

MANITOBA

Order No. 97/05

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

**THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT**

June 27, 2005

Before: Graham F. J. Lane, C.A., Chairman
Denyse Côté, Member
Len Evans, Member
Eric Jorgensen, Member

**A SPECIAL HEARING REGARDING THE CURRENT CLAIMS COST
ATTRIBUTION METHODOLOGY OF MANITOBA PUBLIC INSURANCE
AND THE CONCEPT OF LOSS TRANSFER IMPLEMENTATION**

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Executive Summary

The Board held a special public hearing into Manitoba Public Insurance's ("MPI") claims attribution approach, and the concept of Loss Transfer. The hearing took place over three days, May 10 through May 12, 2005; the Board heard final arguments on May 17, 2005.

The annual MPI General Rate Application ("GRA") public hearing process has had motorcycle premiums as an ongoing issue since 1993. Motorcyclists have claimed that MPI's first-party no-fault claim cost attribution model is unfair resulting in excessive motorcycle premiums. Since the 1998 GRA, the Coalition of Manitoba Motorcycle Groups has advanced the concept of Loss Transfer, as a fairer cost attribution approach than MPI's current cost attribution methodology.

Intervenors participating fully at the special hearing were: Coalition of Manitoba Motorcycle Groups ("CMMG"), Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors ("CAC/MSOS"), Canadian Bar Association/Manitoba Bar Association ("CBA/MBA"), and the Manitoba Used Car Dealers Association ("MUCDA").

Intervenors assist the Board in its determination of the public interest, and are involved in all stages of the Board's public hearing process, including the filing of questions; cross-examination of witnesses; and final argument. In addition to the Intervenors at this special hearing, a number of individuals made presentations to the Board.

At the beginning of the hearing, the Board announced the following criteria it had adopted to guide any decision it may reach:

- Will the selected claims cost attribution model result in a premium system that is actuarially sound and statistically based?
- Will the system be fair?
- Will the model be expected to provide for a lower number of accidents with lower overall severity?
- Will the system be administratively feasible?
- Will the system be comparable to the approaches of other jurisdictions?
- Will the model be acceptable to the majority of MPI's policyholders?

Following the hearing, the Board reflected on the evidence and concluded that:

- accidents involve two major factors – vehicles and drivers;
- an accident is just that, an accident;
- while road and weather conditions are important, they are factors to be addressed by drivers;
- as MPI has asserted, motorists choose the vehicles they purchase and drive, and those vehicles have characteristics that may or may not predispose occupants to being injured in an accident;
- motor vehicles have characteristics that predispose them to cause damage and injury (mass and speed equal force);
- MPI's Bonus/Malus system should address driver behaviour, while vehicle insurance premiums should primarily relate to the characteristics of the vehicle (yet, the Board acknowledges the current level of interplay between the Bonus/Malus system and vehicle premiums with respect to vehicle premium discounts); and
- vehicle characteristics and driver behaviour each contribute to accidents.

The Board rejects the claims cost attribution models proposed at the hearing, including the status quo first-party approach of MPI and the Loss Transfer model espoused by CMMG, MMIC and MUCDA.

By this Order, the Board directs that MPI develop a claims cost attribution model for rate setting purposes commencing with the 2007/08 insurance year that is consistent with the following framework for the allocation of PIPP claim costs:

- (a) In any accident involving only MPI-insured vehicles (one or more) and no other injured party, total PIPP costs are to be allocated equally (per vehicle) across the rating categories to which those vehicles belong; and
- (b) In any accident involving one or more MPI-insured vehicles and (i) one or more unidentified hit-and-run offenders, or (ii) another injured party or parties (including cyclists, pedestrians, and occupant(s) of out-of-province vehicles), 50% of total PIPP costs are to be allocated equally (per MPI-insured vehicle) across the

rating categories to which the MPI-insured vehicles belong, and the remaining 50% of total PIPP costs are to be effectively allocated across all vehicle rating categories.

The Board also directs MPI to:

1. Develop a communications approach to inform motorists of the change;
2. Consider applying the new allocation approach to all accident costs, i.e. collision and comprehensive as well as PIPP benefits, and project the possible effect of a universal application of the new approach on CLEAR; and
3. Provide a report on expected rate impacts, in advance of the 2007/08 GRA.

The new approach, which will affect the premiums of all vehicle classes, is simply the methodology chosen by the Board to allocate the costs arising out of accidents. Attributing the cost of claims is separate from MPI's Bonus/Malus system. As well, the new approach does not, in itself, address MPI's methodology for determining fault. The new approach focuses more on the identification of the parties to accidents, and the sharing of costs arising out of accidents, wherein both drivers and vehicles play a role.

The Board expects this new approach will have an effect beyond the motorcycles class and similar two-wheel vehicles; the effect will extend to the premiums of all vehicle classes.

1.0 Background

Motorcycle premiums have been an ongoing topic since 1993, the year the Personal Injury Protection Plan (“PIPP”)” was announced by government.

PIPP was implemented so as to improve no-fault accident benefits for motorists and restrain vehicle premiums. The previous tort-based approach resulted in inadequate compensation for many of those injured in motor vehicle accidents, particularly those found to be at-fault, while, some argued, it compensated others too much. Under the previous tort system, the legal costs incurred by some claimants were generally perceived to take up too much of the compensation paid. During the introduction of PIPP, little was said about how MPI’s first-party claims attribution policy would impact on motorcycle premiums.

At the 1998 GRA and at the request of CMMG, the Board reviewed the possibility of having MPI implement a Loss Transfer model to supplement its first-party attribution approach. An actuary then-engaged by CMMG proposed that the premiums for all vehicles be based on the degree of responsibility for an accident. It was held that this approach would emulate to some degree the personal accountability and vehicle premium outcome arising out of the former and discarded tort system, and this supplemental approach has been denoted as the Loss Transfer model. In a modified form, Loss Transfer is in place in Ontario.

In Order 154/98, the Board directed MPI to provide a report on Loss Transfer at the next GRA. At that subsequent hearing, which was held in the fall of 1999, MPI filed the report, which was then discussed. By the resultant Order 177/99, the Board affirmed MPI’s claims cost attribution approach, and rejected the adoption of Loss Transfer.

The Board opined that MPI’s Bonus/Malus program, which provides driver license and vehicle premium reductions and surcharges based on individual driver experience, sufficiently penalizes at-fault motorists while rewarding safe drivers. The Board accepted MPI’s view that the type of vehicle one owns and drives is a personal choice, and the risk of personal injury in an accident varies with the size and type of vehicle chosen.

After MPI's 2002 GRA, by Order 203/02 the Board, on the urging of CMMG, revisited the issue of Loss Transfer. It had been four years since the concept had been reviewed. While at that hearing the Board confirmed MPI's first party approach, it again directed that MPI review Loss Transfer and report its findings at the next GRA.

At the subsequent 2003 GRA, MPI filed its rationale for continuing its first-party system of assigning claims costs; the application continued MPI's opposition to the Loss Transfer approach sought by CMMG. MPI again suggested that its approach was fair, non-preferential and not unfairly discriminatory. Additionally, MPI stated that its rate making approach treated all motorists and vehicles similarly and equitably, and represented an appropriate means to assess the likelihood of claims cost frequency and severity.

Furthermore, MPI reiterated its view that its approach to assessing risk and assigning claims costs was reasonable, and argued that the model provided motorists with a degree of control over their vehicle premium, through their choice of vehicle.

As well, MPI opined that first-party cost attribution reduces the delays and costs often associated with resolving liability, and, by so doing, contributes to a higher standard of customer service.

MPI re-filed the same 2003 report at the 2004 GRA, together with the following table. It discloses the credibility-weighted rate indications by Major Class (with and without loss transfer being applied across the entire vehicle population):

Major Class	Indicated Rate Changes Before Loss Transfer (%)	Indicated Rate Changes After Loss Transfer (%)
Private Passenger	2.7	2.1
Commercial	4.5	10.0
Public	2.7	10.1
Motorcycles	29.7	23.6
Trailers	-34.6	-29.9
Off Road Vehicles	-30.1	-20.9
Overall	4.3	4.3

MPI forecast that the impact of introducing Loss Transfer would vary more significantly within Major Classes than is evident from the table. .

In its report, MPI estimated that the adoption of Loss Transfer would only reduce the actuarially indicated rate for motorcycle premiums by 6.1%, a reduction that was significantly lower than previously predicted. At previous GRA hearings, MPI forecast that the impact from introducing Loss Transfer would be much greater for motorcycles than is now estimated.

MPI opined that the forecast reduced premium benefit for motorcycles associated with the adoption of Loss Transfer could be accounted for by the maturing of PIPP data. MPI advised that the motorcycle class had experienced a substantial number of serious losses, resulting in claims costs far exceeding the benefits available under the previous tort system for at-fault motorists.

According to MPI's records, the vast majority of serious motorcycle losses occur in single vehicle accidents. Loss Transfer does not benefit motorcycles in the case of a single vehicle accident.

CMMG and MMIC suggested at this hearing that the percentage of motorcycle accidents denoted as single-vehicle accidents by MPI is high compared to the experience of other jurisdictions, but this dispute was not the focus of the special hearing.

Of \$25.9 million in motorcycle serious losses reviewed by MPI, it claimed that less than \$1.6 million were the result of multi-vehicle collisions in which the other vehicle involved with the motorcycle was at fault. Of \$29.1 million of non-serious motorcycle losses reviewed, MPI claimed that \$8.9 million arose from multi-vehicle collisions where the other vehicle was at least partially at fault.

Therefore, out of \$55 million in motorcycle losses reviewed by MPI, the Corporation reported that only \$10.5 million would be subject to Loss Transfer, and thus would have provided some cost and rate relief to the motorcycle class if Loss Transfer had been in place. MPI claimed that with the credibility-weighted rate actuarially indicated for motorcycles, in the long run the financial impact of Loss Transfer would not be significant.

MPI opined that its ratemaking approach avoided cross-subsidization, and that Loss Transfer would represent cross-subsidization. Under first-party claim cost attribution, the Major Class receiving benefits is assessed the cost, and MPI has held that this system and not Loss Transfer is appropriate.

MPI also suggested that under Loss Transfer it would have difficulty determining credible rate groups, as rate group assignments under the Canadian Loss Experience Automobile Rating system (“CLEAR”) are made on a first-party basis (where there is no assignment of fault). To adopt a system requiring at-fault assignment, MPI argued it would have to rework its complete historical claims data by make, model, and model year. MPI suggested that such an approach may produce statistically unreliable data.

By Order 173/03, the Board concurred that the adjustments required to provide statistical credibility to Loss Transfer represented significant impediment to the potential introduction of Loss Transfer. In MPI’s then-indicated view, Loss Transfer should be implemented only utilizing territory and insurance use; the allocation of costs to rate groups would, for MPI, have to remain on a first-party basis.

The Board further noted in Order 173/03 that MPI had indicated that implementing Loss Transfer would result in significant rate dislocation for most motor vehicles, excepting Private

Passenger vehicles, even at the Major Class level. The Board expressed the concern that even greater rate dislocation would occur below that level. The Board stated that, given the substantial rate changes that could arise out of a switch to Loss Transfer, more compelling reasons were required before the Board would order MPI to abandon its first-party claim cost allocation approach.

During the 2004 GRA hearing, CMMG again raised Loss Transfer; this time not only as it relates to motorcycles but also with respect to its potential application to all Major Classes. An actuarial consultant engaged by CMMG argued that equity and fairness would be improved under a Loss Transfer approach. CMMG's witness opined that the possible implementation of Loss Transfer was a public policy issue, a position unopposed by any party to the current proceeding.

At that 2004 GRA hearing, MUCDA joined in support of CMMG's call for Loss Transfer. MUCDA reported that in excess of \$8 million of serious losses incurred between 1995 and 2003 were assigned to the dealer plate group for incidents where the vehicle owned by the dealer had not been at fault. MUCDA contended that Loss Transfer was a valid and preferable approach for all Major Classes, not just motorcycles. Scootering Manitoba, an association representing scooter and moped owners, supported CMMG's recommendation of Loss Transfer at the 2004 GRA hearing, as did a presenter, MMIC.

Notwithstanding the representations, by Order 148/04 the Board found the evidence insufficient to warrant a change from MPI's first-party claims cost allocation methodology to Loss Transfer. However, the Board expressed reservations on the fairness of MPI's first-party cost attribution approach and called this special hearing.

As previously indicated, the issue of Loss Transfer has been before the Board for over ten years. Through this special hearing, the Board sought comment in the broadest sense towards assisting it to come to a definitive conclusion on the appropriateness of the current system of claims cost attribution and whether Loss Transfer should be implemented in its place.

In this Order, the Board rejects not only MPI's first-party claims cost attribution model, but also the alternative approaches placed before it by CMMG and its fellow-supporters of Loss Transfer, as well as CAC/MSOS's initial suggestion of a possible subsidy. The Board found problems with each approach and arrived at a new approach, one more fitting for the realities associated with accidents and the presence of a driver-orientated Bonus/ Malus system.

2.0 MPI's Current Approach

2.1 Personal Injury Protection Plan ("PIPP") Accident Benefits

PIPP accident benefits include weekly disability payments, death benefits, coverage for funeral and medical expenses as well as impairment and rehabilitation payments and services. Accident benefits are payable under the plan to injured persons regardless of the attribution of fault.

2.2 Risk Classification

MPI reports that its risk classification plan is in accordance with generally accepted property and casualty automobile insurance industry practice. The classification plan considers risk through rating territories, vehicle use, driving records and vehicle rate groups.

Rating Territories

Manitoba is divided into four geographic rating classes for vehicles (territories). There is also an additional rate class for commuter vehicles residing in Territory 2 and driving regularly to Territory 1 (Winnipeg) either for work or school.

Each of the classes results in a distinctive rate effect, which reflects differences in patterns of loss experience. This means that vehicle owners are assessed premiums related to the risk (allocated cost experience and frequency) associated with a particular geographical area of the province.

Insurance Use

Registered vehicles are classified into various "use" categories. These categories are intended to take into consideration the varying degrees of risk (allocated first party cost experience and

frequency) associated with the different purposes for which vehicles are used. Again, rates are established to reflect relative claims experience.

Driving Record

The driving record component of MPI's classification plan is designed to adjust rates based on the traffic conviction and claims history of the vehicle's owner and operators. Those with a prior history of claims or traffic infractions are deemed to be a higher risk and assessed surcharges. Those without convictions or at-fault accidents receive merit reductions as well as a driver license discount.

This approach is referred to as the Bonus/Malus Plan. The components include:

- Driver license accident and conviction surcharges; driver licence merit rates;
- Fleet rebates and surcharges; and
- Discounts from vehicle premiums based on years without an accident and conviction record.

Rate Groups

The rate groups for private passenger vehicles and light trucks are based on CLEAR, which assigns vehicles to particular rate groups based on such factors as the vehicle make, model and age, gross vehicle weight, engine size, safety features and declared value. These factors are deemed to have a bearing on the cost of claims for particular types of vehicles.

2.3 Canadian Loss Experience Automobile Rating ("CLEAR")

CLEAR is a major part of MPI's vehicle classification and rate setting methodology. MPI adopted CLEAR about a decade ago, phasing the system in over several years in an attempt to avoid undue rate volatility.

CLEAR uses actual loss experience data from public and private insurers across Canada (except for Quebec) to determine relative loss cost indices for makes, models, and model years of specific vehicles. In the opinion of MPI's actuary, a view not opposed by any party to the annual GRA or this special hearing, MPI's use of this independent database allows it to improve the

credibility of its rate setting, thus providing policyholders a level of confidence that might otherwise not be possible. Manitoba is a relatively small market, and does not have enough registered vehicles to ensure a credible data set for this purpose; CLEAR addresses this deficiency by utilizing national data.

CLEAR considers repair costs, comprehensive claims, and the injury frequency associated with different types of vehicles. The data is used to establish homogeneous groupings of vehicles, and rate group relativities for the groupings.

CLEAR allows vehicle insurers to predict future claims more accurately and fairly and to design insurance premiums that reward vehicle owners for buying vehicles with a history of fewer claims and smaller losses.

Currently, CLEAR includes neither Quebec experience nor accident benefit and third party claims costs; deficiencies that its owner, the Insurance Bureau of Canada, has indicated it is attempting to address.

MPI utilizes only the relative rankings of vehicle rate groups established by CLEAR; MPI employs its own methodology to determine the variation of premiums between the rate groups.

2.4 First-Party Cost Allocation for Ratemaking

MPI's claims cost attribution approach is consistent with its risk classification system; and the methodology currently assigns claims costs on a first-party basis. Under this approach, claims are assigned to the vehicle category that incurs the cost. This is defined to be the vehicle class of the vehicle for which owner, driver or occupant benefits were paid. Fault is not a factor in the allocation of costs to vehicle categories under the current system.

MPI has consistently held that its approach to assessing risk (i.e. cost and frequency experience) is fair, non-preferential and not unfairly discriminatory, because it:

- treats all motorists and vehicles similarly and equitably (it is fair and non preferential);

- makes appropriate use of generally accepted means of assessing the likelihood of claims cost frequency and severity (it is reasonable); and
- ensures that motorists, themselves, will have the greatest possible impact on how much they pay for automobile insurance by the choices they make in their vehicle purchase and can therefore exercise free choice and appropriate judgement as they so wish (it is not unfairly discriminatory).

Since the introduction of PIPP, CMMG, now joined by MUCDA, MMIC and Scootering Manitoba, have opposed MPI's contentions with respect to the fairness of its claims cost attribution methodology.

2.5 Motorcycle Rates

In response to a Board directive (Order 173/03), MPI filed a Motorcycle Rate Study analysing motorcycle claims data by motorcycle body style. The study suggests motorcycles represent a higher risk than private passenger vehicles, and, thus, that motorcycles should be assessed higher premiums. MPI's study reported that over a five-year period motorcycle claims involved personal injury claims comprising 82.8% of the total claims costs for motorcycles. MPI also reported that for the same period only 34.8% of claims incurred for private passenger vehicles were for injury claims.

MPI's study also indicated that injury claims expressed as a percentage of total claims were 53.4% for motorcycles compared to 12.3% for private passenger vehicles. MPI stated that, unlike other vehicles, the vast majority of motorcycle claims costs are comprised of bodily injury costs. MPI further asserted that injury experience does not vary greatly with the value of the motorcycles involved.

MPI's study utilized three years of data to arrive at the conclusion that Sports Bikes are riskier than other motorcycles. The study reported that Sports Bikes comprise 16% of the motorcycle pool and account for 47% of motorcycle claims costs. MPI claimed that Sports Bike claims frequency was more than four times higher than any other vehicle category.

Claims frequency by motorcycle body style were reported to be:

Body Style	Sport	Touring	Other Custom	All Other	Total
Claims	727	221	535	73	1556
Units	3,386	5,189	11,337	3,120	23,032
Claims per 1,000 Units	214.7	42.59	47.19	23.40	67.56

At that hearing, CMMG brought forward evidence that suggested that MPI’s perspective on the relative negative experience of sports bikes as compared to other motorcycles was flawed as a result of definitional and other data problems. Some of CMMG’s claims were accepted by MPI.

The relevance of the Sports Bike experience to the matter before the special hearing related to MPI’s contention that the choice of a vehicle is a major determinant of accident costs and premiums. MPI has consistently held that motorcycles are inherently riskier than other vehicles, and now it has indicated that a particular grouping of motorcycles is riskier than the overall class.

3.0 Participant Positions

In response to its enquiry, the Board received correspondence from three other Canadian public vehicle insurance programs: Saskatchewan Government Insurance (“SGI”), Insurance Corporation of British Columbia (“ICBC”) and the Société de l’assurance automobile du Québec (“SAAQ”). These agencies provided information with respect to their approach to motorcycles, and this information was shared with the parties to the special hearing.

Oral testimony was given at the hearing by or on behalf of the following parties that also submitted written reports:

- Financial Services Commission of Ontario (“FSCO”);
- Insurance Bureau of Canada (“IBC”);
- Motorcycle and Moped Industry Council (“MMIC”);
- Mr. Brian Pelly - Board Actuary; and
- MPI.

3.1 Financial Services Commission of Ontario (“FSCO”)

Ms. Darlene Hall, Director of the Automobile Insurance Services Branch of FSCO provided context to Ontario’s implementation of Loss Transfer. She stated that since June 1990 Ontario has had a comprehensive no-fault automobile insurance plan, including a limitation on the right to sue for personal injuries. The Ontario Motorist Protection Plan (“OMPP”) has had a Loss Transfer component since inception.

The need for a mechanism to balance the effects of Ontario’s first-party insurance system on the different classes of vehicles was reviewed in a 1989 reference hearing held by the Ontario Automobile Insurance Board (“OAIB”).

In its report, the OAIB identified drivers of motorcycles, all terrain vehicles (“ATVs”) and snowmobiles as being subject to a higher risk of injury in an accident due to the lack of restraints and other safety features generally present in cars and trucks.

The OAIB noted that in Ontario’s change from a predominantly tort based system to a modified first-party approach, the insurers of motorcycles, ATVs and snowmobiles would have been responsible for a much larger proportion of accident costs in the absence of Loss Transfer because of no-fault accident benefit payments.

The OAIB concluded that this could lead to significant increase in costs and premiums with respect to such vehicles, and likely reduce the availability of insurance. In Ontario, while the owners of all eligible vehicles can obtain insurance, that insurance can be very costly if an insurer is not willing to take on the risk and the vehicle has to be insured through the Facility Association, if it is insured at all. In essence, the Facility Association is a partnership of insurers accepting risks that the individual insurers will not accept, i.e. the Facility Association is the insurer of last resort.

To address this concern, the OAIB recommended Loss Transfer, the provision of the right of subrogation with respect to motorcycles, ATVs and snowmobiles. Ms. Hall indicated that this was implemented to allow for the transfer of accident benefits costs from such vehicles to other

vehicle types when those other vehicles were deemed to be at fault. Ontario's Loss Transfer system arose out of OAIB findings and recommendations.

Ms. Hall indicated that the Ontario government made a public policy decision to provide motorcycles, ATVs and snowmobiles with a Loss Transfer mechanism.

In Ontario's transition to a modified no-fault plan, the primary reason for adopting Loss Transfer were to address concerns related to affordability and availability. Without Loss Transfer, Ontario concluded there would be significant cost and insurance premium pressures on the insurers and owners of motorcycles, ATVs and snowmobiles. Also, and with respect to heavy commercial vehicles, the OAIB cited a concern that trucks, being larger and heavier, cause more damage and injuries while the trucks and their occupants are less likely to be seriously damaged and injured.

Under a first-party system, the costs for compensating these injuries would be assigned to the insurers of those smaller private passenger vehicles.

Ontario's Loss Transfer Mechanism

Loss Transfer, in the Ontario context, is a mechanism by which an insurer is entitled to be reimbursed for accident benefit costs incurred on the part of its own policyholder by the insurer of another vehicle if the driver of the other vehicle involved is at-fault. Loss Transfer is prescribed by legislation in provisions within the *Insurance Act of Ontario*.

In accidents involving motorcycles, ATVs and snowmobiles, accident benefit costs are paid by the first-party insurer to its insured. Under Loss Transfer, accident benefit costs are indemnified (guaranteed or met) by the insurer of the vehicle (second party) involved in the accident in accordance with the degree of fault assigned to the second party vehicle driver. The loss transfer occurs only after the first \$2,000 in accident benefits have been paid out.

Ms. Hall indicated that the \$2,000 threshold was instituted to reduce the administrative costs of the mechanism, particularly with respect to relatively minor claims.

Loss Transfer mechanism does not apply in cases where motorcycles, ATVs and snowmobiles are involved in accidents with each other, however it will be applied where they are involved in an accident with a vehicle from another class; i.e. in most cases either a private passenger car or truck.

Loss Transfer in Ontario also applies to large commercial vehicles over 4,500 kilograms. Insurers of trucks (second party insurers) involved in accidents with private passenger or other vehicles (e.g. smaller commercial vehicles like company cars and vans) will cover the accident benefits costs rising from payments made by first-party insurers for the accident, based on the percentage of fault of the truck driver. Again, the first \$2,000 is paid by the first-party insurer before any costs are transferred.

Loss Transfer is not automatic; it occurs when the second party is partially or fully at-fault. In cases where the passenger vehicle or truck involved with a motorcycle, ATV or snowmobile is not at-fault, the accident benefit cost is not transferred and remains with the first-party vehicle insurer.

Fault is determined according to a set of fault determination rules set out by a regulation which provides for a private arbitration process to deal with disputes between insurers over responsibility.

Ms. Hall opined that the implementation of Loss Transfer in Manitoba, where there is only one provider of compulsory auto insurance, would not require the level of detail, forms and procedures that exist in Ontario.

She stated that the system in Ontario was fair and reasonable and not unfairly discriminatory, and that there had not been any major complaint with the system since its inception.

3.2 Insurance Bureau of Canada (“IBC”)

Mr. Arthur Tabachneck, IBC’s Manager of Statistical Research and Development, also testified at the hearing. He indicated that he is directly responsible for the CLEAR system.

The system rates automobile first-party coverage, primarily collision, comprehensive and accident benefits, the latter only with respect to frequency. Mr. Tabachneck confirmed that CLEAR provides a rating that identifies loss costs and/or risks of a particular vehicle relative to other vehicles.

Mr. Tabachneck explained that the CLEAR system utilizes a statistical model to estimate loss costs based upon approximately 75 vehicle characteristics (e.g. price, weight, horsepower, height, wheelbase, air bags, a theft deterrent system, to name a few). For new model years, the CLEAR rating is based on vehicle characteristics. CLEAR provides a loss cost for each vehicle, which is then adjusted by the actual experience that insurers throughout Canada encounter with that particular vehicle. CLEAR does not incorporate any third-party coverages.

As previously indicated, CLEAR only considers accident benefit frequency and does not take into account accident benefit severity. To-date, IBC has not been able to gather sufficient data on third-party claims severity to develop a credible third party model.

Mr. Tabachneck indicated that Quebec data is not in the model, but that IBC will incorporate Quebec data next year.

As well, he reported that IBC is considering accounting for accident benefits severity, but will require credible data from its reporting insurers before incorporating severity into its model.

He indicated that the nature of the first-party system results in actuarial evidence of dislocation of claims costs between private passenger automobiles, and commercial vehicles, and motorcycles.

He stated that according to experience in Ontario, drivers of motorcycles tend to suffer the most severe injuries while drivers of commercial vehicles incur the least severe injuries in

multi-vehicle accidents. Due to the first-party nature of the accident benefit compensation; motorcycle drivers incur higher accident benefit claims costs, and commercial vehicles and automobile drivers incur lower costs. He indicated that private passenger automobiles are in the middle of the scale of the dislocation. Mr. Tabachneck suggested that the situation would be similar in Manitoba, since both provinces have similar no-fault systems for accident benefit compensation.

He also indicated that Loss Transfer in Ontario has an impact on ratemaking, because it adjusts the dislocation of claims cost from one type of vehicle to another.

He opined that if Loss Transfer were adopted in Manitoba, and since all vehicles are insured by MPI, the application of Loss Transfer would require only an additional actuarial ratemaking procedure. He suggested that MPI would then be able to estimate the dislocation effects and make the necessary claims costs and premium adjustment for different types of vehicles.

Mr. Tabachneck expressed concern that depending on the specifics of any Loss Transfer mechanism adopted in Manitoba, there may be the potential for a conflict between the applicability of CLEAR data gathered in Manitoba with data gathered for CLEAR in the rest of the country.

He further stated that if claims severity were adopted in the CLEAR rating model and Manitoba transitioned to a Loss Transfer approach differing from Ontario's, there would be a potential for inconsistency.

Mr. Tabachneck opined that the adoption of a Loss Transfer scheme in Manitoba similar to Ontario's approach should not result in the risk of conflict with CLEAR.

3.3 Motorcycle and Moped Industry Council (“MMIC”)

Mr. Liam McFarlane FCIA, FCAS, an actuary with Dion, Durrell and Associates (“Dion Durrell”) provided testimony and spoke to a report he had prepared on behalf of MMIC (“Report on the Impact of No-Fault Insurance on Motorcyclists in Manitoba, November 12, 2004”).

Dion Durrell’s report reviews the impact of no-fault insurance on motorcyclists in Manitoba, pursuant to the following stated objectives:

- To compare and contrast loss costs in Manitoba for motorcyclists and private passenger vehicles under the current no-fault environment and the prior tort environment;
- To review other no-fault environments in Canada and the United States to determine how motorcyclists are treated; and
- To quantify the impact of loss transfer and the bodily injury threshold in Ontario on the motorcycle premiums in Ontario.

The report indicated Manitoba motorcycle rates have increased by 369% over the past ten years while insurance rates for those driving private passenger vehicles have risen 18% over the same time frame, as reflected in the following table:

Manitoba Approved Rate Increases

Accident Year	Private Passenger		Motorcycle	
	Increase	Cumulative	Increase	Cumulative
1993/94	10.0%	10.1	15.0	15.0
1994/95	0.0	10.0	15.0	32.3
1995/96	-0.3	9.7	6.5	40.8
1996/97	6.5	16.8	16.7	64.4
1997/98	3.8	21.2	15.0	89.0
1998/99	1.7	23.3	13.9	115.3
1999/00	-1.3	21.7	13.8	145.0
2000/01	-5.7	14.8	9.6	168.5
2001/02	-0.4	14.3	15.0	208.8
2002/03	0.0	14.3	15.0	255.1
2003/04	-1.1	13.0	15.0	308.4
2004/05	4.2	17.8	14.8	368.8

Mr. McFarlane attributed the premium increases in motorcycle rates over the past ten years to PIPP, with the continuation of the first-party claims cost attribution approach.

Mr. McFarlane stated that in a collision between a motorcycle and a car, the motorcyclist will, due to a much lower level of protection, generally be injured more severely than the driver of the car regardless of who was at-fault. Under a no-fault program without Loss Transfer, the motorcycle insurer will incur greater claims costs.

Mr. McFarlane stated that the introduction of no-fault insurance in Manitoba resulted in an initial decrease in claims costs for automobile owners, and a material increase in claims costs for motorcyclists. He indicated that under no-fault, loss costs were shifted from automobile owners to motorcyclists.

Mr. McFarlane opined that the move from a tort to a no-fault environment should have resulted in savings for everyone, rather than the experience that has resulted for motorcycles. He stated that in a tort environment claims costs are more appropriately allocated among rating groups.

Mr. McFarlane further opined that the change from tort to no-fault should not have changed the attribution of costs to the various classifications. In the case of no-fault in Manitoba, Mr. McFarlane indicated that the change in the delivery mechanism has shifted costs to motorcyclists that previously, under tort, would have been allocated to other vehicle classes.

Mr. McFarlane indicated that under Loss Transfer in Ontario, approximately 17% of the total loss costs were transferred from the motorcycle class to the private passenger class. In addition, and as to the bodily injury threshold, he reported that 24.5% of total loss costs were transferred, resulting in a total combined impact in loss cost savings to motorcyclists of approximately - 34.4%. The corresponding negative impact on private passenger vehicles because of losses transferred from motorcycles was only 0.6%.

Under cross-examination, Mr. McFarlane conceded that he had not undertaken a comparison of the benefits paid in Ontario versus Manitoba's no-fault benefits. Nonetheless, he indicated that if

similar benefits were paid in Manitoba as are in Ontario, he would expect that Loss Transfer for motorcyclists would result in a 42% reduction in motorcycle premiums and an increase in private passenger automobile premiums of 1.2%, in Manitoba.

Mr. McFarlane's main conclusions were:

1. The introduction of no-fault insurance in Manitoba has had a favourable impact on automobile drivers' premiums and an adverse impact on motorcyclists;
2. Considering fault, motorcyclists in Manitoba are being attributed a disproportionate share of claims costs;
3. The majority of jurisdictions have some sort of mechanism to ensure equitable treatment among the classes of vehicles (loss transfer, tort , optional tort/no-fault etc);
4. The ratio of motorcycle to private passenger premiums is significantly higher in Manitoba than in any other jurisdiction; and
5. A Loss Transfer mechanism in Manitoba would result in material savings to motorcyclists with a minimal increase to automobile drivers.

Mr. McFarlane recommended that Manitoba adopt Loss Transfer for motorcyclists and other similar classes. Mr. McFarlane also asserted that if Loss Transfer was implemented, MPI's premium ratemaking would be more equitable, and full actuarial rates could then properly be assessed against motorcyclists.

Mr. Robert Ramsay, President of MMIC, testified at the special hearing. MMIC is a national non-profit industry association representing the major manufacturers and distributors of motorcycles. Mr. Ramsay stated that PIPP benefits account for over 80% of the costs associated with motorcycle premiums as compared to less than 40% in the case of private passenger vehicles. He claimed that the high cost of motorcycle insurance in Manitoba directly relates to the cost of PIPP coverage.

He opined that although Manitoba's no-fault system has benefited all claimants, the effect of the claims attribution approach has very significantly and negatively impacted on motorcycle premiums.

As previously indicated, Mr. Ramsay attributed the large increase in motorcycle premiums to the high cost of motorcyclists' injury claims which, under a no-fault system, are borne solely by the motorcycle class regardless of fault.

Mr. Ramsay suggested that the increase in motorcycle rates over the last ten years have negatively impacted the motorcycle industry.

Mr Ramsay cited proprietary sales statistics indicating that, while sales in the rest of Canada have gone up 18.8% in recent years, sales in Manitoba have decreased.

He noted that there are approximately 400 collisions involving pedestrians annually in Manitoba, and that the costs of injuries arising out of these collisions are attributed to the vehicle involved regardless of fault. MMIC suggested that a public policy decision had been made to protect pedestrians and cyclists from liability, notwithstanding that in some cases they cause collisions. MMIC believes a similar public policy decision should be made in connection with motorcyclists.

He testified that a fundamental principle of the justice system is that wrongdoers should be held accountable. MMIC's view is that the tort system, while having some significant drawbacks, generally resulted in the proper allocation of claims costs to the wrongdoer. He submitted that a no-fault system should accomplish the same outcome, while removing excess legal and other transaction costs to the benefit of all.

MMIC stated that the adoption of no-fault in Manitoba has resulted in the inequitable treatment of motorcyclists as costs formerly attributed to others are now borne by motorcyclists.

Mr. Ramsay suggested that a mechanism should be implemented restoring an equitable balance while retaining the cost advantage associated with the no-fault delivery system.

Mr. Ramsay opined that the adoption of Loss Transfer would be a policy decision based on fairness. He suggested Loss Transfer would result in the equitable treatment of motorcyclists and with a very minor impact on automobile drivers.

3.4 Mr. Brian Pelly - Board Actuary

Mr. Brian Pelly was engaged by the Board to provide an opinion as to whether the issues surrounding Loss Transfer should be decided on actuarial grounds. This engagement was in addition to Mr. Pelly's continuing retainer as the Board's actuarial advisor, a role he has fulfilled since 1997.

Mr. Pelly filed a written report and provided oral testimony. In his report he cited the Casualty Actuarial Society's May 1988 Statement of Principles Regarding Property and Casualty Insurance Ratemaking and opined:

Accordingly, it is my opinion that both the first-party approach and the Loss Transfer approach may be appropriate and in accordance with accepted actuarial practice, provided rates reflect the expected costs associated with the risk transfer.

The risk transfer referred to is that created by the insurance purchase transaction, through which the policyholder substitutes the uncertainty of an automobile accident-related loss for the certainty of a fixed premium.

Mr. Pelly expressed the view that in the absence of an actuarial argument for or against a Loss Transfer mechanism, the decision is one of public policy. His report noted that public policy considerations have been brought to bear on prior Board decisions, e.g., to limit the pace at which rates have responded to experience through the capping of experience adjustments.

The Board also asked Mr. Pelly to comment on possible transitional issues that would arise if Loss Transfer was to be introduced in Manitoba; his report identified three issues:

- ♦ **Defining the Mechanism** with respect to coverages affected, classifications of vehicles/operators encompassed, and/or imposition of any dollar thresholds before loss transfer applies.
- ♦ **Assigning Fault** is central to a loss transfer mechanism, and some means of ensuring fairness and consistency in the treatment of claimants is needed, ideally in a manner consistent with how related data has been collected in the past.

- ♦ **Managing Dislocation** may prove to be necessary to mitigate rate shock issues for policyholders, in effect transitioning to loss transfer over a number of years.

3.5 Manitoba Public Insurance (“MPI”)

MPI presented a position paper on Loss Transfer, and its witnesses spoke to the issues before the Board. While continuing to defend its first-party claims cost attribution model, MPI acknowledged that the hearing, which was held outside of the parameters of a GRA, was helpful in that it had provided for the question to be considered in a more focused manner.

MPI reviewed Loss Transfer in Ontario, noting that Ontario implemented a partial one-way loss transfer benefiting motorcyclists and negatively affecting commercial trucks. The system transfers costs out of the motorcycle class but not into it. With respect to trucks, costs are transferred in, but not out.

MPI cited the example of an accident involving a motorcycle and truck. In MPI’s example, the truck was at fault, and the insurer of the truck was obliged to meet all accident benefit costs of the motorcyclist less a deductible (\$2,000). If, conversely, the motorcyclist had been at fault, the truck’s insurer would have been responsible for the costs associated with the truck and its occupants, with no costs transferred to the motorcyclist’s insurer.

MPI stated that the Ontario model of a one way partial loss transfer was preferential and discriminatory, and should not be implemented in Manitoba.

MPI noted that Ontario insurers do not have to underwrite motorcycle coverage. Even though insurers select the drivers they insure, they may be reluctant to insure vehicles they consider to be inherently risky and which place their drivers at risk of serious injury. Absent Loss Transfer in Ontario, according to MPI, there would be a serious availability problem for motorcycle insurance coverage. MPI noted this concern does not exist in Manitoba as MPI provides compulsory insurance coverage to all motorists.

MPI also negatively commented on the practicality of implementing a full Loss Transfer mechanism, one which would involve the transfer of all claims costs to the classification categories of the at fault driver's vehicle.

As previously indicated, MPI classifies risk by insurance use, territory, vehicle characteristics, and driving record of the vehicle's owner and operators. For the large majority of vehicles the relative risk associated with each vehicle is determined on the basis of CLEAR. CLEAR rate classifications are established based on first-party losses, including injury frequencies, with no consideration for a loss transfer. MPI opined that the CLEAR system is a well designed, robust and reliable system, adequate to evaluate the differing risks that different vehicles bring.

MPI reiterated its position of previous hearings that first-party claims cost assignment encourages customers to choose safer vehicles, those with lower repair costs and which are safer for occupants.

MPI stated that IBC does not currently have a CLEAR model that differentiates risk based on a third party model, an approach that considers the amount of damage caused by a vehicle to another.

MPI opined that with a lack of a credible third party rating system, and given its use of CLEAR, MPI could not prudently implement full Loss Transfer. MPI reiterated its prior position that the fact that Loss Transfer cannot be applied at the make/model/year level is the single greatest practical barrier to introducing the model.

MPI also assessed the implications of implementing Loss Transfer at the Insurance Use/Territory levels. In recasting the 2004 credibility weighted Major Class Indicators applying differentials and using loss transfer costs assigned at the Insurance Use and Territory level, MPI asserted implementing Loss Transfer would result in significant premium shifts.

MPI noted that Loss Transfer would result in a shift in premium requirement from Winnipeg (Territory 1) to rural southern Manitoba (Territory 2), and attributed that forecast shift to higher average levels of income and cars in Winnipeg. MPI indicating that in an accident between a

farm resident and Winnipeg resident, under Loss Transfer the amount of claims cost transferred would depend on who was at fault. As on average losses are higher for the Winnipeg resident, MPI asserted that Loss Transfer would create an imbalance. MPI opined that Loss Transfer would benefit Winnipeg residents over rural residents.

MPI suggested that similar imbalances would develop between insurance use categories, again due to differing economic factors. Overall MPI opined that applying Loss Transfer at the Insurance Use and Territory level would not meet fairness or reasonableness requirements.

MPI also considered the practicality of applying loss transfer at the Major Class level. MPI noted that its rate making methodology uses historical cost information to determine future rates at a finer level of detail than Major Class. MPI indicated that its ratemaking methodology is based on calculating expected costs at the Insurance Use/Territory level within Major Classes, making the application of Loss Transfer at only the Major Class level internally inconsistent.

Therefore, for MPI, implementation of a partial Loss Transfer approach at the Major Class level only would produce significant rate dislocation. MPI observed that in many circumstances, the dislocation would bear no relationship to the actual costs incurred by the insurance use/territory groupings below the Major Class level.

MPI stated that a partial Loss Transfer approach would result in an adverse impact on the classification system as rates calculated using Loss Transfer at the Major Class level do not provide for the expected future costs of any individual classification category. MPI stated that the implementation of Loss Transfer at the Major Class level would also not be without problems from an actuarial point of view. For MPI, Loss Transfer could not be applied down to the level of MPI's existing rate making methodology at the territory and rate use classifications.

In addressing the Board's criterion as to whether Loss Transfer would reduce the number or severity of accidents, MPI stated that there is no evidence to suggest that Loss Transfer would have such a positive impact. MPI suggested that because the private passenger vehicle pool is so large, the impact of transferring losses from the motorcycle class to private passenger vehicle premiums would be negligible, and not have any impact on driving behaviour.

MPI stated that its Bonus/Malus system is the appropriate way to penalize those responsible for accidents. MPI reiterated its intention to improve the system, which in its view continues to be the best way to bring personal responsibility to the issue of automobile insurance. The Board concurs in this view and encourages MPI to follow through on its intentions to enhance the mechanism.

MPI stated that Loss Transfer is administratively feasible. However, MPI was not able to give an estimate of the administrative costs that might be involved, and indicated that the impact would depend on the type of Loss Transfer system implemented.

MPI opposed CAC/MSOS's initial proposal for a subsidy for the motorcycle class. MPI suggested the Board reject any subsidy-based proposal, and opined that granting a subsidy would not end the debate as the amount of the subsidy would become the focus at future hearings.

MPI concluded that the versions of Loss Transfer considered at the special hearing failed the universal tests of being fair, equitable, reasonable, non-preferential and not unfairly discriminatory. MPI held that its ratemaking methodology and risk classification system fairly and reasonably assesses the risk of each particular vehicle and operator. MPI reported that its assessment is based on the characteristics of the vehicle: how it is to be used, where it is to be used, and according to the risk profile of the vehicle's owner.

MPI asserted that future claims costs are predictable and that individuals have significant control over their premiums. Putting the control of insurance premiums in the hands of vehicle owners is eminently fair and reasonable, according to MPI.

MPI recommended that its first-party claims cost attribution model for ratemaking purposes be continued, and that it best recognizes the inherent risk of particular vehicles. MPI opined that its approach meets the tests of being fair, equitable, reasonable, non-preferential, and not unfairly discriminatory.

MPI reminded the Board that Loss Transfer has been before GRA hearings on numerous occasions, has been the subject of debate, evidence and deliberation.

MPI cited past Board findings supporting first-party cost allocation methodology. MPI urged the Board to reflect on past Board Orders, and suggested that the Board give these past decisions considerable weight and credibility in assessing the evidence of this hearing.

MPI opined there were no compelling reasons presented in this hearing to justify a decision for Loss Transfer. MPI stated that there had been no change in the prior positions of the parties at this hearing, and, in MPI's view, the mere repeating of the same evidence does not justify the Board, acting on a public policy consideration, directing the adoption of Loss Transfer.

4.0 Intervenor Positions

4.1 CAC/MSOS

CAC/MSOS contended that MPI's first-party claims cost attribution system is better than a Loss Transfer system. CAC/MSOS stated that the first-party system is fairer, will have a greater impact on loss prevention, and produces rates that are actuarially sound and statistically based. Nonetheless, CAC/MSOS indicated apprehensiveness with respect to its support for the current approach. CAC/MSOS opined that the current system is not a perfect system, and its continuance was unlikely to be acceptable to everyone.

CAC/MSOS did not agree with MMIC's claims that MPI's claims attribution approach under PIPP was the cause of high motorcycle premiums. CAC/MSOS stated it did not agree that no-fault has negatively impacted motorcyclists. CAC/MSOS also disagreed that Ontario's Loss Transfer mechanism represents a perfect solution.

CAC/MSOS noted that despite Ontario's Loss Transfer system, motorcycle rates increased between 15 to 25% in 2003 and 2004. CAC/MSOS asserted that the premium increases in Ontario prove that the cause of rising motorcycle rates is not the first-party system.

CAC/MSOS suggested the true cause of higher motorcycle premiums is that motorcyclists are more likely to be seriously injured than other vehicle owners, and, in a no-fault environment, there are likely to be more at-fault motorcyclists eligible for benefits.

CAC/MSOS further stated that fairness is extremely important in choosing a claims allocation system. According to CAC/MSOS, there are two aspects to fairness, these being the personal accountability of the at-fault motorist and rating classification.

CAC/MSOS suggested that Loss Transfer seems fairer in terms of personal accountability, and holds at-fault persons accountable. In its view, however, the attribution of fault has an indirect and almost immeasurable impact. CAC/MSOS stated it believes the Bonus/Malus system performs better than Loss Transfer in holding motorists accountable.

CAC/MSOS further stated that a first-party system is also fairer with respect to rate classification accountability. From a rate classification perspective, CAC/MSOS contended there are two factors that are within the control of individual vehicle owners and drivers: the design of the vehicle from a safety perspective and driving behaviour. In CAC/MSOS's opinion, the first-party system best reflects the cost attribution consequences of the predictable choices of consumers, in comparison to Loss Transfer, which mutes the predictable impact of such choices. CAC/MSOS opined that, from a consumer's perspective, Loss Transfer is less fair.

CAC/MSOS maintains that the first-party approach underscores loss prevention, this because the more likely a vehicle is to result in an injury, the higher the insurance premium. CAC/MSOS stated that there is a cost to driving a more vulnerable vehicle, and that higher cost is a deterrent and helps prevent losses. On the other hand, Loss Transfer does not support loss prevention, as it allocates costs based upon the random element of fault.

CAC/MSOS further questioned whether Loss Transfer could be actuarially sound and statistically based. CAC/MSOS noted that MPI's actuary indicated that MPI does not have credible data to apply a loss transfer at the rate group level. CAC/MSOS further observed there is a lack of evidence that a loss transfer could be applied at either the Major Class or Territory/Use level.

CAC/MSOS took issue with Mr. McFarlane's contention that in a Loss Transfer system, when costs of the Motorcycle Class are allocated across a large pool such as the Private Passenger Class, there would be a relatively small premium impact on passenger cars. CAC/MSOS stated that although Loss Transfer may not have a large impact on the passenger vehicle class as a whole, it could significantly impact certain owners.

CAC/MSOS further addressed its perceptions of weaknesses in Ontario's Loss Transfer model, namely that a system where costs are transferred out for motorcyclists but never in, is fundamentally unfair and inappropriate.

Although CAC/MSOS endorsed the current system, it, initially, proposed that motorcycle premiums be assisted by a subsidy rather than through Loss Transfer. CAC/MSOS stated that while both a subsidy and Loss Transfer were alternatives unpalatable to it, a subsidy, although not endorsed by CAC/MSOS, might prove a better alternative than Loss Transfer. In closing statements, CAC/MSOS withdrew its subsidy suggestion.

4.2 CMMG

CMMG has raised concerns over motorcycle premiums and the effect of no-fault claims cost attribution from the GRA of 1993, which was held after PIPP had been announced for implementation in the 1994/95 insurance year.

At this hearing, CMMG stated that it has supported Loss Transfer since becoming aware of the approach. CMMG believes that accident costs should be assigned to each Major Class based on fault, and accident costs, particularly accident benefit costs, should not be borne by vehicles on a first-party basis.

CMMG questioned MPI and CAC/MSOS's arguments against Loss Transfer. As to MPI's contention that motorcycles are inherently risky, CMMG acknowledged that a lack of personal protection placed motorcyclists at a higher risk of injury in a collision than drivers of cars and trucks. However, CMMG opined that all vehicles have inherent risk, not just motorcycles.

CMMG's partially defended its position from the perspective of claims frequency; CMMG contended there is little difference between the frequency of motorcycle and passenger vehicle accident and injury frequency.

Comparing the rate increase/decrease distribution resulting from the premium setting of the last GRA, CMMG stated that the distribution of rate changes would have improved with Loss Transfer. CMMG projected that nearly 300,000 vehicles would have received either no premium change or a rate decrease under Loss Transfer, compared to 254,000 vehicles under the current system.

CMMG noted that the number of vehicles experiencing rate increases would have been similar under either system, although there would have been fewer increases under Loss Transfer.

CMMG also contended rate volatility would not increase with Loss Transfer, contrary to MPI's suggestion, and also questioned MPI's contention that Loss Transfer would result in an economic imbalance between Winnipeg and rural residents.

CMMG disputed MPI's claim that the first-party attribution approach motivates consumers to choose safer vehicles due to higher insurance rates for less safe vehicles.

CMMG opined that there was no proof of MPI's contention, noting that a 2002 CAA vehicle ownership survey reported that insurance rates were not a consideration in a vehicle purchase decision.

CMMG noted that MPI had suggested that Loss Transfer could damage its ability to use CLEAR, and disagreed with that contention. CMMG submitted that Mr. Pelly had considered Loss Transfer as being only marginally relevant to CLEAR, assuming the Ontario approach was implemented, given CLEAR utilizes only frequency levels with respect to accident benefits. CMMG contended that CLEAR is simply a ranking system.

CMMG also noted that IBC's witness had indicated that vehicle rankings do not change with Loss Transfer, and that, as well, neither do rate groups nor rate lines. CMMG cited the tort-

based system in Alberta, which also provides data to CLEAR, as evidence that the transfer of claim costs does not invalidate the use of CLEAR.

CMMG referred to MPI's contention that a benefit arising from the first-party approach to claim attribution is consistency of ratemaking, since, for MPI, every component of a rate setting system should be based either on the first-party system or the loss transfer system. CMMG noted that neither Mr. McFarlane nor Mr. Pelly held that view. In short, CMMG held that no-fault benefits payments could be accompanied with fault-based claims cost attribution.

CMMG urged the Board to focus on the testimony of Mr. Pelly and the more extensive testimony and actuarial report of Mr. McFarlane in deliberating on the issues. CMMG opined that the adoption of Loss Transfer would not change the fundamental concept of pooling the experience and risks of both good and bad drivers. CMMG contended that Loss Transfer only assigns costs to the pool based on who is responsible for those losses, and that the pool remains.

Referring back to the introduction of PIPP in 1993, CMMG expressed concern that motorcyclists were not consulted prior to the adoption of PIPP. CMMG contrasted the lack of consultation with the introduction of PIPP in Manitoba to the consultative approach taken by Ontario prior to its adoption of Loss Transfer.

CMMG urged the Board to adopt Loss Transfer, claiming it would be fairer, and more equitable and reasonable than the current approach.

CMMG proposed a two-way Loss Transfer mechanism, by which costs would be transferred not just out but also into the motorcycle class; such a system would be different than Ontario's "one way transfer."

4.3 MUCDA

On behalf of MUCDA, Mr. Roberts supported Loss Transfer. He indicated that Loss Transfer would have a positive effect on the costs and premiums assigned to dealer plated vehicles.

MUCDA held that MPI's current system is not fair, reasonable, non-preferential, nor fairly discriminatory.

MUCDA opined that the rules on which MPI's current claims cost attribution approach are based are unsound. MUCDA suggested that while the first-party cost attribution approach may provide incentives to reduce risks through vehicle choice, the incentives were inoperative in the case of its membership.

MUCDA noted that used car dealers are at the mercy of buyers' wishes, and had to provide both low and high-risk vehicles in order to remain competitive.

Mr. Roberts also raised the issue of risk management, citing the realities under which test-drives take place. And, he stated that dealer plates are switched between dealer vehicles, contradicting MPI's concept of risk control through vehicle selection.

MUCDA maintained that the current system is not reasonable. Mr. Roberts reported that under the current system if a customer goes for a test drive, has an accident and is not at-fault, the costs of the accident are still assigned to the dealer class and affect premiums. Yet, neither the driver nor the dealer was at-fault.

Mr. Roberts indicated that in 1996 these cases resulted in \$6.7 million in excess costs being attributed to dealers. MUCDA noted that as dealers represent a relatively small pool, an accident has a much larger effect on the dealer pool than it would have in the larger passenger vehicle pool.

MUCDA stated that MPI's claims cost attribution approach placed dealers at a great disadvantage compared to used car dealerships in other provinces. MUCDA indicated that even if a Loss Transfer system is not fully adopted, it should be for used car dealerships so as to level the playing field with competitors in other provinces.

4.4 CBA/MBA

While CBA/MBA indicated that it neither supported nor opposed Loss Transfer, Mr. Dawson stated that Loss Transfer would be philosophically ill-suited for Manitoba.

Mr. Dawson considered the intent of the Legislature when PIPP was adopted, and cited a Manitoba Court of Appeal decision and the judge's comment that:

"... the Legislature created an all encompassing insurance scheme to benefit, or rather, to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile".

Mr. Dawson contended that opting for a fault-based approach in claims cost attribution may be opposed to the underlying philosophy of the PIPP legislation as referred to in the judge's decision.

Secondly, CBA/MBA opined that the legislative intention to provide compensatory benefits to all Manitobans means that premium pricing must be sufficient to pay compensation to all Manitobans. Mr. Dawson suggested that as the benefits are provided on a no-fault basis and since the emphasis of the legislation is on benefits not costs, a fault-based concept such as Loss Transfer could be considered contradictory to the legislative intent.

Also, CBA/MBA opined that as PIPP was intended to provide compensation, not punishment, Loss Transfer, an approach based on fault, would not reflect the underlying philosophy of the no-fault legislation.

Mr. Dawson discussed possible alternative approaches to allocating claims other than MPI's approach and Loss Transfer. In his review, Mr. Dawson noted the "elegance" of the Quebec plan, wherein he suggested the allocation of first party bodily injury costs was performed by an arbitrary and uniform division.

According to Mr. Dawson, Quebec's plan is considering an approach which would have the overall cost of a claim divided equally among the vehicles involved in an accident.

CBA/MBA also suggested the Board consider the approach followed by SGI in Saskatchewan, where motorists may opt out of no-fault in favour of tort. CBA/MBA stated that while this may be a workable option, it too may be opposed to the philosophy espoused by the legislation.

CBA/MBA further suggested the Board consider CAC/MSOS's subsidy proposal, which would retain the current rate making methodology but transfer a sum in recognition of what could be considered the unintended consequences of no-fault on motorcycles. This would be a subsidy both express and transparent, and it could be allocated in a manner similar to the way in which claims are now allocated.

CBA/MBA speculated that such a subsidy may result in future proceedings dealing with the size of the subsidy, and a continuing discussion on how motorcycles are treated. Mr. Dawson opined that such an outcome may be contrary to the Board's intention of dealing definitively with the matters of Loss Transfer and the claims cost attribution model.

Mr. Dawson concluded with the view that Loss Transfer is the offspring of a tort system, and is therefore philosophically ill-suited to a monopolistic jurisdiction such as Manitoba. He also opined that the Board had the jurisdiction to decide the matter.

5.0 Presenter Positions

Mr. Al Robertson indicated that he is being unfairly treated by MPI, as his motorcycle premium has soared though he has been riding for 40 years without an accident or a traffic ticket. Mr. Robertson suggested that MPI intends to gradually increase motorcycle premiums until there are no motorcycles on the road, a position he adamantly opposes.

Mr. Dave Wilton sought changes to the classifications currently used by MPI, opining that these classifications are incorrect. He suggested that there should be restrictions on engine horsepower for newly licensed drivers, as motorcycles continue to get lighter, more powerful, and more dangerous in the hands of inexperienced drivers.

Mr. Ron Arjoo claimed that a system that allocated accident costs caused by automobiles to the motorcycle pool is neither fair nor logical. For Mr. Arjoo, Loss Transfer would alleviate the problem for motorcyclists.

Mr. Wilf Bach noted that MPI receives significant premiums from motorcycle riders who insure their cars year-round but only drive them for a few months. He maintained that accidents are caused by drivers and the type of vehicle being driven has little impact on accident frequency.

In a lengthy oral and written submission, Mr. Doug Houghton stated that while motorcycles represent 1% of all licensed vehicles they are involved in only 0.25% of collision claims. He suggested that a decrease in motorcycle rates would have little impact on the premiums of passenger vehicles.

Mr. Houghton stated that Loss Transfer would best reflect the true nature of collisions, that being that they are caused by drivers, and thus its implementation would bring about an increase in personal accountability.

Ms. Johnson reported having two registered vehicles, a 2004 Harley Davidson and a 2003 PT Cruiser. She indicated that she had recorded three times as many kilometres on her car than her motorcycle, and yet pays over \$800 less for the insurance on this vehicle than her motorcycle. She contended that most accidents are caused by passenger vehicles, and suggested that these vehicles should be absorbing the cost.

Mr. Craig Stieben, who works in the motorcycle dealer industry as a salesperson, indicated that he has seen many people negotiate the purchase of a motorcycle only to back out when they discover the level of insurance premium. He reported that sales are decreasing, and that if the trend continues people who work in the industry will lose their jobs. He suggested that MPI should be more aggressive with respect to bad drivers instead of discriminating against motorcycles.

Mr. Phillip Zubrycki opined that motorcycle premiums subsidize both cars and commercial vehicles. He also opined that if comprehensive and collision insurance were optional, motorcycle rates would be much lower.

Mr. Robert Dolyniuk, General Manager of the Manitoba Trucking Association, called for the maintenance of the current first-party claims allocation system. He stated that Loss Transfer is a mechanism that artificially creates lower rates for motorcycles at the expense of other vehicle categories, including trucks.

6.0 Board Findings

The annual MPI GRA has had motorcycle premiums as an ongoing topic since 1993. That was the year PIPP was announced, and at the hearing in the fall of 1993 the Board set the rates for the first year of PIPP's operation, the insurance year 1994/95.

During the public information phase of PIPP, the focus was on restraining premium levels as well as improving benefits for motorists. The perception was that the previous tort-based approach was resulting in inadequate compensation for many of those injured in motor vehicle accidents, while sometimes compensating others too much. Another cited concern related to legal costs, which were considered to be absorbing too large a portion of the compensation received by accident victims.

Little if anything was said about how, under PIPP, MPI's first party claims attribution policy would impact motorcycle premiums. These premiums were affected in part by the significant increase in no-fault accident benefits arising out of PIPP.

PIPP was unexpected, and the initial surprise was followed by all-party support in the legislature and a quick enactment and implementation.

The government-of-the-day had indicated previously no interest in no-fault, yet the program was announced and implemented within one year.

MPI testified at this special hearing that there was intense pressure to implement the program in time for the 1994/95 insurance year, and that motorcycle groups were not specifically consulted. This approach differed markedly from that of Ontario. When that province implemented a modified no-fault plan two years earlier, it was a change that followed extensive consultations and a shared understanding of the implications for motorcyclists, truckers and passenger vehicle owners.

Ms. Hall, of the Ontario regulator FSCO, testified about the attention paid by the Ontario government to the impact of no-fault on motorcyclists and the Loss Transfer mechanism that was developed to ensure availability of coverage and reduced rate pressure on motorcycle owners.

Ms. Hall also testified that since Loss Transfer has been in place, there has been little or no public opposition to it. In short, Ms. Hall suggested the general public, including those who own trucks whose premiums increased as a result of Ontario's loss transfer model, accepted the approach.

The Board is of the view that the difference in attention paid in Manitoba to the impact of no-fault improvements on motorcycle premium rates prior to the introduction of PIPP may have resulted in part from incomplete research and awareness of the ensuing ramifications to motorists, particularly motorcyclists.

That being said, the Board notes that the oversight with respect to the effect of PIPP on motorcycle rates did not give rise to any other major problems. PIPP was implemented by MPI in as effective a manner as one could hope for given the timeframe available to MPI.

And, the Board is supportive of PIPP and notes that its overall objectives of improving first party benefits and reducing premium rate pressure have, to date, been accomplished.

What has not been fully resolved over the past ten years of PIPP is the appropriateness of first party claim attribution under an expanded no-fault system, and the particular effect that has had on motorcycle rates.

The cost of opposing and defending MPI's first party claims attribution approach over the years has been high. The effect of PIPP on the overall public system of vehicle insurance in Manitoba has not been satisfactorily resolved to the satisfaction of all parties, including the Board. Despite considerable testimony by expert witnesses for and against the claims attribution approach over a succession of hearings, and despite arguments mounted by proponents and opponents thereof, the issue has never been resolved once and for all.

Accordingly, at the conclusion of last fall's GRA hearing, the Board determined that a special hearing would take place, with evidence and positions sought from all interested parties. The practices and policies of other jurisdictions would be considered, in addition to other aspects of the issue.

The Board stated at the outset of this special hearing that it intended to reach a final conclusion on the merits of MPI's first party accident cost attribution approach.

The Board realized that the issue at hand went beyond motorcycles, and that it affected or would likely affect all vehicle classifications. Accordingly, past participants in MPI GRA hearings as well as other parties with an interest in the matter were advised of this special hearing and invited to make presentations and participate.

In addition to issuing a public notice, other parties whom the Board considered might offer useful information and comments were specifically invited. The Board met the travel costs of some of the parties it invited to the special hearing, and instituted its award of cost provision to better ensure various groups would be able to participate.

The Board notes that there is no legislated foundation for MPI's first party claims cost attribution approach. It has been in place as a result of a corporate policy that has been consistently applied since the adoption of no-fault accident benefits before PIPP was introduced in 1994.

Prior to the advent of PIPP, no-fault accident benefits were not a major determinant of premium levels, as no-fault benefits were modest and tort-based claims predominated. After the introduction of PIPP, the first-party claims attribution policy became more important.

The Board brought to this special hearing no bias towards any particular outcome other than wanting to achieve a result that would fairly reflect the general interests of the public. One of the Board's secondary goals was to bring about a greater understanding of the merits of the differing positions.

The Board found the process and the evidence from this special hearing to be sufficient to allow it to resolve the matter, and, in the Board's view, the new approach it will direct be implemented will provide for a more satisfactory overall system design.

The Board has in the past supported MPI's claims attribution model at past MPI GRA hearings. However, this special hearing allowed the Board an opportunity to seek input from a wider representation and to focus its entire attention on this issue. This special hearing, with its attendant research and deliberate reflection, has allowed the Board to come to a definitive conclusion.

From the Board's perspective, the primary advantages of MPI's claim attribution approach are that it:

- (a) has been applied consistently and uniformly;
- (b) was historically based – no-fault first party accident benefits have always been allocated on the basis of the beneficiary, albeit the no-fault benefits were much lower prior to PIPP; and
- (c) was acceptable from an actuarial perspective.

The Board understands the philosophical underpinning of MPI's policy to be that motorcycles are inherently riskier than other vehicles and that the costs arising out of an accident have a great deal to do with the vehicle choice of the vehicle owner.

The difficulty experienced with this particular policy may be due to the fact that where a public policy such as this one materially affects one or more stakeholder communities it requires thorough research, consultation, full discussion and considered reflection prior to implementation. Care is required to ensure the policy will withstand the test of time and future

examination. The policy decision to implement a total no-fault system of benefits has, with the exception of the claims attribution feature, proved to be sound and has found favour generally with stakeholders and the public.

MPI delivers and administers its compulsory vehicle insurance scheme with its no-fault benefit feature under the authority of the *Manitoba Public Insurance Act* and regulations. The claims attribution model was a policy endorsed by MPI's Board of Directors.

This Board's jurisdiction to direct a different claims attribution model has not been questioned. However, in order to consider implementation of a different model the Board required a better understanding of the effect and rationale of the current approach.

It also required a more detailed perspective on MPI's position, the views of the Intervenors and the perspectives of other invited and interested parties. This special hearing arose out of Board Order 148/04 from last year's MPI GRA hearing.

The Board finds it instructive to review the original Board experience with PIPP, the MPI GRA of 1993, and the 1988 Report of the Autopac Review Commission.

At the 1993 hearing, MPI proposed a 1994 rate freeze for all vehicles in spite of actuarially indicated increase requirements.

MPI justified the rate freeze suggesting it would be difficult to gain public acceptance of no-fault PIPP while both increasing rates and taking away access to the courts. MPI stated that a rate freeze would make PIPP "a more saleable commodity."

MPI's pre-PIPP application for 1994/5 rates disclosed an actuarially required rate increase for motorcycles ranging from 59% to 67% (with PIPP, the required rate increases rose to a range of 94% to 105%). Thus, despite an indicated minimum rate increase requirement for motorcycles ranging from 59% to 94%, MPI held to its request that rates be frozen for 1994, a position rejected by the Board.

In the 1993 hearing, then-Vice-President of Insurance Operations Mr. Kidd, stated:

“There is likely little doubt that motorcycles are involved in a lot of accidents where bodily injury is involved, particularly on the accident benefit side... and, clearly, with the increased accident benefits under no-fault, the cost of insuring motorcycles in relationship to the cost of insuring other vehicles might continue to be a problematic area if that occurs we will have to look at it in the future and decide what to do with the rates.”

Nonetheless, the Board imposed a 15% rate increase for motorcycles, a decision subsequently upheld by the Manitoba Court of Appeal.

At the 1993 hearing, MPI's then-President was asked:

“Do you feel, Mr. Bardua, that your Chairman and (the MPI) Board is fully aware that the decision that they made (freezing rates for the year of no-fault's introduction) is going to have some serious consequences perhaps next year or year after for some particular rating classifications; in other words, they won't necessarily have the catch-up of just one year; they may have the catch-up of two or three years.”

Mr. Bardua responded:

“I really can't answer that question. I'm not sure that they (MPI's Board of Directors) understand (the detail) to that extent. But I would suggest that they realized that we're operating with a very limited amount of information and the numbers that we presented could very well be wrong.”

He went on to say:

“...when we were studying the no-fault issue we did not ...look at individual groups or rates for individual groups of vehicles. We were looking at the principle of no-fault against the tort principle, and the effects on the population as a whole, not on individual groups of vehicles.”

Later in his testimony with respect to the impact of PIPP on motorcycle owners, Mr. Bardua also stated:

“No, we didn't provide that level of detail to our Board of Directors ... we were originally looking at the plan and the cost projections; I'm not sure we had that level of detail ourselves.”

At the 1993 hearing, MPI reported that as a result of discussions with Quebec officials MPI had become aware of the likely impact on motorcycle premiums of PIPP, but that this information was not shared with their Board of Directors.

Leaving aside premiums, there is no doubt that the benefits available to at-fault motorists, including motorcyclists, increased significantly with PIPP. Under tort, when a motorcyclist was judged at fault, accident benefits were modest and dramatically different from the benefits available through tort to the “not-at-fault” motorist. Over the past ten years, no party to the Board’s hearings has opposed the higher first party accident benefits PIPP provides.

The question has been whether the costs associated with the benefits should be borne on a first-party basis.

In considering this question, the Board found it instructive to consider the origins of PIPP. His Honour Judge Robert L. Kopstein, Commissioner of the Autopac Review Commission, suggested in his 1988 report to Government that the tort system should be abandoned in favour of no-fault, and commented upon the concepts of simplicity and affordability:

“MPIC’s rating system for judging risks and for fixing premium prices has since its inception strived for simplicity.From Autopac’s inception the rating system was, by design, more level than is common practice among private insurers. It does not discriminate as much as they do between higher risks and lower risks. This rating system was seen initially as a benefit in the sense that it makes insurance affordable to those who are in the high risk classes without penalizing too severely those who are in the low risk classes. That benefit, with some modifications, has remained constant over the course of the corporation’s history.”

In his report, Judge Kopstein criticized then current practices, calling for an overhaul of the rate-making methodology and recommending “the existing merit/discount system (should be) overhauled so that it becomes a more useful indicator of insurance experience...”

During last year’s GRA and again during this special hearing, MPI testified that with the 2004 transfer of Driver Vehicle Licensing to MPI, the Bonus/Malus system could be overhauled to make it more effective in motivating driver behaviour.

MPI has indicated that it is the Bonus/Malus system that acts as an incentive to good driving behaviour. From MPI's perspective, premium levels are too remote to act as a deterrent to poor driving habits and are not effective as a motivator to better driving practices.

In defending its present approach to claim attribution on a first-party basis (that occurring with the exception of fleets and inter-provincial trucks), MPI indicated that the Bonus/Malus system would remain its primary means of influencing driver behaviour.

MPI asserted that attributing claims on the basis of fault for the purpose of setting vehicle premium rates would be contrary to its first-party no-fault system, while at the same time being ineffective as a deterrent to poor driving conduct. The Board concurs.

Prior to making its determinations, the Board reviewed and reflected upon a wide range of matters arising out of the evidence from this special hearing, including:

- (a) the background of and objectives established for this special hearing;
- (b) the history of no-fault and PIPP;
- (c) previous Board directions and comments;
- (d) options presented at the special hearing;
- (e) implications associated with each of those options;
- (f) positions and comments of the participants to this process;
- (g) ratemaking and actuarial principles;
- (h) the criteria stated by the Board for its decisions;
- (i) matters related to jurisdiction;
- (j) timing; and
- (k) transition issues.

The Board has decided to:

- (a) reject the *status quo*, the current system of first-party claims attribution; and
- (b) reject all of the alternative approaches proposed at the special hearing.

The Board has misgivings with the status quo, and thus rejects it in favour of an approach that it believes will alleviate the shortcomings of the current claims cost allocation system.

MPI has suggested that its current first party approach is fair because the costs associated with the benefits provided to a given vehicle class are allocated to that particular vehicle class.

It also argues that its approach is not punitive, and that, because the costs are reflected in premiums motorists are able to make wise choices in their vehicle selection.

The Board appreciates MPI's perspective, but will not ignore the effect on motorists driving smaller, less protected vehicles that have accident costs assigned to their vehicle classification that, but for the size of that other vehicle, would have been less.

Costs under the current system are distributed without regard to the risk posed by larger vehicles. By virtue of their size and weight, larger vehicles pose an "inherent risk" to the other smaller vehicles. It is that element of risk that is not factored into the current allocation approach, namely: the risk of damage inflicted on others.

The Board finds certain aspects of the current approach too difficult to accept. The Board accepts that accident benefits paid to or on behalf of an injured motorcyclist are allocated to the motorcycle class when the motorcyclist suffered the injuries in an accident caused by his/her driving error. What the Board finds unpalatable is the allocation of those benefits to the motorcycle class when a truck driver or passenger car has sideswiped the motorcyclist.

The same concern arises when an at-fault operator of a Ford F-150 rear ends a driver of a Firefly stopped at a red light. The costs incurred by the driver and owner of the Firefly are assessed against its private passenger rate group while the Ford F-150's light truck rate group escapes any cost attribution because neither the vehicle or the driver were damaged

The Board considers the Ontario loss transfer model to be flawed as, conceptually, it resembles a subsidy.

One problem with the Ontario model is that Loss Transfer is only applied one-way, with accident costs flowing from the motorcycle class when a motorcyclist is not at-fault but never to the motorcycle class when the motorcyclist is at-fault.

As well, the Board finds the \$2,000 threshold, at which point claims costs in excess of that level are transferred out of the class, to be subjective and arbitrary. As well, the Ontario approach applies only to accident benefit costs, ignoring other costs that can also be substantial; this particular deficiency may be difficult to address given CLEAR.

CMMG proposed that an amended Loss Transfer model be implemented, whereby accident costs would be transferred to and from the motorcycle class. While this change deals with one of the objections the Board has to the Ontario model, it does not meet with the Board's other concerns. The Board anticipates that the threshold level would be the subject of future debate.

The Board also rejects what it understands to be the Saskatchewan model, which essentially provides the Saskatchewan motorist with an option between no-fault first party coverage and tort. The Board heard evidence at this special hearing suggesting that in these early days of the new tort/no-fault choice system, Saskatchewan motorists, including motorcyclists, are still mostly opting for no-fault coverage. Those indications were very preliminary and no pricing information was available for the special hearing. In any case, under Manitoba law, a tort option is simply not available.

During the special hearing, CAC/MSOS initially suggested providing a subsidy to the motorcycle class and allocating the cost of the subsidy across all major vehicle classes. The Board agrees with MPI that premiums should arise out of the fair application of a rational system and that a subsidy does not meet that test because it is, by its very nature, arbitrary. The Board understands why CAC/MSOS withdrew its suggestion during its closing statement.

The Board acknowledges CBA/MBA's perspectives on the nature of no-fault, and particularly appreciates its citing of the "elegance" of an approach reported to be under consideration in Quebec. Quebec has a different plan than Manitoba's, but Quebec's plan was reported to have been the framework on which the Manitoba PIPP design was based.

It is interesting that twelve years after the introduction of PIPP, this Board's consideration has been affected by a further consideration of the Quebec design.

While the Board does not accept that a no-fault benefits plan requires a cost attribution system that ignores fault, it does appreciate CBA/MBA's consideration of legislative intent.

The Board would not have reached the conclusions indicated herein in the absence of MPI's Bonus/Malus program, and the contribution of that program to motivate good and improved driving behaviour through the linking of personal responsibility and insurance premium and license cost.

The Board, as set out in its opening remarks to the special hearing, has adopted the following criteria in its determinations:

- Will the selected claims cost attribution model result in a premium system which is actuarially sound and statistically based?
- Will the system be fair?
- Can the model provide for a lower number of accidents with a lower overall severity?
- Will the system be administratively feasible?
- Will the system be comparable to approaches in other jurisdictions?
- Will the model be acceptable to the majority of MPI's policyholders?

The current first-party claims attribution approach, which pre-dates PIPP, does meet many of the Board's criteria. It is actuarially sound and statistically driven, and administratively feasible. And, it has been in place for a lengthy period of time. The Board also accepts that the current approach is comparable to approaches in other jurisdictions, particularly with respect to no-fault benefits.

Leaving aside motorcyclists and motor vehicle dealers, it seems clear from the lack of declared dissent that the first-party system is acceptable to the majority of MPI's policyholders.

And, it is debatable whether any particular claims attribution approach will bring about material reductions in the severity and frequency of accidents.

The present allocation of claims costs on a first-party basis has a philosophical basis. MPI has argued for many years that motorcycles are “inherently risky”, in fact riskier than other vehicles. MPI refers to the obvious absence of a safety infrastructure with a motorcycle; motorcycles lack many of the protective features found in other motor vehicles, namely: a surrounding protective frame, air bags, seatbelts, roll bars, etc.

None of the parties appearing before the Board disagreed with the inherently vulnerable features of motorcycles, scooters and mopeds. The evidence clearly supports the contention that not only is the frequency of injury higher in the case of motorcyclists involved in accidents but that the risk of severe injury is also higher.

When a motorcycle is involved in a collision with another vehicle, the motorcyclist and any passenger are clearly at a higher risk of being injured than the driver and passengers of the other vehicle.

Different but similar conclusions can be reached when considering a collision between a small car and a large truck, and a SUV and a small car. Weight and speed deliver force, and force is a determinant of damage, including injury damage.

The same is true with respect to a single vehicle accident, whether involving a fixed object such as a tree, wall or road. In such cases, if one is on a motorcycle as opposed to any other two-track vehicle, car or truck, one’s chances of injury are higher.

Operators and passengers of motorcycles need to be particularly careful when “on the road”; their attention needs to be focused not only on their own driving behaviour but that of others, as well as potentially risky road conditions.

The consequences of inattention while driving can be particularly egregious to a motorcyclist. Death is final, injury can be a life-long tragedy; and in the case of a motorcyclist not much separates her or him from dire consequences.

The Board notes that it is not illegal to operate a motorcycle, scooter or moped. Properly licensed and insured individuals are entitled to operate them. Government does not attempt to

reduce bicycle riding by levying licensing fees that are so high as to discourage the use of bicycles. Given these facts and the effect of the current claims attribution system on motorcycle premiums, it may appear to a motorcyclist that the current claims attribution approach is designed to “drive them off the road.” MPI’s perceived inflexibility at considering the implementation of other more “motorcycle friendly” approaches favoured in other jurisdictions may also be particularly frustrating to the motorcyclists.

Tort jurisdictions (British Columbia, Alberta, the Maritimes and, to a limited degree, Ontario) utilize the concept of fault to determine allocation of accident costs.

In Saskatchewan, SGI gives registrants the choice to opt out of total no-fault. Ontario employs Loss Transfer in an approach, which “inherently” favours motorcycles. Loss costs are transferred out of the motorcycle class, but, as previously indicated, not into that class.

In Quebec, motorcycle rates are subsidized, and a new approach may have costs being shared amongst vehicle classes.

The striking feature to all of these various models is that they have considered the implications of their system on the motorcycle owners. With this realization, the Board considered the problem from different perspectives starting first with the factors involved in an accident. There is an implied absence of intent. Drivers do not, generally, set out to injure themselves or others.

Consider the definition of an accident. Webster’s New World dictionary describes an accident as “a happening that is not expected, foreseen or intended; and unfortunate occurrence or mishap; sudden fall, collision, etc., usually resulting in physical injury, as a traffic accident.”

The weight of the vehicles involved in a motor vehicle accident is another major factor; weight combined with speed results in force, and force is a large determinant of the frequency and severity of injury. Considering this physical reality, MPI’s contention that the safest vehicle is the largest one is not unreasonable.

However, the larger vehicles can be more expensive than smaller ones and thus less affordable to many. In addition, larger vehicles pose a greater risk to smaller vehicles, pedestrians, bicyclists,

road infrastructure, the environment and they are not representative of the average motoring fleet.

Another factor the Board considered is the condition of the vehicle. There exist laws and regulations to ensure that only safe vehicles are on the road. While a motorcycle and a truck may be significantly different in physical characteristics and perhaps dramatically different in injury probability, they can both be “safe” on the road in terms of their design and condition.

The next major factor is the condition of the road and the circumstances with respect to weather and visibility. Motorcycles are rarely seen when the “snow flies” or during driving rainstorms.

This makes sense from a safety perspective. MPI’s insurance plan does not prevent a motorcycle from being on the road during a snowstorm. Premiums are based on the five-month “summer” season but the insurance is valid for the full year. The common sense of motorcyclists should keep them off the road when conditions are unsafe.

As to uneven and other unsafe road conditions, motorcyclists have to take these into account more so than do drivers of other vehicles because they present a far greater hazard to the two-wheel vehicle. With the many attendant risks faced by the motorcyclist, proper training and education of the rider almost goes without saying.

Perhaps the largest factor in accidents and injuries is driver behaviour. There are good and bad drivers operating all sorts of motor vehicles: motorcycles, scooters, mopeds, cars, vans, SUVs, small trucks, large trucks, buses, taxis, etc. Evidence presented at this special hearing indicated that approximately two-thirds of motorcycle owners also own a passenger vehicle.

Good driver behaviour can be taught and enforced regardless of the vehicle the driver is to operate. All parties to the special hearing recognized the Bonus/Malus system as a means to encourage good and better driving behaviour, as are driver education and training.

There is a general acceptance that MPI can use the Bonus/Malus system to encourage good driving habits while also using it to discourage and penalize bad driving behaviour. The Board shares this view. It also understands the benefits of the CLEAR program in setting rates based on

vehicle characteristics (including accident experience) and the information it provides to the motorist for his or her eventual vehicle selection.

The Board has carefully considered and reflected on the evidence and concludes that:

- accidents involve two major factors – vehicles and drivers;
- an accident is just that, an accident;
- while road and weather conditions are important, they are factors to be addressed by drivers;
- as MPI has asserted, motorists choose the vehicles they purchase and drive, and those vehicles have characteristics that may or may not predispose occupants to being injured in an accident;
- motor vehicles have characteristics that predispose them to cause damage and injury (mass and speed equal force);
- MPI's Bonus/Malus system should address driver behaviour, while vehicle insurance premiums should primarily relate to the characteristics of the vehicle (yet, the Board acknowledges the current level of interplay between the Bonus/Malus system and vehicle premiums with respect to vehicle premium discounts); and
- vehicle characteristics and driver behaviour each contribute to accidents.

Accordingly, the Board will direct that MPI develop a claim cost attribution model for rate setting purposes commencing with the 2007/08 insurance year that is consistent with the following framework for the allocation of PIPP costs:

- (a) In any accident involving only MPI-insured vehicles (one or more) and no other injured party, total PIPP costs are to be allocated equally (per vehicle) across the rating categories to which those vehicles belong; and
- (b) In any accident involving one or more MPI-insured vehicles and (i) one or more unidentified hit-and-run offenders, or (ii) another injured party or parties (including cyclists, pedestrians, and occupant(s) of out-of-province vehicles), 50% of total PIPP costs are to be allocated equally (per MPI-insured vehicle) across the rating categories to which the MPI-insured vehicles belong, and the remaining 50% of total PIPP costs are to be effectively allocated across all vehicle rating categories.

This approach is separate from the Bonus/Malus system and is not so much related to determining fault for the accident as it is in determining the parties to the accident. As well, the

Board makes no comment on the fault-allocation determination approach now in force, it not having been a focus of the special hearing.

The Board is not confident as to the administrative feasibility of applying the new cost attribution approach to all accident costs (PIPP no-fault accident benefits, collision and comprehensive), and directs MPI to consider this approach and provide a report to the Board.

Accordingly, the Board will direct that MPI:

- a) prepare its 2007/08 insurance year GRA on the basis of the application of the above new cost attribution approach to PIPP benefits, only;
- b) develop a draft communications approach to inform motorists of the change in the attribution of costs arising out of accidents, and review the draft with the Board;
- c) consider the feasibility of applying the new allocation approach to all accident costs, i.e. collision and comprehensive as well as PIPP benefits and consider the possible effect of a universal application of the new approach on CLEAR; and
- d) provide a report on each of the above directives, including information on expected rate impacts.

As to testing the new model against the Board's established criteria, the Board notes:

Criterion 1:

Will a premium system based on this claims cost approach be actuarially sound and statistically based?

The Board believes it will be. Assigning costs on the basis set out above will result in rates that are actuarially sound and statistically based.

Criterion 2:

Is this model fair?

The Board considers its approach to be fair because it recognizes that in a multi-vehicle accident, vehicles, their drivers and passengers will either incur damage or inflict damage to a greater or lesser degree.

By sharing the costs of the accident in the manner outlined above, it recognizes the inherent risk of driving vehicles, both in terms of damage suffered by and damage inflicted on others.

Size of the vehicle will no longer be the determining factor in allocating costs. The owners and operators of all vehicle types will be treated the same in a multi-vehicle accident, no matter what types of vehicles are involved.

Criterion 3:

Can this approach provide for fewer and less severe accidents?

The Bonus/Malus system will continue to operate as the main mechanism by which to affect driver behaviour.

Criterion 4:

Is the system administratively feasible?

The Board believes its approach, limited at least initially to PIPP benefits, will be as administratively feasible as a full loss transfer scheme would have been (MPI testified to this effect at the special hearing).

Criterion 5:

Will the system be comparable to approaches in other jurisdictions?

The Board believes its approach is not directly comparable to any other model in place in any other Canadian jurisdiction. It may be a unique made-in-Manitoba approach but one which will

hopefully address the inadequacies of not only MPI's current approach but the weaknesses in the models from other jurisdictions.

Criterion 6:

Will the approach be acceptable to the majority of MPI's policyholders?

The Board believes its approach will be acceptable to a majority of MPI's policyholders and the public. The current system has been under attack every year since the advent of PIPP. Even CAC/MSOS, while not advocating changes to the current system, could not deny that first-party cost allocation was particularly harsh on the motorcycle class.

The Board's approach not only addresses the concerns of motorcyclists but deals with the concerns of motor vehicle dealers. Dealers are not in a position to control the driving behaviour of prospective customers, and those customers only share in the responsibility for accidents that occur when they are test-driving vehicles.

The Board anticipates that this new approach will reduce rate pressure on the motorcycle class and on motor vehicle dealers, while increasing rate pressure on the commercial and public classes of vehicles. Commercial and public use vehicles would logically be expected to inflict more damage than they incur to their own vehicles (and occupants), so the new approach may tend to increase PIPP loss costs for these vehicles relative to the status quo.

Since by far the majority of accidents occur between vehicles in the Private Passenger category, with many of these vehicles being broadly similar in terms of protection and damage-infliction potential, the Board does not anticipate a material change in the required actuarial rate for cars.

That being said, there may be dislocation due to the change in cost attribution approach for Insurance Use and Territory categories within this Major Use if the distribution of the vehicle fleet varies significantly (e.g. with a skew towards light trucks).

The Board expects that the adoption of this approach will have the added benefit of allowing the continued use of CLEAR in MPI's rating approach.

With respect to the upcoming MPI GRA hearing, MPI should, in particular, consider the impact these changes will have on the future rate requirement for motorcycles, commercial and public use vehicles and motor vehicle dealers. And, the Board expects MPI to continue to consider rate volatility and rate shock in its implementation of this approach; this to ensure an orderly transition.

The Board will direct MPI to model the new approach, limited to PIPP benefits and to the extent possible, on a retrospective basis going back to the inception of PIPP. It should report its findings to the Board prior to the GRA for the insurance year 2007/08. The Board will then be in a better position to provide direction for the 2007/08 insurance year.

The new approach will spread MPI's revenue requirement across the various major vehicle classes, and vehicle owners and drivers will have an equal interest in avoiding collisions.

The Board appreciates the helpful contributions from all parties to the special hearing. Views, often strongly held, were articulated with civility and thoughtfulness and with the common purpose of achieving a better-designed and better-managed vehicle insurance system.

7.0 It Is Therefore Ordered That:

1. MPI develop a claim cost attribution model for rate setting purposes commencing with the 2007/08 insurance year that is consistent with the following framework for the allocation of PIPP costs:
 - (a) In any accident involving only MPI-insured vehicles (one or more) and no other injured party, total PIPP costs are to be allocated equally (per vehicle) across the rating categories to which those vehicles belong; and
 - (b) In any accident involving one or more MPI-insured vehicles and (i) one or more unidentified hit-and-run offenders, or (ii) another injured party or parties (including cyclists, pedestrians, and occupant(s) of out-of-province vehicles), 50% of total PIPP costs are to be allocated equally (per MPI-insured vehicle) across the rating categories to which the MPI-insured vehicles belong, and the remaining 50% of total PIPP costs are to be effectively allocated across all vehicle rating categories.

The Board recognizes that the new claims cost attribution model is a major change, and appreciates that MPI may experience some difficulty in interpreting the direction at a technical level during implementation and modeling. MPI is invited to dialogue with the Board during its modeling to best ensure the interpretation represented in the implemented system abides by the framework concepts endorsed and directed by the Board.

2. MPI develop a draft communications approach to inform motorists of the change in the method of claims cost attribution to be adopted as a result of this Order, and review the draft with the Board.
3. MPI consider the feasibility of extending the new allocation methodology to all accident costs, i.e. collision and comprehensive as well as PIPP benefits. In

undertaking this, MPI should consider the potential impact on its ability to utilize the Canadian Loss Experience Automobile Rating system (“CLEAR”), and provide a report to the Board on expected rate impacts of all these directives at least sixty (60) days in advance of the GRA filing for the 2007/08 insurance year.

The Public Utilities Board

“GRAHAM F. J. LANE, C.A.”

Chairman

“G. O. BARRON”

Secretary

Certified a true copy of
Order 97/05 issued by
The Public Utilities Board

Secretary

Appendix A

Appearances

W. S. Saranchuk, Q.C. C. Everard	Counsel for The Manitoba Public Utilities Board
K. McCulloch	Counsel for Manitoba Public Insurance Corporation
P. Shaw	Representing the Canadian Automobile Association (Manitoba Division)
R. P. Oakes	Counsel for the Coalition of Manitoba Motorcycle Groups
B. Williams	Counsel for the Consumers' Association of Canada (Manitoba Inc./Manitoba Society of Seniors
R. Ramsay	Representing the Motorcycle and Moped Industry Council
D. Hall	Representing the Financial Services Commission of Ontario
R. Dawson	Counsel for the Canadian Bar Association/ Manitoba Bar Association
N. Roberts	Representing Manitoba Used Car Dealers Association

Appendix B

Witnesses for MPI

M. J. McLaren President and Chief Executive Officer

D. Palmer Director of Actuarial Services

Witness for IBC

A. Tabachneck Manager of Statistical Research and Development

Witness for FSCO

D. Hall Director Automobile Insurance Services

Independent Witness

B. Pelly Board Actuary

Witnesses for MMIC

R. Ramsay President, MMIC

L. McFarlane Actuary