims from 2008 onward, you've had an active
17 process of getting those people the therapy they need,
18 you won't have to -- in 2014 you won't have to go back
19 and pick those people up. Am I correct?
20 MS. MINOGUE: A: Okay, the way we do our rate making is
21 prospective, so we're not trying to recover costs from
22 prior policy years. We're trying to reset the rate
23 level to the right cost level to reflect costs going
24 forward.
25 MR. ROSS: Q: I understand and I'm sorry --
26 MS. MINOGUE: A: Okay, so whatever old years, like the

2008, '09 and '10 and so forth, any extra costs associated with that came right out of capital. So when I talked about collecting premium and premium insufficient for costs, would costs come in higher than expected? That comes straight off of capital. And what we as actuaries do is try to determine what the new cost level is and set things right going forward. So that's what in the application, just to be clear.

**Proceeding Time 4:08 p.m. T55**

MR. ROSS: Q: Right, and I'm sorry, I think my question was probably not well phrased, but my point being that you, your frequencies went up and your costs per claim went up because you instituted a new program, I'm not sure how far back but -- how long ago it was instituted but sometime after the end of 2012 and before the beginning of 2014. So sometime in 2013, and you made more medical/rehab benefits available to everybody who was on claim hoping that medical/rehab would reduce the amount of their BI claim ultimately, correct?

MS. MINOGUE: A: That's one objective that we hope transpires.

MR. ROSS: Q: Also to get them back to their jobs and their lives, as you say in paragraph 40.

MS. MINOGUE: A: Okay.

1 MR. LOACH: A: So just to clarify in terms of what's
2 embedded in our forecasts, with regards to the medical
3 rehabilitation frequency, we have seen that there was
4 some adjustment to our estimate in policy year 2012
5 and there is -- that is forecast to -- starting from
6 sort of the current level to then resume a downward
7 trend and we approached that in a similar way to the
8 bodily injury frequency.
9 When we talk about the severity of the
10 medical rehabilitation claims, what we have forecast
11 is that, as we are now observing, there is some
12 increase in costs evident in the last several years on
13 an accident year basis. We are forecasting then from
14 that point that there will continue to be inflation in
15 these costs.
16 One of the things that the program has done
17 as I understand it, is remove some of the limitations
18 that may have been in place where additional
19 authorization may have been involved for additional
20 treatments, and so with that no longer in play as well
21 as I think some of the other factors, and maybe my
22 colleagues can speak to what some of those are, there
23 is an expectation that there will continue to be,
24 right from the outset of the claim, a possibility for
25 additional costs associated with the medical rehab
26 claims.

1 MR. WILSON: A: I can speak to that. I think it's been
2 termed that we are offering more medical benefits and
3 I'd like to say that this wasn't Claim's intention to
4 spend more on AB benefits. It's a byproduct of --
5 we've mentioned over the last two days -- a deliberate
6 corporate effort to focus on the drivers of
7 representation and to improve customer service where
8 we can. Some of our findings are that customers want
9 to be -- want to take care of their immediate needs
10 first, their car, and they want to get better. And
11 our process was for them to phone in, get an
12 appointment with an adjuster. Once they saw an
13 adjuster, they may have to go to their doctor to get a
14 note. So it could be weeks, it could be days before
15 they got to see a doctor.
16 What we did is we worked with the therapy
17 associations to streamline that. We built in some
18 parameters, but what we did was improve the access, so
19 that the customer can phone ICBC, we've trained our
20 staff to explain that they can go for benefits. We've
21 removed the requirement for the physio or the doctor
22 to phone the adjuster first, and that is -- the intent
23 there is to get customers the help they need right
24 away and they've clearly said, "You're not doing
25 that." Or they didn't feel we were.
26 So when we talk about paying more in

accident benefits and we hope that improves customer service and reduces representation, that's exactly what we are talking about.

MR. ROSS: Q: Okay, and maybe I can try this through you, Mr. Wilson, because I think it's more of a claims issue. If I understand the evidence that's been given, it wasn't only new claims that received that treatment, claims back as far as 2008 with this new policy in place had an easier time of getting physio therapy or massage approved. Is that correct?

MR. WILSON: A: If they were already activated, there was just more -- I would say yes, in terms of extending it past 12 visits without having to go to your doctor, in terms of ICBC oversight, this is where we worked with the associations to give the therapist more autonomy. And so to that point, yes, even the existing claims would have less hurdles, for lack of a better term.

**Proceeding Time 4:14 p.m. T56**

MR. ROSS: Q: And that program has been in place for a year now?

MR. WILSON: A: I would say a little bit less than a year.

MR. ROSS: Q: All right.

MS. TAYLOR: A: Since April of 2013.

MR. ROSS: Q: Thank you. So, anybody who has an

existing claim and still wants to have therapy, whether their claim is from 2008 or later, would have been subject to that easier method of getting approval for their physiotherapy in the last eight months. Am I correct?

MS. TAYLOR: A: Yeah, the focus was on that initial claim. The focus was on the initial claim, but as Mr. Wilson has talked about, the discussions with the associations was to streamline the approval process. And I think that is also contributing to some of the others.

MR. ROSS: Q: Thank you. But I thought my point was simple, but perhaps only I am simple. If you've had the policy in place for eight months now, and people who want therapy have had an easier time of getting it, that's what I refer to as the bulge in the snake going through. And moving forward, you're only going to have to deal with new applications, new accidents. So, your experience over the last year has been higher than average. And it's going -- it should now settle down. Maybe I'm wrong, but --

MR. WILSON: A: And Ms. Minogue can probably speak to this better than me, but I think that the vast majority of that bulge in the snake that you're talking about is new clients. It's not 2008/2009 claims. It would be claims within a few months to a

1 year. So I don't see a big bulge there from prior
2 years.
3 MS. MINOGUE: A: Yeah, and we can see that on Figure 3-
4 10, very well. Because, you know, the way the
5 actuaries look at the data is not to look at all the
6 new costs in the calendar year that are incurred. We
7 actually segment out our data according to the year in
8 which the loss occurred. And so if you look at Figure
9 3-10, you can see that, you know, in 2008, there was
10 very -- the grey dots versus the black dots are the
11 re-evaluations since the implementation. And it --
12 and this has had very little effect on the 2008, just
13 a little bit, but as you go into the more recent
14 years, where there is more claims opened, and it could
15 be affected, those claims were affected more. And so
16 the re-evaluation of the year was higher. There was
17 more difference.
18 So again, Figure 3-10, you compare the 2008
19 year versus the 2010, a much bigger re-evaluation of
20 the year. And then the trend lines, the grey line
21 versus the black line, and the comparison of the
22 triangles, that differential between the grey and the
23 black triangles is the forecast variance.
24 MR. ROSS: Q: Okay. So that amount is paid out per
25 policy year as opposed to the amount paid out in the
26 year. Am I correct on that?

1 MS. MINOGUE: A: Yeah, that's for the policy year.
2 MR. ROSS: Q: Okay. So although it goes up on a
3 gradual basis, I note that Figure 3.9 shows that --
4 Mr. Loach said that there had been gradual increase
5 over time. But there was a significant increase in
6 2000. Between policy -- between the 2012 application
7 and your current application. That's the 19 percent
8 increase. It just seems odd to me that you've got a
9 19 percent increase in three -- Figure 3.9, and yet a
10 relatively straight line.
11 MS. MINOGUE: A: Okay, yeah. So let's be clear. The
12 19 percent increase on the Figure 10 is the difference
13 between the two triangles.
14 MR. ROSS: Q: Right.
15 MS. MINOGUE: A: Okay.
16 MR. ROSS: Q: Okay.
17 MS. MINOGUE: A: Yeah.
18 MR. ROSS: Q: Thanks, that's helpful. I just want --
19 the last sentence in paragraph 40 says, "These
20 expected increases are in line with inflation -- with
21 the inflation inherent in the cost of medical
22 treatment and other therapeutic services". You told
23 me earlier that these were part 7 payments. Correct?
24 MS. MINOGUE: A: They pay under part 7.
25 MR. ROSS: Q: Right. And you pay under part 7. And
26 the amount that you pay under part 7 doesn't go up

1 with inflation, does it? It's set.
2 MR. WILSON: A: Under part 7, we pay for -- as we've
3 talked about, basic chiropractic, physiotherapy. But
4 under part 7, we also pay for rehabilitation programs.
5 We pay for return to work programs. We pay for
6 diagnostic tests, MRIs, et cetera. And those costs
7 are increasing.
8 **Proceeding Time 4:19 p.m. T57**
9 MR. ROSS: Q: Right, but you didn't introduce the
10 timely pain management program, you introduced -- this
11 program was aimed at physio, massage and chiro,
12 correct?
13 MS. TAYLOR: A: Correct.
14 MR. ROSS: Q: And the amount you paid for those is
15 exactly the same year over year, correct? There was
16 no room for inflation.
17 MR. LOACH: A: I believe you are referring to cost per
18 visit to be clear, not the overall cost.
19 MR. ROSS: Q: Exactly. Thank you, Mr. Loach, the
20 amount that ICBC pays to the physiotherapist hasn't
21 gone up at all under Part 7.
22 MR. LOACH: A: That is correct.
23 MR. ROSS: Q: So the last sentence of paragraph 40 in
24 respect of med/rehab severity has -- inflation has no
25 impact on that because you decide, ICBC decides how
26 much it's going to pay the physiotherapist per visit.

1 Correct?
2 MR. WILSON: A: Again, I think it's -- as Mr. Loach
3 pointed out, it's the rate per visit and the number of
4 visits. So with earlier utilization you are going to
5 have more -- so it's not a case of it costing more per
6 visit, it's a case of the treatment costs more because
7 it's activated earlier and there's more people
8 accessing it.
9 MR. ROSS: Q: Mr. Wilson, I'm just looking at the last
10 sentence of paragraph 40.
11 "The expected increases are in line with the
12 inflation inherent in the cost of medical
13 treatment and other therapeutic services."
14 And inflation doesn't apply to Part 7 benefits for the
15 vast majority of those, does it?
16 MR. WILSON: A: Inflation would have less effect on the
17 vast majority of the minor treatments.
18 MR. ROSS: Q: Thank you. And when you say the vast
19 majority, that's the vast majority of your costs?
20 MR. WILSON: A: In frequency it's the vast majority,
21 but the medical/rehab payments on our catastrophic or
22 return to work are significantly higher. So the
23 severity or the cost is significantly higher and I
24 don't have those numbers handy to say.
25 MR. ROSS: Q: That's okay. I've got seven minutes left
26 and I want to get through claims rated scale, so let's

go. Could you look at figure 3.2 on page 3-4. That's the one where you've ascribed a percentage, positive or negative, to the total of 11.5 in terms of the rate application. And you've indicated that in number 7 change in average premium would have a plus 1 percent impact. That's correct?

MS. MINOGUE: A: That's correct.

MR. ROSS: Q: And if I understand the application, and this part is found at page 3-7, change in average premium -- I think I understand this. You're saying that the total amount of premium dollars that ICBC will take in paid by 100 percent of the B.C. motorists, it will be lower because of the number of long-commute and business-use policies has levelled off and is not increasing – that's paragraph 23 - there's been a gradual increase in the proportion of experienced drivers and a decline in the proportion of new drivers on the road. That's paragraph 24. Have I stated that correctly?

MS. MINOGUE: A: That is correct.

MR. ROSS: Q: And as a result, you say, existing customers are migrating to a great level of discount on average, correct?

MS. MINOGUE: A: Correct.

MR. ROSS: Q: Right. So, and I don't have any stats on this, but it's truly intuitive, you charge lower

1 premiums to drivers who are a lower risk of having an
2 accident, is that correct?
3 MS. MINOGUE: A: That is correct, but the claims-rated
4 scale is not an actuarially, you know, based rating
5 mechanism either.
6 MR. ROSS: Q: I don't want to go into rate design.
7 Please. Please, stay away.
8 MS. MINOGUE: A: Good thing. You started it, though.
9 **Proceeding Time 4:24 p.m. T58**
10 MR. ROSS: Q: I didn't. Overall, looking at these
11 safer drivers who are on the road and not driving as
12 much, will you agree with me that although you will
13 collect on policy year 2013, you would collect a lower
14 premium. But those drivers on average should have a
15 better experience in driver over the year, on average.
16 MS. MINOGUE: A: Indeed, and that's one of the factors
17 that we identified as a downward force on our
18 frequency trend line. And so while we might have a
19 little bit of premium trend that had an unfavourable
20 influence, we for a long time had a favourable
21 frequency that had -- well, it had a favourable
22 influence on our rate, and so that was taken into
23 account. Now with the flattening of the frequency we
24 don't have that offset, but it was reflected. And it
25 continues to be a favourable influence, I think, on
26 the frequency trend that there's other factors pushing

it up.

MR. ROSS: Q: Right, but you -- I can close off and have three minutes to spare. You will agree with me that as the claims rated scale means lower policy dollars, it should also drive total claims down.

MS. MINOGUE: A: And we do think that the demographic shift toward more safe drivers is one of the favourable influences on frequency. And if we didn't have that demographic shift, frequency would be higher. That's a belief we have.

MR. ROSS: Q: We will not hope for another baby boom. But thank you for your answer.

THE CHAIRPERSON: Thank you, Mr. Ross.

Mr. Miller, do you have anything before we close for the day, seeing it's 20 after the hour?

MR. MILLER: No, Mr. Chair, I'm not aware of anything procedural that needs to be attended to, no.

THE CHAIRPERSON: Okay. On that note then, we will adjourn until Tuesday morning 9:00 a.m., and everyone have a good long weekend and don't think on this too much.

**(PROCEEDINGS ADJOURNED AT 4:27 P.M.)**