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ISSUED: November 16, 2007

**TO: ALL INSURERS, INCLUDING FACILITY ASSOCIATION,
TRANSACTIONING THE BUSINESS OF AUTOMOBILE INSURANCE
IN THE PROVINCE OF NEWFOUNDLAND AND LABRADOR.**

SUBJECT: DEFINITION – AT FAULT ACCIDENT/CHARGEABLE ACCIDENT.

As a result of a recent filing of underwriting rules by an insurer in this province and a review of the of a number of the underwriting manuals filed with the Board it has been identified that insurers may be unintentionally using a non-compliant definition in determining **At Fault Accidents** or **Chargeable Accidents** for underwriting and rating purposes.

Under the *Automobile Insurance Prohibited Underwriting Regulations* made under the *Insurance Companies Act*, in this province in respect of a policy of automobile insurance, an insurer is prohibited from using for purposes of:

1. rating, or as an element of its Risk Classification System, or,
2. declining to issue, terminating or refusing to renew a contract of automobile insurance or refusing to continue a coverage or endorsement,

any accident or notification of an accident for which a payment of indemnity under the policy has not been made. The applicable legislative provisions are found at S. 3 (1) (a) (ii) and S. 4 (1) (b) of Newfoundland and Labrador Regulation 80/04 located at the following web link:

<http://www.assembly.nl.ca/Legislation/sr/Regulations/rc040080.htm>

In accordance with the provisions of the Regulation the following cannot be included as part of any At Fault Accident or Chargeable Accident or similar definition and cannot be

considered in respect of the rating of an insured or in the determination by an insurer whether or not to issue, renew or terminate a policy of automobile insurance, or, to continue a coverage or endorsement:

Any situation where indemnity may be due and payable under a policy of automobile insurance but such payment has not actually been made, or, any situation where it has not been determined whether or not indemnity may have to be paid under a policy of automobile insurance. Without limiting the generality of the foregoing, this includes but is not limited to the following specific situations:

- 1. A reserve has been established in respect of a claim.**
- 2. An amount would have been paid except for the existence of direct compensation laws or agreements.**
- 3. There exists an unsettled or unpaid loss.**
- 4. A civil suit has been commenced or is pending.**
- 5. A claim has been denied due to a policy condition violation.**
- 6. An insurer has indicated in a prior experience report at fault losses unless it is also indicated that indemnity has been made under the prior insurance policy.**

Accordingly, insurers are advised to revise and submit to the Board their At Fault Accident/Chargeable Accident definitions in all sections of their rate manuals where such a definition appears so as to exclude from consideration any situation where indemnity has not been paid under a policy of automobile insurance. The Board requires revised definitions be filed within 30 days of the date of this directive.

Questions regarding the foregoing may be directed to the Undersigned.



Robert S. Byrne, B.Comm. A.I.I.C., CD.
Director Regulatory and Advisory Services