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Volume 4
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STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATIONS

No. C-2011000036

In the Matter of:
Local Government Center, Inc., et al.

BEFORE DONALD E. MITCHELL, ESQUIRE
PRESIDING OFFICER

* * * * *

REPORT OF PROCEEDINGS

May 3, 2012

9:05 a.m.

* * * * *

New Hampshire State Archives and Genealogical
Public Research Room
71 South Fruit Street
Concord, New Hampshire 03301

Court Reporter: Kimberly A. Smith, CSR, CRR, RDR

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I N D E X

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1 (Whereupon the following
2 proceedings were held in the
3 presence of the Presiding
4 Officer, counsel, the parties,
09:05:46 5 and the public:)

09:05:46 6 THE PRESIDING OFFICER: Good morning,
09:05:48 7 ladies and gentlemen. This begins Day 4 of these
09:05:54 8 proceedings in the matter of Local Government Center,
09:05:57 9 et al. We are on the direct case of the BSR.

09:06:03 10 Mr. Volinsky, do you have your first
09:06:08 11 witness prepared?

09:06:11 12 MR. VOLINSKY: I do.

09:06:12 13 THE PRESIDING OFFICER: All right. Please
09:06:13 14 call him forward.

09:06:23 15 Good morning, sir. I'm going to ask
09:06:25 16 you to remain standing, please, and raise your right
09:06:28 17 hand.

09:06:29 18 (The witness was duly sworn by
09:06:31 19 the Presiding Officer.)

09:06:46 20 THE PRESIDING OFFICER: Please be seated.

09:06:47 21 Would you state your name clearly for
09:06:49 22 the record, as a stenographic record is being taken,
09:06:52 23 and just identify, if you will, your business address

09:06:55 1 for us.

09:06:58 2 THE WITNESS: My name is Howard Atkinson,
09:07:00 3 I'm a consulting actuary at the Segal Company. And
09:07:04 4 our Washington, D.C. office is located on 1920 N
09:07:08 5 Street in northwest Washington, D.C.

09:07:11 6 THE PRESIDING OFFICER: Thank you. And
09:07:13 7 Mr. Atkinson, I would just draw your attention to the
09:07:16 8 fact that the microphone in front of you is not an
09:07:18 9 amplifier. So if you could focus on, for instance,
09:07:21 10 the rear tables in your responses --

09:07:24 11 THE WITNESS: Okay.

09:07:24 12 THE PRESIDING OFFICER: -- we've learned
09:07:25 13 through experience --

09:07:26 14 THE WITNESS: All right.

09:07:27 15 THE PRESIDING OFFICER: -- that that would
09:07:28 16 be the best projection.

09:07:30 17 THE WITNESS: Will do.

09:07:31 18 THE PRESIDING OFFICER: Thank you.

09:07:32 19 Mr. Volinsky, your witness.

09:07:34 20 MR. VOLINSKY: Thank you.

09:07:34 21 HOWARD ATKINSON,
09:07:34 22 having been first duly sworn, was examined
09:07:35 23 and testified as follows:

DIRECT EXAMINATION

BY MR. VOLINSKY:

Q. Mr. Atkinson, would you tell us your educational background, please.

A. Yes. I have a B.A. degree from Lincoln University in Pennsylvania in mathematics.

Q. If you keep your voice up, I'll try and move away from you so that we don't have a close dialogue.

A. Okay.

Q. Do you have any professional designations?

A. I do.

Q. What are they?

A. I'm an associate of the Society of Actuaries and a fellow of the Conference of Consulting Actuaries and a member of the American Academy of Actuaries.

Q. Does all of that qualify you to act in a professional capacity as an actuary?

A. They do. Yes, they do.

Q. Would you recount for us your employment experience as an actuary.

A. Yes. My almost entire career has been in the healthcare actuarial field, starting in 1973 as a

09:08:37 1 junior actuary at Blue Cross of Western Pennsylvania,
09:08:41 2 which is now Highmark, stayed there for about 12 years
09:08:46 3 or so, and then was promoted externally within the
09:08:51 4 Blue Cross Blue Shield system and became a manager of
09:08:57 5 underwriting reserving at the Blue Cross Blue Shield
09:09:00 6 of Michigan plan, where subsequently I was promoted
09:09:06 7 to director of the department -- of the actuarial
09:09:08 8 department.

09:09:12 9 And so that takes me from 1973 to
09:09:15 10 1984, where I decided to change career direction and
09:09:21 11 went into consulting work. At that time I was hired
09:09:26 12 by the Wyatt Company, and I worked there for five
09:09:30 13 years, and then decided that I had garnered enough
09:09:36 14 experience that I wanted to go out on my own.

09:09:38 15 And so from 1992 to 2005, I had an
09:09:44 16 actuarial practice, Atkinson & Company, where I was
09:09:49 17 an independent actuary. In 2005 I decided to seek
09:09:56 18 employment with the Segal Company, and I've been
09:09:59 19 employed at the Segal Company for seven years since
09:10:02 20 then.

09:10:03 21 Q. Are you an officer at Segal?

09:10:05 22 A. I am. I'm a vice president.

09:10:07 23 Q. What's your exact title at Segal?

09:10:10 1 A. Vice president, health actuary, and
09:10:13 2 consultant.

09:10:18 3 Q. We've talked about your being an actuary.
09:10:20 4 Can you give us a working understanding of what an
09:10:25 5 actuary, particularly in the health field, does.

09:10:28 6 A. Yes, I can. For a health actuary, the
09:10:33 7 topics and subject matter that we deal with is pretty
09:10:38 8 much in the underwriting area. That is, rate setting
09:10:43 9 and doing financial analysis, claim projections,
09:10:48 10 trending analysis and the like. That's one facet.

09:10:54 11 I'm not sure if I mentioned reserving
09:10:57 12 or not, but certainly --

09:10:58 13 Q. Go ahead.

09:10:58 14 A. Reserving is another big component of what
09:11:02 15 a health actuary does. And then there's other facets
09:11:09 16 of actuarial work for healthcare such as doing long-
09:11:13 17 term valuations such as retiree health evaluations
09:11:17 18 analogous to pension valuations to make sure that
09:11:22 19 there's sufficient funds available so that when
09:11:24 20 people retire, in the case of healthcare, that
09:11:30 21 medical -- medical care will be provided to them.

09:11:35 22 Q. We have heard the term "reserving" in a
09:11:37 23 couple of contexts in this case. So let me ask you

09:11:40 1 to let us understand how you use that term so we'll --

09:11:44 2 A. Um-hum.

09:11:44 3 Q. -- follow your testimony better.

09:11:48 4 A. Okay. Well, there are two major types of
09:11:51 5 reserves that are being discussed here. And I might
09:11:56 6 say that the word "reserving" has many definitions
09:12:02 7 within the health insurance vernacular. So it can be
09:12:08 8 confusing at times. But as it relates to claim
09:12:12 9 reserving for incurred, but not reported claims --
09:12:17 10 the so-called IBNR --

09:12:21 11 Q. "IBNR" means "incurred but not reported"?

09:12:24 12 A. "Incurred but not reported." And for an
09:12:28 13 insurance company or a fund or a plan, it's necessary
09:12:34 14 for -- when preparing a financial statement, that the
09:12:40 15 IBNR is estimated because it takes a while for claims
09:12:45 16 to be paid that were incurred.

09:12:48 17 So for example, if you're doing a
09:12:51 18 financial statement as of December 31, 2011, there
09:12:58 19 may be -- there will be claims that will be paid in
09:13:05 20 2012 for services that were incurred in 2011, so you
09:13:08 21 must have sufficient funds reserved in your financial
09:13:11 22 statement as of 12/31/2011 to account for those claims.

09:13:17 23 It's an estimate, but there are

09:13:20 1 techniques available that an actuary would use to
09:13:23 2 estimate that liability. So in that sense, a reserve
09:13:27 3 is a liability.

09:13:29 4 Q. And the second kind of reserving?

09:13:32 5 A. The second kind of reserving is just in
09:13:35 6 general for what I'll call un- -- or in- --
09:13:41 7 unanticipated events. So it's more or less --
09:13:44 8 sometimes you hear the word "surplus" or "claims
09:13:48 9 fluctuation reserve," "premium stabilization
09:13:54 10 reserves." There are a lot of names that are
09:13:56 11 associated with that. But it would be a pool of
09:13:58 12 money that would be available in the event that the
09:14:04 13 premiums that were projected were not sufficient to
09:14:07 14 cover the claims expense.

09:14:11 15 Q. If I use the term "net assets," does that
09:14:14 16 equate to one of those two kinds of reserving?

09:14:16 17 A. Yes. More so the latter.

09:14:19 18 Q. A couple of questions about Segal. Give us
09:14:27 19 an understanding of how large a firm it is and
09:14:30 20 geographically its footprint.

09:14:33 21 A. Um-hum. We have about 1,000 employees.
09:14:36 22 I don't recall how many -- maybe about 40 percent of
09:14:38 23 those are actuaries. Don't hold me to that number

09:14:41 1 exactly. But we have offices throughout the country.
09:14:45 2 We're headquartered in New York City; Washington,
09:14:52 3 D.C. and Chicago, with offices in the Southeast, West
09:14:55 4 Coast. So we're a national consulting company.

09:14:58 5 And we do not only healthcare
09:15:00 6 consulting; we're an employee benefits consulting
09:15:04 7 company. So we give consulting advice to our clients.
09:15:07 8 And our clients -- we serve in three markets for the
09:15:10 9 most part: our corporate market, our public sector
09:15:15 10 market, and our health and welfare trust-related
09:15:21 11 market.

09:15:21 12 Q. Do you have a Boston office?

09:15:23 13 A. We do. We do. We also have an office
09:15:27 14 pretty close to here, who I work with on a regular
09:15:32 15 basis as well some of the actuarial folks there.

09:15:37 16 I actually, as a senior actuary,
09:15:41 17 review a lot of the work that goes out. We have a
09:15:43 18 very rigorous process within Segal of having
09:15:48 19 materials reviewed once or twice at the least before
09:15:53 20 they go out to a client.

09:15:56 21 So I get involved in reviewing a lot
09:15:58 22 of the work that some of the actuaries in the Boston
09:16:00 23 office do --

09:16:02 1 Q. Okay.

09:16:02 2 A. -- to sign off on.

09:16:04 3 Q. In addition to being retained to write
09:16:08 4 expert reports about the Local Government Center,
09:16:12 5 does Segal have other work that it does with respect
09:16:16 6 to the State of New Hampshire?

09:16:18 7 A. Yes.

09:16:19 8 Q. What is that?

09:16:20 9 A. Yes. Our Boston office is the main
09:16:23 10 consultant to the State of New Hampshire, their
09:16:29 11 employee retiree -- employee health benefits plan.
09:16:33 12 I'm not sure exactly how long, but I know they've
09:16:36 13 been a client of ours since I've been at Segal, which
09:16:39 14 is 2005.

09:16:41 15 And so we get involved and I review
09:16:44 16 the work of the premiums that we set for the State of
09:16:53 17 New Hampshire Employee Benefits Program; the IBNR I
09:16:56 18 certify. It's done on a sound and actuarial basis.
09:17:02 19 Those are the main components. And there are a lot
09:17:05 20 of other consulting that we do for them -- that our
09:17:09 21 consultants and actuaries do from our Boston office.

09:17:11 22 Q. And is it the work that was ongoing in the
09:17:17 23 State system that led to your firm being asked to

09:17:19 1 write relevant reports concerning the Local
09:17:22 2 Government Center?

09:17:22 3 A. That is correct. As a result of our work
09:17:28 4 with the State plan, our name was passed over to the
09:17:31 5 Secretary of State when this opportunity came up back
09:17:35 6 in 2010, and we responded accordingly.

09:17:40 7 Q. I understand there is an actuary junior to
09:17:44 8 you that also worked on your report.

09:17:46 9 Is that right?

09:17:47 10 A. That is correct.

09:17:48 11 Q. What is his name?

09:17:49 12 A. His name is Danny Rhodes. And he's an
09:17:53 13 actuary out of our Boston office.

09:17:55 14 Q. Have you been asked, with respect to the
09:17:57 15 Local Government Center, to determine an actuarially
09:18:02 16 appropriate level of capital or net assets for the
09:18:05 17 Local Government Center?

09:18:05 18 A. Yes. That was our -- our primary
09:18:09 19 assignment back in 2010.

09:18:11 20 Q. And have I asked you to update the work
09:18:14 21 that you did in '10 for the purposes of a report for
09:18:18 22 this particular proceeding?

09:18:21 23 A. Yes, you did.

09:18:22 1 Q. Did you reach an expert opinion as to how
09:18:27 2 much in net assets Local Government Center should
09:18:31 3 hold with respect to the 2010 financial year?

09:18:38 4 A. We did.

09:18:39 5 Q. And other years?

09:18:40 6 A. And other years.

09:18:41 7 Q. But I want to ask you about 2010.

09:18:44 8 A. Yes.

09:18:44 9 Q. And can you tell me approximately how much
09:18:47 10 was held in net assets by the Local Government Center
09:18:52 11 in 2010 and how much, in your expert opinion, you
09:18:56 12 conclude they should have held.

09:19:00 13 A. Yes. As of 12/31/2010, according to their
09:19:04 14 audited financial statements, they were holding net
09:19:07 15 assets of about \$86.8 million. And our analysis
09:19:11 16 demonstrated that 41.4 would be sufficient, based
09:19:20 17 upon our analysis.

09:19:21 18 Q. And by "sufficient," is that the same as
09:19:23 19 appropriate?

09:19:24 20 A. Yes, um-hum.

09:19:26 21 Q. Now, let's go through the process that you
09:19:31 22 used to reach that conclusion. So first, describe
09:19:37 23 for us what kinds of information you reviewed and

09:19:41 1 relied upon to come to the conclusion that they have
09:19:48 2 86 million and they should have \$41-odd million.

09:19:52 3 A. Well, we rely primarily on the audited
09:19:55 4 financial statements going back from 2002 all the way
09:19:58 5 to 2010 as our primary source. But we also received
09:20:06 6 information from the State about information that was
09:20:11 7 pertinent how the -- how the Local Government Center
09:20:17 8 HealthTrust put together their information and how
09:20:20 9 they analyzed the reserve level.

09:20:25 10 So we reviewed that information in
09:20:27 11 addition to coming up with our own assessment,
09:20:30 12 independent assessment.

09:20:31 13 Q. Taking the information that was collected
09:20:34 14 or provided to you, describe the process you went
09:20:38 15 through to come to your expert opinion that
09:20:44 16 \$41.4 million was an appropriate amount of net assets.

09:20:48 17 A. Okay. We -- For the purpose of developing
09:20:55 18 our net asset estimate or claim fluctuation analysis,
09:21:03 19 we independently looked at a model that we use
09:21:09 20 routinely in our consulting environment for that very
09:21:13 21 purpose. And that model has its basis in what's
09:21:18 22 known as stochastic modeling.

09:21:23 23 And so our approach to looking at the

09:21:24 1 adequacy of the needed net assets for the LGC
09:21:30 2 HealthTrust was based upon using that model, which is
09:21:35 3 a proprietary model within the Segal Company. And it
09:21:39 4 has, you know, a lot of input items that we put in
09:21:42 5 there specific to LGC HealthTrust.

09:21:47 6 Q. Can you describe for us in a little more
09:21:49 7 detail what "stochastic modeling" means.

09:21:54 8 A. Sure. Well, to, sort of, give you -- it's
09:21:59 9 more called -- it's contrasted with deterministic
09:22:05 10 approach where a deterministic approach is more or
09:22:09 11 less a point value where you're doing projections and
09:22:12 12 you come up with a point. And that's your best
09:22:16 13 estimate of a projection.

09:22:19 14 So anytime you're involved in doing
09:22:21 15 projections where there is estimation involved, there
09:22:24 16 are -- there is not just one point. There are a
09:22:29 17 range of values that are likely to occur, some with
09:22:37 18 higher probability than others. So stochastic
09:22:41 19 modeling is approached -- takes a look at the point
09:22:45 20 which is a statistical term of the mean value of your
09:22:48 21 projection. And within the range of values, you
09:22:56 22 develop a distribution about that mean.

09:22:57 23 Q. Yes.

09:22:58 1 A. And so these values are as likely to occur
09:23:01 2 if not more so than the mean value. So stochastic
09:23:06 3 modeling is a methodology that is used to look at the
09:23:10 4 distribution of likely events about the mean and
09:23:15 5 develop a range of estimates based upon that
09:23:21 6 distribution.

09:23:22 7 And so one can then look at the
09:23:24 8 distribution and say, for example, if I take a
09:23:33 9 value that is -- or if I want an outcome that has a
09:23:35 10 confidence level of, let's say, 95 percent, then that
09:23:40 11 will generate a value. Or you could take a confidence
09:23:50 12 level of 60 percent or 99 percent.

09:23:53 13 It is common in healthcare actuarial
09:23:58 14 analyses such as this to use somewhere between 90 and
09:24:01 15 95 percent.

09:24:03 16 Q. Somewhere between 90 and 95 percent
09:24:06 17 confidence level. And tell us what a "confidence
09:24:10 18 level" means.

09:24:11 19 A. Um-hum. Well, a confidence level means that
09:24:20 20 over a long period of time, because the stochastic
09:24:23 21 modeling is done with many iterations, and so it
09:24:26 22 plots points, and so it says that in 95 percent --
09:24:32 23 95 percent confidence interval would say that if

09:24:36 1 you're measuring the adequacy of surplus, for example,
09:24:41 2 of net assets, that if you do the projection based
09:24:44 3 upon the distribution that you used, that your points
09:24:47 4 would satisfy that distribution 95 percent of the
09:24:50 5 time out of 100.

09:24:51 6 Q. 95 out of 100?

09:24:53 7 A. Right.

09:24:53 8 Q. And the times where it doesn't satisfy the
09:24:57 9 remaining 5 percent, does the stochastic model say
09:25:03 10 it's a complete failure; it's a little bit low; it's
09:25:06 11 a little bit high? How does that work?

09:25:08 12 A. Right. The 95 percent says that there's a
09:25:12 13 5 percent chance that the value could be, you know, a
09:25:16 14 penny, but on the other side of reserve adequacy, or
09:25:21 15 more. So it could be anywhere. And there's a
09:25:23 16 probability associated with that, obviously the
09:25:27 17 closer it is to the penny than it is to some larger
09:25:30 18 value is higher.

09:25:35 19 Q. So just to make sure I follow what you just
09:25:38 20 said, 5 percent of the time you won't get the exact
09:25:41 21 right number; is that what you're saying?

09:25:42 22 A. That's correct.

09:25:43 23 Q. And it's more likely that you're off by a

09:25:45 1 little than a lot?

09:25:46 2 A. That's correct.

09:25:46 3 Q. And is there any distinction in the
09:25:49 4 stochastic 95 percent confidence level between being
09:25:53 5 off by a little high versus being off by a little low?

09:25:58 6 A. No. The 95 percent basically says, as I
09:26:00 7 said before, that if you look at all the data points
09:26:03 8 when you're doing your modeling and if one falls
09:26:06 9 outside of the 95 percent, whether it's a penny or
09:26:10 10 not, it counts towards the 5 percent, if you will.

09:26:16 11 Q. You may have said this, and I just want to
09:26:19 12 make sure that I have it. The normal confidence
09:26:23 13 level that you at Segal would use for this stochastic
09:26:33 14 modeling with health insurers' prediction of net
09:26:34 15 assets is in what range?

09:26:35 16 A. I would say we traditionally would use
09:26:38 17 95 percent. But you know, I would say in the industry,
09:26:43 18 90-95 percent is probably utilized.

09:26:46 19 Q. Are you familiar with a different method
09:26:50 20 related to net assets called risk-based capital, or
09:26:59 21 RBC?

09:27:00 22 A. Yes, I am.

09:27:00 23 Q. Give us a quick understanding of what "RBC"

09:27:03 1 means .

09:27:04 2 A. Risk-based capital, it's a methodology that
09:27:09 3 was promulgated by the National Association -- or --
09:27:12 4 yes -- the National Association of Insurance
09:27:14 5 Commissioners. It's been in use for -- don't quote
09:27:18 6 me on this exactly -- but, you know, 10 years or more
09:27:21 7 in the healthcare --

09:27:24 8 For insurance companies, they're
09:27:26 9 required to calculate their risk-based capital,
09:27:30 10 analyze their reserve level, using a risk-based
09:27:39 11 capital formula. And it's used for insurance
09:27:42 12 companies as a mechanism for measuring whether or not
09:27:47 13 the carrier, the insurance carrier, is in jeopardy.

09:27:54 14 So it's a minimum calculation that
09:27:58 15 they're concerned with. And so they have a scale
09:28:02 16 that they look at. And you go through the
09:28:06 17 calculation -- again, this is for insurance
09:28:09 18 companies. You go through the calculation. And if
09:28:12 19 you fall with an RBC level of below 2.0 -- 2.0 being
09:28:21 20 the determinant value in the regulations that the
09:28:24 21 NAIC has promulgated that most states use in their
09:28:28 22 State Insurance Department -- then you're deemed at
09:28:32 23 that point, if it falls below 2.0, that they want

09:28:36 1 to -- you know, they want to watch you a little bit
09:28:39 2 closer.

09:28:40 3 And so at that point you may be
09:28:42 4 required to file an action plan so that you can
09:28:45 5 correct that provision.

09:28:51 6 Q. Are you aware of the components of the RBC
09:28:56 7 formula for healthcare?

09:28:56 8 A. Yes.

09:28:57 9 Q. Do any of the components relate to stochastic
09:28:59 10 modeling?

09:29:00 11 A. Yes. Actually, the risk-based capital
09:29:04 12 approach is a form. It has its genesis in stochastic
09:29:11 13 modeling. So the actuaries that develop that -- so
09:29:19 14 it was the NAIC, the National Association of
09:29:24 15 Insurance Commissioners, along with the American
09:29:26 16 Academy of Actuaries, that developed the risk-based
09:29:30 17 capital formula.

09:29:30 18 And since it's used to regulate
09:29:33 19 insurers, they have built in -- they have factors
09:29:39 20 that are associated with categories of risk from
09:29:42 21 asset risk to underwriting risk to credit risk to
09:29:47 22 general business risk. There are certain categories
09:29:50 23 that are -- that the model -- you know, that plug in

09:29:54 1 and come up -- come up with their final value.

09:29:58 2 Q. As a professional actuary working with
09:30:01 3 health concerns, do you have a preference for the
09:30:04 4 stochastic modeling approach versus RBC?

09:30:11 5 A. Yes. I think RBC, by definition, is a more
09:30:14 6 conservative approach because it's being used to
09:30:17 7 measure adequacy for insurance carriers. So they
09:30:22 8 want to make sure that the carriers are at a certain
09:30:26 9 level. The formula doesn't vary from state to state,
09:30:35 10 so there's no specificity in the sense that, you
09:30:38 11 know, we're looking at a particular plan. It's, you
09:30:43 12 know, all plans in general.

09:30:44 13 So the -- there's not a whole lot
09:30:49 14 of -- the factors that are developed that are used
09:30:51 15 within the RBC formula are more general in nature.
09:30:56 16 And so, you know, the approach is more -- is more
09:31:02 17 conservative.

09:31:03 18 Q. Are you familiar with the term "insurance
09:31:07 19 blank"?

09:31:07 20 A. Yes, I am.

09:31:09 21 Q. What's an insurance blank?

09:31:11 22 A. Well, that's the annual insurance statement
09:31:15 23 that insurance carriers fill in and file with the

09:31:17 1 State Insurance Department each year. And the --
09:31:22 2 also included within that is the resource base or the
09:31:29 3 RBC calculation exhibits. And so there are numbers
09:31:31 4 that are pulled directly from the insurance blank
09:31:36 5 that go --

09:31:39 6 MR. QUIRK: Mr. Mitchell, sorry to interrupt.

09:31:42 7 THE PRESIDING OFFICER: Mr. Quirk, please.

09:31:46 8 MR. QUIRK: I would object to this line of
09:31:48 9 questioning, ask to have the answer stricken. This
09:31:50 10 is not part of his report. These details were not
09:31:53 11 discussed during deposition. And as a result, it is
09:31:55 12 an undisclosed expert opinion.

09:32:00 13 THE PRESIDING OFFICER: Mr. Volinsky, please.

09:32:02 14 MR. VOLINSKY: Respectfully, I don't think
09:32:03 15 this is an expert opinion. It's a factual statement.
09:32:06 16 Insurance blanks exist and information is provided on
09:32:09 17 them to Insurance Commissioners. And RBCs are
09:32:14 18 calculated off of that. It's a factual statement.
09:32:16 19 And that, quite frankly, is as far as I want to go
09:32:19 20 with it.

09:32:21 21 THE PRESIDING OFFICER: I understand.

09:32:21 22 Rebuttal then?

09:32:22 23 MR. QUIRK: The only rebuttal is, it's

09:32:24 1 nowhere within his report. It wasn't discussed in
09:32:26 2 any detail during his deposition. No information was
09:32:28 3 provided about this. And thus, we object and ask to
09:32:32 4 have the answer stricken.

09:32:34 5 THE PRESIDING OFFICER: Your objection is
09:32:35 6 denied.

09:32:36 7 Please proceed, Mr. Volinsky.

09:32:38 8 MR. VOLINSKY: Thank you.

09:32:41 9 Q. BY MR. VOLINSKY: We've talked about
09:32:44 10 stochastic modeling, RBC. Are there also some
09:32:49 11 carriers that express their net assets as a
09:32:54 12 percentage of claims expenses?

09:32:55 13 A. Yes.

09:32:55 14 Q. And what does that mean when it's expressed
09:32:59 15 that way?

09:32:59 16 A. Well, because the calculation can be -- if
09:33:04 17 you were to approach it as I did -- somewhat difficult.
09:33:09 18 Typically what is done is somebody may do an analysis
09:33:13 19 at some point and then translate that reserve amount
09:33:17 20 or net asset amount into a percentage of claims or
09:33:22 21 percentage of expenses, claims plus administrative
09:33:27 22 expenses, and then use that percentage.

09:33:30 23 So for example, if it turns out that

09:33:32 1 the net assets is 20 percent of claims or 20 percent
09:33:38 2 of expenses -- either one; it could be expressed
09:33:41 3 either way -- then rather than go through the
09:33:43 4 calculation year after year, they would just use that
09:33:46 5 20 percent. And so that's common.

09:33:51 6 Over the course of number of years,
09:33:55 7 you know, consultants will recommend certain
09:34:00 8 percentages to clients. You should hold 10 percent.
09:34:06 9 You should hold 20 percent of expected claims.
09:34:09 10 But it should have its genesis based upon some
09:34:11 11 calculation that was done at some point in time.

09:34:14 12 Q. Have you compiled a chart as part of your
09:34:19 13 report in this case that compares the RBC, the actual
09:34:27 14 net value, net asset value, and what stochastic
09:34:33 15 modeling would require?

09:34:35 16 A. Yes, I did.

09:34:35 17 THE PRESIDING OFFICER: Number, please.

09:34:37 18 MR. VOLINSKY: 12, BSR 12.

09:35:17 19 Q. BY MR. VOLINSKY: I'm showing you what's
09:35:18 20 been marked as BSR 12. Did you prepare this as
09:35:21 21 Exhibit 3 to your report that was prepared at my
09:35:26 22 request in the process of this case?

09:35:27 23 A. Yes, I did.

09:35:29 1 Q. Across the top of the report, you happen to
09:35:35 2 have shaded it, which I would recommend against in
09:35:37 3 the future. You have a number of column headings:
09:35:45 4 1 through 14. And I think to help us understand
09:35:48 5 what's on the report, I'm going to have you read the
09:35:50 6 column heading and tell us what's intended by that
09:35:55 7 column heading.

09:35:56 8 A. Okay. First column is called "Net assets,"
09:36:05 9 and that is the number that was taken directly from
09:36:07 10 the audited financial statements of HealthTrust.

09:36:11 11 Q. Let me stop you and ask you a question
09:36:14 12 about that. Is that just the total net asset number
09:36:17 13 from the financial statement: the 86.8 in the top
09:36:24 14 instance?

09:36:25 15 A. Yes. And I don't see the years listed
09:36:27 16 here. Do we somehow have the year -- the top year of
09:36:32 17 86.8 is actually 2010, and 2009 -- so going down the
09:36:39 18 rows all the way to the bottom is 2002.

09:36:42 19 Q. And let me just ask you, if you know,
09:36:46 20 are -- does this figure being the total, does it
09:36:49 21 include gains and losses from investments?

09:36:51 22 A. Yes. It is the final net asset that has
09:36:55 23 been reported. So if there were some gains or losses

09:37:00 1 from those things that were investments where there
09:37:04 2 was a subtotal shown before that, this is after that.

09:37:07 3 Q. Got it.

09:37:08 4 A. Um-hum.

09:37:09 5 Q. Column 2, please.

09:37:10 6 A. Column 2 shows that there were, as we saw,
09:37:14 7 some distributions that were made from the HealthTrust
09:37:17 8 to the parent. \$7.3 million in 2010 went from
09:37:29 9 HealthTrust to the parent organization -- I'm sorry.
09:37:31 10 I repeat --

09:37:33 11 Q. Yes. That's 3.

09:37:34 12 A. That's Column 3.

09:37:35 13 Q. And so what is Column 2?

09:37:37 14 A. Column 2 is the change in net assets that's
09:37:39 15 also reported in the financial statement. But that's
09:37:41 16 prior to the distribution --

09:37:45 17 Q. Okay.

09:37:46 18 A. -- and after the distribution. After the
09:37:48 19 distribution. So Column 4 is before the distribution.
09:37:51 20 So Column 4 is the sum of Columns 2 and 3.

09:37:54 21 Q. Got it.

09:37:55 22 A. And so it is the change in net assets
09:37:57 23 before distribution to the parent were made.

09:38:06 1 Q. So that's the first group of four columns.

09:38:08 2 There's now a second group of four columns.

09:38:10 3 A. So there's a second group in the center
09:38:11 4 here, four columns, the first one showing the reserve
09:38:13 5 target for 2010 of \$84 million. And that represents,
09:38:21 6 according to the reserve policy in HealthTrust, which
09:38:25 7 is an RBC of 4.2. So it's showing 4.2 in the next
09:38:34 8 column --

09:38:35 9 Q. Okay.

09:38:35 10 A. -- Column 6. And then on translating their
09:38:41 11 target reserve into, as we discussed earlier, the
09:38:44 12 percentage of expenses, so that you can see that in
09:38:50 13 Column --

09:38:51 14 Q. 7, I think.

09:38:53 15 A. -- Column 7, the 21.8 percent, that's
09:38:58 16 saying that the \$84 million is 21.8 percent of the
09:39:02 17 claims that were incurred plus the administrative
09:39:04 18 expenses in 2010.

09:39:08 19 Q. Okay. And then Column 8?

09:39:11 20 A. Column 8 is the actuals -- it's taking net
09:39:24 21 assets from Column 1, and translating that, based
09:39:26 22 upon the four point -- the RBC value -- translating
09:39:31 23 that into the RBC equivalent, based on actuals as

09:39:38 1 opposed to the target.

09:39:39 2 Q. So for this top line, which is 2010 --

09:39:42 3 A. So you can take for example, the 4.2 in
09:39:45 4 Column 6, compared to the 4.3 in Column 8, it's really
09:39:52 5 representative of the fact that the Column 4 --
09:39:56 6 Column 5, the \$84 million compared to the \$86 million.
09:40:02 7 That's why the 4.3 as opposed to the 4.2 because the
09:40:09 8 actual net assets is slightly higher than the target
09:40:12 9 based upon the -- calculating 4.2 times RBC.

09:40:16 10 Q. So in 2010, according to this chart, they
09:40:19 11 overshot their target by a hair?

09:40:23 12 A. Yes. If we move -- if we move over to the
09:40:25 13 next set of columns, the three columns that are
09:40:29 14 labeled "Segal," you can see where the -- our
09:40:33 15 calculation of the -- based upon the stochastic
09:40:41 16 modeling that we did indicate that \$41.4 million
09:40:45 17 would have been sufficient for the risk involved.
09:40:47 18 And so you're right in that that's roughly half of
09:40:55 19 the \$84 million that they had as a target.

09:41:00 20 Q. And a little bit less than the net assets
09:41:02 21 they accumulated?

09:41:03 22 A. That's correct. And so the \$41.4 million,
09:41:11 23 these are numbers that were based upon our analysis

09:41:13 1 showing the 95 percent confidence level net asset
09:41:19 2 target and then expressing that as a percentage of
09:41:24 3 expenses.

09:41:26 4 So the 10.8 -- pardon me. Then based
09:41:31 5 upon the fact that \$41.4 million is the calculated
09:41:37 6 stochastic model net asset number and the fact that
09:41:42 7 21.3 -- 21.8 -- I'm sorry -- is the percentage of
09:41:48 8 expenses, then the calculated percentage of expenses
09:41:53 9 for our model is about half of that, or 10.8.

09:41:57 10 Q. Got it.

09:41:58 11 A. And that represents -- if you translate
09:42:02 12 10.8 in terms of average underwriting expenses, if
09:42:05 13 you're looking to say, how much reserves would we
09:42:08 14 have based upon the estimated monthly expenses that
09:42:12 15 the plan incurs -- the claims that they pay plus the
09:42:17 16 expenses that they incur -- then that reserve is
09:42:20 17 equivalent to 1.3 months of underwriting expense.
09:42:24 18 And that's shown in Column 11.

09:42:28 19 Q. Got it.

09:42:29 20 A. Then we have in the next three columns, the
09:42:34 21 same information that was reported in Columns 9, 10,
09:42:37 22 and 11, except that our analysis is looking at it at
09:42:40 23 a 99 percent confidence level.

09:42:43 1 And so at a 99 percent confidence
09:42:45 2 level, we're saying that the reserves, if you were to
09:42:52 3 use the 99 percent, would be \$60 million -- that
09:42:56 4 would be an adequate target -- compared to 41 at
09:43:01 5 95 percent. And then that translates into
09:43:03 6 15.6 percent of expenses and 1.9, almost two months
09:43:07 7 of underwriting results.

09:43:08 8 Q. And have you done the same calculation for
09:43:11 9 each of the years going back to '02?

09:43:16 10 A. Yes, I have. So each row represents going
09:43:19 11 down the column -- I'm sorry -- down the sheet
09:43:22 12 represents years from 2010, 2009, and at the bottom,
09:43:29 13 2002, where the 23.4 net assets --

09:43:34 14 MR. VOLINSKY: Just on my copy. I'm going
09:43:36 15 to ask you about some more numbers in this chart.

09:43:39 16 But before I do, let me ask to strike
09:43:41 17 the ID on BSR 12 and admit it as an exhibit.

09:43:48 18 MR. QUIRK: No objection. And to the
09:43:49 19 extent that it was attached to his report and he's
09:43:51 20 had testimony on it, we are not verifying the numbers
09:43:54 21 are accurate. But no objection to it coming in with
09:43:58 22 that caveat.

09:43:58 23 THE PRESIDING OFFICER: Okay. Very good.

09:43:59 1 Accepted with that caveat. And for my education,
09:44:06 2 this is the same type of caveat, Mr. Quirk, that
09:44:10 3 we've had in Day 1 with respect to there were some
09:44:14 4 differences of numbers when Mr. Coutu was testifying.

09:44:20 5 Is that correct?

09:44:21 6 MR. QUIRK: That is correct.

09:44:22 7 THE PRESIDING OFFICER: Thank you very much
09:44:24 8 for that clarification. Well, education. You all
09:44:26 9 knew it.

09:44:29 10 (BSR 12 admitted into evidence.)

09:44:35 11 Q. BY MR. VOLINSKY: So this chart and
09:44:39 12 analysis began in '02. Why did you chose '02 to
09:44:41 13 begin the process?

09:44:43 14 A. Well, I think '02 is the point in time when
09:44:47 15 HealthTrust decided to move to RBC. And so we were
09:44:52 16 actually tracking the -- that's when they came up
09:44:54 17 with the 4.2 reserve policy, RBC policy. So we
09:44:57 18 wanted to track, you know, what the actual results
09:45:03 19 had been since that time going forward to 2010.

09:45:06 20 Q. It's hard for me at this level to keep both
09:45:09 21 the -- well, I guess I can. Let me ask you to do the
09:45:15 22 same explanation you did for '10 with respect to '2,
09:45:19 23 but now we know the columns, so you can just walk us

09:45:22 1 through the numbers.

09:45:24 2 A. Okay. Well, in 2002, if you were to look
09:45:27 3 at audited statements, you would see that their
09:45:30 4 net -- net-net asset value assets as of 12/31/2002
09:45:36 5 was \$23.4 million. And their target, based upon the
09:45:44 6 4.2 ACL, using the risk-based capital approach, was
09:45:50 7 35.7, which translates into 19.4 percent of expenses.

09:45:57 8 Q. And were they there in '02? Did they reach
09:46:00 9 4.2?

09:46:01 10 A. No. They were at 23.4. And they set the
09:46:07 11 target at 35.7. Which translates into 19.4 of
09:46:16 12 expenses.

09:46:16 13 So as you can see, that percentage of
09:46:18 14 expenses -- and that's why it's certainly used
09:46:22 15 sometime in the industry -- it doesn't change a whole
09:46:24 16 lot over time. You can see it starts out at 19.4 and
09:46:28 17 goes up to 21 point -- in the year 2010, it goes up
09:46:33 18 to 21.8 in Column 7.

09:46:39 19 Q. Yes.

09:46:39 20 A. Yes.

09:46:40 21 Q. And the 23.4 was an actual RBC of 2.8 at
09:46:48 22 that time?

09:46:48 23 A. That's correct.

09:46:56 1 Q. And then you at Segal did your own
09:46:58 2 calculation of where in '02 you, according to your
09:46:58 3 expert opinion --

09:46:58 4 A. Um-hum.

09:47:02 5 Q. -- conclude they should have been for net
09:47:04 6 assets. And tell us what that is.

09:47:07 7 A. Right. At the 95 percent confidence level,
09:47:08 8 we're saying that \$16.6 million would be sufficient
09:47:11 9 to cover the risk. And that translates into 1.1 months
09:47:19 10 of underwriting results on average -- or translated
09:47:25 11 into at that time. Yes.

09:47:26 12 Q. And then just to be consistent, you also
09:47:28 13 did the analysis at 99 percent?

09:47:30 14 A. At 99 percent, the targeted stochastic
09:47:37 15 model says \$23.9 million should be sufficient.

09:47:42 16 Q. The top of the typical confidence level
09:47:45 17 that you use in practice is how much?

09:47:50 18 A. That would be 95 percent.

09:47:52 19 Q. 95 percent?

09:47:52 20 A. Correct, um-hum.

09:47:53 21 Q. Let me ask you to do one more year for us.

09:47:56 22 A. Um-hum.

09:47:56 23 Q. So this is '02, '03, '04, '05, '06.

09:48:06 1 A. Okay.

09:48:06 2 Q. Explain that for us.

09:48:10 3 A. In 2006, their audited financial statement
09:48:15 4 showed that the net assets had grown from \$23.4 million
09:48:17 5 in 2002 to \$77.2 million in 2006. That was 2006?

09:48:22 6 Q. Yes.

09:48:25 7 A. In 2006. That's correct. And that at that
09:48:32 8 point they had surpassed their target. Their target
09:48:37 9 was \$53.8 million, if you see that -- \$53.8 million
09:48:53 10 in 2006 and their reserve target was 4.2. But their
09:48:56 11 actual is 6.0 if you base it on RBC. So they had
09:49:02 12 grown from one -- from the -- you know, the actual of
09:49:10 13 2.8 up to 6.0 in a matter of what -- one, two, three --
09:49:16 14 four years.

09:49:16 15 Q. And then the Segal/Atkinson calculation
09:49:23 16 where they should have been for '06?

09:49:25 17 A. Was \$28.6 million compared to the
09:49:31 18 \$53.8 million target, compared to the 77.2 actual.

09:49:38 19 Q. And if they had been at the 28.6, that
09:49:41 20 would have been what percentage of expenses and --

09:49:45 21 A. 9.8 percent. So from 9 to 9.8 percent.
09:49:50 22 And that represented about 1.2 months of underwriting
09:49:53 23 results when translated. And at the 99th percent

09:50:00 1 level, wherever it is on there, 41.3 would be our
09:50:04 2 calculated amount of sufficient net assets, which is
09:50:09 3 14.1 percent of expenses and 1.7 percent of
09:50:20 4 underwriting results.

09:50:20 5 Q. Let me ask you, a little bit off the chart,
09:50:23 6 but we heard a term yesterday called the "law of
09:50:26 7 large numbers."

09:50:27 8 A. Um-hum.

09:50:27 9 Q. Does that come into play conceptually when
09:50:30 10 you're thinking about how much to hold in net assets
09:50:33 11 and capital, as you've calculated here?

09:50:36 12 A. Yes. I think -- I think you can say that
09:50:44 13 in this case, LGC HealthTrust is -- you know, with
09:50:51 14 53 -- I believe 53,000-plus members -- is a large
09:50:56 15 group as compared to a small group where, you know,
09:51:01 16 maybe you only have 25 members in it or 50 or a couple
09:51:05 17 hundred. Those would be considered small groups.

09:51:08 18 And so your claim fluctuation from
09:51:16 19 year to year for smaller groups is going to be
09:51:19 20 greater than they are for larger groups. Larger
09:51:21 21 groups are more predictable in their outcome.

09:51:24 22 So I can come up with an example for
09:51:26 23 you that --

09:51:27 1 Q. Sure.

09:51:27 2 A. -- that if, for example, you know, you were
09:51:32 3 to have a coin and toss a coin. And let's just say
09:51:37 4 it's a normal coin so that the chance of a tail or a
09:51:40 5 head is the same: 50 percent. And so the analogy of
09:51:46 6 the small group, if you were to just toss that coin,
09:51:49 7 let's say 10 times, you know, you might expect that
09:51:54 8 it would show 5 heads and 5 tails, but because you
09:51:57 9 only tossed it 10 times, you might get 3 heads and
09:52:02 10 7 tails or 6 tails and 4 heads.

09:52:05 11 But if you were to take that same
09:52:06 12 coin and toss it 1,000 times or 10,000 times or
09:52:12 13 50,000 times, the likelihood that you're going to
09:52:16 14 come out with a 50/50 split in terms of heads and
09:52:19 15 tails is greatly improved because of the number of
09:52:23 16 instances that you actually flipped the coin.

09:52:28 17 So the law of large numbers has that
09:52:31 18 same applicability in that the larger the concern
09:52:35 19 you're dealing with, the more predictable the results
09:52:39 20 are going to be over time.

09:52:40 21 Q. And the more predictable the results, how
09:52:43 22 does that impact on the amount of net assets to be
09:52:45 23 held?

09:52:47 1 A. More predictable, the lower -- the lower
09:52:50 2 the net assets. Because as I said, if, for example,
09:52:54 3 you had a smaller case, then the chance of one large
09:53:00 4 claim fluctuating up and down could impact the overall
09:53:04 5 results of that particular plan much more severely
09:53:07 6 than a large claim in this group.

09:53:14 7 Q. At the bottom of your chart, you included
09:53:16 8 some footnotes. And I want to ask you about your
09:53:25 9 second footnote on the page.

09:53:28 10 A. Okay. I'm just going to read it.

09:53:30 11 Q. Yes.

09:53:31 12 A. It says, "A change in how LGC classified
09:53:36 13 its 2010 underwriting risk in the RBC projection
09:53:40 14 model resulted in the target amount increasing
09:53:43 15 substantially from \$69.3 million in 2009 to
09:53:50 16 \$84.0 million in 2010."

09:53:52 17 So as I looked at the detail of their
09:53:58 18 RBC calculation, it was quite evident by virtue of
09:54:05 19 the fact that you would see that the 69.3 is a
09:54:11 20 significant -- there's a significant increase from
09:54:13 21 2009 to 2010, to the \$84 million in their target.
09:54:18 22 And so one would question, you know, what happened
09:54:21 23 between 2009 and 2010 that would cause the target to

09:54:26 1 increase that amount.

09:54:29 2 So going --

09:54:31 3 Q. May I stop you there. You're talking about
09:54:33 4 dollar numbers. But did the 4.2 remain the same as
09:54:37 5 the stated target from '09 to '10?

09:54:41 6 A. As far as I know, it did.

09:54:43 7 Q. But the actual translation into dollars
09:54:46 8 changed?

09:54:46 9 A. But the actual translation of what the ACL
09:54:51 10 that you applied the 4.2 to changed. So the
09:54:55 11 calculation of the -- you know, it's 4.2 times the
09:55:00 12 ACL level --

09:55:01 13 Q. Yes.

09:55:02 14 A. -- that is the \$84 million. And so that
09:55:06 15 ACL level, the definition of that changed between
09:55:09 16 2009 and 2010. And it changed in the sense that the
09:55:15 17 characterization of the underwriting risk was expanded
09:55:21 18 based upon the assumption that the projections that
09:55:26 19 they were using to develop rates was somehow more
09:55:32 20 riskier now in 2010 than it was in 2009. So that
09:55:38 21 would translate into a larger number that you would
09:55:40 22 apply the 4.2 to.

09:55:44 23 Q. Got it. So the target 4.2 stayed the same,

09:55:49 1 but the number multiplied by 4.2 --

09:55:52 2 A. Increased.

09:55:53 3 Q. -- increased?

09:55:54 4 A. Because of the way they interpreted the
09:55:56 5 underwriting risk in the risk-based capital formula.

09:56:01 6 Q. Do you know who made the change in the
09:56:03 7 interpretation?

09:56:03 8 A. No, I don't.

09:56:05 9 Q. Let's switch topics.

09:56:29 10 A. Okay.

09:56:29 11 Q. In the context of this case, are you
09:56:30 12 familiar with the term "GMR," or "guaranteed maximum
09:56:36 13 rate"?

09:56:37 14 A. Yes, I am.

09:56:38 15 Q. In the context of this case, what do you
09:56:40 16 understand that to mean?

09:56:44 17 A. Well, for the risk of July risk pool, those
09:56:49 18 are the groups that are renewing based upon the July
09:56:53 19 rate calculation, they're actually looked at in
09:56:58 20 advance of the normal rate determination.

09:57:00 21 So the rate determination which
09:57:03 22 typically takes place in March/April for the July
09:57:07 23 rates, because of the budget needs of the

09:57:12 1 participating municipalities, and the like, needing
09:57:15 2 numbers before that time, they actually do a
09:57:17 3 calculation in October, I believe, for them. And
09:57:23 4 that calculation then is an estimation of what the
09:57:27 5 actual rate calculation will be.

09:57:29 6 Q. Okay.

09:57:30 7 A. And so to that then -- and that amount
09:57:36 8 that's calculated in October is guaranteed that the
09:57:41 9 actual rate calculation won't be any higher than that
09:57:45 10 calculation. So that's why it's called the
09:57:48 11 guaranteed maximum.

09:57:50 12 So when that calculation is actually
09:57:53 13 performed, since they're not sure whether it's going
09:57:57 14 to -- you know, the actual experience that emerges
09:58:01 15 subsequent to that calculation is going to generate a
09:58:03 16 higher or lower calculation, they add in some margin.

09:58:10 17 Q. They do what?

09:58:10 18 A. They add in margin.

09:58:12 19 Q. And what does that mean?

09:58:13 20 A. They add margin in the calculation so that
09:58:16 21 hopefully that margin will ensure that the calculation,
09:58:21 22 when it occurs actually in the March/April timeframe,
09:58:25 23 won't be any -- won't be any higher.

09:58:29 1 So again, it's a way of, sort of,
09:58:32 2 hedging. And that -- my understanding is that the
09:58:35 3 calculation in October is done for the purposes of
09:58:43 4 the columns in the budgets. So they could end up
09:58:46 5 budgeting a number that is different than what their
09:58:50 6 actual expenditures would be targeted -- the premiums
09:58:54 7 would be targeted once the actual rates are done.

09:58:56 8 So it's likely that based upon the
09:58:59 9 margin, the risk margin that's added in in October,
09:59:03 10 it's likely that that target is going to create a
09:59:06 11 higher premium number. It's going to be more
09:59:09 12 conservative than the actual rate calculation that
09:59:12 13 emerges when the rates are done.

09:59:14 14 Q. So is it accurate to say the longer in
09:59:17 15 advance you predict the rate, that there might be a
09:59:21 16 little more risk?

09:59:22 17 A. That's correct.

09:59:22 18 Q. And in order to accommodate this, there's a
09:59:25 19 little bit of a margin added for that guaranteed
09:59:30 20 maximum rate?

09:59:31 21 A. That's correct, um-hum.

09:59:34 22 Q. Switch topics again. You described for us
09:59:40 23 the concept of IBNR, which is a reserve liability?

09:59:48 1 A. That's correct.

09:59:48 2 Q. It's not an asset?

09:59:49 3 A. That's correct.

09:59:51 4 Q. Are you familiar with how the Local
09:59:57 5 Government Center does its IBNR liability reserving?

10:00:02 6 A. Yes. We did review that. We reviewed
10:00:07 7 it -- our review took -- we looked at the 2009 IBNR
10:00:11 8 calculation in their 2009 financials, and then we
10:00:16 9 subsequently looked at the 2010 calculation.

10:00:20 10 Q. Let me refer you to Exhibit 63.

10:00:40 11 THE PRESIDING OFFICER: Book number?

10:00:41 12 MR. VOLINSKY: That is Book 2 of 5. And
10:01:14 13 when everyone gets to BSR 63, I'll tell you that I
10:01:18 14 added numbers at the middle bottom of each page just
10:01:21 15 for reference points. And I'd like to send you to
10:01:23 16 page 10.

10:01:35 17 THE PRESIDING OFFICER: That's the number
10:01:36 18 that appears in the center of the lower portion?

10:01:38 19 MR. VOLINSKY: Yes.

10:01:39 20 THE PRESIDING OFFICER: Thank you.

10:01:41 21 Q. BY MR. VOLINSKY: Are you there?

10:01:42 22 A. Yes.

10:01:42 23 Q. And tell us just generally what this

10:01:46 1 document is that appears at page 10 of Exhibit 63
10:01:50 2 BSR.

10:01:50 3 A. Okay. This is a letter from Peter Riemer,
10:01:55 4 who is the consulting actuary to the LGC HealthTrust,
10:02:00 5 where he's determined the IBNR liability estimate to
10:02:05 6 be booked on their December 31, 2009 financial
10:02:09 7 statements.

10:02:11 8 Q. Is this a common function for a consulting
10:02:14 9 actuary to perform for a healthcare concern?

10:02:18 10 A. Yes, it is.

10:02:19 11 Q. Let me ask you to turn to page 11, the next
10:02:22 12 page. And I want you to look at paragraph No. 5. In
10:02:36 13 paragraph No. 5, Mr. Riemer wrote, "Next we adjusted
10:02:40 14 the projected December 2009 IBNR factors by the
10:02:47 15 adjustment factor in 4," paragraph 4 above,
10:02:51 16 "including a margin of 10 percent."

10:02:59 17 A. Um-hum.

10:02:59 18 Q. And what I want to ask you about is, do you
10:03:01 19 understand what he's talking about when he says -- or
10:03:03 20 writes "including a margin of 10 percent"?

10:03:06 21 A. Yes, I do.

10:03:07 22 Q. Would you explain that for us first.

10:03:10 23 A. Okay. Well, the whole concept of the IBNR

10:03:17 1 calculation, it is an estimate. So it's a calculated
10:03:20 2 estimate. And typically it's done based upon looking
10:03:22 3 at the historical payment patterns for that
10:03:26 4 particular -- for this particular group to see how it
10:03:34 5 impacts the actual reserve, had -- in the past had
10:03:37 6 run out.

10:03:37 7 So you would, sort of, apply that
10:03:40 8 run-out pattern, if you will, to the more current
10:03:44 9 period to estimate what the liability is going to be
10:03:46 10 for the current period. And so it is an estimate.
10:03:50 11 And so it is a standard practice for actuaries to add
10:03:53 12 a margin into estimates.

10:03:56 13 Q. Why?

10:03:57 14 A. Because of the uncertainty associated with
10:03:59 15 it. And from a financial reporting standpoint, it's
10:04:04 16 better to be conservative than -- and overstate your
10:04:08 17 liability than to understate your liability.

10:04:11 18 Q. Would you comment on whether 10 percent is
10:04:13 19 a typical margin to use in the context of an IBNR
10:04:18 20 like this?

10:04:19 21 A. It seems on the high side to me. We
10:04:26 22 typically would use 5 percent for a margin.

10:04:30 23 Q. And so by using 10 percent instead of a

10:04:35 1 5 percent, which you would typically use, what impact
10:04:38 2 does that have on the amount of reserves held as a
10:04:43 3 liability?

10:04:44 4 A. Well, that would increase your claims cost.
10:04:48 5 And so that would reduce your net asset.

10:04:55 6 Q. Reduce your net asset? Do you mean need
10:05:00 7 for net asset or --

10:05:01 8 A. No, it would actually reduce your reported
10:05:03 9 net assets. It doesn't affect at all your target
10:05:09 10 per se. It shouldn't. If your target is based upon --
10:05:13 11 Well, I'll just leave it at that.

10:05:16 12 Q. Okay. I'll accept that. This happens to
10:05:19 13 be the March 26, '10 IBNR calculation. Have you also
10:05:26 14 seen more recent IBNR calculations?

10:05:29 15 A. We have.

10:05:32 16 Q. And does the use of the 10 percent margin
10:05:34 17 remain consistent through as close to the present as
10:05:38 18 you know?

10:05:39 19 A. Yes. Yes. In fact, both of them had --
10:05:43 20 even though they changed their methodology and how
10:05:46 21 they calculated their IBNR between 2009 and 2010,
10:05:51 22 I think the methodology they were using in 2010 is
10:05:56 23 probably a better estimate of the liability. But yet

10:06:01 1 they kept the margins the same -- the 10 percent
10:06:07 2 reserve the same. I would think that the increased
10:06:10 3 accuracy based upon the methodology they went to in
10:06:15 4 2010 would imply a reduced margin.

10:06:17 5 Q. But it didn't go down?

10:06:19 6 A. No.

10:06:24 7 Q. Let me just show you quickly BSR 63, page 1,
10:06:31 8 the first page of that exhibit. And you'll see some
10:06:35 9 calculations -- some numbers in the middle of the
10:06:38 10 page and then immediately below that is a paragraph
10:06:44 11 that I've highlighted in yellow.

10:06:48 12 Is that the 10 percent margin
10:06:52 13 including through this time period?

10:06:53 14 A. That's correct, um-hum.

10:06:54 15 Q. And apparently they also do it to dental
10:06:58 16 claims?

10:06:58 17 A. Yes.

10:07:02 18 Q. Are you aware that there are other risk
10:07:21 19 pools in New Hampshire besides Local Government
10:07:27 20 Center?

10:07:27 21 A. Yes. I am aware.

10:07:29 22 Q. Does Segal do any work for those other risk
10:07:31 23 pools?

10:07:32 1 A. Yes. Our Boston office -- and in particular,
10:07:36 2 Danny Rhodes, who I mentioned previous -- earlier --
10:07:39 3 is involved in doing consulting work for some of
10:07:42 4 those other risk pools.

10:07:43 5 Q. In New Hampshire? I'm not talking about
10:07:47 6 the State pool; I'm talking about --

10:07:52 7 A. The other pools, yes.

10:07:53 8 Q. -- SchoolCare and Primex. Do you do
10:07:56 9 SchoolCare and Primex?

10:07:57 10 A. Not that I'm aware of, no.

10:07:59 11 Q. State of New Hampshire, we just started to
10:08:01 12 mention. Have you prepared -- actually, it's in the
10:08:05 13 text of your report -- a comparison chart showing us
10:08:13 14 some reference points about the State system and the
10:08:18 15 Local Government Center?

10:08:20 16 A. Yes, we did.

10:08:22 17 MR. VOLINSKY: I'd like to refer everyone
10:08:23 18 to BSR 13: one three.

10:08:52 19 Q. BY MR. VOLINSKY: Is this your chart
10:08:54 20 comparing the State system and the Local Government
10:08:58 21 Center system?

10:08:58 22 A. Yes, it is.

10:08:59 23 MR. VOLINSKY: I'd ask to strike the ID on

10:09:02 1 BSR 13 and admit it as an exhibit, please.

10:09:06 2 THE PRESIDING OFFICER: Mr. Quirk?

10:09:06 3 MR. QUIRK: We object to the admission of
10:09:09 4 this exhibit. There are some numbers regarding the
10:09:12 5 State plan set forth within this document. We have
10:09:14 6 no idea of where he obtained those numbers from.
10:09:17 7 There was no backup information provided with his
10:09:20 8 report to substantiate those numbers. And thus, we
10:09:24 9 object to the admission of the exhibit.

10:09:29 10 THE PRESIDING OFFICER: I'm going to
10:09:29 11 reserve my opinion on that, Mr. Quirk.

10:09:32 12 Mr. Volinsky, would you give me some
10:09:34 13 more foundation on this.

10:09:35 14 MR. VOLINSKY: Sure.

10:09:37 15 Q. BY MR. VOLINSKY: Let's do Column 1, first.

10:09:43 16 A. Um-hum.

10:09:48 17 Q. Local Government Center numbers. You have
10:09:49 18 a footnote here. What's the source of the numbers
10:09:51 19 regarding the Local Government Center?

10:09:53 20 A. The source is the Local Government
10:09:58 21 HealthTrust audited financial statements as of
10:10:00 22 December 31, 2010.

10:10:01 23 Q. And second column, "SONH" means "State of

10:10:05 1 New Hampshire"?

10:10:06 2 A. Um-hum.

10:10:06 3 Q. And "ERHBP" means "Employee and Retiree
10:10:15 4 Health Benefit Program"?

10:10:15 5 A. That's correct.

10:10:15 6 Q. There's similarly a footnote here
10:10:17 7 disclosing the source of the information you used to
10:10:21 8 compile that column in the chart. Can you tell us
10:10:25 9 what that source was.

10:10:26 10 A. Yes. It's the State of New Hampshire
10:10:31 11 self-funded Employee and Retiree Health Benefit
10:10:34 12 Program annual report for the fiscal year ended
10:10:36 13 June 30, 2010.

10:10:39 14 Q. And is it available at the website that's
10:10:42 15 included in the chart footnote No. 2?

10:10:45 16 A. Yes.

10:10:46 17 Q. And was this chart as it appears with those
10:10:49 18 footnotes in your report itself?

10:10:53 19 A. Yes, they were.

10:10:55 20 MR. VOLINSKY: I renew my motion.

10:10:56 21 THE PRESIDING OFFICER: Thank you.

10:10:57 22 Anything further, Mr. Quirk?

10:10:59 23 MR. QUIRK: Nothing further, your Honor.

10:11:01 1 THE PRESIDING OFFICER: Then I'm going to
10:11:02 2 deny that objection.

10:11:03 3 Please proceed, Mr. Volinsky.

10:11:04 4 MR. VOLINSKY: And admit the exhibit?

10:11:06 5 THE PRESIDING OFFICER: And admit the
10:11:07 6 exhibit.

10:11:07 7 MR. VOLINSKY: Thank you.

10:11:08 8 (BSR 13 admitted into evidence.)

10:11:14 9 Q. BY MR. VOLINSKY: Now, Mr. Atkinson, would
10:11:16 10 you tell us what you gleaned from review of the
10:11:19 11 information presented in this chart marked as BSR 13,
10:11:22 12 please.

10:11:23 13 A. Okay. This is a comparison of the two
10:11:27 14 plans: LGC HealthTrust and the State of New Hampshire
10:11:33 15 Employee Benefits Program. And as you can see, they
10:11:37 16 are both very large plans. Total membership in excess
10:11:43 17 of tens of thousands of members: 57,000 members for
10:11:46 18 the LGC HealthTrust and almost 40,000 members for the
10:11:52 19 State of New Hampshire Employee Benefits Program.

10:11:55 20 So in our way of viewing this, we
10:11:57 21 talked about the law of large numbers previous --
10:12:01 22 both of these are categorized as large cases.

10:12:05 23 Q. Okay.

10:12:06 1 A. And so you can see that HealthTrust has
10:12:10 2 more members. It has -- it pays more claims.
10:12:15 3 Operating expenses, you can see there.

10:12:19 4 Now, the reason why we thought this
10:12:20 5 was useful is because, you know, they both use the
10:12:28 6 same medical carrier to pay their healthcare claims:
10:12:32 7 Anthem. And for prescription drug they're both using
10:12:36 8 Caremark as their prescription drug manager.

10:12:42 9 So with regard to claims payment
10:12:44 10 patterns and run-out and lag and all that stuff,
10:12:48 11 they're comparable.

10:12:54 12 Q. What about the "claims per member" line,
10:12:58 13 what does that show you?

10:12:59 14 A. That tells us that on average that even
10:13:02 15 though they're covering, you know, in the case of
10:13:08 16 LGC, about 17,000 more members, the average cost per
10:13:12 17 claim is about the same. So it's sort of one
10:13:18 18 indicator that, you know, the benefit costs are about
10:13:22 19 the same. The average -- their benefit programs are
10:13:30 20 somewhat comparable.

10:13:35 21 Q. Understanding -- Anything else you can tell
10:13:37 22 us that would help us understand how comparable these
10:13:41 23 two plans are?

10:13:44 1 A. Well, we just want to note that in the case
10:13:47 2 of the State of New Hampshire Employee Benefits Plan,
10:13:52 3 that, you know, we get involved -- the Segal Company,
10:13:55 4 that is -- in doing and developing the premium rates
10:13:58 5 for the State plan.

10:14:04 6 And you know, they have special, I
10:14:06 7 guess, enabling acts. I'm not sure exactly how you
10:14:09 8 would call it. But they have a -- for purposes of
10:14:14 9 making sure that their premiums are adequate over the
10:14:18 10 years, they've established a reserve target. That
10:14:22 11 reserve target, from what I understand, is 5 percent
10:14:25 12 of -- 5 percent of claims.

10:14:28 13 Q. And just to make sure I'm following --

10:14:30 14 A. Um-hum.

10:14:31 15 Q. -- the reserve target that you're talking
10:14:33 16 about is the net assets kind of reserve?

10:14:35 17 A. That's correct.

10:14:36 18 Q. So the State plan, as you understand it,
10:14:39 19 uses 5 percent of claims?

10:14:43 20 A. Yes.

10:14:45 21 Q. Just going back quickly to BSR 12, the 2010
10:14:55 22 figure --

10:14:56 23 A. Up at the top.

10:14:57 1 Q. -- was 21.8?

10:15:01 2 A. That's the target, that's correct. That's
10:15:04 3 opposed to 5 percent with the State plan.

10:15:09 4 Q. Have you particular knowledge as to whether
10:15:19 5 the State plan has had to dip into its 5 percent
10:15:24 6 reserve?

10:15:24 7 A. My understanding is they've never had to
10:15:26 8 dip into that reserve at all.

10:15:37 9 Q. Mr. Atkinson, would you -- just so we have
10:15:41 10 it cleanly in one place, would you just give us a
10:15:44 11 quick summary of the opinions you've reached about
10:15:51 12 the Local Government Center's reserving practices,
10:15:54 13 both in terms of reserves to liability and reserves
10:15:59 14 with respect to net assets.

10:16:00 15 A. Okay. I would say that our review -- this
10:16:11 16 goes back to, you know, our initial work with the
10:16:17 17 Secretary of State -- concluded that the -- that the
10:16:25 18 consulting actuary for the HealthTrust plan in his
10:16:31 19 approach is doing things reasonably, reasonable in
10:16:35 20 terms of actuarial standards, but we believe very
10:16:40 21 conservative, meaning that in setting, for example,
10:16:46 22 the IBNR reserve, he's using a margin of 10 percent,
10:16:51 23 and we think 5 percent is more likely.

10:16:55 1 One of the critical aspects of the
10:17:00 2 adequacy of the reserves has to do with setting
10:17:03 3 premium rates. And in setting premium rates, the
10:17:10 4 so-called trend factors that are used. And the trend
10:17:12 5 factors are factors that are used to estimate what
10:17:16 6 claims costs are likely to be in the future. And
10:17:19 7 that's the basis for developing premium rates. And
10:17:22 8 our position is that he's conservative in that as
10:17:26 9 well.

10:17:26 10 So, for example, I believe at one
10:17:28 11 point he was using a 10.75 percent trend factor for
10:17:33 12 medical. And that was subsequently reduced to 10.0.
10:17:41 13 You know, our feeling is that that's probably
10:17:43 14 overstating things.

10:17:44 15 But again, what that tends to do, it
10:17:47 16 certainly protects the HealthTrust in the sense that
10:17:51 17 their net assets are probably not going to, you know,
10:17:55 18 go under. But with regard to the calculation of the
10:18:00 19 premium rates, that also means that the participating
10:18:06 20 members are probably being charged more than they
10:18:11 21 have to.

10:18:13 22 So you know, in general, you know,
10:18:19 23 we don't at all argue at all with regard to the

10:18:22 1 methodology that he uses in determining the rates.
10:18:27 2 It's that we feel that they're overstating the needed
10:18:33 3 requirements.

10:18:34 4 Q. In preparing the rates each rating period?

10:18:37 5 A. That's correct.

10:18:39 6 Q. And then switch me now to how that relates
10:18:41 7 to the amount they hold in net assets and your opinion
10:18:45 8 on that.

10:18:46 9 A. And so that the buildup over time, as we
10:18:50 10 can see, from 2002 to 2010 really supports that in
10:18:59 11 the fact that reserves have built up net assets that
10:19:04 12 have built up primarily as a result of premium rates
10:19:06 13 being higher than what they needed to be.

10:19:11 14 Q. And just again, so we have the numbers, if
10:19:14 15 they're at \$86 million now, in your professional
10:19:19 16 expert opinion, you believe their net assets should
10:19:22 17 be how much?

10:19:23 18 A. As of 2010, around \$41 million.

10:19:29 19 MR. VOLINSKY: Thank you, Mr. Atkinson.

10:19:32 20 I would move to strike the
10:19:33 21 identification number on Exhibit 68E, as in echo, and
10:19:38 22 ask for its admission.

10:19:40 23 MR. QUIRK: No objection to that report

10:19:41 1 coming in as a full exhibit because this witness has
10:19:43 2 gone through during his live testimony the topics
10:19:46 3 covered. Thank you.

10:19:47 4 THE PRESIDING OFFICER: Thank you. And it
10:19:49 5 is admitted then --

10:19:51 6 MR. VOLINSKY: Thank you.

10:19:52 7 THE PRESIDING OFFICER: -- as BSR 68E?

10:19:58 8 MR. VOLINSKY: E as in echo.

10:20:03 9 (BSR 68E admitted into evidence.)

10:20:18 10 MR. QUIRK: Thank you, Mr. Mitchell.

10:20:20 11 Are you through?

10:20:21 12 MR. VOLINSKY: Yes.

10:20:23 13 MR. QUIRK: Good morning.

10:20:24 14 THE PRESIDING OFFICER: Mr. Atkinson, how
10:20:25 15 are you doing on water and such over there?

10:20:27 16 THE WITNESS: I'm fine. Thank you.

10:20:31 17 THE PRESIDING OFFICER: Please proceed
10:20:32 18 then, Mr. Quirk.

10:20:35 19 MR. QUIRK: Thank you.

10:20:35 20 CROSS-EXAMINATION

10:20:35 21 BY MR. QUIRK:

10:20:35 22 Q. Good morning, Mr. Atkinson.

10:20:35 23 A. Good morning.

10:20:39 1 Q. We've met previously during your deposition.
10:20:41 2 My name is Brian Quirk and I represent the Local
10:20:44 3 Government Center and its affiliated entities.

10:20:48 4 I want to start off by talking about
10:20:50 5 some different methods of appropriating the level of
10:20:54 6 reserves, okay? We talked about this during your
10:20:59 7 deposition. There are several different methods an
10:21:03 8 actuary such as yourself can use to determine and
10:21:06 9 calculate the appropriate level of reserves, correct?

10:21:11 10 A. There are several different methods, that's
10:21:16 11 correct.

10:21:16 12 Q. One of those methods is the method that
10:21:19 13 Peter Riemer used regarding RBC, correct?

10:21:21 14 A. That's correct.

10:21:22 15 Q. Another method is the stochastic modeling
10:21:25 16 approach that you used, right?

10:21:27 17 A. Yes.

10:21:29 18 Q. And yet another method is percentage of
10:21:33 19 claims as a method of calculating reserves, correct?

10:21:37 20 A. I would call percentage of claims not a
10:21:41 21 methodology. It's more or less a translation of an
10:21:45 22 amount to a percentage for purposes -- I mean, it
10:21:51 23 could be called a methodology after a while, but it

10:21:54 1 has its basis -- has to have its basis in something
10:21:58 2 real. And that real could be a determination using
10:22:01 3 the stochastic modeling, for example, yes.

10:22:04 4 Q. And you agreed during your deposition that
10:22:07 5 you can use percentages of claims as a method to
10:22:10 6 target reserves, right?

10:22:11 7 A. Yes. After you've made the calculation
10:22:15 8 what that percentage should be.

10:22:17 9 Q. You also admitted during your deposition,
10:22:20 10 you can use percentages of premiums, correct?

10:22:22 11 A. Yes. It would generate the same dollars,
10:22:25 12 but just translated as a -- the denominator would be
10:22:29 13 different.

10:22:31 14 MR. QUIRK: May I grab the easel?

10:22:34 15 THE PRESIDING OFFICER: Certainly.

10:22:35 16 MR. QUIRK: I'm going to sneak behind you.

10:23:06 17 Can you see that okay?

10:23:07 18 THE WITNESS: I can.

10:23:09 19 MR. QUIRK: Andy, can you see that?

10:23:10 20 MR. VOLINSKY: Yes. I'm fine.

10:23:13 21 MR. QUIRK: Mr. Mitchell.

10:23:18 22 Q. BY MR. QUIRK: So if we put actuarial
10:23:25 23 methods to calculate reserves, we've talked about the

10:23:38 1 RBC method, correct?

10:23:40 2 A. Yes.

10:23:43 3 Q. We've talked about this stochastic model
10:23:47 4 that you recommended in this case, correct?

10:23:50 5 A. Yes.

10:23:56 6 Q. We've talked about the percentage of
10:24:00 7 claims, right?

10:24:00 8 A. Yes.

10:24:00 9 Q. And we've talked about percentage of
10:24:07 10 premiums, correct?

10:24:09 11 A. Yes.

10:24:10 12 Q. And during your deposition, we reviewed a
10:24:17 13 press release from the Bureau that we're going to
10:24:20 14 talk about in a little bit, but there was also
10:24:22 15 another method that one of the other risk pools in
10:24:25 16 New Hampshire used.

10:24:26 17 Do you recall that?

10:24:26 18 A. I don't recall it, no.

10:24:27 19 Q. I'm going to show you a document now, just
10:24:31 20 to refresh your recollection so we can add yet
10:24:34 21 another method to the chart.

10:24:54 22 MR. QUIRK: It's LGC 362.

10:24:58 23 May I approach the witness?

10:25:03 1 MR. TILSLEY: Just one second, Brian.

10:25:06 2 THE PRESIDING OFFICER: Let everyone catch
10:25:07 3 up to you.

10:25:22 4 MR. QUIRK: All set? Everybody have it?

10:25:25 5 THE PRESIDING OFFICER: Yes, we do.

10:25:27 6 Q. BY MR. QUIRK: I'd ask you to turn to page 4
10:25:29 7 of the document and direct your attention to the area
10:25:33 8 that says, "Primex." And I will represent to you
10:25:36 9 that that's another risk pool within the State of New
10:25:41 10 Hampshire, and ask you to read that to yourself.

10:25:43 11 A. Okay. I'll read it to myself.

10:25:50 12 THE PRESIDING OFFICER: Do you have one
10:25:51 13 available for him, Mr. Quirk?

10:25:57 14 MR. QUIRK: I do.

10:25:58 15 THE PRESIDING OFFICER: Could you provide
10:25:59 16 that to him.

10:26:20 17 Q. BY MR. QUIRK: And page 4 of that document,
10:26:22 18 when you read the section for Primex, does that
10:26:27 19 refresh your recollection as to the method that Primex
10:26:30 20 used, at least at that point in time, to calculate
10:26:34 21 reserves? It's called capital adequacy policy,
10:26:43 22 correct?

10:26:44 23 A. Yes, it is.

10:26:44 1 Q. And it's a mixture between RBC and loss
10:26:48 2 reserves, correct?

10:26:48 3 A. Can I ask a question? Primex, what is their
10:26:51 4 major -- what are they insuring?

10:26:54 5 Q. I'm supposed to be asking the questions,
10:26:57 6 but I'll be happy to answer the question, if that's
10:26:59 7 all right with counsel?

10:27:00 8 MR. VOLINSKY: No objection. It's relevant.

10:27:03 9 Q. BY MR. QUIRK: They do multiple lines under
10:27:04 10 one company. And that is property-liability,
10:27:08 11 workers' comp, and health.

10:27:12 12 A. Okay.

10:27:12 13 Q. So that's the representation. My question
10:27:14 14 to you with respect to Primex, it's correct that
10:27:16 15 they're using a capital adequacy policy concerning
10:27:21 16 the setting of reserves, correct?

10:27:23 17 And above that it says, "New Hampshire
10:27:25 18 approaches." And if you want to go to page 1, this
10:27:28 19 is a document produced by the Bureau of Securities.

10:27:33 20 MR. VOLINSKY: Is there a question?

10:27:36 21 THE PRESIDING OFFICER: No, I have a
10:27:37 22 question. And that is, did you get your question
10:27:38 23 answered, Mr. Atkinson?

10:27:38 1 THE WITNESS: Well, I'm trying to make sure
10:27:41 2 I understand what their -- what lines --

10:27:41 3 Q. BY MR. QUICK: They have a health line --

10:27:42 4 A. They have a health line?

10:27:42 5 Q. -- to answer your question.

10:27:43 6 A. How much of it is health-related versus
10:27:45 7 casualty that --

10:27:46 8 Q. I'll represent a portion of their line is
10:27:48 9 health. My question is, they use a certain policy
10:27:53 10 called capital adequacy policy to set reserves,
10:27:56 11 correct?

10:27:56 12 A. Yes.

10:27:58 13 Q. And that is a mixture between risk-based
10:28:01 14 capital and losses, correct?

10:28:02 15 A. And loss reserves.

10:28:04 16 Q. Loss reserves, correct?

10:28:05 17 A. Right.

10:28:09 18 Q. So right now you'd agree with me that we
10:28:31 19 have one, two, three, four -- five approaches to
10:28:36 20 calculating reserves, correct?

10:28:37 21 A. Actually, I stand corrected. The -- as I
10:28:41 22 read it, the -- they use risk-based capital as one
10:28:45 23 method. And then for purposes of doing loss reserves,

10:28:49 1 which is not capital-related --

10:28:53 2 Q. Okay.

10:28:53 3 A. -- they're using a method as recommended by
10:28:56 4 the casualty actuary. And that applies to non-
10:28:59 5 health-related --

10:29:00 6 Q. So with that caveat, we'll count risk-based
10:29:03 7 capital, stochastic, percentage of claims, percentage
10:29:07 8 of premiums, correct?

10:29:08 9 A. Yes.

10:29:08 10 Q. Different methods. And within each of
10:29:10 11 these different actuarial methods to calculate
10:29:13 12 reserves, you can have variations, correct?

10:29:15 13 A. Yes.

10:29:17 14 Q. For example, risk-based capital can be at
10:29:24 15 different levels. For example, the level that the
10:29:27 16 HealthTrust board approved: 4.2, right?

10:29:30 17 A. Yes.

10:29:30 18 Q. And it can also have levels ranging from
10:29:36 19 3.7 to 10.0, and those ranges are set forth in your
10:29:45 20 report, correct?

10:29:46 21 A. Those are actual observed results. So that
10:29:52 22 would be comparable in 2010 to your 4.3 for
10:29:57 23 HealthTrust compared to your 4.2, which was the

10:30:02 1 targeted amount.

10:30:02 2 So in the case of some insurers --
10:30:06 3 and you're talking about health insurers --

10:30:08 4 Q. Correct.

10:30:08 5 A. -- not HealthTrust, that their actual net
10:30:12 6 assets have ranged from, as you said, 3.7 to 10.0.

10:30:19 7 Q. And then you can have anywhere -- any
10:30:21 8 numbers between these, correct, as subsets of the
10:30:24 9 RBC, right?

10:30:25 10 A. You're referring to the actual reserves
10:30:30 11 that have emerged as opposed to targets?

10:30:34 12 Q. Correct.

10:30:34 13 A. Okay. 3.7 to 10.0 is not -- they're not
10:30:38 14 targets.

10:30:38 15 Q. If an actuary recommends a target of RBC
10:30:43 16 10.0, that can be used to target reserves, correct?

10:30:47 17 A. Could, but I don't believe an actuary would
10:30:50 18 ever do that.

10:30:50 19 Q. But it could be a level, correct?

10:30:52 20 A. Anything could be a level. But in this
10:30:55 21 case, the 3.7 to the 10.0 is not a target. It's what
10:31:01 22 actually emerged as a result of their underwriting
10:31:04 23 practices.

10:31:04 1 Q. And what actually emerged -- and you're
10:31:07 2 referring to one of the studies we'll get to -- is an
10:31:10 3 RBC of 10.0, correct?

10:31:12 4 A. When you translate their actual net assets
10:31:17 5 into an RBC number, it translates into 10.0, not what
10:31:21 6 they targeted.

10:31:22 7 Q. Right. And when you translate the net
10:31:24 8 assets to an RBC, it's RBC 10.0, correct?

10:31:29 9 A. That's correct.

10:31:30 10 Q. And you have stochastic model, and you have
10:31:34 11 a particular model -- and I'll write "Segal" -- as a
10:31:38 12 model, right?

10:31:39 13 A. Yes.

10:31:39 14 Q. And there can be different models of
10:31:43 15 stochastic modeling, depending upon the assumptions
10:31:46 16 you put into the model, correct?

10:31:48 17 A. That is correct.

10:31:49 18 Q. And you have a proprietary model, correct?

10:31:55 19 A. That is correct.

10:31:56 20 Q. Thus, in fact, you wouldn't disclose to us
10:32:00 21 the proprietary nature of your software that you used
10:32:04 22 to determine your numbers under the stochastic model,
10:32:07 23 right?

10:32:07 1 A. That's correct.

10:32:08 2 Q. And other companies can have different
10:32:12 3 models that can result in different reserve levels,
10:32:15 4 correct?

10:32:15 5 A. Yes, they could.

10:32:18 6 Q. Obviously, percentage of claims, you can
10:32:22 7 have different levels? For example, the 5 percent
10:32:25 8 that you just covered for the State plan, right?

10:32:27 9 A. Yes.

10:32:30 10 Q. In the 5 percent for the State plan, that
10:32:33 11 5 percent is set forth directly in the State statute,
10:32:38 12 isn't it?

10:32:38 13 A. I believe so, yes.

10:32:39 14 Q. You can also have a 10 percent of claims,
10:32:43 15 correct?

10:32:44 16 A. Yes, you could.

10:32:46 17 Q. You could also have a 15 percent, correct?

10:32:49 18 A. Yes, you could.

10:32:50 19 Q. You could also have a 20 percent, correct?

10:32:53 20 A. Yes, you could.

10:32:54 21 Q. Same thing for percentage of premiums,
10:32:58 22 realizing they're going to be similar numbers, but
10:33:00 23 slightly different, right?

10:33:01 1 A. That's correct.

10:33:02 2 Q. You can have 5, 10, 15, 20, anywhere in
10:33:06 3 between; is that correct?

10:33:07 4 A. That's correct. Even though I might add
10:33:11 5 that it's probably rarely done as a percentage of
10:33:15 6 premium. Premiums can fluctuate and vary all over
10:33:19 7 the place. It's normally done on claims.

10:33:21 8 Q. And when you say, "It's normally done on
10:33:24 9 claims," the converse of that is sometimes it's done
10:33:26 10 on premiums, right?

10:33:27 11 A. I haven't seen it done on premium, but it
10:33:30 12 could be. You can translate an amount that you
10:33:33 13 calculated a percentage of claims, you could
10:33:36 14 translate that to a percentage of premium.

10:33:39 15 Q. And the statute -- the law that we're all
10:33:43 16 looking at here, RSA 5-B, regarding risk pools in New
10:33:48 17 Hampshire, it does not specify any specific actuarial
10:33:54 18 method to calculate reserves, correct?

10:33:56 19 A. That's correct.

10:33:57 20 Q. So in other words, the statute that we're
10:34:00 21 all looking at here doesn't require or prohibit RBC,
10:34:07 22 correct?

10:34:07 23 A. Yes. To my knowledge, it doesn't.

10:34:09 1 Q. The statute that we're all looking at here
10:34:12 2 doesn't require or prohibit the stochastic model,
10:34:16 3 either the one you recommended or another actuarial
10:34:18 4 firm, correct?

10:34:19 5 A. That's correct.

10:34:20 6 Q. The statute that we're all looking at here
10:34:23 7 does not require or prohibit percent of claims or
10:34:27 8 percent of premiums, correct?

10:34:29 9 A. That's correct.

10:34:35 10 Q. So I just wrote up here, "RSA 5-B, no
10:35:02 11 specific method to calculate reserves."

10:35:04 12 You'd agree with that, right?

10:35:05 13 A. And hence, my report.

10:35:06 14 Q. Correct.

10:35:07 15 MR. QUIRK: And prior to -- we'll get to
10:35:10 16 your report in just a moment. I would like this
10:35:14 17 exhibit, as messy and sloppy as it is, to be marked
10:35:18 18 as a full exhibit.

10:35:19 19 THE PRESIDING OFFICER: Do you have any
10:35:21 20 objection, Mr. Volinsky?

10:35:23 21 MR. VOLINSKY: No objection.

10:35:24 22 THE PRESIDING OFFICER: Can we have a
10:35:25 23 number.

10:35:27 1 MS. WORTHEN: 457.

10:35:29 2 THE PRESIDING OFFICER: 457, Mr. Quirk's
10:35:32 3 chart. It is so admitted.

10:35:37 4 (LGC 457 admitted into evidence.)

10:36:01 5 THE PRESIDING OFFICER: Mr. Quirk, do you
10:36:02 6 believe that you're done with that exhibit?

10:36:05 7 MR. QUIRK: I don't think so. If it's
10:36:06 8 okay, could I leave it up?

10:36:08 9 THE PRESIDING OFFICER: That's fine.

10:36:12 10 Q. BY MR. QUIRK: You were just referencing,
10:36:15 11 hence your engagement in this case, correct?

10:36:16 12 A. Yes.

10:36:17 13 Q. Your engagement is pursuant to the laws of
10:36:19 14 2010, right?

10:36:20 15 A. I'm assuming it's 2010.

10:36:26 16 Q. Showing you --

10:36:30 17 MR. QUIRK: You admitted his report, right?

10:36:32 18 MR. VOLINSKY: I'm sorry?

10:36:34 19 MR. QUIRK: You admitted his report. Is it
10:36:36 20 up there?

10:36:36 21 MR. VOLINSKY: It's in the exhibit book.

10:36:39 22 MR. QUIRK: Could you turn to your report,
10:36:42 23 BSR 68, please.

10:36:47 1 THE WITNESS: 68. I have no idea where
10:36:48 2 that is. Okay.

10:36:55 3 THE PRESIDING OFFICER: Take your time
10:36:56 4 because it will take me longer, Mr. Atkinson.

10:37:05 5 THE WITNESS: I see 66. Did you say 68?

10:37:09 6 MR. VOLINSKY: It's Book 4.

10:37:13 7 THE PRESIDING OFFICER: Book 4.

10:37:16 8 MR. QUIRK: Exhibit 68. And page 99.

10:37:19 9 Thank you.

10:37:20 10 MR. VOLINSKY: If you don't mind . . .

10:37:46 11 68. And if you flip it one more
10:37:49 12 page, that will be 99.

10:37:50 13 THE PRESIDING OFFICER: For clarification,
10:37:51 14 I have an additional mark at 68 for Bureau of
10:37:59 15 Securities Regulation expert report B from yesterday.
10:38:01 16 Is that the one we're talking about?

10:38:02 17 MR. VOLINSKY: No. That B would be Coutu.

10:38:05 18 MR. QUIRK: Yes.

10:38:09 19 THE PRESIDING OFFICER: Okay. And so this
10:38:09 20 one is?

10:38:11 21 MR. VOLINSKY: E. Remember we --

10:38:11 22 THE PRESIDING OFFICER: Earlier, E?

10:38:12 23 MR. VOLINSKY: Yes. We had broken it up.

10:38:13 1 And so this happens to be in 68 at page 99.

10:38:24 2 THE PRESIDING OFFICER: As I said,
10:38:25 3 Mr. Atkinson, it will take me longer than you.

10:38:28 4 THE WITNESS: I have it.

10:38:30 5 Q. BY MR. QUIRK: And on page 99, if everyone's
10:38:32 6 with us, you'll see your third paragraph in, you talk
10:38:36 7 about that you were retained pursuant to Chapter 149:6,
10:38:43 8 the laws of 2010.

10:38:45 9 Do you see that?

10:38:46 10 A. I do.

10:38:47 11 Q. Does that refresh your recollection?

10:38:49 12 A. Yes, it does.

10:38:50 13 Q. Because the statute, RSA 5-B, has no
10:38:54 14 specific method to calculate reserves and thus no
10:38:58 15 specific guidance to risk pools to do that, you were
10:39:01 16 retained pursuant to the laws of 2010 to provide a
10:39:06 17 recommendation, right?

10:39:07 18 A. Yes.

10:39:11 19 Q. Exhibit 256 on the screen, please.

10:39:13 20 Showing you what's been marked LGC
10:39:18 21 256 --

10:39:21 22 MR. TILSLEY: Can I have just a second,
10:39:23 23 please.

10:39:24 1 MR. QUIRK: Sure.

10:39:25 2 Q. BY MR. QUIRK: -- and ask you to turn to
10:39:27 3 pages 43 and 44. The numbers are on the upper-right.

10:39:33 4 A. Okay.

10:39:38 5 MR. QUIRK: Can you scroll down for me to
10:39:39 6 149:6, please. Perfect.

10:39:43 7 MR. VOLINSKY: I'm sorry. Which page?

10:39:49 8 MR. QUIRK: 43 and 44. Second-to-the-last
10:39:52 9 page.

10:40:04 10 We're at 256, the second-to-the-last
10:40:07 11 page.

10:40:20 12 THE PRESIDING OFFICER: Bear with us,
10:40:22 13 Mr. Quirk.

10:40:23 14 MR. QUIRK: Yes. My apologies. I don't
10:40:32 15 think I gave you this one.

10:40:37 16 THE PRESIDING OFFICER: And I would ask the
10:40:39 17 observers to also bear with us. There's a significant
10:40:42 18 amount of number of exhibits up here, multipage
10:40:46 19 exhibits. And we have them stored in different
10:40:50 20 places. I'm afraid we're not doing Archives'
10:41:03 21 reputation.

10:41:25 22 Q. BY MR. QUIRK: And we're at page 43 of 44,
10:41:28 23 the second-to-the-last page.

10:41:30 1 THE PRESIDING OFFICER: Thank you for your
10:41:31 2 indulgence, Mr. Quirk. We are with you.

10:41:35 3 MR. QUIRK: Thank you.

10:41:36 4 Q. BY MR. QUIRK: At the middle of the page
10:41:37 5 you'll see 149:6, correct?

10:41:39 6 A. Yes.

10:41:40 7 Q. That's the chapter of the laws of 2010 that
10:41:45 8 was issued by the New Hampshire Legislature and that
10:41:48 9 resulted in you being retained, correct?

10:41:51 10 A. That's correct.

10:41:52 11 Q. And to be clear, you were retained long
10:41:56 12 before this staff petition was filed, right?

10:41:59 13 A. Yes.

10:42:00 14 Q. You were retained at the direction of the
10:42:05 15 Secretary of State to provide a recommendation to the
10:42:10 16 Legislature, correct?

10:42:11 17 A. Yes. To provide a recommendation, yes.

10:42:13 18 Q. And your recommendation to the Legislature
10:42:18 19 to try to fill in the gaps of 5-B has not been
10:42:22 20 adopted by the New Hampshire Legislature, has it?

10:42:25 21 A. Not to my knowledge.

10:42:28 22 Q. And do you know that the New Hampshire
10:42:31 23 Legislature right now is in the process of trying to

10:42:35 1 determine and enact specifics concerning the setting
10:42:39 2 of reserves? Are you aware of that?

10:42:41 3 A. No.

10:42:42 4 Q. Have you been asked to testify before the
10:42:45 5 Legislature concerning your recommendation?

10:42:47 6 A. No.

10:42:48 7 Q. Not yet anyway, right?

10:42:52 8 A. (No response.)

10:42:54 9 Q. I want to go through the law of 2010 briefly
10:42:56 10 and compare it with what the Secretary of State and
10:43:00 11 the Bureau of Securities actually asked you to do in
10:43:03 12 this case, okay?

10:43:04 13 A. Okay.

10:43:05 14 Q. If you follow this, the New Hampshire
10:43:09 15 Legislature asked -- well, didn't ask -- "instructed
10:43:13 16 the Secretary of State, in consultation with the
10:43:16 17 Insurance Commissioner, and by employing the services
10:43:20 18 of an actuary who has experience with pooled risk
10:43:25 19 management programs and is a qualified member of the
10:43:29 20 American Academy of Actuaries" to submit a report,
10:43:35 21 correct?

10:43:35 22 A. Yes.

10:43:36 23 Q. And that report, you'll see from the law,

10:43:39 1 was to go to the Speaker of the House, the President
10:43:41 2 of the Senate, the Senate committee and House
10:43:46 3 committee, and the Governor, correct?

10:43:48 4 A. Yes.

10:43:48 5 Q. And the next part is what I want you to
10:43:50 6 focus on. It concerns "specific recommendations
10:43:53 7 concerning the limitation of reserves in pooled risk
10:43:57 8 management programs and the limitation on
10:44:00 9 administrative expenses as a percentage of claims of
10:44:04 10 pooled risk management programs," correct?

10:44:06 11 A. Yes.

10:44:06 12 Q. You would agree with me that this law
10:44:09 13 instructs the Secretary of State to offer
10:44:13 14 recommendations on programs broadly, correct?

10:44:18 15 A. Yes.

10:44:19 16 Q. But that's not what you were asked to do,
10:44:21 17 is it?

10:44:23 18 A. I'm not following you. When you said
10:44:26 19 "broadly," how does that relate to what we did?

10:44:29 20 Q. All of the programs, pooled risk programs
10:44:33 21 in the State of New Hampshire, you didn't do that,
10:44:35 22 correct?

10:44:35 23 A. No. We didn't. We specifically in our

10:44:37 1 proposal said we could focus in on the HealthTrust.

10:44:41 2 Q. And in fact, the Secretary of State or the
10:44:45 3 Bureau of Securities only asked you to focus on Local
10:44:50 4 Government Center HealthTrust, correct?

10:44:53 5 A. Yes.

10:44:58 6 Q. The Secretary of State or the Bureau of
10:45:01 7 Securities didn't ask you to look at Primex or
10:45:03 8 SchoolCare, the other two risk pools, did they?

10:45:07 9 A. They did not.

10:45:08 10 Q. In addition to limiting your engagement to
10:45:13 11 only one of the three pools, you were also asked --
10:45:17 12 not asked to provide any recommendations concerning
10:45:21 13 reserves for property-liability or workers'
10:45:25 14 compensation pools, were you?

10:45:26 15 A. We were asked, but we -- we said we
10:45:29 16 don't -- that's not our area of expertise, so we
10:45:32 17 didn't respond to those two.

10:45:33 18 Q. So if I understand your testimony, you
10:45:35 19 actually explained to the Secretary of State or the
10:45:39 20 Bureau of Securities, You know, I know you're asking
10:45:43 21 me to provide recommendations for other programs, but
10:45:47 22 we just don't have the expertise to do that. Words
10:45:51 23 to that effect you told them?

10:45:52 1 A. Yes.

10:45:53 2 Q. And did they explain to you that the law
10:45:56 3 that they were trying to follow required opinions on
10:46:00 4 reserves concerning all the different programs?

10:46:03 5 A. I think I understood that's what they --
10:46:05 6 that's what their intent was, yes.

10:46:07 7 Q. Are you aware that they've never retained
10:46:09 8 any actuary to offer recommendations to the
10:46:13 9 Legislature on any other pools other than LGC's
10:46:17 10 health program?

10:46:18 11 A. No, I'm not aware of that.

10:46:26 12 Q. And it also says that the actuary has
10:46:29 13 experience with pooled risk management programs,
10:46:33 14 correct?

10:46:33 15 A. Yes.

10:46:34 16 Q. You specifically drafted the majority of
10:46:37 17 this report, right?

10:46:38 18 A. Yes.

10:46:39 19 Q. And you specifically do not have experience
10:46:42 20 with pooled risk management programs such as
10:46:45 21 HealthTrust, correct?

10:46:46 22 A. I do not have specific experience with
10:46:51 23 pooled arrangements, me personally.

10:46:56 1 Q. Sure. Next I want to talk about what you
10:46:58 2 did prior to making the recommendation on the level
10:47:01 3 of reserves for LGC HealthTrust.

10:47:06 4 Because you did not have experience
10:47:09 5 directly with risk pools such as HealthTrust, did you
10:47:14 6 at least look at what the other pools in New
10:47:16 7 Hampshire were doing as it applies to the setting of
10:47:21 8 reserves for its programs?

10:47:23 9 A. No. I think I mentioned in that deposition,
10:47:25 10 I didn't think it was necessary.

10:47:27 11 Q. And the reason I'm asking some of these
10:47:29 12 questions that we covered in our deposition is that
10:47:32 13 the hearing officer who has to make this decision
10:47:36 14 isn't privy to that deposition, okay? So I apologize
10:47:39 15 if we're going to go over some common ground.

10:47:41 16 A. Okay.

10:47:41 17 Q. In addition to not reviewing any pools
10:47:43 18 within New Hampshire as to what they're doing to set
10:47:46 19 reserves, you also didn't look at any pools within
10:47:50 20 New England as to how they're handling reserves
10:47:54 21 within risk pools similar to HealthTrust, correct?

10:47:56 22 A. That is correct.

10:47:58 23 Q. You also didn't look to any -- what any

10:48:01 1 pools did throughout the country, right?

10:48:03 2 A. That is correct.

10:48:03 3 Q. And as you sit here today, you do not know
10:48:06 4 what a majority of pools do throughout the country as
10:48:09 5 it goes to setting of reserves, do you?

10:48:11 6 A. I do not.

10:48:14 7 Q. You also did not look to any national
10:48:19 8 association of risk pools and the guidance that they
10:48:23 9 have promulgated concerning the setting of reserves,
10:48:26 10 correct?

10:48:26 11 A. I did not.

10:48:30 12 Q. You did not review any LGC HealthTrust
10:48:35 13 minutes from 2002 where they decided to adopt RBC 4.2,
10:48:43 14 did you?

10:48:43 15 A. I believe I did, yes.

10:48:45 16 Q. You reviewed the 2002 minutes?

10:48:47 17 A. Well, I'm not sure if it's 2002, but I
10:48:52 18 recall having information when -- discussing the
10:48:57 19 decision to go to 4.2.

10:48:57 20 Q. You had those --

10:49:00 21 A. I don't know whether it was 2002 or not.

10:49:01 22 Q. I'm sorry. You had those discussions with
10:49:03 23 the Bureau of Securities attorneys, right?

10:49:06 1 A. Yes. I believe we did.

10:49:08 2 Q. You didn't review the actual minutes where
10:49:10 3 the decision was made, did you?

10:49:12 4 A. I believe -- I believe I had those minutes.

10:49:15 5 Q. If you reviewed minutes, how many sets of
10:49:17 6 minutes did you review?

10:49:19 7 A. I don't recall.

10:49:21 8 Q. Would it be the one that instituted RBC or
10:49:24 9 would it be the subsequent minutes where all of these
10:49:27 10 topics were discussed by the board?

10:49:31 11 A. I believe it was the initial setting of the
10:49:35 12 4.2 and Peter Riemer's -- and the board minutes that
10:49:44 13 actually had that discussion.

10:49:45 14 Q. So as you sit here now, your best
10:49:47 15 recollection is that you reviewed, at best, the
10:49:49 16 minutes from the 2002 HealthTrust board meeting,
10:49:52 17 correct?

10:49:53 18 A. Yes.

10:49:54 19 Q. And am I correct to say then that you did
10:49:57 20 not review any minutes of any subsequent board
10:50:00 21 meetings where the topic was revisited?

10:50:04 22 A. I don't recall. I may have.

10:50:10 23 Q. But as you sit here today, you don't

10:50:12 1 recall?

10:50:12 2 A. That's correct.

10:50:12 3 Q. Now, Peter Riemer, the actuary, did you
10:50:17 4 call him up and talk with him about why he
10:50:20 5 recommended RBC 4.2?

10:50:27 6 A. No. And it's my understanding he didn't
10:50:29 7 recommend it.

10:50:31 8 Q. My point is you never spoke to Peter
10:50:35 9 Riemer, the actuary that was actually retained and
10:50:37 10 addressed these issues prior to your recommendation
10:50:40 11 to the Legislature, correct?

10:50:42 12 A. I did not.

10:50:43 13 Q. And right before Attorney Volinsky sat
10:50:48 14 down, I wrote down a quote you made concerning
10:50:50 15 Mr. Riemer.

10:50:51 16 A. Um-hum.

10:50:51 17 Q. And you thought that he was reasonable, but
10:50:54 18 conservative, correct?

10:50:55 19 A. Yes.

10:50:55 20 Q. And I also wrote down a quote you said
10:50:58 21 earlier in your testimony, that it's better to be
10:51:02 22 conservative in making estimates, correct?

10:51:04 23 A. That's correct.

10:51:05 1 Q. And that's what we're doing here? We're
10:51:08 2 making estimates, right?

10:51:09 3 A. We are.

10:51:12 4 Q. We've talked about what you did not do prior
10:51:21 5 to you making a recommendation to the Legislature.
10:51:25 6 Now I want to talk about what you did do.

10:51:27 7 You reviewed some financial statements,
10:51:31 8 right?

10:51:31 9 A. Yes.

10:51:33 10 Q. And you made certain assumptions within
10:51:38 11 your stochastic model, correct?

10:51:40 12 A. Yes.

10:51:40 13 Q. And just so there's no mystery here, the
10:51:43 14 stochastic model is a software program, and you type
10:51:47 15 in certain assumptions and data within the software
10:51:50 16 program, correct?

10:51:51 17 A. That's -- It's more than that. But yes,
10:51:56 18 there are inputs.

10:51:57 19 Q. And after those inputs, it comes out with a
10:52:01 20 calculation, correct?

10:52:02 21 A. Yes.

10:52:03 22 Q. And depending on what you put in to the
10:52:07 23 model is a result -- the end result is dependent upon

10:52:15 1 that, correct?

10:52:15 2 A. Sure. Yes.

10:52:17 3 Q. And what you put into this model that we
10:52:20 4 just heard about during your direct examination is
10:52:25 5 about medical trend, correct? That was a factor, and
10:52:31 6 in fact, your primary factor that you used in your
10:52:34 7 model, right?

10:52:36 8 THE PRESIDING OFFICER: Excuse me. Do you
10:52:37 9 still recall the first question?

10:52:39 10 THE WITNESS: No.

10:52:39 11 MR. QUIRK: I'm sorry. I jumped in. My
10:52:40 12 apologies. Let me strike the question and I'll ask a
10:52:43 13 different question.

10:52:44 14 Q. BY MR. QUIRK: In the stochastic model that
10:52:46 15 you used, Mr. Atkinson, the medical trend factor was
10:52:49 16 the primary factor for your model, correct?

10:52:52 17 A. No, it was not the primary input into the
10:52:56 18 model. It was the reason why we used the model,
10:53:02 19 because the trend factor that's used to calculate
10:53:04 20 rates is the primary driver for whether or not the
10:53:09 21 premiums are going to be sufficient or not. So that's
10:53:13 22 the primary reason the model was being used. It wasn't
10:53:18 23 one of the inputs.

10:53:19 1 Q. I'm going to ask you a broad question so we
10:53:22 2 all know what went into your model, okay? What were
10:53:25 3 the inputs that you put into your model?

10:53:28 4 A. They were the number of lives.

10:53:31 5 Q. Number of lives, yes.

10:53:33 6 A. It's actually in my report.

10:53:35 7 Q. Please feel free to refer to your report if
10:53:38 8 you'd like to.

10:53:39 9 A. If I can find it. It's right in front of
10:53:40 10 me. There it is.

10:53:42 11 THE PRESIDING OFFICER: And help the rest
10:53:43 12 of us and tell us where you are in your report, please,
10:53:46 13 Mr. Atkinson.

10:53:47 14 THE WITNESS: Sure.

10:53:49 15 Q. BY MR. QUIRK: And at the risk of making
10:53:51 16 another messy chart, I'm going to write down the
10:53:56 17 assumptions that you used for your model. I'm
10:54:10 18 writing "stochastic model." And go right ahead.

10:54:14 19 A. I think it might have been in one of the
10:54:16 20 previous reports we did, not the final expert report.

10:54:18 21 But I can tell you that we used the
10:54:20 22 number of members or covered lives.

10:54:22 23 Q. I want to make sure it's accurate, so if

10:54:27 1 it's okay with you, I'm going to give you one of your
10:54:30 2 prior reports, okay?

10:54:31 3 A. Um-hum.

10:54:42 4 Q. And when you say "prior report," this --
10:54:45 5 what I'm about to give you is the December 29, 2010
10:54:48 6 report, correct?

10:54:50 7 A. Yes.

10:54:50 8 Q. And that's the report that we were just
10:54:53 9 talking about that you issued to the Secretary of
10:54:57 10 State in response to Chapter 149:6, laws of 2010,
10:55:05 11 right?

10:55:05 12 A. That's correct.

10:55:09 13 MR. QUIRK: Exhibit 360.

10:55:20 14 Q. BY MR. QUIRK: You reviewed this document
10:55:21 15 during your deposition. It has a sticker from your
10:55:23 16 deposition.

10:55:24 17 A. Um-hum.

10:55:25 18 Q. And feel free to spend as much time as you
10:55:27 19 want, and then we'll talk about the various
10:55:31 20 assumptions that went into the model that you used.

10:55:38 21 THE PRESIDING OFFICER: "Assumptions"
10:55:39 22 meaning "inputs"?

10:55:41 23 MR. QUIRK: "Inputs." Thank you.

10:55:55 1 THE WITNESS: Okay.

10:55:57 2 Q. BY MR. QUIRK: And the hearing officer
10:55:58 3 asked you to refer to a page --

10:56:00 4 A. Right.

10:56:00 5 Q. -- so I'll ask you to do that.

10:56:02 6 A. It's page 8, the top of page 8 of the
10:56:07 7 report.

10:56:07 8 Q. So top of page 8 of Exhibit 360, there are
10:56:11 9 certain factors -- or inputs you used. And go right
10:56:13 10 ahead.

10:56:13 11 A. Right. It says the main input parameter
10:56:16 12 specific to the HealthTrust were "Average number of
10:56:20 13 covered employees."

10:56:21 14 Q. All right. So I'm going to write
10:56:25 15 "average" -- "Average number of covered employees."

10:56:32 16 A. "Average number of covered adults."

10:56:35 17 Q. "Average number of covered adults."

10:56:40 18 A. "Average annual claims cost per employee."

10:56:44 19 Q. "Average number of claims cost per employee."

10:56:51 20 A. And "Average annual claims cost per adult."

10:56:57 21 Q. "Average annual claims cost per adult."

10:57:04 22 A. And an indicator whether they had specific
10:57:08 23 stop loss and what the attachment point was. In this

10:57:11 1 case there was none.

10:57:14 2 Q. Okay.

10:57:15 3 A. And then the risk of confidence level.

10:57:24 4 Those are the main points.

10:57:25 5 Q. And the confidence level is what we heard
10:57:28 6 about on direct exam, right?

10:57:29 7 A. Yes.

10:57:30 8 Q. And you used 95 percent?

10:57:32 9 A. That's right.

10:57:34 10 Q. So I've just written down the various
10:57:35 11 inputs to your model. Did I write all of them down?

10:57:39 12 A. Yes. Those are the main ones, yes.

10:57:45 13 Q. Well, I want to be complete.

10:57:46 14 A. Yes.

10:57:46 15 Q. You said those are the main ones. What
10:57:48 16 other ones went into your model? And the reason I'm
10:57:50 17 asking this is we didn't have access to this because
10:57:54 18 of the proprietary nature.

10:57:56 19 A. That's right. Those are the standard input
10:57:57 20 items, um-hum.

10:57:58 21 Q. Beyond the standard input items, what other
10:58:00 22 items did you use?

10:58:01 23 A. Well, because of the nature of the program,

10:58:08 1 we revised our distribution function slightly to take
10:58:12 2 into account the fact of the -- you know, the fact
10:58:19 3 that this was a risk pool versus a standard employer.

10:58:27 4 Q. So I'm going to write that --

10:58:29 5 A. Go ahead.

10:58:29 6 Q. Is it in an input? Is it an input in the
10:58:35 7 model?

10:58:36 8 A. It's not an input, no. It's revising the
10:58:40 9 underlying distribution in the -- in the model.

10:58:45 10 So it's not an input item per se.

10:58:47 11 Q. And repeat for me what it is again. It's a
10:58:51 12 distribution factor?

10:58:52 13 A. We revised the claims distribution to
10:58:56 14 recognize the fact that this was a risk pool
10:58:59 15 arrangement and not a standard single employer group.

10:59:05 16 Q. And why was that important?

10:59:07 17 A. Well, we always customize our model to
10:59:14 18 recognize whatever variables that we think are
10:59:18 19 pertinent in a particular situation. And this was
10:59:21 20 one of them.

10:59:21 21 Q. Any other variables that you used?

10:59:23 22 A. No.

10:59:24 23 Q. So now we have them all. And I'll put that

10:59:27 1 you revised the claims distribution as one, okay?

10:59:31 2 A. Um-hum.

10:59:41 3 Q. So in just a moment I'm going to put a
10:59:43 4 sticker on this, assuming it's admitted. So before I
10:59:47 5 do that, I want to make sure I write down everything
10:59:49 6 that went into your model. Is everything there?

10:59:51 7 A. That's it.

10:59:53 8 MR. QUIRK: Mr. Mitchell, I'd ask that this
10:59:55 9 be marked a full exhibit.

10:59:58 10 THE PRESIDING OFFICER: Mr. Volinsky?

10:59:59 11 MR. VOLINSKY: No objection.

11:00:00 12 THE PRESIDING OFFICER: Without objection.

11:00:02 13 Number?

11:00:04 14 MS. WORTHEN: 458.

11:00:06 15 MR. QUIRK: Thank you.

11:00:07 16 THE PRESIDING OFFICER: LGC 458 is admitted.

11:00:07 17 (LGC 458 admitted into evidence.)

11:00:13 18 THE PRESIDING OFFICER: Mr. Quirk, may I
11:00:16 19 inquire if you are going into another stage of your
11:00:18 20 examination?

11:00:18 21 MR. QUIRK: I'm going to stay with this for
11:00:20 22 a moment.

11:00:20 23 THE PRESIDING OFFICER: When you complete

11:00:21 1 this, would you consider whether this is a good time
11:00:24 2 for a morning break?

11:00:26 3 MR. QUIRK: This would be a fine time.

11:00:27 4 THE PRESIDING OFFICER: Right now or when
11:00:28 5 you finish?

11:00:30 6 MR. QUIRK: Right now.

11:00:30 7 THE PRESIDING OFFICER: Okay. I think it
11:00:31 8 will shorten everything. And we will adjourn then
11:00:34 9 for 10 minutes, please. 11:10.

11:00:34 10 (Recess at 11:00 a.m.,
11:15:24 11 resumed at 11:15 a.m.)

11:15:24 12 THE PRESIDING OFFICER: We're on the
11:15:28 13 record. We have returned from recess midmorning
11:15:32 14 style. Mr. Quirk is still questioning Mr. Atkinson
11:15:36 15 on cross-examination.

11:15:39 16 If you're prepared to go forward,
11:15:41 17 Mr. Quirk.

11:15:42 18 MR. QUIRK: Thank you, Mr. Mitchell.

11:15:50 19 Q. BY MR. QUIRK: I want to talk to you a bit
11:15:52 20 about what the Bureau of Securities did after you
11:15:54 21 made your recommendation to them concerning the
11:15:58 22 reserve levels for risk pools, okay?

11:16:00 23 A. Okay.

11:16:01 1 Q. And I'll direct -- if we could have 361 on
11:16:04 2 the screen. 361.

11:16:10 3 Putting what has been marked LGC
11:16:15 4 Exhibit 361 in front of you, and you'll notice on the
11:16:21 5 first page -- let me just wait till everyone has
11:16:40 6 it -- you'll notice on the first page there's a
11:16:42 7 sticker at the bottom, Exhibit Segal 4.

11:16:48 8 Do you see that?

11:16:49 9 A. Yes, I do.

11:16:49 10 Q. That's from your deposition, correct?

11:16:51 11 A. Yes.

11:16:52 12 Q. And we spoke about this document during
11:16:55 13 your deposition. It's a press release from the
11:17:00 14 Bureau of Securities after you made your
11:17:04 15 recommendations pursuant to the law that we reviewed
11:17:08 16 earlier this morning, correct?

11:17:10 17 A. Yes.

11:17:15 18 Q. If you turn to the --

11:17:18 19 A. Well, let me say that I'm looking at the
11:17:21 20 date, the December 30 date, and I don't know if, in
11:17:24 21 fact, it was pursuant to our report or not.

11:17:27 22 Q. You have your report in front of you, the
11:17:31 23 first report you did pursuant to the laws of 2010.

11:17:34 1 And that's Exhibit 360, just for the record.

11:17:37 2 And if you look at the date of your
11:17:38 3 report, it's a day before the press release, right?

11:17:42 4 A. That's correct.

11:17:44 5 Q. And it talks about your report within this
11:17:50 6 press release on December 30, correct?

11:17:52 7 A. Yes.

11:17:53 8 Q. I want to turn your attention to the second
11:18:00 9 page, last sentence. It reads, "The Bureau emphasized
11:18:15 10 that these are recommendations and that the Legislature
11:18:19 11 will ultimately determine how to address these issues,"
11:18:28 12 correct?

11:18:29 13 A. Yes.

11:18:30 14 Q. And to your knowledge, your request is
11:18:32 15 still pending with the Legislature as far as you know,
11:18:36 16 right?

11:18:36 17 A. That's correct.

11:18:38 18 Q. As long as we're here on this document,
11:18:41 19 the sentence before the one that we just looked at
11:18:47 20 addresses administrative expenses, correct?

11:18:52 21 A. Yes.

11:18:52 22 Q. And you were asked to do two things by the
11:18:58 23 Secretary of State prior to this case. You were

11:19:02 1 asked to make a recommendation as to reserves, right?

11:19:06 2 A. Yes.

11:19:07 3 Q. And we've talked a little bit about that so
11:19:09 4 far, correct?

11:19:11 5 A. That's correct.

11:19:11 6 Q. The second thing you were asked to do was
11:19:13 7 to look at administrative expenses for LGC
11:19:19 8 HealthTrust, correct?

11:19:20 9 A. That's correct.

11:19:20 10 Q. And even though the law of 2010 didn't
11:19:24 11 specify it was only for LGC HealthTrust, that's all
11:19:29 12 the Secretary of State asked you to do, correct?

11:19:31 13 A. That's correct.

11:19:31 14 Q. And you did that, right?

11:19:33 15 A. We did.

11:19:34 16 Q. And you reviewed all of the financial
11:19:37 17 records from 2002 to 2010 before you came to an
11:19:43 18 opinion regarding the administrative expenses for LGC
11:19:47 19 HealthTrust, correct?

11:19:48 20 A. That is not correct. We didn't look at the
11:19:52 21 prior years until sometime subsequent to two
11:19:57 22 thousand -- you know, the issuing of that 2010 report.

11:20:00 23 Q. And just so --

11:20:01 1 A. We looked at, I believe it was 2008 and
11:20:04 2 2009 at that point.

11:20:05 3 Q. Thank you for that clarification. So you
11:20:06 4 looked at 2008 and 2009 prior to you coming to your
11:20:12 5 conclusion on the administrative expenses for LGC
11:20:16 6 HealthTrust, right?

11:20:17 7 A. That's correct.

11:20:19 8 Q. And your ultimate opinion as set forth in
11:20:22 9 your report and as relayed by the Bureau of Securities
11:20:26 10 was that LGC HealthTrust expenses were reasonable,
11:20:34 11 correct?

11:20:34 12 A. In total.

11:20:35 13 Q. In total.

11:20:37 14 A. We didn't look at specific pieces in great
11:20:40 15 detail.

11:20:40 16 Q. Right. You weren't asked to, right?

11:20:42 17 A. In total.

11:20:43 18 Q. You were asked to voice an opinion as to
11:20:46 19 the administrative expenses as to a percentage of
11:20:49 20 claims, correct?

11:20:50 21 A. That's correct. And we broke it down into
11:20:54 22 the claims administration piece and then the general
11:20:58 23 administration piece. And -- yes.

11:21:00 1 Q. And you're careful in your review when you
11:21:03 2 are issuing opinions, particularly for the New
11:21:10 3 Hampshire Legislature, correct?

11:21:11 4 A. Yes.

11:21:11 5 Q. And you were careful in this case when you
11:21:13 6 did your review of the administrative expenses,
11:21:15 7 correct?

11:21:16 8 A. Yes.

11:21:16 9 Q. And after that careful review, it was your
11:21:20 10 opinion that the administrative expenses for LGC
11:21:23 11 HealthTrust were reasonable; isn't that true?

11:21:26 12 A. In total.

11:21:27 13 Q. In total, correct?

11:21:28 14 A. That's correct.

11:21:34 15 Q. And in total LGC's administrative expenses
11:21:39 16 were approximately 7.7 percent of claims, correct?

11:21:43 17 A. Yes.

11:21:44 18 Q. And if you look at the sentence before the
11:21:48 19 one that we just talked about, it reads, "In addition
11:21:52 20 to the recommendations for reserves, the Bureau also
11:21:55 21 recommended that administrative expenses be capped at
11:21:58 22 10 percent of total claims for each plan," correct?

11:22:04 23 A. That's correct.

11:22:04 1 Q. So the Bureau of Securities is actually
11:22:08 2 recommending to the Legislature a level of
11:22:14 3 administrative expenses above the ones that LGC
11:22:18 4 HealthTrust has, correct?

11:22:19 5 A. As a cap.

11:22:20 6 Q. As a cap?

11:22:21 7 A. Right.

11:22:22 8 Q. And the cap is about -- over 2 percent above
11:22:26 9 what LGC HealthTrust had, correct?

11:22:28 10 A. Right. They're not actually recommending
11:22:30 11 that everybody go there. They're saying that's what
11:22:33 12 the maximum is.

11:22:35 13 Q. My question is, the cap is 2.2 percent
11:22:38 14 above the level that LGC HealthTrust had, correct?

11:22:40 15 A. That's correct.

11:22:41 16 Q. And you deemed that percent reasonable in
11:22:45 17 total, correct?

11:22:45 18 A. Yes.

11:22:46 19 Q. And this recommendation by the Bureau to
11:22:53 20 the Legislature on administrative expenses has also
11:22:56 21 not been adopted as of yet, correct?

11:22:59 22 A. I don't know that for a fact, but . . .

11:23:01 23 Q. As far as you know, it hasn't, right?

11:23:03 1 A. That's correct.

11:23:12 2 Q. And as long as we're on this document, I'll
11:23:21 3 ask you to turn to the first page, second full
11:23:25 4 paragraph, and it gives a bit of context as to where
11:23:35 5 the law of 2010 came from that sought your expertise
11:23:40 6 as a recommendation.

11:23:43 7 It states, "During the 2010
11:23:47 8 legislative session, legislation was introduced
11:23:50 9 proposing to limit the amount of reserves maintained
11:23:54 10 by pools to 5 to 10 percent. While this initiative
11:23:57 11 was unsuccessful, the Legislature passed a law," and
11:24:02 12 it goes on to say that they're looking for opinions
11:24:04 13 so they can determine what the appropriate amount is,
11:24:08 14 correct?

11:24:08 15 A. Yes.

11:24:09 16 Q. It indicates that someone -- whether the
11:24:11 17 Bureau or someone else -- proposed 5 to 10 percent,
11:24:18 18 the Legislature rejected that proposal, correct?

11:24:20 19 A. Yes.

11:24:20 20 Q. So when you were talking earlier about this
11:24:23 21 5 percent of claims that exists in state law
11:24:27 22 concerning the State of New Hampshire employees and
11:24:33 23 their health insurance, that specific requirement was

11:24:36 1 rejected by the Legislature, correct?

11:24:38 2 A. It was. I don't know the basis for their
11:24:41 3 rejection though.

11:24:42 4 Q. I'm not asking the basis. It was rejected,
11:24:45 5 right?

11:24:45 6 A. Yes.

11:24:49 7 Q. Did you know it was rejected -- this
11:24:54 8 legislation was rejected before you issued your
11:24:57 9 December 29, 2010 report?

11:25:00 10 A. I did not.

11:25:11 11 Q. Did you know it was rejected before you
11:25:22 12 issued the report for Attorney Volinsky in February
11:25:29 13 2012?

11:25:29 14 A. Repeat the question again.

11:25:30 15 Q. Did you know the legislation regarding the
11:25:33 16 5 to 10 percent was rejected before you issued your
11:25:36 17 February 2012 report?

11:25:38 18 A. I did not.

11:25:40 19 Q. So in your February 2012 report where
11:25:45 20 you're making comparisons, you were not aware that
11:25:49 21 the Legislature had already rejected a similar level
11:25:52 22 of reserves, correct?

11:25:55 23 A. That is correct.

11:26:01 1 MR. QUIRK: I'm going to ask for 362 to
11:26:04 2 come up, please.

11:26:29 3 Is everybody with us on 362?

11:26:34 4 THE PRESIDING OFFICER: Not yet.

11:26:36 5 THE WITNESS: Am I supposed to have that as
11:26:38 6 well?

11:26:40 7 MR. QUIRK: I think I showed you that one
11:26:42 8 earlier. That's the one that I was showing to you
11:26:44 9 regarding the Primex calculation. Is that it?

11:26:53 10 THE WITNESS: Yes.

11:26:54 11 THE PRESIDING OFFICER: We're with you.

11:26:58 12 Q. BY MR. QUIRK: The document just prior to
11:27:00 13 this that we reviewed was a press release dated
11:27:03 14 December 30, 2010 concerning recommendations,
11:27:08 15 correct?

11:27:15 16 A. I'm looking for the date.

11:27:18 17 Q. Upper right. I'll just -- I'll move on.
11:27:23 18 My point is, if you could turn to the last page of
11:27:25 19 362, and the date is December 30, 2010, correct?

11:27:32 20 A. Yes, it is.

11:27:34 21 Q. That's the same date as the press release,
11:27:37 22 Exhibit 361, correct?

11:27:39 23 A. Yes.

11:27:40 1 Q. So it appears that 362 is the actual
11:27:45 2 recommendations -- and it is a seven-page document --
11:27:52 3 by the Bureau of Securities to the Legislature
11:27:55 4 pursuant to the laws of 2010, correct?

11:27:59 5 A. Yes. Let me -- Yes.

11:28:13 6 Q. I ask you to turn to page 2 of this
11:28:18 7 document. And in the middle there it says, "Other
11:28:30 8 approaches." And they reference a national
11:28:33 9 association of pooled risk management groups.

11:28:36 10 Do you see that?

11:28:36 11 A. I do.

11:28:39 12 Q. Within that first sentence it states that
11:28:43 13 this national association of pooled risk management
11:28:48 14 groups noted that "there was not a consensus on the
11:28:51 15 issue as to the proper amount of reserves versus
11:28:55 16 surplus," correct?

11:28:56 17 A. Yes.

11:28:58 18 Q. Prior to your recommendation concerning
11:29:06 19 risk pools, did you even know of the national
11:29:07 20 association of risk pools: AGRiP?

11:29:08 21 A. I did not.

11:29:09 22 Q. Did you ever do any research to try to
11:29:11 23 determine whether there were national associations of

11:29:15 1 pooled risk management groups prior to your opinion?

11:29:17 2 A. I did not.

11:29:19 3 Q. Because for some reason, you didn't feel
11:29:21 4 that that was relevant, correct?

11:29:22 5 A. It wasn't.

11:29:24 6 Q. I ask you to turn to page 4. And at the
11:29:39 7 top of the page of page 4, there is a reference to
11:29:53 8 the Pennsylvania study, correct?

11:29:56 9 A. Yes.

11:29:57 10 Q. And you are familiar with that Pennsylvania
11:30:02 11 study, right?

11:30:03 12 A. I don't believe I was.

11:30:05 13 Q. Did you review the Pennsylvania study prior
11:30:10 14 to any of your reports?

11:30:12 15 A. I don't -- I don't believe so, no.

11:30:14 16 Q. So if you didn't review this study, do you
11:30:18 17 know how the Bureau put it into their recommendations?

11:30:21 18 A. I don't.

11:30:22 19 Q. So it's fair to say -- and I'll direct your
11:30:26 20 attention to the last sentence -- that because you did
11:30:29 21 not review this study, you would not have known that,
11:30:33 22 based upon this report, there was a determination, a
11:30:38 23 conclusion that "RBC of 5.5 to 7.5 was appropriate

11:30:44 1 for nonprofit organizations"? You weren't aware of
11:30:48 2 that, correct?

11:30:52 3 A. That's correct.

11:30:52 4 Q. And it says "for nonprofit organizations."
11:30:56 5 HealthTrust is a nonprofit organization, correct?

11:30:58 6 A. Yes.

11:31:00 7 Q. And it concluded that this "RBC of 5.5 to
11:31:05 8 7.5 was appropriate." That's less than the RBC for
11:31:10 9 HealthTrust, correct? More. I'm sorry. More. More
11:31:15 10 than the RBC for HealthTrust, right?

11:31:17 11 A. Meaning the 4.2, more than the 4.2?

11:31:23 12 Q. Correct.

11:31:23 13 A. Yes, it is.

11:31:26 14 Q. And this is a Bureau of Securities document,
11:31:32 15 correct?

11:31:32 16 A. Yes.

11:31:33 17 Q. I want to direct your attention to the top
11:31:40 18 of page 6. And if everybody's with us at the top of
11:32:01 19 page 6, it has a comment in the first sentence that
11:32:11 20 4.2 of RBC -- and that's LGC's HealthTrust -- "is not
11:32:20 21 out of line with the range of RBC ratios used in
11:32:23 22 other jurisdictions."

11:32:25 23 Do you see that?

11:32:25 1 A. I do.

11:32:25 2 Q. Do you know where that statement came from?

11:32:35 3 A. Not exactly. Our report looked at a study
11:32:37 4 that was done in the State of Massachusetts, and it
11:32:40 5 showed a lot of the ranges of RBCs that had -- or
11:32:45 6 reserves that had actually been accumulated. That
11:32:47 7 study did not at all come up with targeted levels.
11:32:54 8 They just looked at actuals.

11:32:57 9 Q. So as you sit here --

11:32:59 10 A. It says, "RBC ratios used by other
11:33:04 11 jurisdictions." I don't know if that actually meant
11:33:06 12 used as a target or RBC levels that were actually
11:33:10 13 achieved.

11:33:11 14 Q. Let me help --

11:33:12 15 MR. VOLINSKY: Let him --

11:33:14 16 MR. QUIRK: I'm sorry.

11:33:15 17 Q. BY MR. QUIRK: Were you done?

11:33:16 18 A. I believe I'm finished with that statement.

11:33:18 19 Q. I'm going to direct you to your report.

11:33:20 20 And it's in both your reports. But for purposes of
11:33:23 21 this question, I'll direct you to your February 16,
11:33:27 22 2012 report. It's BSR Exhibit 68. And I missed the
11:33:31 23 letter. Is that E?

11:33:32 1 THE PRESIDING OFFICER: E.

11:33:38 2 MR. QUIRK: E. And I would direct your
11:33:39 3 attention to page 9.

11:33:51 4 THE PRESIDING OFFICER: That would be
11:33:52 5 page 107.

11:33:54 6 MR. QUIRK: 107. Thank you.

11:33:57 7 Q. BY MR. QUIRK: And right above the
11:33:59 8 stochastic modeling, I want to focus your attention
11:34:02 9 on a sentence. Are you with me, Mr. Atkinson?

11:34:05 10 A. Yes.

11:34:05 11 Q. And it reads, "This 4.2 target reserve
11:34:10 12 level" -- and that's referring to LGC HealthTrust's
11:34:10 13 target reserve level, correct?

11:34:21 14 A. I'm sorry. Where are you again?

11:34:21 15 Q. Right above "Stochastic model."

11:34:21 16 A. Right above it, okay.

11:34:21 17 Q. That's okay. Let's just step back. "This
11:34:21 18 4.2 target reserve level," do you see that?

11:34:25 19 A. Yes, I do.

11:34:25 20 Q. And you're referring to HealthTrust's 4.2
11:34:29 21 target reserve level, right?

11:34:31 22 A. I am.

11:34:31 23 Q. You go on to say, "while highly subjective,

11:34:36 1 it is certainly not out of line when compared to the
11:34:38 2 range of RBC ratios of the aforementioned surveyed
11:34:43 3 health insurance companies," correct?

11:34:45 4 A. That's correct.

11:34:45 5 Q. And if you could go back to 362,
11:34:51 6 Exhibit 362, at the top of page 6, and I was asking
11:35:03 7 you where that statement came from, that statement
11:35:05 8 came from your report, correct?

11:35:06 9 A. I'm not quite -- not quite. But it looks
11:35:10 10 like it's pretty close.

11:35:11 11 Q. And in fact, you do view RBC 4.2, in your
11:35:18 12 words, "Not to be out of line with the RBC used in
11:35:22 13 other jurisdictions," right?

11:35:24 14 A. Surveyed in other health insurance
11:35:27 15 companies. That's their actual reports, not target.

11:35:32 16 Q. And what survey are you referring to when
11:35:37 17 you are making a statement that the 4.2 is not out of
11:35:41 18 line with the companies surveyed?

11:35:47 19 A. I don't recall exactly, but it was done by
11:35:49 20 the Blue Cross Blue Shield Association.

11:35:51 21 THE PRESIDING OFFICER: Again, it was done
11:35:52 22 by whom, please?

11:35:53 23 THE WITNESS: The Blue Cross Blue Shield

11:35:57 1 Association. At the top of page 9 of my report, it
11:36:01 2 says, "Even the Blue Cross Blue Shield Association
11:36:04 3 uses the RBC formula."

11:36:06 4 MR. QUIRK: 356. Exhibit 356.

11:36:16 5 Q. BY MR. QUIRK: Showing you what's been
11:36:18 6 marked Exhibit 356 --

11:36:19 7 A. Okay.

11:36:20 8 Q. -- and ask you if you recognize that
11:36:22 9 document?

11:36:22 10 A. I do.

11:36:35 11 Q. Can you tell us how many pages are within
11:36:38 12 this document.

11:36:39 13 A. Approximately 223.

11:36:42 14 Q. And this is a "Study of the reserves and
11:36:50 15 surpluses of health insurers in Massachusetts,"
11:36:53 16 correct?

11:36:53 17 A. Yes.

11:36:54 18 Q. And this is a study of the reserves and
11:36:57 19 surpluses that was completed in May of 2010, right?

11:37:00 20 A. Yes.

11:37:00 21 Q. And this study was cited in your report to
11:37:06 22 the Legislature concerning a recommendation on
11:37:09 23 reserves, right?

11:37:10 1 A. It was reported -- a report that was done,
11:37:17 2 it actually summarizes where these insurance carriers
11:37:20 3 actually are with regard to the reserves, not what
11:37:23 4 their target is.

11:37:28 5 Q. And this is a fairly comprehensive study,
11:37:32 6 right?

11:37:32 7 A. Yes, it is.

11:37:33 8 Q. And it looks at a number of nonprofit
11:37:37 9 entities that provides health insurance coverage,
11:37:41 10 correct?

11:37:41 11 A. Yes, it does.

11:37:43 12 Q. And it also looks at a number of for-profit
11:37:47 13 entities, correct?

11:37:47 14 A. I believe it does as well, yes.

11:37:51 15 Q. I would turn your attention to page 10 of
11:37:56 16 the document, and it would be page 11 for purposes of
11:38:01 17 displaying it on the screen, or even perhaps 12. And
11:38:09 18 that's it. Perfect.

11:38:11 19 It's Table 6 in this comprehensive
11:38:16 20 study that includes nonprofit entities that provide
11:38:22 21 health coverage.

11:38:23 22 Are you with me?

11:38:24 23 A. Yes, I am.

11:38:24 1 Q. And Table 6 discusses various risk-based
11:38:31 2 capital ratios for the various companies that were
11:38:35 3 analyzed as part of this comprehensive study, correct?

11:38:37 4 A. That's correct.

11:38:38 5 Q. And the companies are Blue Cross Blue
11:38:43 6 Shield, HMO Blue, another Blue Cross Blue Shield,
11:38:47 7 Fallon, Harvard Pilgrim, Health NE, Neighborhood,
11:38:53 8 Tufts, UHNE, and then it has a section that it kind
11:38:58 9 of averages out and it says, "All companies," correct?

11:39:01 10 A. Yes.

11:39:04 11 Q. And at the end of this comprehensive study,
11:39:10 12 they list each of the entities and they tell you
11:39:14 13 whether they're a nonprofit or for-profit. My
11:39:19 14 question is, are you aware that only two of these
11:39:22 15 companies are for-profit and the rest are nonprofits?

11:39:25 16 A. Not exactly.

11:39:28 17 Q. Taking my representation that the only two --
11:39:32 18 Health NE and UHNE, I believe, are for-profit --
11:39:37 19 taking that representation, the remaining companies
11:39:40 20 would fall in the category of nonprofit, correct?

11:39:43 21 A. Yes. Based on your statement.

11:39:50 22 Q. And there are years listed on the top of
11:39:53 23 this chart, correct?

11:39:54 1 A. Yes.

11:39:55 2 Q. I want to focus your attention to 2008.

11:40:04 3 When we see Blue Cross Blue Shield having an RBC of
11:40:11 4 640 percent, is that also viewed at 6.4 RBC?

11:40:14 5 A. Yes, that is.

11:40:15 6 Q. So that would be 2.2 higher than LGC's
11:40:21 7 HealthTrust, correct?

11:40:22 8 A. Yes. Thereabouts because these are actuals
11:40:28 9 as opposed to targets.

11:40:29 10 Q. Understood. And if you go down the list of
11:40:37 11 the nine companies, each one of them is above LGC
11:40:46 12 HealthTrust's target except one, correct?

11:40:49 13 A. That's correct.

11:40:52 14 Q. And in fact, there's a wide range, right?

11:40:56 15 A. There is.

11:40:57 16 Q. The range goes all the way from 3.69 RBC --
11:41:02 17 I'm translating that into 3.69. You understand how
11:41:06 18 I'm doing that, right?

11:41:07 19 A. I do.

11:41:07 20 Q. It goes from 3.69 RBC all the way to 10.13
11:41:14 21 RBC, correct?

11:41:15 22 A. It does.

11:41:17 23 Q. And what's the average for 2008 of these

11:41:23 1 nine nonprofit and profit companies in Massachusetts?

11:41:28 2 A. 5.15.

11:41:29 3 Q. And that is above the LGC HealthTrust
11:41:32 4 target, right?

11:41:33 5 A. Yes.

11:41:33 6 Q. The target that you said was reasonable,
11:41:39 7 but conservative, correct?

11:41:43 8 A. I'm sorry. What did I say?

11:41:45 9 Q. During your testimony earlier.

11:41:47 10 A. That what was reasonable?

11:41:48 11 Q. You testified earlier --

11:41:49 12 A. Yes.

11:41:49 13 Q. -- that Peter Riemer's evaluation was
11:41:54 14 reasonable but conservative; do you recall that?

11:41:56 15 A. Just a general statement about reserves or
11:42:00 16 are we talking specifically about the RBC?

11:42:04 17 Q. I believe you said it's better to be
11:42:05 18 conservative, right?

11:42:07 19 A. In the -- I believe at that time we were
11:42:09 20 discussing premium setting and IBNR setting.

11:42:14 21 Q. Okay. The record will speak to that. It's
11:42:18 22 no question that the average of these companies were
11:42:23 23 above the RBC of HealthTrust, right?

11:42:26 1 A. That's correct. And therein lies the
11:42:29 2 problem.

11:42:29 3 Q. And if you view HealthTrust as being
11:42:32 4 conservative, apparently these companies are more
11:42:36 5 conservative, right?

11:42:37 6 A. I have no idea what they're setting their
11:42:42 7 target at. This represents where they actually are.

11:42:45 8 Q. Where they are. Fair enough.

11:42:47 9 And if you go to 2007, the average
11:42:51 10 bumps up as to where they are, right? It's 6.15 RBC?

11:42:58 11 A. On average they didn't have a good year for
11:43:00 12 2008.

11:43:01 13 Q. And if we go all the way down the line for
11:43:06 14 the last five years, the average RBC is higher than
11:43:11 15 4.2, correct?

11:43:13 16 A. The actual RBCs.

11:43:15 17 Q. The actual RBC, correct?

11:43:16 18 A. Yes, um-hum.

11:43:21 19 Q. And this study is cited in your report,
11:43:26 20 right?

11:43:26 21 A. It is.

11:43:28 22 Q. I want to talk a little bit more about the
11:44:32 23 risk-based capital approach and your opinions

11:44:36 1 concerning RBC, okay?

11:44:38 2 A. Yes.

11:44:39 3 Q. You will admit that RBC is the de facto
11:44:44 4 standard for measuring the adequacy of reserves for
11:44:48 5 health insurance entities, correct?

11:44:49 6 A. It is.

11:44:55 7 Q. And it's used by numerous nonprofit health
11:45:00 8 entities, correct?

11:45:02 9 A. That's correct. That's because they are
11:45:07 10 required to.

11:45:09 11 Q. So if someone such as the Bureau of
11:45:13 12 Securities were to allege that LGC HealthTrust was
11:45:17 13 using an improper method of calculating reserves, you
11:45:23 14 would agree with me that RSA 5-B does not set forth a
11:45:28 15 particular method, correct?

11:45:29 16 A. It does not.

11:45:31 17 Q. And because it doesn't set forth a
11:45:39 18 particular method, it's up to the actuary to choose
11:45:41 19 one of the different methods to calculate reserves,
11:45:47 20 correct?

11:45:47 21 A. That's correct.

11:45:53 22 Q. And you were aware that in this case, LGC
11:45:55 23 retained an actuary to do just that, correct?

11:45:59 1 A. I am.

11:46:00 2 Q. And that actuary is Peter Riemer, right?

11:46:05 3 A. That's right.

11:46:05 4 Q. And he is a member of the American Academy
11:46:10 5 of Actuaries, correct?

11:46:11 6 A. He is.

11:46:12 7 Q. And from your review, he did an annual
11:46:15 8 evaluation of the HealthTrust pool, correct?

11:46:20 9 A. "Evaluation" meaning rate setting?

11:46:23 10 Q. Correct.

11:46:23 11 A. Yes.

11:46:28 12 Q. And you were aware that he made
11:46:34 13 recommendations based on the adequacy of the
11:46:40 14 contributions or the premiums, right?

11:46:42 15 A. Yes. The rate setting.

11:46:44 16 Q. Correct. And you're aware that he set
11:46:48 17 reserves that he felt were necessary to be maintained
11:46:52 18 to meet expenses of all incurred and incurred but not
11:46:57 19 reported claims, correct?

11:46:58 20 A. That's correct.

11:46:59 21 Q. And he also set forth reserves based upon
11:47:10 22 the projected needs of LGC's HealthTrust plan based
11:47:15 23 upon his opinions, correct?

11:47:17 1 A. Well, I'm not sure if the 4.2 was his
11:47:21 2 opinion or not.

11:47:21 3 Q. And we'll look at some minutes in a moment.
11:47:24 4 But leaving aside that issue --

11:47:26 5 A. Um-hum.

11:47:26 6 Q. -- you would agree that the board of
11:47:31 7 HealthTrust adopted a plan that addressed the
11:47:36 8 projected needs of the program based upon their view,
11:47:39 9 correct?

11:47:39 10 A. That's right.

11:47:42 11 Q. And LGC did that in consultation with
11:47:52 12 Mr. Riemer, correct?

11:47:53 13 A. That's correct.

11:48:12 14 Q. LGC 397. But for purposes of --

11:48:16 15 MR. QUIRK: Mr. Mitchell, I think it's
11:48:17 16 easiest probably to refer to the joint exhibits,
11:48:26 17 No. 1, RSA 5-B.

11:48:28 18 THE PRESIDING OFFICER: Thank you.

11:48:29 19 MR. QUIRK: It's the same document, but we
11:48:30 20 did not have the joint exhibits on the software so we
11:48:33 21 couldn't project it. It's 397. And page 4 of this
11:48:46 22 document.

11:48:52 23 MR. VOLINSKY: You may need to give him

11:48:54 1 one.

11:48:54 2 MR. QUIRK: Thank you.

11:48:55 3 Q. BY MR. QUIRK: I'm handing you what's been
11:48:57 4 marked by agreement as the joint exhibits. Joint
11:49:00 5 Exhibit 1 is RSA 5-B, the statute that we have been
11:49:03 6 talking about this morning.

11:49:08 7 Do you recognize that?

11:49:09 8 A. I do.

11:49:09 9 Q. And you've reviewed that statute, right?

11:49:11 10 A. Yes.

11:49:12 11 Q. And ask you to turn to page 4.

11:49:19 12 A. Page numbers are . . .

11:49:21 13 Q. Of the statute. So it would be page 5 if
11:49:25 14 you're also counting the cover page. And
11:49:30 15 specifically I'd like to focus on RSA 5-B:5 --

11:49:34 16 A. Okay.

11:49:36 17 Q. -- okay? We have discussed this morning
11:49:47 18 several times that in your opinion, the statute does
11:49:53 19 not specify a method -- specific method to calculate
11:49:57 20 reserves, correct?

11:49:59 21 A. That's correct.

11:49:59 22 Q. But the statute does require certain things
11:50:04 23 of risk pools, right?

11:50:05 1 A. It does.

11:50:05 2 Q. And the statute 5-B:5, Roman I(f), I'll
11:50:15 3 direct your attention to, requires that the risk pool
11:50:20 4 "provide for an annual actuarial evaluation," correct?

11:50:24 5 A. Yes.

11:50:24 6 Q. And that "the evaluation shall assess the
11:50:29 7 adequacy of contributions required to fund any such
11:50:32 8 program," correct?

11:50:33 9 A. Yes.

11:50:34 10 Q. And you acknowledged a moment ago that LGC
11:50:41 11 HealthTrust did just that: "assess the adequacy of
11:50:46 12 the contributions," or premiums, correct?

11:50:50 13 A. I did.

11:50:51 14 Q. Another requirement of the risk pools is
11:50:55 15 that the evaluation "assess reserves necessary to be
11:51:02 16 maintained to meet expenses of all incurred and
11:51:05 17 incurred but not reported claims," correct?

11:51:07 18 A. Yes.

11:51:08 19 Q. And you similarly acknowledged a moment ago
11:51:13 20 that LGC HealthTrust did just that, correct?

11:51:17 21 A. I did.

11:51:21 22 Q. Moving on with that sentence, it also
11:51:25 23 requires the evaluation to address "other projected

11:51:32 1 needs of the plan," correct?

11:51:33 2 A. It does.

11:51:34 3 Q. And you acknowledged a moment ago that
11:51:37 4 whether it was Mr. Riemer or the board, the Board of
11:51:43 5 Directors of HealthTrust did just that with its RBC
11:51:47 6 4.2, correct?

11:51:49 7 A. I can't say that's correct necessarily.

11:51:53 8 Q. You just acknowledged a moment ago that the
11:51:56 9 board did an evaluation of other projected needs,
11:51:59 10 correct?

11:51:59 11 A. I'm not sure what "other projected needs
11:52:03 12 are." What are they?

11:52:04 13 Q. Well, we've already talked about the claims
11:52:08 14 and the IBNR. They're the net assets, right?

11:52:10 15 A. And so what are the other ones?

11:52:11 16 Q. Oh, they could be -- they could be
11:52:13 17 additional expenses. They could be a contingency
11:52:16 18 fund for different things. But for purposes of my
11:52:18 19 question, I'm just going to assume the other projected
11:52:23 20 needs is the net assets or the RBC 4.2, okay?

11:52:28 21 MR. VOLINSKY: I'd object.

11:52:29 22 THE PRESIDING OFFICER: Yes. Basis of the
11:52:31 23 objection, Mr. Volinsky?

11:52:33 1 MR. VOLINSKY: The statute isn't clear that
11:52:34 2 that's what that phrase refers to. And I don't --
11:52:39 3 from my own knowledge, I don't think there's anything
11:52:41 4 else in the set of statutes that identifies that
11:52:44 5 piece.

11:52:44 6 THE PRESIDING OFFICER: Well, I understand.

11:52:48 7 Mr. Quirk, do you have any comment?

11:52:51 8 MR. QUIRK: It's projected needs of the
11:52:53 9 plan. We're talking about projected needs. The --

11:52:56 10 THE PRESIDING OFFICER: Hold on. The basis
11:52:59 11 which you cite is denied, so the objection is denied.

11:53:02 12 MR. VOLINSKY: Thank you.

11:53:03 13 MR. QUIRK: Thank you.

11:53:03 14 THE PRESIDING OFFICER: Go ahead.

11:53:05 15 Q. BY MR. QUIRK: And projected needs of the
11:53:06 16 plan can include the net assets, right?

11:53:08 17 A. Yes, it could.

11:53:09 18 Q. And the LGC board projected those at RBC 4.2,
11:53:16 19 correct?

11:53:16 20 A. They did.

11:53:21 21 Q. The requirement that actually exists in the
11:53:24 22 statute goes on and says, "The annual actuarial
11:53:28 23 evaluation shall be performed by a member of the

11:53:32 1 American Academy of Actuaries," correct?

11:53:34 2 A. Yes.

11:53:35 3 Q. It goes on to say that person has to be
11:53:39 4 "qualified in the coverage area being evaluated,"
11:53:42 5 right?

11:53:42 6 A. Yes.

11:53:42 7 Q. And you acknowledged a moment ago
11:53:44 8 Mr. Riemer is a member of the American Academy of
11:53:47 9 Actuaries, correct?

11:53:47 10 A. That's correct.

11:53:48 11 Q. You'll also acknowledge that he is
11:53:51 12 qualified in the area of health coverage, correct?

11:53:54 13 A. I did.

11:53:56 14 Q. So although the statute doesn't require a
11:54:08 15 specific method in determining reserves, it does
11:54:15 16 require certain things under 5-B:5, I(f), correct?

11:54:24 17 A. It does.

11:54:32 18 MR. QUIRK: Mr. Mitchell, this may be a
11:54:33 19 good time to take a break at the lunch hour, or I'm
11:54:35 20 happy to move on to a different area.

11:54:37 21 THE PRESIDING OFFICER: How much more do
11:54:38 22 you have?

11:54:39 23 MR. QUIRK: I'd like some time to consult.

11:54:40 1 But if I have that opportunity, I may be cutting down
11:54:44 2 on some things.

11:54:45 3 THE PRESIDING OFFICER: Let me just make
11:54:46 4 inquiry.

11:54:47 5 Attorney Gordon, do you anticipate
11:54:49 6 cross-examination of this client -- of this witness?

11:54:52 7 MR. GORDON: Not at this point, but I would
11:54:53 8 probably want to have some consultation as well.

11:54:55 9 THE PRESIDING OFFICER: Very good. And
11:54:57 10 Mr. Howard?

11:54:59 11 MR. HOWARD: Same response, although
11:55:01 12 probably less likely.

11:55:02 13 THE PRESIDING OFFICER: If there's no
11:55:02 14 objection, it would be a good time to break for
11:55:05 15 lunch. We will do so and return at 1:15.

11:55:14 16 MR. QUIRK: Did you say 1:15?

11:55:17 17 THE PRESIDING OFFICER: 1:15, one-five.

11:55:19 18 (Whereupon, at 11:55 a.m.,
11:55:24 19 the proceedings were recessed,
11:55:26 20 to reconvene at 1:15 p.m.
11:55:30 21 this same date.)

22

23

AFTERNOON SESSION

(1:16 p.m.)

THE PRESIDING OFFICER: Good afternoon, ladies and gentlemen. We've returned from the lunch recess. Mr. Atkinson is on cross-examination to Attorney Quirk.

Please continue, Mr. Quirk.

MR. QUIRK: Thank you.

HOWARD ATKINSON,
the witness at the time of recess, having been previously duly sworn, was further examined and testified as follows:

CROSS-EXAMINATION (continued)

BY MR. QUIRK:

Q. Good afternoon.

A. Good afternoon.

Q. We talked a little bit this morning about the Pennsylvania study, and I want to refer you to LGC Exhibit 355. And I'm going to hand you this document. And I'll wait till everyone has it before them. And I have some questions for you.

Page 5 -- it's not page 5 -- it's ii on the document; it would use a different number if

01:18:12 1 we pull it up.

01:18:15 2 I'm going to direct your attention to
01:18:19 3 the last full paragraph that says, "We explored other
01:18:23 4 states' laws."

01:18:25 5 Are you with me?

01:18:26 6 A. I am.

01:18:26 7 Q. This section -- Well, I should back up.
01:18:32 8 This study relates to something that the Pennsylvania
01:18:36 9 Legislature instructed to get some actuarial reports
01:18:40 10 on the Blue Cross Blue Shield plans, correct?

01:18:43 11 A. Yes, it is.

01:18:52 12 Q. And on ii, the paragraph that I was just
01:18:57 13 referencing, "We explored other states' laws and
01:18:59 14 practices," it goes on to say, "concerning reserves
01:19:04 15 and surpluses to identify other potential models,"
01:19:07 16 correct?

01:19:07 17 A. Yes.

01:19:07 18 Q. And the last sentence of that paragraph
01:19:10 19 before it goes into the bullet says, "However, very
01:19:13 20 few states have chosen to regulate the upper bounds
01:19:17 21 of surplus capital accumulation."

01:19:20 22 Do you see that?

01:19:21 23 A. I do.

01:19:23 1 Q. Were you aware of that?

01:19:26 2 A. For the most part, yes.

01:19:28 3 Q. And what that means is that if a state
01:19:32 4 chose to do that -- say, 20 percent max -- anything
01:19:38 5 over that 20 percent reserve level would have to be
01:19:41 6 returned, correct?

01:19:43 7 A. If a state were to do what again?

01:19:45 8 Q. If a state enacted a law --

01:19:47 9 A. Right.

01:19:47 10 Q. -- that required a maximum surplus --

01:19:50 11 A. Oh, maximum.

01:19:51 12 Q. -- of 20 percent of premiums, anything
01:19:54 13 above that would have to be returned, right?

01:19:56 14 A. That's correct.

01:19:57 15 Q. And it goes on to talk about what occurs in
01:20:01 16 Michigan. And it talks about capping the Blue Cross
01:20:08 17 Blue Shield plan and the surplus of that plan at a
01:20:12 18 ratio of RBC of 1,000 percent or 10.0, correct?

01:20:19 19 A. Yes, it does.

01:20:20 20 Q. And what that means is that if the plan
01:20:22 21 went above RBC 10.0, the Legislature is directing
01:20:27 22 insurance companies in that state, That's when you
01:20:29 23 need to return money to either members, profit --

01:20:35 1 stakeholders or whoever, right?

01:20:38 2 A. Yes.

01:20:38 3 Q. So it's fair to say from your experience --
01:20:40 4 and you have some -- that state legislatures know how
01:20:47 5 to set a cap on, for example, RBC, correct?

01:20:50 6 A. I wouldn't go so far as to say that. I said
01:20:54 7 this is one of the few exceptions where they've
01:20:56 8 actually set a cap. First I'm aware of.

01:20:58 9 Q. Let me frame it this way. Michigan knows
01:21:01 10 how to set a cap, right?

01:21:03 11 A. They've done it.

01:21:04 12 Q. Turn the page for me. Second bullet. New
01:21:14 13 Hampshire. New Hampshire has similarly adopted a law
01:21:18 14 setting a cap for not-for-profit health insurers in
01:21:23 15 New Hampshire, correct?

01:21:24 16 A. Yes. That's what it says.

01:21:25 17 Q. So when I was asking you about state
01:21:30 18 legislators knowing how to do this and we talked
01:21:33 19 about Michigan, apparently the New Hampshire
01:21:37 20 Legislature knows how to do it also, correct?

01:21:39 21 A. According to that bullet, yes.

01:21:45 22 MR. QUIRK: And for purposes of the record,
01:21:55 23 I will direct -- and I'm going to get into this

01:21:59 1 later -- but for purpose of the record, I'll reference
01:22:02 2 that the statute is RSA 420-A. I'll provide Attorney
01:22:08 3 Volinsky a copy of the statute.

01:22:19 4 And since I'm going to ask questions about
01:22:21 5 it, could I have this marked?

01:22:23 6 MR. VOLINSKY: No objection to it being
01:22:25 7 marked. But this doesn't apply to risk pools.

01:22:30 8 MR. QUIRK: Understood.

01:22:32 9 THE PRESIDING OFFICER: Okay. One, yes,
01:22:34 10 you may have it marked.

01:22:35 11 MR. QUIRK: Thank you.

01:22:37 12 THE PRESIDING OFFICER: He has no objection.
01:22:41 13 We'll get a number first.

01:22:43 14 MS. WORTHEN: 459.

01:22:44 15 THE PRESIDING OFFICER: LGC 459.

01:22:47 16 MR. VOLINSKY: I didn't get that.

01:22:48 17 MR. QUIRK: 459.

01:22:53 18 THE PRESIDING OFFICER: 459. And

01:22:54 19 Mr. Volinsky, you can wait for redirect or
01:22:54 20 otherwise --

01:22:54 21 MR. VOLINSKY: Fair enough.

01:22:54 22 THE PRESIDING OFFICER: -- to your
01:22:59 23 objections.

01:22:59 1 MR. QUIRK: May I provide you with a copy.

01:23:25 2 (LGC 459 admitted into evidence.)

01:23:28 3 Q. BY MR. QUIRK: I'm showing you what's been

01:23:29 4 marked as a full exhibit, LGC 459, and ask you to

01:23:34 5 draw your attention to the first page where it says,

01:23:41 6 "Health service corporation," okay?

01:23:43 7 A. Yes.

01:23:43 8 Q. And it goes on to say -- it defines "health

01:23:47 9 service corporation," and it says, "means a

01:23:49 10 nonprofit-sharing corporation without capital stock,

01:23:53 11 organized under the laws of the state for the purpose

01:23:55 12 of establishing, maintaining, and operating a health

01:23:59 13 service plan."

01:24:01 14 And it goes on, correct?

01:24:02 15 A. Yes.

01:24:03 16 Q. And to Attorney Volinsky's point, I will

01:24:07 17 concede, that is not a risk pool, okay?

01:24:10 18 A. Yes.

01:24:10 19 Q. It's a nonprofit insurance company. My

01:24:16 20 point on this is, if you turn to point -- to page 3,

01:24:21 21 about two-thirds of the way down, it talks about this

01:24:26 22 maximum surplus level of 20 percent.

01:24:31 23 Do you see that?

01:24:32 1 A. I do.

01:24:33 2 Q. My question is, from this, would you agree
01:24:36 3 with me that the New Hampshire Legislature knows how
01:24:42 4 to set forth in a statute concerning not-for-profit
01:24:48 5 insurance companies what the maximum surplus should be?

01:24:55 6 A. That appears to be the case.

01:24:57 7 Q. And for example, if a not-for-profit carrier
01:25:00 8 went above that level, they would have to return
01:25:04 9 surplus, right?

01:25:05 10 A. I'm going to read it first.

01:25:19 11 I don't see where it says that.

01:25:20 12 Q. If it's setting a maximum percent, would it
01:25:23 13 be fair to say that they cannot exceed that?

01:25:26 14 A. But it doesn't necessarily mean return of
01:25:29 15 premiums.

01:25:30 16 Q. They would just need to meet it?

01:25:32 17 A. Yes, um-hum.

01:25:33 18 Q. And above that it talks about a reserve
01:25:36 19 fund by an equal amount to at least 5 percent of the
01:25:39 20 annual premium income, correct?

01:25:46 21 A. Yes.

01:25:58 22 Q. And we talked about this at length, but for
01:26:00 23 purposes of clarity, RSA 5-B contains no such provision

01:26:06 1 regarding a specific percentage of a maximum reserve
01:26:07 2 or a minimum reserve as a percentage basis under 5-B,
01:26:12 3 correct?

01:26:12 4 A. Okay. This -- As I read it, this was
01:26:19 5 referring to a health service corporation in
01:26:22 6 instances where its liabilities exceed its assets --

01:26:25 7 Q. Correct.

01:26:26 8 A. -- and it's a way of replenishing the
01:26:29 9 reserves.

01:26:29 10 Q. Understood.

01:26:29 11 A. Yes.

01:26:30 12 Q. My point is, the Legislature knows how to
01:26:32 13 put a percentage on a surplus, correct?

01:26:35 14 A. Yes.

01:26:36 15 Q. And there's no such percentage within
01:26:39 16 RSA 5-B, correct?

01:26:40 17 A. That's correct.

01:26:41 18 Q. If you could go back to the Lewin Group,
01:26:46 19 and on that page, it's iii, and the third bullet
01:26:53 20 down, North Carolina. And it talks about some
01:26:55 21 legislation in North Carolina, correct?

01:26:58 22 A. Yes.

01:26:58 23 Q. And the legislation there is to propose a

01:27:01 1 limit to the Blue Cross plan of RBC, 6.5 or
01:27:05 2 \$100 million, correct?

01:27:08 3 A. That's correct.

01:27:17 4 Q. If you could go down further on the page,
01:27:19 5 the second full paragraph under No. 2. It talks
01:27:23 6 about -- towards the bottom of that paragraph, it
01:27:24 7 talks about "Surplus in the range of 15 to 25 percent
01:27:28 8 of annual premium revenue seems to be a standard for
01:27:31 9 risk protection alone," correct?

01:27:35 10 A. Yes.

01:27:35 11 Q. And when it says "risk protection alone,"
01:27:39 12 if you read the next sentence -- I'll give you some
01:27:46 13 time to do that.

01:27:47 14 A. Um-hum.

01:27:48 15 Q. Would you agree that the next sentence goes
01:27:51 16 on to talk about some additional protections that a
01:27:55 17 carrier may have such as "capital for competitive,
01:28:00 18 service, and regulatory response," correct?

01:28:02 19 A. It does.

01:28:03 20 Q. And when we're talking about HealthTrust,
01:28:05 21 those types of reserves is what you were testifying
01:28:08 22 to about net assets, correct?

01:28:09 23 A. Yes.

01:28:15 1 Q. And HealthTrust, based upon the chart that
01:28:20 2 you did attach to your report -- I believe it's
01:28:26 3 BSR 12 -- and I'll just bring it up to you -- BSR 12
01:28:40 4 indicates that HealthTrust's percentage is at a
01:28:45 5 little over 21 percent, correct?

01:28:47 6 A. That's correct.

01:28:48 7 Q. And that 21 percent is, as you just testified
01:28:52 8 a moment ago, protection for -- risk protection, but
01:28:59 9 also the other protections about capital for
01:29:02 10 competitive, service, or regulatory responses,
01:29:05 11 correct?

01:29:06 12 A. That's correct.

01:29:06 13 Q. And you'd agree with me that the range that
01:29:08 14 HealthTrust has is within the surplus range that this
01:29:12 15 report, after its study, seems to be a standard for
01:29:16 16 risk protection alone, correct?

01:29:20 17 A. If you're referring to insurance companies,
01:29:21 18 that's correct.

01:29:23 19 Q. Right.

01:29:24 20 A. Of which healthcare is not -- HealthTrust
01:29:27 21 is not.

01:29:28 22 Q. Right. And as long as you just brought up
01:29:35 23 a distinction between HealthTrust and an insurance

01:29:39 1 company, I'd like to ask you a couple of questions
01:29:41 2 about that, all right? And we talked about that at
01:29:46 3 your deposition a little bit, correct?

01:29:47 4 A. I believe so, yes.

01:29:48 5 Q. And what we talked about at your deposition
01:29:51 6 was your first report of December 29, 2010 was changed
01:29:59 7 in certain ways as compared with your February 2012
01:30:06 8 report, correct?

01:30:06 9 A. That's correct.

01:30:07 10 Q. And one of the changes that was between the
01:30:10 11 reports was that Attorney Volinsky, after he saw your
01:30:14 12 draft, asked that you highlight what you just said:
01:30:20 13 "LGC HealthTrust isn't an insurance company." And he
01:30:23 14 asked you to put, "It's important to note," correct?

01:30:26 15 A. I'm not sure of the exact words, but yes,
01:30:28 16 that was part of our discussion.

01:30:31 17 Q. And in fact, unlike your earlier report,
01:30:36 18 your February report references that within the
01:30:41 19 summary, correct?

01:30:42 20 A. It does.

01:30:43 21 Q. And if you could look to BSR Exhibit 68 --

01:30:57 22 A. Yes.

01:30:58 23 Q. -- page 113, which is the numbers at the

01:31:03 1 bottom of the page.

01:31:04 2 A. Right.

01:31:05 3 Q. Just wait till everybody has it.

01:31:22 4 Are you with me?

01:31:23 5 A. Yes.

01:31:24 6 Q. Finding No. 1 has a statement in there that
01:31:29 7 the RBC approach, in your opinion -- at least at this
01:31:33 8 time -- it was not an appropriate -- "It was not
01:31:36 9 appropriate for LGC HealthTrust, as it is not an
01:31:40 10 insurance company," correct?

01:31:41 11 A. That's correct.

01:31:50 12 Q. But for all intents and purposes, LGC
01:31:52 13 HealthTrust operates like an insurance company, right?

01:31:54 14 A. In many respects it does, yes.

01:31:57 15 Q. We talked about that at your deposition also,
01:32:00 16 correct?

01:32:00 17 A. I believe so, yes.

01:32:01 18 Q. And the distinction you made, at least
01:32:04 19 during your deposition, was that the difference was
01:32:07 20 that HealthTrust didn't file reports with the
01:32:11 21 Insurance Commissioner, correct?

01:32:14 22 A. That's correct. They do not.

01:32:17 23 Q. But as an operational point of view, LGC

01:32:29 1 HealthTrust operates in all aspects like an insurance
01:32:34 2 company, correct?

01:32:35 3 A. Well, any health plan of this size is going
01:32:41 4 to operate in a manner that generates premiums and pays
01:32:45 5 claims. So in that respect, just like an insurance
01:32:48 6 company, they do.

01:32:50 7 They don't have multiple lines of
01:32:52 8 coverage and multiple kinds of products such as
01:32:55 9 individual versus group, which a typical insurance
01:32:59 10 company does.

01:33:00 11 So this basically operates, in my
01:33:02 12 opinion, more like a fund or a plan than an insurance
01:33:06 13 company.

01:33:08 14 Q. If you didn't have the word "pool" on LGC
01:33:13 15 HealthTrust and you just looked at the operations of
01:33:15 16 what it does, it operates just like an insurance
01:33:17 17 company, correct?

01:33:18 18 A. I would say more like a fund.

01:33:20 19 Q. Then you would disagree with the Bureau's
01:33:26 20 expert Michael Coutu? And I'm referring to page 132
01:33:30 21 of the first day of testimony. I'll represent to you
01:33:34 22 that the BSR's expert, when asked about this topic,
01:33:39 23 said, "So, in all aspects, HealthTrust acts like an

01:33:42 1 insurance company?" Answer: "Just like it."

01:33:47 2 Would you agree or disagree with that
01:33:49 3 statement?

01:33:49 4 A. I would say in many aspects it does operate
01:33:52 5 like an insurance company, as I said before, um-hum.

01:33:57 6 Q. If you look at the BSR -- or LGC Exhibit 355
01:34:11 7 and we go on to the next page, at the top of the
01:34:19 8 page, it starts with, "To quantify the amount."
01:34:25 9 It's page iv. It's right up there if that helps you
01:34:31 10 to match it up to the document you're looking at.

01:34:33 11 A. Okay.

01:34:33 12 Q. It's LGC Exhibit 355.

01:34:36 13 A. Okay. Thanks. Here it is.

01:34:39 14 Q. Take your time.

01:34:45 15 A. What page?

01:34:45 16 Q. It's iv. At the top it says, "To quantify
01:35:11 17 the amount."

01:35:14 18 A. Right.

01:35:14 19 Q. This paragraph is designed to explain what
01:35:18 20 type of historical financial data they reviewed to
01:35:23 21 come to certain opinions. And it states that they
01:35:29 22 "analyzed historical financial data for 31 not-for-
01:35:33 23 profit Blue Cross and Blue Shield plans nationwide,"

01:35:36 1 correct?

01:35:36 2 A. Yes.

01:35:37 3 Q. And the time period was from 1998 to 2004,
01:35:40 4 correct?

01:35:41 5 A. Yes.

01:35:44 6 Q. And if you go to the table -- to the
01:35:47 7 paragraph below the table, it says, "The table shows,
01:35:54 8 for example, that an RBC ratio of 887 percent would
01:35:59 9 be needed to have a 95 percent confidence of
01:36:03 10 maintaining reserves," correct?

01:36:06 11 MR. VOLINSKY: Excuse me. I object.

01:36:08 12 THE PRESIDING OFFICER: There is an
01:36:08 13 objection --

01:36:08 14 MR. QUIRK: I'm happy --

01:36:08 15 THE PRESIDING OFFICER: One moment, please.
01:36:09 16 Objection. Grounds, please.

01:36:11 17 MR. QUIRK: I'm happy to read the whole
01:36:14 18 sentence.

01:36:14 19 MR. VOLINSKY: Okay.

01:36:15 20 THE PRESIDING OFFICER: Withdraws the
01:36:15 21 objection. Got to keep the record clean, Mr. Quirk.

01:36:18 22 MR. QUIRK: Thank you.

01:36:19 23 THE PRESIDING OFFICER: The objection's

01:36:20 1 withdrawn. You may proceed.

01:36:23 2 Q. BY MR. QUIRK: "The table shows, for example,
01:36:26 3 that an RBC ratio of 887 percent would be needed to
01:36:29 4 have a 95 percent confidence of maintaining reserves
01:36:32 5 above the BCBSA minimum level should there be a seven-
01:36:38 6 year insurance down cycle," correct?

01:36:41 7 A. Yes.

01:36:42 8 Q. Next sentence [as read], This analysis led
01:36:46 9 us to conclude that surplus levels that produce RBC
01:36:49 10 ratios in the range of 500 to 900 percent can be
01:36:54 11 justified to protect against underwriting swings, and
01:36:59 12 it goes on, "that could jeopardize a Blue's standing
01:37:06 13 with state insurance regulators and the Blue Cross
01:37:10 14 Blue Shield plan," correct?

01:37:11 15 A. Yes.

01:37:13 16 Q. As long as we're here, it mentions
01:37:17 17 95 percent. You talked about 95 percent in the
01:37:18 18 morning.

01:37:19 19 Do you recall that confidence level?

01:37:21 20 A. I do.

01:37:21 21 Q. And it was in the context of dipping into
01:37:24 22 either one penny or more than that, correct?

01:37:26 23 A. That's correct.

01:37:26 1 Q. Can you explain that a bit more for me,
01:37:29 2 what you meant by the one penny.

01:37:31 3 A. Yes. I'm saying when you're doing the
01:37:34 4 stochastic modeling, it's actually going through and
01:37:36 5 coming up with, you know, projected surplus levels or
01:37:41 6 net asset levels. And so -- based upon the claim
01:37:48 7 distribution that's built in. And so as it's putting
01:37:50 8 up the various points, you can then summarize those
01:37:53 9 points, either above or below a certain threshold.

01:37:57 10 And so if you look at the points that
01:37:58 11 are below 95 percent -- in other words, that's where
01:38:03 12 the majority of the dollars and amounts would be --
01:38:06 13 and there would be amounts above 95 percent. Some of
01:38:09 14 them would just barely be above and some would be
01:38:11 15 above by a significant amount.

01:38:15 16 Q. Thank you. If you could turn to page 11 of
01:38:25 17 the report.

01:38:25 18 MR. QUIRK: And it would be, I think, 22.

01:38:40 19 If I could have a moment, Mr. Mitchell?

01:38:43 20 THE PRESIDING OFFICER: Sure. Mr. Quirk,
01:38:59 21 the report that you're going to refer to, is it his
01:39:00 22 report or the one --

01:39:03 23 MR. QUIRK: No. I'm sorry. It's the

01:39:04 1 continuation of the Pennsylvania report, Exhibit 355.
01:39:21 2 Page 11 of the report.

01:39:21 3 Q. BY MR. QUIRK: I want to direct your
01:39:23 4 attention to the top of the page where it talks about
01:39:25 5 the State of North Carolina, okay?

01:39:28 6 A. Yes.

01:39:28 7 Q. It says, in North Carolina, the Insurance
01:39:32 8 Commissioner formed a working group in 2004 to look
01:39:35 9 at the surplus of the Blue Cross Blue Shield plans in
01:39:39 10 that state, correct?

01:39:41 11 A. Yes.

01:39:41 12 Q. And at the end of the first paragraph, it
01:39:43 13 talks about a bill proposes a limit on those plans.

01:39:47 14 Do you see that?

01:39:48 15 A. I do.

01:39:50 16 Q. And what's the RBC of the limit that the
01:39:53 17 North Carolina bill proposed?

01:39:55 18 A. Either 6.5 or \$100 million.

01:40:05 19 Q. If you could turn your attention to page 14
01:40:24 20 of the report.

01:40:26 21 I believe, Tammy, it's 25.

01:40:33 22 And there's a section entitled, "Is
01:40:35 23 there a 'right' surplus level?"

01:40:38 1 Do you see that?

01:40:39 2 A. I do.

01:40:39 3 Q. And I'm going to read you what the Lewin
01:40:44 4 Group in this Pennsylvania study came to and ask you
01:40:48 5 if you agree with it, okay?

01:40:50 6 A. Yes.

01:40:50 7 Q. And it says, "Our research reveals that
01:40:52 8 there is no consensus as to the 'right' level of
01:40:56 9 surplus for a health insurance company."

01:40:59 10 Do you agree with that statement?

01:41:01 11 A. No, I do not. I feel like there is a right
01:41:14 12 level.

01:41:16 13 Q. Okay.

01:41:16 14 A. It's rarely calculated, and therefore,
01:41:21 15 there is no standard for looking at it, no approach.
01:41:26 16 So I believe that's why they have that in parentheses
01:41:31 17 [sic].

01:41:31 18 Q. Have you done the level of research that is
01:41:35 19 indicated in this report?

01:41:39 20 A. What level of research has been done in
01:41:41 21 this report?

01:41:42 22 Q. If you're not aware, just say, I don't
01:41:46 23 know.

01:41:46 1 A. I don't know.

01:41:46 2 Q. Fair enough. So you disagree with that
01:41:50 3 statement in this report, it sounds like?

01:41:52 4 A. I do.

01:41:52 5 Q. The next sentence, let's see if you would
01:41:54 6 agree or disagree with this. "How much surplus is
01:41:57 7 needed to provide an adequate margin of safety is
01:41:59 8 largely a matter of judgment rather than calculation."

01:42:06 9 A. Disagree.

01:42:08 10 Q. And it goes on, and I would draw your
01:42:12 11 attention to the paragraph below the indented
01:42:14 12 paragraph. And it talks about them speaking with a
01:42:20 13 former State Insurance Commissioner. And this
01:42:23 14 commissioner informally opined that "an RBC ratio of
01:42:27 15 700 percent ought to be sufficient."

01:42:30 16 Do you see that?

01:42:31 17 A. I do.

01:42:33 18 Q. And in RBC that we've been talking about,
01:42:39 19 that would be RBC 7.0, right?

01:42:41 20 A. Yes.

01:42:41 21 Q. And that's significantly higher, you would
01:42:44 22 agree, than the target that LGC HealthTrust of RBC
01:42:50 23 4.2, correct?

01:42:51 1 A. Yes.

01:42:59 2 Q. Almost done with this report. If you could
01:43:01 3 turn to page 16 of the report. Under the graph,
01:43:06 4 there is a sentence similarly, "The actuarial firm
01:43:14 5 Milliman USA."

01:43:17 6 Do you see that?

01:43:17 7 A. Yes.

01:43:18 8 Q. Who is Milliman USA, if you know?

01:43:20 9 A. They are a national actuarial consulting
01:43:23 10 firm.

01:43:24 11 Q. A fairly large actuarial firm in the United
01:43:25 12 States?

01:43:25 13 A. They are.

01:43:25 14 Q. And they provide actuarial services for
01:43:28 15 health insurance entities, correct?

01:43:31 16 A. They do.

01:43:32 17 Q. And this large "actuarial firm, Milliman
01:43:37 18 USA, has recommended maintaining capital of 20 to
01:43:41 19 25 percent of premium revenue," correct?

01:43:52 20 A. Let me read the rest of the paragraph.

01:44:02 21 Yes, they do.

01:44:03 22 Q. Change of topic. If we could go -- if you
01:44:06 23 could go to your report, I believe it's BSR 68.

01:44:13 1 A. Okay.

01:44:16 2 Q. I'll wait till everybody has it. Page 6 of
01:44:27 3 the report, so that would be 104 under your numbering.

01:44:42 4 I just want to ask you a few questions
01:44:44 5 about your review of Peter Riemer's work for LGC
01:44:53 6 HealthTrust of IBNR, okay? You reviewed different
01:44:56 7 years -- I believe it was at least 2009 and then also
01:45:00 8 2010, correct?

01:45:01 9 A. That's correct.

01:45:02 10 Q. And you were asked on direct about the
01:45:07 11 changes in 2010, correct?

01:45:10 12 A. The change in methodology, you mean?

01:45:14 13 Q. I believe so.

01:45:15 14 A. Yes.

01:45:15 15 Q. And you don't know why that change in
01:45:18 16 methodology occurred, correct?

01:45:19 17 A. Do not know.

01:45:20 18 Q. But what we do know is that there was a
01:45:24 19 decrease of \$4 million from the prior year of the
01:45:29 20 estimated medical IBNR, correct?

01:45:32 21 A. Meaning that the previous year's
01:45:35 22 methodology overstated the reserve?

01:45:37 23 Q. Or the next year had a decrease of

01:45:39 1 \$4 million, right?

01:45:40 2 A. Because the previous year was overstated.

01:45:43 3 Q. Is that in your report?

01:45:45 4 A. That's the intent.

01:45:49 5 Q. And you go on to say, "We believe this

01:45:52 6 estimate is a much more reasonable estimate of

01:45:55 7 expected IBNR claims," correct?

01:45:57 8 A. That's correct.

01:45:58 9 Q. And you didn't review all of HealthTrust's

01:46:06 10 IBNR, right?

01:46:06 11 A. We did not.

01:46:07 12 Q. You only reviewed part of HealthTrust's IBNR,

01:46:11 13 right?

01:46:12 14 A. The largest portions of it, that's correct.

01:46:14 15 Q. I think you said during your deposition, it

01:46:16 16 was about 82 percent, correct?

01:46:17 17 A. That's correct.

01:46:18 18 Q. And that was the health portion of the IBNR

01:46:21 19 under LGC HealthTrust?

01:46:22 20 A. That's correct.

01:46:23 21 Q. And you didn't look at, at all, the IBNR

01:46:27 22 for the prescription drug benefit program, correct?

01:46:31 23 A. Did not. That runs out very quickly.

01:46:34 1 Q. And you also did not review the dental part
01:46:40 2 of the health program's IBNR, correct?

01:46:42 3 A. Did not. The premiums were kind of small
01:46:45 4 there.

01:46:45 5 Q. And you also did not review the short-term
01:46:48 6 disability portion of the IBNR, correct?

01:46:50 7 A. We did not.

01:46:51 8 Q. So put differently, you didn't review
01:46:54 9 12 percent of HealthTrust's overall IBNR, correct?

01:46:57 10 A. That's correct.

01:47:06 11 Q. Changing topics again, I just want to talk
01:47:09 12 briefly about the State insurance fund that you
01:47:15 13 referenced in your report that by statute has a
01:47:20 14 5 percent cap on reserves, okay?

01:47:26 15 A. Okay.

01:47:28 16 Q. You would agree with me that if that State
01:47:31 17 plan ran out of money, they could go into the general
01:47:38 18 fund of New Hampshire to obtain funds to pay claims,
01:47:43 19 correct?

01:47:43 20 A. If that would have occurred, that would be
01:47:46 21 an option, yes, that's correct.

01:47:49 22 Q. And that is an option of the State plan,
01:47:51 23 correct?

01:47:51 1 A. That's correct.

01:47:52 2 Q. That is not an option for the Local
01:47:56 3 Government Center health plan, correct?

01:47:57 4 A. That's correct.

01:47:58 5 Q. And in that way, they're different, right?

01:48:00 6 A. They are in that respect.

01:48:06 7 Q. We talked a little bit this morning about
01:48:12 8 actual RBCs versus targets, correct?

01:48:16 9 A. Yes.

01:48:18 10 Q. And when we were doing that, I was showing
01:48:21 11 you the Massachusetts study -- for purposes of the
01:48:31 12 record, it's LGC 356 -- and ask you to turn to page
01:48:55 13 10 of the report. Just wait till everybody has it.

01:49:08 14 THE PRESIDING OFFICER: We're all set,
01:49:10 15 Mr. Quirk.

01:49:10 16 MR. QUIRK: Thank you.

01:49:11 17 Q. BY MR. QUIRK: And if you look to page 10,
01:49:13 18 we were going over these RBCs for the various
01:49:16 19 companies, some Blue Cross, some nonprofits, and some
01:49:21 20 for-profit.

01:49:23 21 Do you recall those questions?

01:49:24 22 A. I do.

01:49:24 23 Q. And one of the comments you made in response

01:49:28 1 was that these are actual RBCs, correct?

01:49:32 2 A. That's correct.

01:49:33 3 Q. And that compares with the target RBC, right?

01:49:37 4 A. It doesn't compare them.

01:49:40 5 Q. It's different then?

01:49:41 6 A. They're different.

01:49:42 7 Q. And that's, I think, the point you were

01:49:44 8 making in response to this graph, right?

01:49:46 9 A. That's correct.

01:49:48 10 Q. For 2010 --

01:49:50 11 A. Um-hum.

01:49:51 12 Q. -- and I'm going to refer you to the BSR

01:49:55 13 Exhibit 12. And you should have it in front of you.

01:50:00 14 But if not, I will look for it and get it in front of

01:50:04 15 you.

01:50:04 16 A. Which one --

01:50:05 17 Q. It's a one-page document.

01:50:07 18 A. What's it look like?

01:50:23 19 MR. QUIRK: I don't want to mess up

01:50:24 20 Attorney Ramsdell's papers.

01:50:27 21 MR. VOLINSKY: Do you need this? It's an

01:50:29 22 attachment to the report.

01:50:30 23 MR. QUIRK: Thank you.

01:50:31 1 Q. BY MR. QUIRK: If you could look to your
01:50:32 2 report, and the report, it's at Exhibit 3 of your
01:50:39 3 report. It's an identical chart.

01:50:42 4 And are you with me?

01:50:43 5 A. I am.

01:50:45 6 Q. I just want to highlight, in 2010 --

01:50:48 7 THE PRESIDING OFFICER: Excuse me,

01:50:49 8 Mr. Quirk.

01:50:50 9 MR. QUIRK: Yes.

01:50:51 10 THE PRESIDING OFFICER: Are we at BSR 12 or
01:50:56 11 something else?

01:50:59 12 MR. QUIRK: For purposes of the record, why
01:51:01 13 don't we refer to it as his report, for clarity of
01:51:03 14 the record.

01:51:04 15 THE PRESIDING OFFICER: So that means we're
01:51:05 16 back to which exhibit?

01:51:09 17 MR. SATURLEY: 68.

01:51:11 18 MR. QUIRK: It is 68E.

01:51:13 19 THE PRESIDING OFFICER: 68E. Thank you.

01:51:13 20 At what page?

01:51:15 21 MR. VOLINSKY: 110.

01:51:17 22 MR. SATURLEY: 110.

01:51:29 23 Q. BY MR. QUIRK: And if you look to 2010, the

01:51:35 1 top line, the difference between HealthTrust's target
01:51:43 2 RBC and the actual RBC in the year 2010 is only .1
01:51:50 3 RBC, correct?

01:51:51 4 A. That's correct.

01:51:53 5 Q. In earlier -- in earlier years there was a
01:52:00 6 larger difference between the target and the actual,
01:52:02 7 correct?

01:52:06 8 A. Yes.

01:52:06 9 Q. But with respect to the last year of
01:52:08 10 audited financials, the target is 4.2 and the actual
01:52:14 11 is 4.3, right?

01:52:16 12 A. That's correct.

01:52:18 13 Q. And thus, when you look at this chart, and
01:52:24 14 referring back to Exhibit 356, the Massachusetts
01:52:30 15 study that we have up on the screen, and that is at
01:52:37 16 page 10, even when you look at HealthTrust's actual
01:52:43 17 RBC of 4.3, for the average -- for the averages for
01:52:50 18 all companies for 2010, 2009 -- I'm sorry -- 2008,
01:52:59 19 2007, 2006, 2005, 2004, HealthTrust's actual RBC is
01:53:06 20 below the average for all of these companies in each
01:53:10 21 of those five years, correct?

01:53:12 22 A. It is. But I should point out that the
01:53:27 23 definition of what RBC was, the ACL number for 2010,

01:53:33 1 we discussed that earlier, changed between 2009 and
01:53:36 2 2010. So had it been the same definition, the 4.3
01:53:40 3 would have been higher.

01:53:44 4 MR. QUIRK: Now, for purposes of the
01:53:45 5 record, Mr. Mitchell, at this time I'd ask that the
01:53:49 6 ID be stricken on LGC Exhibit 356. It's the "Study
01:53:53 7 of the reserves and surpluses of health insurers in
01:53:57 8 Massachusetts," dated May 2010.

01:54:04 9 MR. VOLINSKY: No objection.

01:54:07 10 THE PRESIDING OFFICER: No objection. It's
01:54:08 11 stricken and now is LGC 356 in the record.

01:54:16 12 (LGC 356 admitted into evidence.)

01:54:19 13 Q. BY MR. QUIRK: With respect to LGC 356,
01:54:22 14 would you turn to page 13 of the report. And I believe
01:54:25 15 it would be 1510. Thank you.

01:54:34 16 A. Are we at the Massachusetts report?

01:54:36 17 Q. Yes. Massachusetts report.

01:54:37 18 A. Which page again?

01:54:38 19 Q. Page 13 of the report.

01:54:39 20 A. 13, okay.

01:54:40 21 Q. And below the graph -- or the chart, I should
01:54:45 22 say -- there is "Recommendations." And I could have
01:54:53 23 been mistaken, but did you say that there were not

01:54:55 1 recommendations as a result of the Massachusetts
01:54:57 2 study before the lunch break?

01:54:59 3 A. I don't recall.

01:55:02 4 Q. I may have been mistaken. But in any event,
01:55:05 5 there is a recommendation on page 13 of the
01:55:11 6 Massachusetts report, correct?

01:55:16 7 A. Recommendation of an upper threshold?

01:55:18 8 Q. That's right.

01:55:19 9 A. Not a target, but an upper threshold.

01:55:23 10 Q. That's right.

01:55:24 11 A. Um-hum.

01:55:24 12 Q. And this is a recommendation based upon a
01:55:30 13 study of at least the entities set forth above in the
01:55:36 14 chart, correct?

01:55:39 15 A. I'm assuming so.

01:55:41 16 Q. And those companies, we talked about before
01:55:45 17 the lunch break -- some nonprofit, some profit, right?

01:55:50 18 A. Yes.

01:55:51 19 Q. And the recommendations by the Massachusetts
01:55:53 20 Division of Insurance are that they "should adopt" --
01:55:56 21 "consider adopting upper RBC threshold review levels
01:55:59 22 for health insurers, analogous to the current RBC
01:56:03 23 thresholds for minimum levels of reserves [sic]."

01:56:09 1 It goes on, "An RBC ratio range of 700 percent to
01:56:13 2 900 percent would be an appropriate standard to
01:56:16 3 consider for such an upper threshold review," correct?

01:56:20 4 A. Yes. That's the recommendation.

01:56:23 5 Q. And that would be an RBC of 7.0 to 9.0,
01:56:27 6 correct?

01:56:27 7 A. As a maximum.

01:56:29 8 Q. Correct.

01:56:31 9 A. Yes.

01:56:45 10 MR. QUIRK: May I have a moment,
01:56:46 11 Mr. Mitchell?

01:56:47 12 THE PRESIDING OFFICER: Surely.

01:57:15 13 MR. QUIRK: Mr. Mitchell, would it be okay
01:57:17 14 if we took a short recess so we could consult with
01:57:17 15 respondents' counsel to determine how much is left?
01:57:17 16 And we're getting very, very close to the end, at
01:57:22 17 least for the cross-examination.

01:57:22 18 THE PRESIDING OFFICER: I'll give you five
01:57:24 19 minutes to do so.

01:57:25 20 MR. QUIRK: Thank you.

01:57:27 21 (Recess at 1:57 p.m.,
02:06:36 22 resumed at 2:06 p.m.)

02:06:43 23 THE PRESIDING OFFICER: We've returned from

02:06:44 1 that brief recess to allow respondents' counsel to
02:06:51 2 confer. Please proceed.

02:06:52 3 MR. QUIRK: Thank you.

02:06:55 4 Q. BY MR. QUIRK: Mr. Atkinson, I just have
02:06:57 5 one or two more questions.

02:06:58 6 A. Um-hum.

02:06:59 7 Q. I direct your attention to your February 2012
02:07:02 8 report, BSR Exhibit 68.

02:07:05 9 A. Um-hum.

02:07:07 10 Q. And page 113 at the bottom. And this is your
02:07:23 11 page on summary findings and observations, correct?

02:07:28 12 A. Yes.

02:07:28 13 Q. And I direct your attention to the fourth
02:07:31 14 summary finding and observation in paragraph numbered
02:07:35 15 4, okay?

02:07:36 16 A. Yes.

02:07:36 17 Q. And the last sentence of that is something
02:07:39 18 that we haven't talked about yet today. It's about
02:07:43 19 returning surplus, correct?

02:07:47 20 A. Yes.

02:07:47 21 Q. And in your actuarial opinion, "prudent
02:07:54 22 underwriting would call for trying to achieve the
02:07:56 23 reduction over multiple" and then you have "(2 to 3)

02:08:04 1 years during the rate revisit process," correct?

02:08:06 2 A. Yes.

02:08:07 3 Q. And put differently, you would first
02:08:10 4 recommend that any return, if any is warranted, would
02:08:15 5 be done over multiple years, right?

02:08:17 6 A. Yes. That was my recommendation.

02:08:21 7 Q. And the second part of that is that it
02:08:23 8 would be to reduce rates, correct?

02:08:27 9 A. Yes.

02:08:30 10 MR. QUIRK: That's all the questions we
02:08:31 11 have at this time on behalf of LGC.

02:08:34 12 THE PRESIDING OFFICER: Thank you.

02:08:36 13 Mr. Gordon, would you be next on
02:08:40 14 cross-examination, if any?

02:08:41 15 MR. GORDON: I would be, but I won't.

02:08:44 16 THE PRESIDING OFFICER: Very good. Thank
02:08:44 17 you, sir.

02:08:44 18 Mr. Howard?

02:08:45 19 MR. HOWARD: And I echo Mr. Gordon's
02:08:48 20 sentiment.

02:08:49 21 THE PRESIDING OFFICER: Then on redirect,
02:08:52 22 Mr. Volinsky, the witness is yours.

02:08:54 23 MR. VOLINSKY: Thank you.

REDIRECT EXAMINATION

BY MR. VOLINSKY:

Q. Mr. Atkinson, have you ever heard of Blue Cross Blue Shield insurers being referred to as "the insurers of last resort"?

A. Yes, I have.

Q. What does that phrase mean?

A. Well, by their very nature, they have multiple lines of coverage, and one or two of them of which are in the individual and non-group lines. Those lines typically must get prior approval rates by the Insurance Commissioner. And typically that means a rate hearing of some sort. And typically that means that they don't get what they ask for and when they ask for it because of public outcry over those products.

So by nature, their reserves need to be higher because of those loss leaders and the rate delay action typically that happens during the rate hearing process.

Q. So Blue Cross Blue Shield is a -- I would use the word "traditional" insurance company, although it's not for profit? Is that a fair --

02:10:19 1 A. It's not traditional. Typically they have
02:10:21 2 different enabling acts in most states --

02:10:24 3 Q. Got it.

02:10:25 4 A. -- that are not in the traditional sense.

02:10:32 5 Q. You do know that the Local Government Center
02:10:34 6 HealthTrust is free of regulation by the New Hampshire
02:10:37 7 Insurance Department; do you not?

02:10:39 8 A. I do know that.

02:10:40 9 Q. And HealthTrust in New Hampshire doesn't go
02:10:44 10 through any rate-setting process supervised by a
02:10:49 11 state regulatory agency.

02:10:51 12 Do you know that?

02:10:51 13 A. I'm aware of that.

02:10:52 14 Q. So does it have that same concern that the
02:10:56 15 Blue Cross programs have about lag due to approval
02:11:00 16 processes?

02:11:00 17 A. It does not.

02:11:11 18 MR. VOLINSKY: Does someone have the control
02:11:12 19 for this?

02:11:17 20 MR. QUIRK: Right here.

02:11:27 21 Q. BY MR. VOLINSKY: You were asked -- Let's
02:11:30 22 do this first. I'll use the chart from your report
02:11:41 23 so that we can just stay with Exhibit 68. It's also

02:11:44 1 a separate chart that we show as BSR 12.

02:11:51 2 THE PRESIDING OFFICER: Do you know what
02:11:52 3 page this came from?

02:11:54 4 MR. VOLINSKY: 110.

02:11:55 5 THE PRESIDING OFFICER: Thank you. Book 4.

02:12:04 6 MR. VOLINSKY: Yes. Book 4.

02:12:06 7 THE PRESIDING OFFICER: 68 at page 110.

02:12:09 8 MR. VOLINSKY: Thank you.

02:12:14 9 Q. BY MR. VOLINSKY: I want to refer you to
02:12:16 10 the column that deals with the calculation of the
02:12:20 11 actual amount of net surplus in RBCs.

02:12:28 12 Do you see when we go from '09 to
02:12:32 13 '10, there's a drop of .5?

02:12:33 14 A. Yes.

02:12:35 15 Q. In the context of this case, are you aware
02:12:38 16 of .5 RBC being used by the Local Government Center
02:12:44 17 for what are called administrative expenses?

02:12:47 18 A. Yes, I am.

02:12:48 19 Q. In your history of working as a healthcare
02:12:53 20 actuary, have you ever seen a health insurer or a
02:12:58 21 plan use RBC to calculate administrative expenses?

02:13:04 22 MR. QUIRK: I'm going to just object for
02:13:06 23 the purposes of the record. He testified earlier

02:13:08 1 that he has no experience with risk pools. So with
02:13:11 2 that clarification, I don't have an objection to the
02:13:16 3 question.

02:13:16 4 MR. VOLINSKY: I'll accept that.

02:13:17 5 THE PRESIDING OFFICER: The objection is
02:13:18 6 granted then. Please proceed.

02:13:21 7 Q. BY MR. VOLINSKY: Do you understand
02:13:23 8 Mr. Quirk's objection?

02:13:24 9 A. Yes.

02:13:24 10 Q. With that change. Have you ever seen a
02:13:27 11 health insurer use RBC to calculate administrative
02:13:31 12 expenses?

02:13:31 13 A. No. But I would also say that I've never
02:13:35 14 seen administrative expenses being reserved for,
02:13:38 15 whether it's RBC or otherwise. Typically
02:13:41 16 administrative expenses are something that are
02:13:43 17 predictable. If not predictable, at least to a high
02:13:48 18 level of predictability.

02:13:50 19 So as it relates to insolvency, a
02:13:54 20 typical plan insurer is not going to go under because
02:13:57 21 of their administrative expenses. They know how many
02:14:01 22 people they, you know, have employed and the like.
02:14:04 23 So that number can be easily determined, and it's not

02:14:10 1 necessarily something you would reserve for.

02:14:16 2 Q. Mr. Quirk pointed out that you do not have
02:14:18 3 risk pool experience, and that's an accurate statement?

02:14:21 4 A. That's correct.

02:14:22 5 Q. How about others at your firm, do they have
02:14:25 6 work -- experience working with risk pools?

02:14:28 7 A. Yes.

02:14:28 8 Q. How about people at your firm in the Boston
02:14:32 9 office: experience working with risk pools there?

02:14:35 10 A. Yes. In fact, the actuary who worked along
02:14:38 11 with me on this report, Danny Rhodes, works with many
02:14:43 12 of the municipalities and divisions within the LGC
02:14:49 13 specifically. So, yes.

02:14:52 14 Q. So these are municipalities in New Hampshire
02:14:56 15 that are --

02:14:56 16 THE PRESIDING OFFICER: Excuse me,
02:14:58 17 Mr. Volinsky.

02:14:58 18 MR. VOLINSKY: Yes.

02:14:59 19 THE PRESIDING OFFICER: Could I have a
02:15:00 20 clarification?

02:15:01 21 MR. QUIRK: Yes.

02:15:01 22 THE PRESIDING OFFICER: Mr. Atkinson, we
02:15:02 23 were speaking in the context of Massachusetts

02:15:05 1 municipalities which your assistant or an underwriter
02:15:11 2 that works with you does work.

02:15:14 3 THE WITNESS: Yes.

02:15:14 4 THE PRESIDING OFFICER: Do you remember that?

02:15:15 5 THE WITNESS: Yes.

02:15:15 6 THE PRESIDING OFFICER: And then you used
02:15:16 7 the initials "LGC." Did you mean the Massachusetts
02:15:20 8 league?

02:15:23 9 THE WITNESS: No. My understanding is that
02:15:25 10 it's the New Hampshire LGC that we're talking about.

02:15:29 11 THE PRESIDING OFFICER: Let's have the
02:15:30 12 question and the answer exchange again, please.

02:15:32 13 MR. VOLINSKY: Do you want me to ask again?

02:15:34 14 THE PRESIDING OFFICER: If you would, for
02:15:35 15 the record.

02:15:35 16 MR. VOLINSKY: Yes.

02:15:39 17 Q. BY MR. VOLINSKY: I don't know if I can do
02:15:40 18 it exactly, but Dan Rhodes is the actuary who worked
02:15:44 19 with you on this project?

02:15:44 20 A. Yes, that's correct.

02:15:45 21 Q. And Dan works with certain towns that are
02:15:49 22 in risk pools?

02:15:50 23 A. That is correct.

02:15:51 1 Q. And are those towns New Hampshire or
02:15:55 2 Massachusetts or both?

02:15:57 3 A. Don't know if they're both, but certainly
02:16:00 4 New Hampshire.

02:16:01 5 MR. VOLINSKY: Okay. Is that . . .

02:16:03 6 THE PRESIDING OFFICER: Thank you. Thank
02:16:07 7 you.

02:16:07 8 Q. BY MR. VOLINSKY: Mr. Quirk had you look at
02:16:14 9 Joint Exhibit 1, which is the statute in this case.

02:16:18 10 A. Um-hum.

02:16:23 11 Q. And he had you focus on Section (f) down
02:16:27 12 here and asked you a number of questions about it.
02:16:30 13 I want to focus your attention on 5-B:5 I(c), which
02:16:39 14 is the requirement to "Return all earnings and
02:16:41 15 surplus in excess of amounts required for
02:16:46 16 administration, claims, reserves, and purchase of
02:16:50 17 excess insurance to the participating political
02:16:53 18 subdivisions."

02:16:59 19 A. Um-hum.

02:17:00 20 Q. Does that requirement, returning excess
02:17:03 21 earnings and surplus, does that play any role in your
02:17:06 22 coming to your conclusions about the excess surplus
02:17:10 23 at LGC?

02:17:12 1 A. No, it didn't.

02:17:17 2 Q. The calculation that you did for LGC is a
02:17:22 3 calculation just, This is what I think they need,
02:17:27 4 right?

02:17:27 5 A. That is correct.

02:17:28 6 Q. Let me refer you to LGC 356, which is the
02:17:35 7 Massachusetts study --

02:17:38 8 A. Um-hum.

02:17:39 9 Q. -- the thick one. And let me first turn
02:18:00 10 you to page 30. You'll see two charts on page 30 and
02:18:16 11 then some text below it.

02:18:18 12 A. Right.

02:18:19 13 Q. Let me just ask you to read very quickly to
02:18:24 14 yourself the two paragraphs below the chart. Okay?

02:19:26 15 A. Okay.

02:19:26 16 Q. Having read those two paragraphs, can you
02:19:29 17 tell me whether the insurers referenced in this study
02:19:33 18 are reporting actual or targeted RBCs.

02:19:38 19 A. They're reporting actual.

02:19:44 20 Q. Any doubt about that?

02:19:45 21 A. No. None whatsoever.

02:19:47 22 Q. Same exhibit, I turn you to page 10 of the
02:19:54 23 exhibit.

02:20:02 1 A. Um-hum.

02:20:03 2 Q. There's the table that Mr. Quirk had you
02:20:06 3 looking at?

02:20:07 4 A. Yes.

02:20:08 5 Q. Let me refer you to the text, the bottom of
02:20:15 6 the same page, particularly this bottom paragraph
02:20:21 7 that goes on to the next page, representing that "The
02:20:27 8 levels of surplus for the selected companies exceed
02:20:30 9 minimum regulatory requirements."

02:20:33 10 Is this a reference to the 2.0 or 200
02:20:37 11 level of RBC that we've been talking about as the
02:20:40 12 common minimum capital requirement?

02:20:42 13 A. Yes, it is. Um-hum.

02:20:44 14 Q. Let me put you to the very next page,
02:20:47 15 page 11, and direct you to the bottom bullet. I want
02:21:00 16 you to read that bottom bullet to yourself and then
02:21:05 17 first tell me if you understand the concept being
02:21:08 18 described there.

02:21:50 19 Do you understand what they're
02:21:51 20 talking about there, or writing about?

02:21:53 21 A. I do. Yes.

02:21:53 22 Q. Would you explain that concept of having
02:21:57 23 major investments in equities introducing a need for

02:22:02 1 even more net capital?

02:22:04 2 A. Yes. Well, net capital and net assets has
02:22:08 3 to do with, you know, variability and experience. So
02:22:13 4 to the extent that you are risking their reserve --
02:22:17 5 risking your investments as part of their portfolio,
02:22:21 6 that although they stand to have higher yields, they
02:22:24 7 also stand to have higher losses as well than average.

02:22:33 8 So that concept says that they would
02:22:35 9 require -- for those that have a higher percentage of
02:22:38 10 their investments tied up in equities would require
02:22:42 11 higher capitalization, if you will.

02:22:44 12 Q. And if one were trying to reduce the level
02:22:47 13 of capitalization, could one -- or necessary
02:22:51 14 capitalization, could one do that by having less
02:22:54 15 risky investments?

02:22:54 16 A. That's correct. Yes.

02:22:57 17 Q. Thank you. You were asked a question about
02:22:59 18 whether you reviewed administrative expenses, and you
02:23:05 19 said you did it in total?

02:23:07 20 A. That's correct.

02:23:07 21 Q. What did you mean?

02:23:09 22 A. We didn't review every specific line item
02:23:14 23 to find out if each line item was appropriate or not.

02:23:18 1 We reviewed it more from a benchmarking standpoint
02:23:23 2 for -- based upon some of our clients and clients of
02:23:27 3 like size.

02:23:30 4 And we would say that the roughly
02:23:31 5 4 percent or so for claims administration and
02:23:34 6 3 percent or more for general administration is --
02:23:39 7 they're both reasonable. So the combination of those
02:23:41 8 two, I believe, we mentioned that it's 7.7 percent.
02:23:45 9 And that 7.7 percent total administrative level is
02:23:52 10 reasonable, in our opinion.

02:23:56 11 Q. Thank you.

02:23:56 12 A. Um-hum.

02:23:57 13 Q. You were asked questions by Mr. Quirk about
02:24:00 14 the various ways of determining net capital, and
02:24:05 15 there were some questions about Primex in particular
02:24:09 16 and their method?

02:24:10 17 A. Yes.

02:24:10 18 Q. And you asked questions in response about
02:24:14 19 whether they were in health or in other fields.

02:24:17 20 Do you recall that?

02:24:18 21 A. Yes, I do.

02:24:20 22 Q. Let me refer you to Exhibit 64. And maybe
02:24:24 23 you'll just be able to work off the screen. It will

02:24:27 1 be brief.

02:24:27 2 A. Um-hum.

02:24:28 3 Q. This is the Risk Pool Practices Agreement
02:24:33 4 reached between the Bureau and Primex. And I want to
02:24:38 5 refer us, just quickly, to paragraph 1.12. It's right
02:24:57 6 there in the middle of the screen.

02:24:59 7 A. Right.

02:24:59 8 Q. Did you know at the time you were trying to
02:25:01 9 answer Mr. Quirk's questions that Primex has
02:25:04 10 discontinued its health program as asserted in 1.12?

02:25:08 11 A. I did not know that, no.

02:25:11 12 MR. QUIRK: Objection.

02:25:12 13 THE PRESIDING OFFICER: Objection, Mr. Quirk?

02:25:13 14 MR. QUIRK: I think that mischaracterizes
02:25:15 15 the document. It's still ongoing as we speak. And
02:25:19 16 the document says it terminates as of June 30, 2012.

02:25:23 17 MR. VOLINSKY: I'll accept that. The
02:25:24 18 document says what it says.

02:25:25 19 THE PRESIDING OFFICER: Objection granted.

02:25:26 20 Please proceed, Mr. Volinsky.

02:25:28 21 Q. BY MR. VOLINSKY: As the document reads,
02:25:32 22 did you know that information?

02:25:33 23 A. I did not.

02:25:37 1 Q. Let me refer you to BSR 65. And again, it
02:25:47 2 will be quick so if people want, I can just put it on
02:25:52 3 the screen. 65 is the Risk Pool Practices Agreement
02:25:58 4 between the Bureau and SchoolCare, which is another
02:26:03 5 risk pool in the State. And I would refer you to
02:26:09 6 paragraph 1.16, which I'm now putting in the center.

02:26:22 7 Mr. Quirk asked you if you'd studied
02:26:25 8 any associations for risk pools. I want to refer you
02:26:27 9 to this language about the association AGRiP as it
02:26:34 10 appears on the screen.

02:26:35 11 A. Right.

02:26:35 12 Q. So you can see there's a representation of
02:26:37 13 SchoolCare's membership in AGRiP.

02:26:44 14 A. Okay.

02:26:45 15 Q. Just take that as a representation. And
02:26:47 16 then let me refer you to paragraph 1.17 which refers
02:26:54 17 to SchoolCare actually adopting stochastic modeling
02:26:59 18 as a result of a 2010 report. Your report was 2010,
02:27:06 19 right?

02:27:06 20 A. Yes.

02:27:11 21 Q. And in your report you recommended
02:27:13 22 stochastic modeling?

02:27:14 23 A. I did.

02:27:25 1 MR. VOLINSKY: I think those are full
02:27:26 2 exhibits?

02:27:27 3 MR. TILSLEY: They are.

02:27:28 4 MR. VOLINSKY: Thank you. If I can just
02:27:42 5 have one moment, your Honor.

02:27:44 6 THE PRESIDING OFFICER: You may.

02:27:59 7 MR. QUIRK: Andy, I don't know if this is
02:28:00 8 full or not.

02:28:01 9 MR. VOLINSKY: They're conferring as to
02:28:02 10 whether this is full or not, so I'm giving Mr. Quirk
02:28:04 11 a moment.

02:28:05 12 THE PRESIDING OFFICER: Okay.

02:28:10 13 MR. VOLINSKY: If there's uncertainty, I
02:28:12 14 would move to strike IDs on 64 and 65.

02:28:17 15 MR. QUIRK: No objection.

02:28:17 16 MR. VOLINSKY: Very good. Ask that they be
02:28:19 17 admitted.

02:28:19 18 THE PRESIDING OFFICER: ID is stricken on
02:28:22 19 BSR 64 and 65, and they now are admitted with those
02:28:26 20 same numbers: 64 and 65.

02:28:30 21 (BSR 64 and BSR 65 admitted
02:28:35 22 into evidence.)

02:28:37 23 MR. VOLINSKY: Thank you.

02:28:38 1 Q. BY MR. VOLINSKY: You were asked if you
02:28:39 2 spoke to Peter Riemer, the consulting actuary for the
02:28:45 3 Local Government Center?

02:28:45 4 A. Yes, I was.

02:28:46 5 Q. You have not spoken to him?

02:28:47 6 A. I have not.

02:28:48 7 Q. Have you read his deposition?

02:28:49 8 A. I did.

02:28:50 9 MR. VOLINSKY: That's all I have. Thank you.

02:28:55 10 THE PRESIDING OFFICER: Very much.

02:28:56 11 Mr. Quirk, any recross?

02:28:59 12 MR. QUIRK: Just some brief follow-up.

02:29:01 13 THE PRESIDING OFFICER: All right.

02:29:02 14 RE-CROSS-EXAMINATION

02:29:05 15 BY MR. QUIRK:

02:29:05 16 Q. On that last point, Mr. Riemer's deposition,
02:29:08 17 he was deposed just within the past couple months,
02:29:10 18 right?

02:29:10 19 A. I don't recall the date. I would imagine
02:29:12 20 it was in the past couple months.

02:29:13 21 Q. And that was after you issued your February
02:29:15 22 report and your December 2010 report, right?

02:29:18 23 A. Most likely.

02:29:18 1 Q. I want to just ask you a question about
02:29:22 2 BSR 65, the risk pool agreement with SchoolCare that
02:29:30 3 Attorney Volinsky just asked you about, okay?

02:29:32 4 A. Okay.

02:29:32 5 Q. Had you ever seen that agreement prior to
02:29:35 6 today?

02:29:35 7 A. I have not.

02:29:35 8 Q. Have you ever spoken with anybody from
02:29:37 9 SchoolCare?

02:29:38 10 A. No, I have not.

02:29:39 11 Q. Do you have any idea whether SchoolCare's
02:29:44 12 stochastic model that was just shown to you and that
02:29:47 13 you just saw for the first time today is anything
02:29:49 14 similar to the stochastic model that you recommended?

02:29:52 15 A. I have not -- I do not.

02:29:56 16 Q. And you haven't consulted with them in
02:29:59 17 issuing their stochastic model, correct?

02:30:01 18 A. I have not.

02:30:03 19 MR. QUIRK: That's all I have. Thank you.

02:30:04 20 THE PRESIDING OFFICER: Thank you very
02:30:05 21 much. Anyone else have anything for this witness?

02:30:09 22 MR. HOWARD: No, Mr. Mitchell.

02:30:10 23 THE PRESIDING OFFICER: Thank you,

02:30:11 1 Mr. Atkinson. You are excused, and you are released
02:30:14 2 from these proceedings with the caveat that if
02:30:19 3 necessary, you'll get a call --

02:30:21 4 THE WITNESS: Um-hum.

02:30:22 5 THE PRESIDING OFFICER: -- and we'll expect
02:30:24 6 to see you back.

02:30:25 7 THE WITNESS: Thank you.

02:30:28 8 THE PRESIDING OFFICER: Why don't we take
02:30:29 9 five minutes while we go ahead and clean some room
02:30:33 10 for ourselves and go to the next witness.

02:30:37 11 MR. SATURLEY: Thank you.

02:30:39 12 MR. QUIRK: Thank you.

02:30:40 13 (Witness excused.)

02:30:40 14 (Recess at 2:30 p.m.,

02:45:51 15 resumed at 2:45 p.m.)

02:45:53 16 THE PRESIDING OFFICER: Returning on the
02:45:54 17 record. Mr. Atkinson has completed his testimony;
02:45:59 18 and Mr. John Andrews, who was testifying yesterday
02:46:03 19 and was under cross-examination by Mr. Ramsdell, his
02:46:09 20 cross-examination of Mr. Andrews will now continue.

02:46:13 21 Good afternoon, Mr. Andrews.

02:46:15 22 THE WITNESS: Good afternoon.

02:46:16 23 THE PRESIDING OFFICER: Again, I remind

02:46:17 1 you, that you are under oath.

02:46:19 2 THE WITNESS: Yes.

02:46:19 3 THE PRESIDING OFFICER: And you understand
02:46:20 4 the significance of that?

02:46:21 5 THE WITNESS: Yes.

02:46:22 6 THE PRESIDING OFFICER: Very good. Please
02:46:23 7 continue.

8 JOHN ANDREWS,
9 the witness at the time of recess, having
10 been previously duly sworn, was further
11 examined and testified as follows:

12 CROSS-EXAMINATION (continued)

13 BY MR. RAMSDELL:

02:46:29 14 Q. Mr. Andrews, when we left off yesterday, I
02:46:31 15 was asking you questions about the reorganization and
02:46:32 16 what led up to that. And we're going to get back to
02:46:35 17 that in a few minutes. But I think I was probably
02:46:37 18 remiss yesterday in not cleaning up a few things that
02:46:41 19 were left from your direct examination. So I'm going
02:46:43 20 to start by asking you on a few different topics.

02:46:46 21 You, yesterday, were asked a number
02:46:48 22 of questions about the two-year lockout period. And
02:46:52 23 I believe twice you tried to explain the protection

02:46:55 1 that provided to members.

02:46:57 2 Would you explain it to us now, please.

02:47:00 3 And John, before you give your first answer, I'm

02:47:02 4 asking you to keep your voice up.

02:47:05 5 A. Yes. The two-year lockout benefitted the
02:47:11 6 members because if an employee went to get, you know,
02:47:20 7 medical services, there was usually about a six-week
02:47:23 8 lag time between the time the services were rendered
02:47:29 9 and the time that the bill came in.

02:47:30 10 So anybody who, you know, received
02:47:34 11 medical services, say, from the middle of November to
02:47:37 12 the end of the year -- December 31 -- their bills
02:47:43 13 would appear in the following calendar year to be paid.

02:47:47 14 Yet if an entity left the program,
02:47:53 15 they'd leave, say, December 31 -- or in the case of a
02:47:58 16 unit with a fiscal year that would be June 30 -- and
02:48:04 17 they're now gone and participating in paying premium
02:48:10 18 into whatever new plan they picked.

02:48:13 19 Meanwhile, we're not receiving any
02:48:16 20 premium, but we've got the bill to pay. And what we
02:48:25 21 wanted to do was prevent this jumping around from
02:48:28 22 year to year.

02:48:30 23 Q. Okay. If I can, in that lag time you're

02:48:33 1 talking about there, those costs that came in after
02:48:36 2 there were no more premiums being paid by that
02:48:41 3 member's -- or the employee of that -- employer of
02:48:44 4 that member, those costs were borne by the rest of
02:48:47 5 your members, correct?

02:48:49 6 A. Yes.

02:48:49 7 Q. Now, I'm also -- I think everybody can hear
02:48:52 8 you.

02:48:53 9 A. Okay.

02:48:53 10 Q. So I'm going to ask you to keep your voice
02:48:55 11 up.

02:48:55 12 A. Yes. That's called -- and in the vernacular,
02:49:00 13 that was called the run-in.

02:49:02 14 Q. Yesterday, you were asked a number of
02:49:04 15 questions about the prohibition in RSA 5-B on paying
02:49:10 16 board members.

02:49:12 17 Do you recall that?

02:49:13 18 A. Yes. I recall being asked that. I don't
02:49:17 19 recall the prohibition.

02:49:19 20 Q. If I recall your testimony yesterday, it was
02:49:22 21 that you didn't actually pay board members, correct?

02:49:25 22 A. Correct.

02:49:26 23 Q. Board members whose employers wanted LGC or

02:49:34 1 whichever one of its entities to pay for the substitute
02:49:38 2 teacher or firefighter or whatever, you reimbursed
02:49:41 3 them for that, correct?

02:49:42 4 A. Yes.

02:49:44 5 Q. When you were asked those questions
02:49:45 6 yesterday, were you aware that that prohibition you
02:49:50 7 were asked about did not go into law until after you
02:49:54 8 left LGC?

02:49:56 9 A. No.

02:49:58 10 Q. May I have Exhibit 256, please. This exhibit
02:50:19 11 was used for a different purpose this morning.

02:50:21 12 Do you recognize this as the -- a
02:50:26 13 House bill? I'm not asking if you recognize that
02:50:30 14 specific House bill. But we'll go down in a second
02:50:33 15 to the provision I want to ask you about. But that's
02:50:36 16 House Bill 1393, the final version of the 2010 session,
02:50:41 17 correct?

02:50:41 18 A. I don't know. That was after I left.

02:50:43 19 Q. I understand.

02:50:45 20 MR. VOLINSKY: I'll take your representation.

02:50:47 21 THE WITNESS: If that's what it is . . .

02:50:50 22 Q. BY MR. RAMSDELL: Would you just accept for
02:50:52 23 me --

02:50:52 1 A. Yes.

02:51:01 2 Q. -- that -- Okay.

02:51:01 3 THE PRESIDING OFFICER: Could we be guided
02:51:03 4 as to whether 256 is in a book or if it's separate?

02:51:13 5 MR. QUIRK: I believe that's one of the
02:51:14 6 exhibits, Mr. Mitchell, that we talked about this
02:51:17 7 morning and that I presented to you this morning.

02:51:28 8 MR. GORDON: Is it on the table?

02:51:31 9 MR. QUIRK: It might be on the copier there.

02:51:33 10 THE PRESIDING OFFICER: Thank you for
02:51:35 11 helping us. My bad.

02:51:45 12 MR. QUIRK: My pleasure.

02:51:52 13 THE PRESIDING OFFICER: I'm glad I
02:51:53 14 telegraphed that one.

02:52:44 15 MR. RAMSDELL: We have a stipulation to
02:52:45 16 present that, in fact, this provision in the law
02:52:49 17 about not paying board members did not go into effect
02:52:53 18 until 2010, after Mr. Andrews had retired.

02:52:59 19 THE PRESIDING OFFICER: Excellent. We'll
02:53:00 20 accept that stipulation and any further stipulations
02:53:03 21 you all might come to.

02:53:06 22 MR. RAMSDELL: Thank you. You have in
02:53:46 23 front of you two binders with BSR exhibits. If you

02:53:50 1 would take the one closer to you, I believe you'll
02:53:53 2 find BSR Exhibit No. 67.

02:54:29 3 THE PRESIDING OFFICER: I thank counsel for
02:54:30 4 putting these in a binder. It would certainly be
02:54:33 5 helpful if you refer to the binder first and then the
02:54:36 6 exhibit number, if you know.

02:54:37 7 MR. RAMSDELL: I will.

02:54:38 8 THE PRESIDING OFFICER: Thank you.

02:54:41 9 Q. BY MR. RAMSDELL: Mr. Andrews, you have --
02:54:45 10 it's Book 4. I'm asking you to turn to page 137,
02:54:51 11 please.

02:55:02 12 Are you with me, John?

02:55:03 13 A. Yes.

02:55:04 14 Q. That is the beginning of the HealthTrust,
02:55:10 15 Inc. official bylaws, October 16, 1999, correct?

02:55:16 16 A. Yes.

02:55:16 17 Q. HealthTrust, a standalone entity at that
02:55:21 18 point?

02:55:21 19 A. Yes.

02:55:21 20 Q. I'm going to ask you to turn to page 152,
02:55:27 21 please.

02:55:35 22 A. I have it.

02:55:36 23 Q. You were asked a number of questions

02:55:38 1 yesterday about whether members had to request the
02:55:44 2 return of surplus, and I think there was some
02:55:50 3 confusion about whether that happened after the
02:55:51 4 reorganization or not. These are the 1999 bylaws.
02:55:57 5 Would you take a look at 6.4, please, the "Return of
02:56:01 6 contributions to members."

02:56:03 7 A. Yes.

02:56:03 8 Q. And would you agree with me that the last
02:56:05 9 sentence in the bylaws says [as read], Such return
02:56:08 10 may be made -- may by means of reduction in
02:56:12 11 contributions due in subsequent fund year unless such
02:56:17 12 member elects otherwise by notice, correct?

02:56:20 13 A. Correct.

02:56:20 14 Q. So at least as of 1999, that was in the
02:56:26 15 bylaws of HealthTrust, correct?

02:56:27 16 A. Yes.

02:56:29 17 Q. Thank you. While we're with that same
02:56:46 18 book, same exhibit, I would ask you to turn to the
02:56:54 19 page numbered page 1, please.

02:57:05 20 A. Yes.

02:57:05 21 Q. Would you agree with me that this begins
02:57:09 22 [as read], The Local Government Center official
02:57:12 23 bylaws as of December 15, 2011, correct?

02:57:16 1 A. That's what it -- that's what it is.

02:57:20 2 Q. Okay.

02:57:21 3 A. Yes.

02:57:21 4 Q. Would you turn to page 25, please.

02:57:33 5 A. I have it.

02:57:34 6 Q. Are you with me? Okay. I'm going to ask
02:57:36 7 you about Section 10.1. You were asked a number of
02:57:41 8 questions yesterday about in the event of dissolution,
02:57:47 9 whether real estate proceeds would return to
02:57:49 10 HealthTrust or PLT members and whether there was
02:57:53 11 anything that memorialized that.

02:57:55 12 Do you remember those questions?

02:57:56 13 A. Yes.

02:57:56 14 Q. Do you agree with me under Section 10.1 of
02:58:00 15 the bylaws, it states that, "In the event of
02:58:03 16 dissolution of LGC, and after all legal debts,
02:58:08 17 liabilities, and retirement plan obligations have
02:58:11 18 been fully discharged, all remaining assets shall be
02:58:15 19 liquidated and the proceeds shall be distributed
02:58:19 20 equitably to the members in accordance with their
02:58:23 21 participation in NHMA and/or the trusts from which
02:58:28 22 the assets to be distributed are generated"? Did I
02:58:35 23 read that correctly?

02:58:36 1 A. That's what it says: "all remaining
02:58:38 2 assets."

02:58:39 3 Q. Isn't that what you were describing
02:58:41 4 yesterday?

02:58:41 5 A. I've got to presume "all remaining assets"
02:58:44 6 would include any real estate assets.

02:58:52 7 Q. You know what, I'll get that binder out of
02:59:02 8 the way for you. And if you'd take a look at Book 5
02:59:05 9 of 5 of BSR exhibits. I believe the whole binder
02:59:35 10 only has one exhibit in it, BSR No. 66.

02:59:38 11 A. Yes.

02:59:38 12 Q. I'm going to ask you to take a look at some
02:59:45 13 minutes that were shown to you by the Bureau yesterday.
02:59:49 14 Would you turn to page 11, please.

02:59:59 15 A. I have those.

03:00:01 16 Q. Page 11. Yesterday you were shown --
03:00:20 17 Here's the top of it to make sure we're talking about
03:00:22 18 the same thing. You were shown these minutes
03:00:25 19 yesterday. They're the minutes of the NHMA Health
03:00:29 20 Insurance Trust Board of Trustees meeting, dated
03:00:30 21 January 19, 2000, correct?

03:00:33 22 A. Yes.

03:00:33 23 Q. And outside legal counsel, Robert Lloyd was

03:00:37 1 present?

03:00:37 2 A. Yes.

03:00:37 3 Q. You were present?

03:00:38 4 A. Yes.

03:00:39 5 Q. You were asked about a different section.

03:00:43 6 And then later in your testimony, you were asked
03:00:45 7 questions about going to the Supreme Court after the
03:00:52 8 firefighters had raised a 91A request and LGC had
03:00:57 9 objected to that.

03:00:58 10 Do you remember those questions?

03:00:59 11 A. Yes.

03:01:00 12 Q. Would you look at --

03:01:04 13 MR. GORDON: Mike, he needs to -- it's 4.

03:01:13 14 THE PRESIDING OFFICER: Not 5.

03:01:13 15 MR. RAMSDELL: I apologize if I said the
03:01:18 16 wrong book. I thought I said 4 out of 5.

03:01:18 17 MR. SATURLEY: It's Book 3.

03:01:20 18 MR. VOLINSKY: Book 3.

03:01:25 19 MR. RAMSDELL: That would be the problem.

03:01:41 20 It is page 11.

03:01:46 21 THE PRESIDING OFFICER: Please proceed.

03:01:48 22 MR. RAMSDELL: Sure.

03:01:49 23 Q. BY MR. RAMSDELL: The very first topic in

03:01:52 1 the minutes here, "Review and action on minutes of
03:01:54 2 November 22, 1999. A motion by Bob Wheeler, seconded
03:01:59 3 by Dave Jack, to approve the minutes of November 22,
03:02:03 4 1999 as presented, was passed unanimously. John
03:02:07 5 Bohenko asked if the minutes were available to
03:02:09 6 everyone due to the Right To Know Law. Bob Lloyd
03:02:13 7 replied that the Right To Know Law does not apply to
03:02:16 8 the HealthTrust." Mr. Bohenko "asked as if as a
03:02:23 9 board member, could he release information to someone
03:02:26 10 who requested it?" And "Bob Lloyd replied yes."

03:02:30 11 So on January 19, 2000, there was a
03:02:32 12 discussion at the HealthTrust -- Health Insurance
03:02:38 13 Trust Board of Trustees meeting wherein it was
03:02:40 14 discussed in your presence that Bob Lloyd, your
03:02:43 15 outside counsel, represented to you that the Right To
03:02:47 16 Know Law does not apply to HealthTrust, correct?

03:02:51 17 A. That's correct. When I was asked that
03:02:53 18 question, I didn't recall that we apparently did have
03:02:57 19 legal advice about the application of the Right To
03:03:02 20 Know Law.

03:03:05 21 Q. You may recall, however, that in 2004, the
03:03:14 22 New Hampshire Supreme Court ruled that HealthTrust is
03:03:17 23 a quasi-public entity that does not clearly fall

03:03:21 1 within the ambit of entities covered by the Right To
03:03:26 2 Know Law and, thus, HealthTrust neither knew nor
03:03:30 3 should have known that its conduct violated the
03:03:33 4 statute when it objected to the Right To Know Law
03:03:36 5 request from the Professional Fire Fighters.

03:03:39 6 Do you recall that opinion?

03:03:39 7 A. Yes. I believe they said we had a
03:03:51 8 reasonable belief.

03:03:52 9 THE PRESIDING OFFICER: John, if you want
03:03:55 10 to wait for a question and answer. If you keep your
03:03:58 11 voice up, please, sir.

03:04:01 12 MR. RAMSDELL: I'm not going to ask
03:04:01 13 Mr. Andrews for the cite, but I'll give you the cite
03:04:02 14 if you'd like the cite to the case.

03:04:04 15 THE PRESIDING OFFICER: Fine. Thank you.

03:04:05 16 MR. RAMSDELL: It is -- it was issued
03:04:08 17 November 30, 2004, and I'll get you the cite at the
03:04:11 18 end of the day.

03:04:27 19 We're going to return to the topic of
03:04:29 20 the reorganization.

03:04:44 21 The cite to the case is 151 N.H. 501.

03:04:50 22 THE PRESIDING OFFICER: Thank you.

03:05:10 23 MR. RAMSDELL: Thank you.

03:05:10 1 May I have Exhibit 32, please. All
03:05:29 2 set?

03:05:31 3 Mr. Andrews, are you all set as well?

03:05:33 4 THE WITNESS: Yes.

03:05:34 5 Q. BY MR. RAMSDELL: Do you have Exhibit 32 in
03:05:35 6 front of you?

03:05:36 7 A. Yes.

03:05:36 8 Q. This is a copy of the minutes of the Joint
03:05:41 9 Competition Committee, dated October 24, 2002; is that
03:05:45 10 correct?

03:05:45 11 A. Yes.

03:05:45 12 Q. And just so we're clear from yesterday,
03:05:49 13 Joint Competition Committee, it lists here HealthTrust,
03:05:57 14 Property-Liability Trust, and New Hampshire Municipal
03:06:00 15 Association, all three of them. At this time,
03:06:03 16 October 24, 2002, they were all separate entities,
03:06:05 17 correct?

03:06:06 18 A. That's correct. The Property-Liability
03:06:09 19 Trust Board of Trustees, they also had two additional
03:06:12 20 ones. I just don't think they were at that meeting.
03:06:15 21 That's why.

03:06:16 22 Q. But they were separate entities --

03:06:18 23 A. Yes.

03:06:18 1 Q. -- with separate boards of directors?

03:06:21 2 A. Yes.

03:06:21 3 Q. And again, at this meeting, we can see, if
03:06:25 4 we go down just a little bit on the first page here,
03:06:30 5 that your outside counsel, Mr. Lloyd, was present?

03:06:33 6 A. Yes.

03:06:33 7 Q. And it appears that this discussion
03:06:40 8 continues on for six pages.

03:06:46 9 Would you agree with me?

03:06:47 10 A. Yes.

03:06:48 11 Q. Let me just ask you about the minutes as a
03:06:55 12 general proposition here. John, you don't need to
03:06:58 13 look at the exhibit.

03:06:59 14 A. Oh.

03:07:01 15 Q. You've described that the board generally
03:07:03 16 had robust discussion?

03:07:06 17 A. Yes.

03:07:07 18 Q. But in -- many boards of directors don't
03:07:12 19 record minutes that are nearly as extensive as this.
03:07:16 20 Would you agree with me?

03:07:17 21 A. Yes.

03:07:18 22 Q. Why were minutes kept as extensively as
03:07:24 23 they were for the individual and then the

03:07:27 1 consolidated Local Government Center entities?

03:07:31 2 A. Well, they were -- they were being kept by
03:07:36 3 an exceptionally skilled and dutiful employee,
03:07:41 4 Carolyn Hoeker. She captured just about everything.
03:07:48 5 She was really good at it. And we didn't disabuse
03:07:54 6 her of that. We thought she did a great job.

03:07:57 7 Q. So you were pleased that the minutes were
03:07:59 8 kept in as extensive a fashion as they were?

03:08:02 9 A. Yes.

03:08:03 10 Q. I also notice, if we go to the end of
03:08:06 11 these -- and you don't have to look at it now.

03:08:08 12 A. Okay.

03:08:10 13 Q. -- that at the very end of the minutes on
03:08:13 14 all of the minutes, I believe, it says they're
03:08:18 15 respectfully submitted, and then often your signature
03:08:21 16 is there, Ms. Hoeker's signature is there.

03:08:25 17 Was there a practice about reviewing
03:08:27 18 minutes before they were accepted as final?

03:08:30 19 A. Yes. Carolyn circulated them amongst
03:08:35 20 myself, Sandal Keeffe, Wendy Parker, maybe the other
03:08:43 21 leadership team members. But at least when we're
03:08:45 22 dealing with insurance trust matters, you know, those
03:08:48 23 two people and myself. And we all reviewed them.

03:08:52 1 And you know, if -- if there was some mistake or
03:08:56 2 error -- and sometimes Carolyn would -- you know,
03:08:59 3 would flag sections that she didn't catch everything.
03:09:04 4 And so, you know, we had an opportunity to put in a
03:09:07 5 correction or whatever.

03:09:08 6 Now, anytime that we did, you know,
03:09:14 7 was generally to be inclusive, to make sure something
03:09:17 8 got in there that she might have missed. In
03:09:21 9 particular, Sandal would, you know, correct anything
03:09:24 10 that Carolyn didn't catch in terms of the finance
03:09:29 11 numbers.

03:09:29 12 Q. When you say "to be" -- and it was an
03:09:33 13 intent to be inclusive, was there any effort made to,
03:09:37 14 upon review -- when somebody went, You know, I wish I
03:09:40 15 hadn't said that; that just doesn't sound very smart;
03:09:44 16 I'm going to wish nobody had seen that or anything,
03:09:49 17 were they sanitized in that fashion?

03:09:50 18 A. I don't recall that they were. In fact, if
03:09:54 19 you review all of the minutes that have been provided
03:09:56 20 and everything, you'll find that there were probably
03:09:59 21 things in there that we wish we hadn't said, you know.

03:10:03 22 Q. Okay. But everyone was encouraged to
03:10:07 23 participate and say their piece?

03:10:09 1 A. Oh, absolutely, yes.

03:10:11 2 Q. Let's look at these minutes or some of the
03:10:13 3 contents of the minutes. We're not going to go
03:10:15 4 through all of it. But in this third paragraph here
03:10:18 5 where it starts with, "Paul Beecher advised," at the
03:10:23 6 very end of that paragraph, "It was stated that
03:10:26 7 HealthTrust's Board of Trustees was of the opinion
03:10:29 8 that it would be worthwhile to approach the other
03:10:32 9 boards to explore ways of bringing everyone together
03:10:36 10 with the ultimate goal of providing better services/
03:10:41 11 products," that was a topic of discussion?

03:10:44 12 A. Yes. That reflects how this committee came
03:10:49 13 to be, Board of Trustees of HealthTrust that was
03:10:55 14 interested in getting the others to pursue the
03:10:56 15 combination.

03:10:57 16 Q. And if we go to the third page of these
03:10:59 17 minutes, please. There's a paragraph that starts,
03:11:08 18 "Wendy Parker emphasized"?

03:11:11 19 A. Yes.

03:11:11 20 Q. And what she emphasized was [as read], It's
03:11:15 21 just not one area of this organization that they are
03:11:16 22 focused on. It is the entire organization. We need
03:11:20 23 to unite and pull all our resources together to

03:11:24 1 provide the best value. Presently we are too "siloed"
03:11:29 2 in our effort. That is not productive.

03:11:32 3 That's what she said?

03:11:34 4 A. Yes. I think I remember using that term
03:11:36 5 "siloed" in --

03:11:37 6 Q. Tell me what that means, that "We are too
03:11:44 7 'siloed' in our effort" and "That is not productive."
03:11:47 8 What does that mean?

03:11:48 9 A. Well, it means everybody started doing
03:11:49 10 their own thing and nothing was coordinated in terms
03:11:52 11 of service and the members and providing different
03:11:57 12 services to them. It was HealthTrust over here doing
03:12:01 13 its thing and property and liability, NHMA. That's
03:12:05 14 all.

03:12:05 15 Q. Don't put that away yet. We're going to
03:12:07 16 the next page.

03:12:08 17 A. Oh, all right.

03:12:09 18 Q. We need to go to page 4.

03:12:18 19 Are you with me?

03:12:19 20 A. Yes.

03:12:20 21 Q. "Keith Burke states, 'How can we change our
03:12:25 22 operation to make it better for our members? I think
03:12:27 23 that's what we have to focus on.' Paul Beecher

03:12:30 1 concurred by stating, 'That's a good point.'

03:12:37 2 Was that the focus --

03:12:37 3 A. Yes.

03:12:37 4 Q. -- making the organization better for your
03:12:37 5 members?

03:12:37 6 A. Yes.

03:12:38 7 Q. A couple of paragraphs further down you
03:12:39 8 start to speak and say that, "'We are not drawing the
03:12:43 9 line here with municipalities, but also with the
03:12:46 10 schools. We need to make sure that we serve the
03:12:48 11 whole base of our members. One-stop shopping - that
03:12:52 12 is important; it enhances services. I think better
03:12:56 13 governance makes for a better workplace.'"

03:13:01 14 Now, you used that phrase yesterday --
03:13:03 15 "one-stop shopping" -- in answer to some questions.
03:13:06 16 What did you mean by that?

03:13:07 17 A. Well, what we meant by that was that, you
03:13:10 18 know, a community could -- or a school district or
03:13:13 19 county could get, you know, all of its insurance
03:13:16 20 coverages, its legal advisory services, its training
03:13:21 21 programs and everything from one place, we could try
03:13:25 22 to integrate them and make them -- make them, you
03:13:36 23 know, make them complement each other, and hopefully

03:13:39 1 we could do it less expensively or, you know, at a
03:13:43 2 cheaper cost.

03:13:44 3 Q. At the very bottom of this page, Keith
03:13:49 4 Burke speaks again and he asks, "'Where do we want to
03:13:54 5 go with this? What makes the most sense?' Paul
03:13:56 6 Beecher states that probably 'We all have different
03:13:58 7 ideas.' Paul noted that his vision is to try to find
03:14:01 8 different ways of doing business - 'maybe two trusts
03:14:05 9 that are subsidiaries of NHMA and no differences after
03:14:08 10 that.' Wendy Parker stressed that this exercise 'will
03:14:13 11 make us stronger and give us more resources for our
03:14:16 12 members.' Julia Griffin pointed out the cumbersome
03:14:18 13 nature of having three entities with different
03:14:21 14 mission statements; 'as an organization, you cannot
03:14:25 15 succeed.'" And "Mr. Beecher agreed with Julia's
03:14:30 16 statement."

03:14:32 17 Is that correct?

03:14:32 18 A. Yes.

03:14:32 19 Q. If you go to the next page, I only have one
03:14:34 20 more question about these minutes. If you go down to
03:14:36 21 the paragraph that starts, "Keith Burke inquired."

03:14:40 22 A. Yes.

03:14:41 23 Q. About in the middle of that paragraph

03:14:43 1 there's a sentence that starts, "Bob Lloyd advised
03:14:48 2 developing 'the big picture.'"

03:14:51 3 Are you with me?

03:14:52 4 A. Yes.

03:14:52 5 Q. "Bob noted that the strengths and
03:14:54 6 weaknesses need to be realized and a determination
03:14:56 7 must be made as to the best way to achieve
03:14:59 8 improvement. Bob concurred that a facilitator would
03:15:03 9 be beneficial. 'Combine the products to better
03:15:06 10 serve'" -- "'to better provide products to the
03:15:07 11 marketplace. Do the members want one-stop shopping?
03:15:10 12 I think you should set a series of meetings to see if
03:15:12 13 this can be accomplished by April 1, 2003. I think
03:15:16 14 you have to keep focusing on these goals. I suggest
03:15:18 15 you set the meetings and move ahead.'"

03:15:21 16 Here's my question for you. Is
03:15:26 17 that -- Bob Lloyd here is suggesting looking at the
03:15:29 18 big picture; he's suggesting bringing in a
03:15:32 19 facilitator to form -- to move the discussion
03:15:37 20 forward. He's suggesting a target date: April 1, 2003.

03:15:41 21 My question is -- and this is your
03:15:44 22 outside counsel -- did he regularly participate in
03:15:49 23 these meetings like this?

03:15:50 1 A. Yes. He'd been with the program since
03:15:55 2 their start. So he's -- you know, he regularly
03:16:00 3 participated like this. In other words, participated
03:16:05 4 in ways other than legal advice, you know. General
03:16:10 5 advice.

03:16:11 6 Q. And he provided you with legal advice about
03:16:14 7 what you could and what you could not legally do,
03:16:17 8 correct?

03:16:17 9 A. Yes.

03:16:31 10 Q. We're done with this exhibit, John.
03:16:33 11 May I have Exhibit 35, please.
03:16:51 12 All set?

03:16:52 13 THE PRESIDING OFFICER: All set.

03:17:11 14 Q. BY MR. RAMSDELL: We're not going to pull
03:17:17 15 this one up on the screen, but you have it in front
03:17:20 16 of you.

03:17:22 17 THE PRESIDING OFFICER: We have Exhibit 37.

03:17:24 18 MR. RAMSDELL: 35.

03:17:25 19 THE PRESIDING OFFICER: 35.

03:17:27 20 Q. BY MR. RAMSDELL: And John, you have it in
03:17:28 21 front of you. So I'm only going to ask you a couple
03:17:31 22 of questions about this. Frankly, we can't pull it
03:17:31 23 up on the screen.

03:17:31 1 We've moved ahead a month. This is a
03:17:35 2 Joint Competition Committee meeting, November 18, 2002,
03:17:39 3 correct?

03:17:39 4 A. Yes.

03:17:40 5 Q. And we've introduced a new name at this
03:17:46 6 point. In the very first substantive paragraph here
03:17:48 7 on the first page, "Paul Beecher advised that James
03:17:52 8 Pritchard of Pritchard Consulting would facilitate
03:17:55 9 today's meeting. Paul noted that today's focus would
03:17:58 10 be on a new way of looking at the services we provide
03:18:03 11 into the three organizations."

03:18:04 12 Is that correct?

03:18:05 13 A. Yes.

03:18:05 14 Q. And following up on the suggestion that
03:18:09 15 Attorney Lloyd had made the month before, now a
03:18:13 16 facilitator had been brought in, correct?

03:18:15 17 A. Yes.

03:18:18 18 Q. Would you go to page 4, please. With me?

03:18:31 19 A. Yes.

03:18:31 20 Q. I just want to touch on some of the topics
03:18:34 21 that were discussed. And again, this -- all of these
03:18:36 22 pages have to do with board members speaking their
03:18:40 23 piece about this idea. But the discussion ensued as

03:18:43 1 to where there is vulnerability in the organization,
03:18:47 2 it was noted that the organization is slow, and there
03:18:51 3 are reasons that are listed under there, correct?

03:18:53 4 A. Yes.

03:18:54 5 Q. It was noted that the organization is
03:18:56 6 divided, correct?

03:18:57 7 A. Yes.

03:18:59 8 Q. It is stated -- it was stated there exists
03:19:01 9 a narrow vision of who our customers are, what they
03:19:05 10 need, and how to respond to multiple needs and be
03:19:08 11 more connected, correct?

03:19:10 12 A. Yes.

03:19:13 13 Q. And some of the short --

03:19:14 14 A. These are Mr. Pritchard's observations.

03:19:20 15 Q. He was pointing out shortcomings, correct?

03:19:21 16 A. Yes.

03:19:22 17 Q. For example, you mentioned a minute ago and
03:19:24 18 he pointed out, you do not offer a one-stop shopping
03:19:27 19 approach, correct?

03:19:28 20 A. Correct.

03:19:28 21 Q. You don't have packaged discounts?

03:19:30 22 A. Correct.

03:19:31 23 Q. And you don't have an approach for dealing

03:19:32 1 with critical school needs?

03:19:34 2 A. Correct.

03:19:35 3 Q. And at the very top of the next page, you
03:19:38 4 return to something you'd said the prior month. You
03:19:41 5 noted, "The customer base is looked at being siloed
03:19:45 6 also. We serve cities and towns over here and school
03:19:49 7 districts there. None of it comes together."

03:19:52 8 What's the importance of that point,
03:19:54 9 John?

03:19:54 10 A. Well, it's all -- they're all one local
03:20:00 11 government at the -- you know, at the base level.
03:20:08 12 And they don't always cooperate together and work
03:20:13 13 jointly very well. And that's sort of been siloed up
03:20:19 14 to this organization. And you know, I think that if
03:20:22 15 we -- one of the -- maybe one of the byproducts of
03:20:28 16 bringing them all together in the -- you know, in
03:20:31 17 their insurance programs and stuff and, therefore, in
03:20:35 18 training and whatever, maybe we can get them to be
03:20:39 19 more cooperative below at the local level.

03:20:42 20 Q. I just want to point out one more comment
03:20:45 21 that was made during the discussion, John. If you go
03:20:48 22 to the very bottom of that same page --

03:20:50 23 A. Yes.

03:20:51 1 Q. -- Robert Beauregard commented that "When I
03:20:55 2 was first elected six years ago, I looked at the NHMA
03:20:58 3 as being an extension of towns and cities. I was
03:21:02 4 shocked to find that we had two separate entities
03:21:05 5 that did not talk to one another very much. I think
03:21:09 6 that is one of the reasons I got involved. It took
03:21:12 7 too long to get answers. Our customers are the
03:21:15 8 taxpayers. We need to pull all this together. If we
03:21:19 9 do our job well, we will not have to worry about
03:21:23 10 Primex."

03:21:24 11 That's what he had to say?

03:21:26 12 A. Yes, that's Bob Beauregard. He was one of
03:21:31 13 the property and liability trustees. I see the other
03:21:34 14 two.

03:21:34 15 Q. John, we're done with this exhibit.

03:21:40 16 May I have 37, please.

03:22:03 17 We've moved a little bit further
03:22:05 18 forward. We're still in November, November 25, 2002.
03:22:08 19 This is a HealthTrust by itself, not a joint
03:22:11 20 competition, but HealthTrust alone Board of Trustees
03:22:14 21 meeting and executive session, November 25, 2002,
03:22:17 22 correct?

03:22:17 23 A. Correct.

03:22:20 1 Q. If you would join me on page 5, please.

03:22:37 2 A. I have it.

03:22:38 3 Q. If you go past the redacted portion,
03:22:41 4 there's a paragraph that starts, "Keith Burke advised
03:22:44 5 that we have been entering into discussions with the
03:22:48 6 PLT and the NHMA to determine where we need to be as
03:22:52 7 an entity. There have been two meetings. At the
03:22:55 8 last discussion with the representatives from PLT and
03:22:59 9 HT, they wanted to merge as an entity. What role
03:23:02 10 will NHMA have in that? There are a number of people
03:23:05 11 at the table who think that NHMA needs to be part of
03:23:09 12 that, and there are some who do not feel that way.
03:23:12 13 We are still talking about how this may play out in
03:23:14 14 the long run. If we're going to remain competitive,
03:23:17 15 this made sense in the long run. Dave Lang asked if
03:23:23 16 there has been a formal vote taken on this. Keith
03:23:28 17 replied in the negative. 'They are just having
03:23:30 18 discussions. I am trying to bring you up-to-date on
03:23:32 19 the progress.'" You added, "'The committee wants
03:23:37 20 staff to come back with some ideas of structure,
03:23:41 21 organizational and board.'"

03:23:42 22 Is that correct?

03:23:43 23 A. Yes.

03:23:43 1 Q. So at this point it's really kind of a
03:23:46 2 feeling-out process, if you will?

03:23:48 3 A. Yes.

03:23:50 4 Q. Fair to say you think you can do things
03:23:52 5 better for your members and you're figuring out how
03:23:56 6 to do that?

03:23:57 7 A. Yes.

03:23:57 8 Q. But let's not make any mistake about it,
03:23:59 9 competition was an issue as well, correct?

03:24:01 10 A. Correct.

03:24:05 11 Q. We're done with that exhibit.

03:24:15 12 May I have Exhibit 38, please.

03:24:28 13 Do you have 38, John?

03:24:29 14 A. Yes, I do.

03:24:29 15 Q. We've moved ahead to December of 2002. And
03:24:32 16 this is another Joint Competition Committee meeting,
03:24:36 17 correct?

03:24:36 18 A. Correct.

03:24:39 19 Q. Attorney Lloyd is present?

03:24:41 20 A. Yes.

03:24:41 21 Q. And Mr. Pritchard is present again?

03:24:44 22 A. Yes.

03:24:45 23 Q. And fair to say that this discussion goes

03:24:47 1 on for a number of pages, but Mr. Pritchard is
03:24:51 2 facilitating the discussion?

03:24:53 3 A. Yes.

03:24:54 4 Q. If you go to page 2, please --

03:25:00 5 A. Yes.

03:25:00 6 Q. -- near the bottom of the page,

03:25:04 7 Mr. Pritchard reviewed the three options that had
03:25:07 8 previously been discussed. And then he recaps three
03:25:10 9 options, correct?

03:25:11 10 A. Yes.

03:25:11 11 Q. Option 1: No change in structure, but still
03:25:16 12 reenergize the organization, build the idea that we
03:25:21 13 are still one, correct?

03:25:22 14 A. Correct.

03:25:23 15 Q. On the next page, Option 2 is presented.
03:25:29 16 That would be a two-board model. This would bring
03:25:32 17 health insurance and risk management together; is that
03:25:35 18 correct?

03:25:35 19 A. Correct.

03:25:36 20 Q. And then there's Option 3: A single board
03:25:40 21 and single organization, correct?

03:25:42 22 A. Correct.

03:25:42 23 Q. Now, for each of these three options, there

03:25:45 1 are pros and there are cons identified, correct?

03:25:49 2 A. Correct.

03:25:50 3 Q. For Option 3, the single board with the
03:25:53 4 single organization, the pros are listed as: ability
03:25:56 5 to move quicker, easier to make decisions about use
03:26:00 6 of dollars, fewer meetings. I think you mentioned
03:26:04 7 something about fewer meetings yesterday after
03:26:07 8 consolidation.

03:26:07 9 A. Yes.

03:26:08 10 Q. Why is that important?

03:26:09 11 A. Well, you know, we were calling on these
03:26:13 12 board members to --

03:26:15 13 THE PRESIDING OFFICER: Excuse me,
03:26:15 14 Mr. Andrews, I'm going to interject. This is
03:26:18 15 redundant from yesterday --

03:26:21 16 MR. RAMSDELL: Okay.

03:26:21 17 THE PRESIDING OFFICER: -- so please ask
03:26:22 18 him another question.

03:26:24 19 Q. BY MR. RAMSDELL: Continuing into the pros
03:26:25 20 are: one-third the number of committees, shared
03:26:30 21 resources, combined departments, cost savings, single
03:26:33 22 culture, one face and singular presence with customers,
03:26:36 23 more policy-oriented board, more flexibility for

03:26:40 1 management to take action, broader labor perspective
03:26:43 2 for potentially better decisions, better job of
03:26:46 3 eliminating the silos, single culture, keep names,
03:26:51 4 and easiest model to allow for staff empowerment,
03:26:55 5 correct?

03:26:55 6 A. Correct.

03:26:57 7 Q. And there were cons identified as well,
03:26:59 8 correct?

03:26:59 9 A. Yes.

03:27:03 10 Q. I'm going to ask you to move forward to
03:27:06 11 page 5, please.

03:27:10 12 A. I have it.

03:27:11 13 Q. And you start to speak at that point,
03:27:14 14 explaining that [as read], We came to one board that
03:27:17 15 oversees a new entity, which we would call the Local
03:27:21 16 Government Center. There would be reorganization of
03:27:23 17 staff. We need to capture some efficiencies there
03:27:26 18 and do more cross-training. We need more versatile
03:27:30 19 staff people in the field. There would be three
03:27:32 20 service centers. All staff would work for the Local
03:27:35 21 Government Center. Each service would be specialized.
03:27:38 22 All the services would be available to all members.

03:27:43 23 You advised under this option there

03:27:44 1 would be one board of directors and you suggested a
03:27:49 2 composition of the board members split up among school,
03:27:53 3 municipal, county, police, fire, and teachers.

03:27:58 4 Correct?

03:27:59 5 A. Yes.

03:27:59 6 Q. And you introduced the idea of a structure
03:28:03 7 for the Local Government Center that is described on
03:28:06 8 the next page, with a Local Government Center at the
03:28:10 9 top, two legislative committees, a Risk Management
03:28:13 10 Committee, a Long-Range Planning Committee, and
03:28:18 11 Budget and Finance Committee; is that correct?

03:28:22 12 A. Correct.

03:28:23 13 Q. If we move ahead to page 11, at the very
03:28:33 14 bottom, Mr. Pritchard noted that, "I think you have a
03:28:36 15 consensus here. However, there are some things still
03:28:39 16 to be worked out such as explore the concerns of
03:28:42 17 union members with this model, explore ways to modify
03:28:47 18 the model to create a win/win situation, bring this
03:28:52 19 back to the committee."

03:28:53 20 And he reviewed the next steps,
03:28:54 21 correct?

03:28:54 22 A. Correct.

03:28:55 23 Q. [As read], There will be a small group

03:28:57 1 meeting by the middle of January, you need to explore
03:29:00 2 the concerns of union members with this model, need
03:29:02 3 to explore ways to modify this model to make it a
03:29:08 4 win/win situation, and bring the results back to the
03:29:13 5 entire Competition Committee, correct?

03:29:15 6 A. Correct.

03:29:16 7 Q. Okay. We're done with that. We're going
03:29:24 8 to skip No. 39, John. We're going to go to No. 40.
03:29:40 9 We'll move forward to January 15 of 2003. And again,
03:29:45 10 this is the Joint Competition Committee minutes; is
03:29:50 11 that correct?

03:29:50 12 A. Yes.

03:29:50 13 Q. And Attorney Lloyd is present, correct?

03:29:52 14 A. Yes.

03:29:52 15 Q. And it's introduced where Paul Beecher
03:29:56 16 advised that, "We are here today to discuss the impact
03:29:59 17 of combining the three boards into one," correct?

03:30:02 18 A. Correct.

03:30:03 19 Q. And if we turn to page 3, one of the
03:30:08 20 questions -- near the bottom, the very last paragraph
03:30:10 21 there -- is Mr. Beecher voices one of the concerns
03:30:15 22 that he has and that is, "When I came to the last
03:30:18 23 meeting, I asked, as a HealthTrust trustee, the same

03:30:24 1 question - Is this right for HealthTrust?"

03:30:28 2 Is that what each of the boards was
03:30:30 3 doing, was independently determining whether it was
03:30:32 4 in their best interests?

03:30:34 5 A. I -- I mean, I don't know what they're
03:30:35 6 doing. I -- I guess they were. I assume that
03:30:46 7 property and liability trustees were asking that same
03:30:51 8 question among themselves. And others like -- I don't
03:30:55 9 remember Paul asking me that question.

03:30:59 10 Q. But consolidation could not have taken
03:31:01 11 place unless each of the independent boards approved
03:31:04 12 it, could it?

03:31:06 13 A. No, not at all. In fact, each of them was
03:31:09 14 required to vote on it independently of the other.

03:31:19 15 Q. Would you turn to page 5, please. Third
03:31:27 16 paragraph from the bottom. "Rod MacDonald inquired
03:31:32 17 as to whether 'We would be violating our charter by
03:31:36 18 doing this.'"

03:31:37 19 Do you see that?

03:31:38 20 A. Yes.

03:31:38 21 Q. And your attorney, outside counsel, "Bob
03:31:41 22 Lloyd responded in the negative," correct?

03:31:44 23 A. Correct.

03:31:44 1 Q. So that was his function: legal questions
03:31:46 2 were raised, he answered them?

03:31:48 3 A. Yes.

03:31:53 4 Q. We're done with this exhibit.

03:31:55 5 A. That was his function.

03:31:56 6 Q. We're done. No. 41, please. This is Joint
03:32:12 7 Competition Committee of January 22, 2003, correct?

03:32:14 8 A. Correct.

03:32:14 9 Q. And again, Attorney Lloyd and Mr. Pritchard
03:32:17 10 are present?

03:32:17 11 A. Yes.

03:32:18 12 Q. And would you turn to the middle of page 2,
03:32:20 13 please.

03:32:25 14 A. Yes.

03:32:26 15 Q. You referred to two important organizational
03:32:28 16 features that presently exist. [As read] The
03:32:30 17 important thing is to maintain status under RSA 5-B,
03:32:35 18 as well as Internal Revenue Code Section 115. This
03:32:41 19 is the pooled risk management statute that we wrote.
03:32:44 20 They are not under the laws of the Insurance
03:32:46 21 Department. What it really avoids is the process of
03:32:49 22 having to submit coverage plans, rates, et cetera to
03:32:51 23 them. We are in the same position as a city, town,

03:32:54 1 or school district in relation to taxes. We have
03:32:58 2 enough issues with regulating agencies.

03:33:01 3 But you were raising the concern,
03:33:05 4 Whatever we do, it has to comply with 5-B, correct?

03:33:09 5 A. Yes.

03:33:11 6 Q. If we could move forward to -- it's
03:33:20 7 page 2633, the Bates number on the left-hand side at
03:33:23 8 the bottom. It's a few pages forward.

03:33:26 9 THE PRESIDING OFFICER: 26 what, please?

03:33:28 10 MR. RAMSDELL: 2633.

03:33:30 11 THE PRESIDING OFFICER: Thank you.

03:33:33 12 Q. BY MR. RAMSDELL: The last paragraph on the
03:33:36 13 page is [as read], Leon Kenison queried if it would
03:33:36 14 be helpful to have a sketch for implementation and
03:33:41 15 key points when it is presented at the meeting of all
03:33:43 16 boards. You noted there will be some legal analysis
03:33:46 17 and steps to be followed. Bob Lloyd will undertake
03:33:49 18 this task. The boards would have to vote. Then
03:33:53 19 maybe an initial board and appropriate bylaws will be
03:33:56 20 created. Then the Local Government Center and
03:33:58 21 protection of ownership has to be addressed. Assets
03:34:01 22 could be turned over and Bob -- Attorney Lloyd
03:34:06 23 commented that we could look at using one of the

03:34:08 1 existing entities for that.

03:34:13 2 A. Yes.

03:34:13 3 Q. And at the very top of the next page, [as
03:34:16 4 read], Mr. Lloyd suggests having another meeting in
03:34:18 5 30 days and advised that the necessary information
03:34:21 6 could be prepared by then.

03:34:24 7 Is that correct?

03:34:25 8 A. Yes.

03:34:26 9 Q. We're done with that exhibit. No. 42,
03:34:41 10 please.

03:34:43 11 Now, we've moved forward another
03:34:46 12 couple of months. We're up to March 5, 2003. And
03:34:48 13 this is a Joint Competition Committee. These are the
03:34:52 14 minutes of that committee; is that correct?

03:34:57 15 A. Yes.

03:34:57 16 Q. I'm going to ask you to move forward to --
03:34:59 17 the Bates number on the bottom left is 2640.

03:35:11 18 A. I have it.

03:35:12 19 Q. There's a section that's entitled,
03:35:15 20 "Presentation of legal procedure for implementation
03:35:18 21 of proposal."

03:35:20 22 Do you see that?

03:35:20 23 A. Yes.

03:35:22 1 Q. "Attorney Lloyd reviewed in detail the
03:35:25 2 memorandum that was distributed at today's meeting
03:35:29 3 and is attached to these minutes"; is that correct?

03:35:31 4 A. Yes.

03:35:33 5 Q. [As read], Mr. Lloyd addressed the
03:35:41 6 advantages of maintaining segregation and separate
03:35:44 7 identifiable entities as compared to a full merger.
03:35:46 8 Keith Burke queried, if we have a fire in one entity,
03:35:49 9 can you draw from another entity? Attorney Lloyd
03:35:52 10 responded in the affirmative.

03:35:55 11 A. Yes.

03:35:55 12 Q. Then further down -- Mr. Lloyd continues to
03:36:01 13 explain the legal procedure as this goes on, correct?

03:36:05 14 A. Yes.

03:36:13 15 Q. Would you take a look at the next exhibit,
03:36:17 16 please, Exhibit No. 368. Don't put this one away.
03:36:20 17 I'm going to ask you a question about that in a minute.
03:37:08 18 The minutes of the March 5, Joint Competition Committee
03:37:13 19 meeting refer to a memo presented by Attorney Lloyd.

03:37:17 20 Is this the memo that Attorney Lloyd
03:37:20 21 gave to the Joint Competition Committee?

03:37:21 22 A. Yes, it's addressed to the Joint Competition
03:37:29 23 Committee.

03:37:29 1 Q. And in this memorandum, it is broken down
03:37:31 2 by section. It has a section, "Advantages of
03:37:34 3 maintaining segregation and [sic] separate
03:37:37 4 identifiable entities as compared to a full merger,"
03:37:40 5 correct?

03:37:40 6 A. Correct.

03:37:41 7 Q. On the next page, he talks about the
03:37:50 8 Attorney General and how it might view -- or might
03:37:53 9 have to be consulted regarding a consolidation,
03:37:57 10 correct?

03:37:57 11 A. Yes.

03:37:58 12 Q. It goes through the ultra vires doctrine,
03:38:04 13 as well, correct, at C?

03:38:07 14 A. Yes.

03:38:12 15 Q. On page 3 of this memorandum, there's a
03:38:15 16 discussion of "type of separate entity: voluntary
03:38:20 17 corporation or limited liability company," correct?

03:38:22 18 A. Yes.

03:38:23 19 Q. And in the legal memorandum, Mr. Lloyd
03:38:27 20 breaks down that analysis of type of separate entity,
03:38:29 21 whether a voluntary corporation or a limited
03:38:31 22 liability company, correct?

03:38:32 23 A. Yes.

03:38:32 1 Q. And at the very -- on the last page of this
03:38:35 2 memorandum, No. 3 is entitled, "The limited liability
03:38:40 3 company solution," correct?

03:38:42 4 A. Yes.

03:38:43 5 Q. 3.1 says it would be a "single member."
03:38:48 6 3.2, "Merger of each existing voluntary corporation
03:38:50 7 with a separate LLC." And 3.3, "Formation of a
03:38:56 8 workers' compensation LLC," correct?

03:38:57 9 A. Yes.

03:38:58 10 Q. But he does point out, "Real estate might
03:39:02 11 require separate corporate existence," correct?

03:39:04 12 A. Yes.

03:39:05 13 Q. And this is the legal memorandum provided
03:39:07 14 to the Joint Competition Committee by its outside
03:39:10 15 counsel, correct?

03:39:11 16 A. Yes.

03:39:12 17 Q. You can put the other exhibit away. We'll
03:39:21 18 move on.

03:39:38 19 May I have Exhibit 370, please.

03:39:48 20 Exhibit 370 is -- now we are a month
03:39:52 21 later, April 7, 2003, and this is a memorandum from
03:39:56 22 Attorney Lloyd to the New Hampshire Municipal
03:40:00 23 Association, Inc., the New Hampshire Municipal

03:40:06 1 Association Property-Liability Trust, Inc., and
03:40:07 2 HealthTrust, Inc., correct?

03:40:08 3 A. Correct.

03:40:09 4 Q. Because they were still separate entities
03:40:11 5 at that point, correct?

03:40:12 6 A. Yes.

03:40:13 7 Q. And this legal memorandum from Attorney
03:40:19 8 Lloyd advises those boards about reorganizing. And
03:40:25 9 it goes through a primary objective, "A primary
03:40:32 10 corporate objective of the Competition Committee
03:40:34 11 proposal is to achieve a single unified board of
03:40:39 12 trustees from the three existing boards of NHMA, NHMA
03:40:43 13 PLT, and HealthTrust," correct?

03:40:46 14 A. Correct.

03:40:46 15 Q. In Section B below that he opines that it
03:40:52 16 "meets all the legal requirements," correct?

03:40:54 17 A. Yes.

03:40:54 18 Q. There then are alternatives that are
03:40:57 19 discussed on the next page?

03:41:00 20 A. Yes.

03:41:00 21 Q. And then we return to, in capital letter C,
03:41:05 22 "The limited liability company solution," correct?

03:41:08 23 A. Yes.

03:41:12 1 Q. And then in Roman Numeral III, Attorney
03:41:18 2 Lloyd advises you about the process and schedule for
03:41:20 3 completion of consolidation, correct?

03:41:23 4 A. Yes.

03:41:24 5 Q. He advises the boards that there will need
03:41:27 6 to be a resolution of each board, correct?

03:41:31 7 A. Yes.

03:41:32 8 Q. Incorporators and interim Board of Trustees
03:41:37 9 will be necessary?

03:41:37 10 A. Yes.

03:41:37 11 Q. And the completion will be effective by
03:41:41 12 July 1, 2003, correct?

03:41:42 13 A. Yes.

03:41:46 14 Q. Would you take a look at Exhibit 45, please.

03:41:50 15 May I have 45, please.

03:42:13 16 These are actually the minutes of the
03:42:16 17 HealthTrust Board of Trustees meeting for April 7,
03:42:18 18 2003, correct?

03:42:19 19 A. Correct.

03:42:19 20 Q. And Attorney Lloyd is present at that
03:42:23 21 meeting, correct?

03:42:24 22 A. Correct.

03:42:24 23 Q. And now --

03:42:26 1 A. I notice I'm not present.

03:42:28 2 Q. Fair enough.

03:42:30 3 A. I don't know why I wasn't, but . . .

03:42:33 4 Q. Okay. And this is not a Joint Competition
03:42:41 5 Committee meeting, but the separate HealthTrust Board
03:42:45 6 of Trustees, correct?

03:42:45 7 A. Correct.

03:42:46 8 Q. And during that meeting, it just starts
03:42:48 9 out, "Keith Burke noted that 'We are here to answer
03:42:53 10 questions, have more discussion, and take a vote on
03:42:55 11 joining the trusts,'" correct?

03:42:59 12 A. Correct.

03:43:00 13 Q. "John Bohenko stated, 'I think I have not
03:43:02 14 made a decision yet because of what Bob Lloyd said
03:43:05 15 because of the legal makeups. The one I favor the
03:43:08 16 most is the holding company with the separate LLCs.
03:43:10 17 If you said there has to be a commingling of assets,
03:43:13 18 my vote would be different,'" correct?

03:43:16 19 A. Correct.

03:43:16 20 Q. And then two paragraphs later, "Keith Burke
03:43:19 21 interjects with 'When we talk about commingling of
03:43:22 22 funds, you can if you want to. If we need help from
03:43:26 23 PLT, we can get it and vice versa, but that is a

03:43:28 1 decision for the whole board to make.' Bob Lloyd
03:43:32 2 stated that 'There will be 12 New Hampshire Municipal
03:43:38 3 Association members that would require two-thirds
03:43:39 4 vote for that to be changed.' John Bohenko inquired
03:43:44 5 as to how things could go back to the way they were
03:43:47 6 in the future if this does not work; 'Would you need
03:43:51 7 a two-thirds vote?' Bob noted that he thought that
03:43:54 8 was correct. 'I have never seen that in any
03:43:56 9 organization. They are authorized by statute.
03:43:59 10 Dissolution would be voted on as a new resolution.'
03:44:02 11 Keith added that 'We are trying to make something
03:44:05 12 complete that is simple.'"

03:44:07 13 And then at the very end of this
03:44:10 14 meeting -- and there is -- I'm not going to go
03:44:12 15 through all of it, but there is lots of discussion
03:44:15 16 among the HealthTrust Board of Trustees during this.

03:44:19 17 But at the very end on page 5, "Rod
03:44:22 18 MacDonald asked, 'If this passes today, is this up
03:44:26 19 and running by July 1, 2003?' It was concluded that
03:44:31 20 if the resolution passes, that would occur."

03:44:35 21 "Mr. Cryans' motion to move on the
03:44:41 22 'joint resolution' as written, seconded by Julia
03:44:44 23 Griffin passed with seven votes in favor, three votes

03:44:47 1 in opposition, and one abstention," correct?

03:44:50 2 A. Correct.

03:44:51 3 Q. Thank you. We're done with that exhibit.

03:44:52 4 May I have Exhibit 47, please.

03:45:09 5 This very same day, this is a Board
03:45:09 6 of Trustees meeting, but it's a different Board of
03:45:14 7 Trustees. This is the Property-Liability Trust Board
03:45:14 8 of Trustees minutes; is that correct?

03:45:15 9 A. Yes.

03:45:16 10 Q. And at that time, different board than the
03:45:18 11 HealthTrust board, correct?

03:45:19 12 A. Correct.

03:45:21 13 Q. At the very beginning of this, Mr. Caron
03:45:25 14 called the meeting to order. "It was noted that the
03:45:28 15 purpose of this meeting was for the PLT Board of
03:45:31 16 Trustees to discuss, deliberate, and act on the issue
03:45:34 17 of reorganization as recommended by the Competition
03:45:38 18 Committee. It was noted that this meeting followed
03:45:40 19 an all-boards informational meeting with the
03:45:43 20 executive committee and the Board of Trustees of both
03:45:46 21 HealthTrust and PLT," correct?

03:45:49 22 A. Correct.

03:45:49 23 Q. And when we get to the bottom of the second

03:45:51 1 page of these minutes --

03:45:53 2 A. Excuse me. Could I just check something?

03:46:03 3 Q. If we get to the bottom of the second page,
03:46:05 4 a motion is then made by -- With me?

03:46:09 5 A. Ms. Brenner, yes.

03:46:11 6 Q. Yes. Ms. Brenner, seconded by
03:46:13 7 Mr. Beauregard, "to approve a joint resolution that
03:46:18 8 the NHMA, the New Hampshire Municipal Association
03:46:20 9 PLT, and HealthTrust, Inc. be consolidated into an
03:46:22 10 organization represented by a single Board of
03:46:24 11 Trustees," and it was unanimously approved, correct?

03:46:29 12 A. Yes.

03:46:29 13 Q. If you go to the fourth page of this exhibit.

03:46:38 14 A. Yes.

03:46:38 15 Q. That is the joint resolution of the NHMA,
03:46:43 16 Inc., the NHMA PLT, and HealthTrust; that's correct?

03:46:49 17 A. Yes.

03:46:49 18 Q. And this is the resolution of the three
03:46:51 19 boards that actually effects the consolidation, or
03:46:56 20 authorizes -- I guess I should say -- it doesn't get
03:47:01 21 effected until counsel files the appropriate legal
03:47:04 22 documents. But it actually authorizes counsel to do
03:47:09 23 that, correct?

03:47:09 1 A. Yes.

03:47:09 2 Q. And what was actually resolved is that the
03:47:15 3 respective Board of Trustees [as read] each
03:47:17 4 separately and jointly deem it advisable and
03:47:21 5 generally to the welfare and advantage of each
03:47:22 6 company and all their respective members and the
03:47:25 7 employees of the members that the companies be
03:47:26 8 consolidated into an organization represented by a
03:47:29 9 single Board of Trustees, correct?

03:47:31 10 A. Yes.

03:47:35 11 Q. And if we get to the second resolution,
03:47:39 12 among other things, [as read] for NHMA to be renamed
03:47:43 13 the Local Government Center, HealthTrust and PLT be
03:47:48 14 merged into and -- with separate New Hampshire
03:47:50 15 limited liability companies, with the sole member of
03:47:53 16 each being the new Local Government Center, Inc.,
03:47:57 17 correct?

03:47:57 18 A. Correct.

03:47:58 19 Q. "The New Hampshire Municipal Association,
03:48:03 20 Inc. legislative and dues collection activities be
03:48:06 21 segregated from the activities of the new Local
03:48:09 22 Government Center by being conducted in a separately
03:48:12 23 constituted committee of the new Local Government

03:48:15 1 Center, Inc. for a limited liability company with the
03:48:19 2 Local Government Center, Inc. as its sole member.
03:48:22 3 That the workers' compensation joint business of
03:48:26 4 HealthTrust and PLT be transferred to a separate
03:48:29 5 limited liability company with the Local Government
03:48:31 6 Center . . . as its sole member. The current Local
03:48:36 7 Government Center that holds real estate utilized by
03:48:38 8 the companies be renamed and such corporation's
03:48:42 9 ownership transferred to the new Local Government
03:48:44 10 Center, Inc., be and is hereby, in all respects
03:48:49 11 approved and adopted," correct?

03:48:53 12 A. Yes.

03:48:53 13 Q. We're done with that exhibit.

03:49:03 14 May I have Exhibit 46, please.

03:49:13 15 Are you with me, John?

03:49:14 16 A. Yes.

03:49:19 17 Q. There was reference in the last two
03:49:23 18 exhibits to an all-boards meeting that same day,
03:49:26 19 April 7, 2003. These are actually the minutes of
03:49:29 20 that all-boards meeting, correct?

03:49:30 21 A. Correct.

03:49:31 22 Q. And at page 2 on this, Mr. Pritchard
03:49:37 23 referred to the PowerPoint presentation entitled

03:49:39 1 "Competition Committee Charge," which is attached to
03:49:42 2 these minutes, correct?

03:49:43 3 A. Yes.

03:49:46 4 Q. We're not going to go through that entire
03:49:48 5 PowerPoint presentation, but I want to mention some
03:49:50 6 of the things that are in these minutes.

03:49:53 7 On page 3 --

03:49:54 8 A. Yes.

03:49:54 9 Q. -- Mr. Pritchard, the third paragraph,
03:49:57 10 "Mr. Pritchard stated that the committee participants
03:49:59 11 pinpointed challenges, i.e., the organization is slow
03:50:03 12 in making decisions, they tend to be siloed, they
03:50:07 13 kept thinking about these things as it went along.
03:50:10 14 Three alternative scenarios were considered as
03:50:12 15 follows: no change in structure - try to put things
03:50:15 16 together internally. Two-board model, single-board
03:50:19 17 and single-organization model. They concluded that
03:50:22 18 the single-board/single-organization model was the
03:50:25 19 best scenario"; is that correct?

03:50:30 20 A. Yes.

03:50:31 21 Q. If you turn to the next page, Mr. Pritchard
03:50:35 22 continues on, saying that, "We do not want to change
03:50:39 23 some of the core values as follows: honesty and

03:50:42 1 integrity, service to the members above all else,
03:50:46 2 excellence in reputation; being part of something
03:50:49 3 special, hard work and continuous self-improvement,
03:50:52 4 member driven - a distinction from the competition."

03:50:56 5 "Mr. Pritchard stated that the
03:50:58 6 guiding principles of the organization would be to:
03:51:00 7 maintain openness to change, maintain expertise of
03:51:03 8 staff, hear and respect unique concerns of all
03:51:07 9 communities of interest, stay focused on the mission."

03:51:12 10 Mr. Pritchard then goes on to
03:51:15 11 describe the compelling reasons that were given for
03:51:18 12 going to a single-board model. And to just touch on
03:51:23 13 the highlights of those, [as read] coalesce around a
03:51:25 14 common vision, empower staff to innovate and serve,
03:51:29 15 improve understanding of varying viewpoints, service
03:51:33 16 all the needs of local governments and their
03:51:34 17 officials/ employees, recognize unique strengths of
03:51:36 18 different participant entries, focus on education.
03:51:42 19 Create efficiencies in operations, maximize use of
03:51:45 20 available resources, address future competition,
03:51:49 21 streamline governance and committee process. They
03:51:55 22 felt this would create efficiencies. There would be
03:51:57 23 less duplication of the supervisory structure.

03:52:05 1 THE PRESIDING OFFICER: Is there a question
03:52:05 2 in that, Mr. --

03:52:07 3 THE WITNESS: That's what it says.

03:52:09 4 Q. BY MR. RAMSDELL: That is the discussion
03:52:10 5 that occurred?

03:52:11 6 A. Yes.

03:52:11 7 Q. Thank you. If we turn to page 7, you were
03:52:21 8 the first one to speak on that page and you offered
03:52:25 9 that, "'I think we have to be careful and get a
03:52:28 10 cross-section of all the communities and make sure
03:52:31 11 all points of view are represented. It is important
03:52:32 12 to maintain that connection for every member.
03:52:35 13 Everyone who serves will have to be conversant about
03:52:39 14 all issues. Everyone will have to learn. It takes
03:52:41 15 about a year until you figure out what decisions have
03:52:44 16 to be made; there will be a training period.'"

03:52:49 17 That was your opinion, correct?

03:52:50 18 A. Yes. In context, I think I was talking
03:52:52 19 about, you know, what's going to happen when we get
03:52:54 20 this new board together, what would be necessary.

03:52:57 21 Q. And then if we go to the next-to-the-last
03:53:00 22 paragraph, a couple of sentences from the end, "Keith
03:53:06 23 Burke emphasized that 'I think it is important to

03:53:10 1 note that this is not about Primex. It is about
03:53:12 2 changing the landscape [sic]. We have to find ways
03:53:17 3 to work together. Primex keeps us sharp. The focus
03:53:20 4 is on how we can evolve as a total organization to
03:53:27 5 make it stronger and better for members.'" "

03:53:34 6 If we go to page 12. Are you with
03:53:50 7 me?

03:53:50 8 A. Almost. Yes.

03:53:50 9 Q. Mr. Lloyd refers to his memorandum included
03:53:50 10 in the materials for the packet for today's meeting --
03:53:53 11 and we've already looked at that memorandum. It's
03:53:55 12 the same one that we looked at, John; is that correct?

03:53:57 13 A. Yes.

03:53:59 14 Q. In the middle of the page, Attorney Lloyd's
03:54:05 15 outline shows that the limited liability corporation
03:54:07 16 model, "'The entities need to make a choice and
03:54:12 17 maintain financial segregation. You can have a
03:54:14 18 single board and single minutes. Single members of
03:54:17 19 the LLC would be the Local Government Center and each
03:54:20 20 line of business would be put in a separate LLC. If
03:54:24 21 you had a 'holding company,' there would be complete
03:54:28 22 segregation. Decisions would be made by that
03:54:30 23 committee. They would be used to finance NHMA

03:54:33 1 activities.'" "

03:54:36 2 That's the model that your counsel
03:54:38 3 provided to the boards, correct?

03:54:40 4 A. Yes.

03:54:41 5 Q. And then he went on to say, "'I have
03:54:45 6 reviewed this proposal with someone at the Attorney
03:54:48 7 General's Office and was informed that they would not
03:54:50 8 take jurisdiction of that [sic] matter,'" correct?
03:54:56 9 That's your outside counsel confirming --

03:54:56 10 A. Yes.

03:54:58 11 Q. -- that he spoke to the Attorney General's
03:55:00 12 Office about this move, correct?

03:55:01 13 A. Yes.

03:55:02 14 Q. We're done with this exhibit. Two more on
03:55:10 15 the consolidation.

03:55:13 16 If you take a look at No. 43, please.
03:55:22 17 We're actually not going to go through the pages of
03:55:24 18 this. But this is the PowerPoint presentation that
03:55:27 19 Attorney Lloyd referred to in the minutes that we
03:55:30 20 just went over, correct?

03:55:34 21 A. I -- I don't -- I'm not sure.

03:55:38 22 Q. Okay. Would you take a look at Exhibit 43,
03:55:41 23 please.

03:55:45 1 A. I'm looking for a date on it.

03:55:52 2 Q. You know what, John? We'll just move on.
03:55:55 3 I don't believe there is a date on it. We'll just
03:55:58 4 move on.

03:55:58 5 A. Okay. This is just --

03:56:01 6 THE PRESIDING OFFICER: We're going to move
03:56:02 7 on, Mr. Andrews. Thank you.

03:56:03 8 THE WITNESS: All right. This is all recap
03:56:06 9 of all that's going on.

03:56:08 10 MR. RAMSDELL: I only have one more document
03:56:09 11 about the consolidation, so I'd prefer to move on.
03:56:12 12 My error. I don't have the date. It's not your
03:56:15 13 fault. It's my fault.

03:56:18 14 THE WITNESS: Oh, okay.

03:56:23 15 MR. RAMSDELL: May I have Exhibit 48, please.

03:56:28 16 Q. BY MR. RAMSDELL: These are the Executive
03:56:31 17 Committee meeting minutes of April 7, 2003 --

03:56:33 18 A. Yes.

03:56:34 19 Q. -- correct? And Attorney Lloyd is present
03:56:37 20 for that?

03:56:37 21 A. Yes.

03:56:38 22 Q. And this starts out, "It was noted that the
03:56:40 23 purpose of this meeting was for the Executive Committee

03:56:42 1 to discuss, deliberate, and act on the issue of
03:56:44 2 reorganization, as recommended by the Competition
03:56:47 3 Committee. It was noted that this meeting followed
03:56:49 4 an all-boards meeting with the Executive Committee
03:56:52 5 and the Boards of Trustees on the PLT and HealthTrust,
03:56:57 6 and separate meetings of the two trusts on this
03:56:58 7 matter. It was further noted that the two Boards of
03:57:01 8 Trustees had voted to adopt a joint resolution to
03:57:03 9 consolidate the NHMA, PLT, and HealthTrust into a
03:57:08 10 single organization called the Local Government
03:57:10 11 Center (LGC) which would be represented by a single
03:57:13 12 board of trustees."

03:57:17 13 Is that correct?

03:57:17 14 A. Yes.

03:57:18 15 Q. On the next page near the bottom of the
03:57:24 16 page. With me?

03:57:24 17 A. Yes.

03:57:25 18 Q. "A motion by Mr. Kenison, seconded by
03:57:29 19 Mr. Olson to approve a joint resolution that the New
03:57:32 20 Hampshire Municipal Association, Inc., the New
03:57:35 21 Hampshire Municipal Association PLT, Inc., and
03:57:37 22 HealthTrust, Inc. be consolidated into an organization
03:57:40 23 represented by a single Board of Trustees was

03:57:42 1 approved by a vote of 14 in favor, 1 opposed."

03:57:49 2 Is that correct?

03:57:49 3 A. Yes.

03:57:50 4 Q. One more question about this exhibit.

03:57:51 5 Would you turn to the next page, please.

03:57:53 6 A. Yes.

03:57:53 7 Q. At the very top of this page, you speak.

03:57:57 8 You reported that "a letter would be sent out to

03:58:00 9 1,800 municipal, school, and county officials

03:58:04 10 informing them of this change. Mr. Russell suggested

03:58:07 11 that the letter be held a couple of days so committee

03:58:10 12 members could directly inform their own people first,"

03:58:15 13 correct?

03:58:15 14 A. Yes.

03:58:16 15 Q. Those are your members you're talking about,

03:58:18 16 correct?

03:58:18 17 A. Yes. That was the schools and counties and

03:58:22 18 communities that were members of the various programs.

03:58:29 19 MR. RAMSDELL: We're done with the

03:58:30 20 consolidation. I'll take those exhibits. Let's see

03:59:21 21 if we can at least make a dent. Unless your

03:59:24 22 preference is to stop now. I mean, I am going to a

03:59:26 23 new topic. I have no problem going on for a while,

03:59:28 1 if you'd like.

03:59:29 2 THE PRESIDING OFFICER: How long do you
03:59:29 3 expect your new topic --

03:59:32 4 MR. RAMSDELL: This topic? If somebody
03:59:34 5 could tell me how long --

03:59:41 6 THE PRESIDING OFFICER: Let me ask it this
03:59:42 7 way. Are there any of these exhibits at this time
03:59:46 8 that we could allow to speak for themselves?

03:59:50 9 MR. RAMSDELL: I don't think so, but I think
03:59:53 10 I'll eliminate some as I going along, just like I did
03:59:56 11 with the others.

03:59:57 12 THE PRESIDING OFFICER: Whatever you need
03:59:58 13 to do.

03:59:58 14 MR. RAMSDELL: Let's see if we can at least
04:00:01 15 make a dent in this by 4:30. Is that -- Wherever I
04:00:04 16 am by 4:30, I'll stop. Is that okay?

04:00:08 17 THE PRESIDING OFFICER: You know that I'm
04:00:09 18 prepared to remain longer than that.

04:00:11 19 MR. RAMSDELL: I know you are and I know
04:00:12 20 other people have other concerns, so I'm trying to be
04:00:15 21 solicitous of others as well.

04:00:32 22 Q. BY MR. RAMSDELL: John, the first exhibit
04:00:33 23 in front of you is 373. We're going to eliminate

04:00:37 1 that one.

04:00:39 2 May I have 51, please.

04:00:44 3 Now, yesterday you were asked a
04:00:46 4 number of questions about the strategic plan, and you
04:00:49 5 distinguished between the strategic plan and the
04:00:52 6 consolidation. And these are the minutes of the
04:00:57 7 Budget and Finance Committee executive session on
04:01:02 8 November 13, 2003, correct?

04:01:04 9 A. Yes.

04:01:06 10 Q. At the very beginning of this, you refer to
04:01:10 11 the memorandum initiated by Attorney Lloyd, dated
04:01:16 12 October 27, 2003 with recommendations for the
04:01:20 13 workers' compensation program for 2004.

04:01:22 14 "'Decisions need to be made on the
04:01:24 15 program for 2004. This was discussed at great length
04:01:27 16 at the Long-Range Planning Committee meeting, and
04:01:31 17 there were some recommendations made; however, there
04:01:33 18 are financial implications. I will turn this over to
04:01:37 19 Attorney Lloyd. This is all confidential; it is
04:01:40 20 attorney work product.'"

04:01:42 21 And then a discussion takes place
04:01:43 22 about the workers' compensation, and we're not going
04:01:47 23 to go through all of that. But would you go to the

04:01:49 1 very last page of the exhibit, please.

04:01:57 2 A. Yes.

04:02:00 3 Q. Near the top of this last page, "Keith
04:02:04 4 Burke inquired as to whether we need to take action
04:02:07 5 on this. Attorney Lloyd stated, 'I think you do.
04:02:11 6 You know that the Long-Range Planning Committee will
04:02:15 7 make a recommendation which is out of their scope.'"

04:02:19 8 "Keith Burke's motion not to make a
04:02:23 9 recommendation on the workers' compensation issue
04:02:23 10 until the Long-Range Planning Committee is heard at
04:02:27 11 the next Local Government Center's Board of Directors
04:02:27 12 meeting, seconded by John Bohenko, passed with one
04:02:31 13 abstention."

04:02:32 14 So no decisions were made during this
04:02:33 15 meeting, correct?

04:02:35 16 A. That's correct.

04:02:36 17 Q. We can move on.

04:02:41 18 May I have Exhibit 62, please.

04:02:51 19 This is the Board of Directors
04:02:54 20 meeting minutes of November 21, 2003. It begins with
04:02:58 21 a Long-Range Planning Committee report. "Dr. Weiss
04:03:02 22 referred to the minutes on the October 28, 2003
04:03:04 23 meeting of the Long-Range Planning Committee and

04:03:08 1 noted, 'This is a condensed version. We spent four
04:03:12 2 hours going over these recommendations because it's a
04:03:14 3 difficult situation. We were brought recommendations
04:03:16 4 and comments by Bob Lloyd and Lisa Chanzit. You have
04:03:23 5 a recommendation in your packet.'

04:03:26 6 On the next page, there is a long
04:03:32 7 discussion begun by -- or introduced by Dr. Weiss,
04:03:38 8 "When our committee met, we had some information from
04:03:42 9 Bob Lloyd." And then Attorney Lloyd stated, "One of
04:03:42 10 my purposes was to lay out the budget. There are
04:03:45 11 long-range plan considerations to be taken into
04:03:47 12 account to determine the rating for next year. It
04:03:50 13 was our recommendation that long-range considerations
04:03:52 14 could be put in. You also need to give authority to
04:03:55 15 place the reinsurance for 2004. Phil Stewart has
04:04:01 16 some quotes that came in last night."

04:04:04 17 There's some discussion about why
04:04:05 18 there are condensed minutes. And then there's a
04:04:09 19 discussion beginning in the box down there, "John
04:04:13 20 Bohenko asked, 'Where will the money come from?' Bob
04:04:17 21 Lloyd responded, 'Originally there was \$1 million in
04:04:23 22 the workers' compensation program (\$500,000 from
04:04:26 23 HealthTrust and PLT respectively). That money has

04:04:32 1 been there to cover losses. It will be sufficient
04:04:34 2 for 2004.' John queried, 'How much has been used to
04:04:40 3 subsidize the program?' Bob replied, 'It will be
04:04:44 4 consumed in 2004.'"

04:04:44 5 THE PRESIDING OFFICER: If we use this,
04:04:48 6 Mr. Ramsdell, whose marks of emphasis on this
04:04:49 7 document -- who made the marks of emphasis on this
04:04:51 8 document?

04:04:56 9 MR. RAMSDELL: It was produced that way.
04:04:57 10 I don't know.

04:04:57 11 THE PRESIDING OFFICER: And that would be
04:04:58 12 the same if you went higher on the document to --

04:05:03 13 MR. RAMSDELL: Oh, I do know what that is
04:05:04 14 now.

04:05:05 15 THE PRESIDING OFFICER: Thank you.

04:05:07 16 MR. RAMSDELL: These were previously
04:05:08 17 redacted. And then once the order came out to
04:05:11 18 provide unredacted versions, that just represents
04:05:14 19 what had previously been redacted --

04:05:17 20 THE PRESIDING OFFICER: Thank you.

04:05:17 21 MR. RAMSDELL: -- so --

04:05:18 22 THE PRESIDING OFFICER: Please proceed.

04:05:33 23 Q. BY MR. RAMSDELL: At the very bottom of

04:05:34 1 this page, Dr. Weiss noted, "'This was an effort to
04:05:39 2 start a new product. The group that came together
04:05:41 3 made a commitment and they knew that may be the
04:05:44 4 expense that would be incurred.'"

04:05:51 5 At the next page, please --

04:05:51 6 A. Um-hum.

04:05:54 7 Q. -- "Dr. Andersen inquired as to whether
04:05:56 8 there is some kind of long-term plan" --

04:05:57 9 A. Who -- Is that Dr. Weiss's quote at the top
04:06:00 10 of the page?

04:06:02 11 Q. No. That's a quote from -- I believe it
04:06:04 12 was Julia Griffin, but I -- "Julia Griffin added PLT
04:06:11 13 and HT started it because municipalities asked us to
04:06:13 14 do it because they did not want to deal with Primex."

04:06:13 15 A. Okay.

04:06:16 16 Q. [As read], Dr. Andersen inquired as to
04:06:18 17 whether there is some kind of long-term plan. When
04:06:20 18 do you cut bait? When you are losing money? You
04:06:23 19 commented, I think the recommendation was 2004.
04:06:27 20 Dr. Weiss stated, We are saying hold on for one more
04:06:29 21 year.

04:06:30 22 And then the discussion continues for
04:06:34 23 a number of pages, correct?

04:06:37 1 A. Correct.

04:06:44 2 Q. There is a discussion on page 4. With me?

04:06:51 3 A. Yes.

04:06:52 4 Q. "Keith Burke interjected with 'The critical
04:06:56 5 mass argument is very important. I think it makes
04:06:58 6 sense to have it run another year. I think you find
04:07:00 7 the schools do not use it very frequently.'"

04:07:04 8 You indicated, "'In all liability
04:07:07 9 coverages, you are worried about severity and
04:07:09 10 frequency. Schools have a lot less exposure than
04:07:12 11 public works.' Keith Burke emphasized 'That is why I
04:07:17 12 am saying to go after the schools to build critical
04:07:19 13 mass.'"

04:07:20 14 "Sam Giarrusso stated, 'I think we
04:07:25 15 need to embrace this recommendation and attain this
04:07:27 16 critical mass. As long as the competition is out
04:07:29 17 there, we [sic] have to deal with it. This
04:07:31 18 organization needs a plan to make it available to
04:07:33 19 sell to other communities. As a teacher, I want to
04:07:35 20 know if I can access it in a reasonable fashion.'"

04:07:40 21 "John Eich noted, 'In regards to what
04:07:43 22 John Andrews said, if we do not pull this together,
04:07:46 23 Primex will buy us with their 'war chest.' Where are

04:07:51 1 we going in the long range? We are part of this
04:07:53 2 whole deal. We have to embrace this to succeed.'"

04:08:02 3 If we just go to the next page, "Tim
04:08:08 4 Ruehr noted, 'We are not competing against the 'war
04:08:12 5 chest.' We are competing against the critical mass.
04:08:15 6 What do we have to do to get to the critical mass? I
04:08:18 7 think that is what we need to look at. Once we let
04:08:22 8 workers' comp go, it will not be good.'"

04:08:24 9 And you stressed, "'You are the market
04:08:27 10 leaders. You know health and property-liability.
04:08:32 11 Primex has the school market for property-liability
04:08:34 12 and workers' comp. Their property-liability school
04:08:37 13 revenues are something like \$3.5 million. I read
04:08:40 14 something recently in the Harvard Business School
04:08:42 15 magazine; if are you going to compete, you better be
04:08:45 16 a leader. Five years from now, you do not want to
04:08:48 17 find yourselves here trying to determine what we did
04:08:51 18 wrong. There is no reason they should take all of
04:08:53 19 our business unless we do not [sic] let it happen.'"

04:08:57 20 And John Bohenko responded to that,
04:08:59 21 said, "'I do not disagree about competing. I have
04:09:01 22 concerns about using members' balance from HealthTrust.
04:09:04 23 We are trying to build members' balance. We raised

04:09:06 1 [sic] premiums to do that. I do not want to have to
04:09:08 2 say that I will spend your money to subsidize workers'
04:09:12 3 comp. You may think it is minor and not material,
04:09:14 4 but eventually someone will ask that. If Primex is
04:09:17 5 subsidizing health that way, I will never recommend
04:09:20 6 going there. I am dealing with people who put in
04:09:23 7 premium share.'"

04:09:25 8 Jon Steiner pointed out, "'At the
04:09:28 9 beginning it was half and half. This is the first
04:09:29 10 time that a full board could talk around one table.
04:09:32 11 The program has never had the full potential. We
04:09:34 12 never had a forum to discuss that. That is [sic] one
04:09:37 13 of the reasons for the merger.'"

04:09:39 14 It's plain from that discussion there
04:09:41 15 was not unanimity of thought on the issue, was there?

04:09:45 16 A. No.

04:09:46 17 Q. There was, as you described it, robust
04:09:48 18 discussion?

04:09:49 19 A. Yes.

04:09:50 20 Q. "Keith Burke's motion to accept the
04:09:52 21 recommendation of the Long-Range Planning Committee
04:09:54 22 to remain in workers' compensation for at least the
04:09:57 23 next year, seconded by Dave Caron, passed with one

04:10:00 1 opposing vote," correct?

04:10:02 2 A. Correct.

04:10:02 3 Q. That's it for that exhibit.

04:10:39 4 John, I think the next exhibit you
04:10:41 5 have there is 64.

04:10:42 6 A. Correct.

04:10:42 7 Q. I'm going to go past that one.

04:10:54 8 May I have Exhibit 67, please.

04:11:03 9 Are you with me, John?

04:11:04 10 A. Yes.

04:11:05 11 Q. This is the Local Government Center Long-
04:11:07 12 Range Planning Committee Meeting, Executive Session
04:11:10 13 minutes of April 19, 2004; is that correct?

04:11:11 14 A. Yes.

04:11:12 15 Q. I'm going to ask you to take a look at
04:11:17 16 page 2.

04:11:22 17 A. Excuse me. What date was it again?

04:11:27 18 Q. April 19, 2004. It should be Exhibit 67.

04:11:30 19 A. Oh, I'm sorry. I got --

04:11:32 20 Q. No, no, don't be sorry. 67. There you go.

04:11:44 21 A. Yes.

04:11:46 22 Q. At the beginning of page 2, "Jenny Emery
04:11:57 23 reviewed actions to be considered as follows." I'm

04:11:59 1 going to represent to you that the exhibit that we
04:12:02 2 just went past showed that the board had authorized
04:12:05 3 retaining Jenny Emery as an outside consultant.

04:12:09 4 Do you remember Jenny Emery?

04:12:10 5 A. Yes.

04:12:11 6 Q. And do you remember her being retained for
04:12:13 7 this purpose?

04:12:14 8 A. Yes.

04:12:14 9 Q. She starts by saying, "Now that the
04:12:17 10 governance and operational structures have been
04:12:19 11 integrated, LGC needs a plan to translate this
04:12:23 12 integration into value for members," correct?

04:12:28 13 A. Yes.

04:12:31 14 Q. Would you go to page 3, please. There's a
04:12:38 15 lengthy discussion here, I'll represent to you -- and
04:12:40 16 you can see from the minutes -- about Primex. "Jenny
04:12:47 17 Emery advised that will happen. They may win some
04:12:49 18 battles, but you want to win the war. We would have
04:12:52 19 liked to keep them, but we do not want to continue to
04:12:55 20 lose money on them."

04:12:56 21 This is a discussion specifically
04:12:58 22 about Gilford in the previous paragraph. "'You will
04:13:02 23 win in two years if Primex is taking the risk. If

04:13:05 1 Harvard Pilgrim is taking the risk, it may take
04:13:07 2 longer. You may want to put greater resolution on
04:13:10 3 the picture and not just react to situations. We
04:13:12 4 know it is real, but do not know enough about it
04:13:16 5 yet.' Keith Burke asked, 'Will it be possible to
04:13:20 6 find out who is taking the risk?' Jenny responded
04:13:24 7 with, 'I think so. We are trying to find out from
04:13:27 8 our contacts without doing anything unethical how the
04:13:31 9 deal is structured.'"

04:13:32 10 A. No, the reference to you -- that you'll
04:13:37 11 know in two years if Primex -- we'll win in two years
04:13:40 12 with Primex goes back to the lockout stuff because I
04:13:46 13 guess what we're saying there is that if Gilford
04:13:51 14 comes back to us, is Primex the one that's going to
04:13:55 15 take that hit --

04:13:56 16 Q. Thank you.

04:13:57 17 A. -- of the run-out.

04:13:59 18 Q. Go with me to page 6, please. Introduced
04:14:11 19 at this time are strategic ideas as follows: "Broaden
04:14:14 20 your [sic] definition of the member to be. All
04:14:17 21 public entities, whether purchasing products or not.
04:14:20 22 Employees/other stakeholders of members. Engage with
04:14:26 23 competitors/counterparties to shape the environment.

04:14:29 1 Broader definition of 'people risk management,
04:14:33 2 products, and services' of the health benefits for
04:14:37 3 HT, workers' comp, and HR management. They revolve
04:14:40 4 around the quality of members and employees. Is
04:14:41 5 there even broader resource management, better
04:14:44 6 employee training leads to less liability losses?
04:14:46 7 Are there more programs you could do?"

04:14:49 8 Those were the strategic ideas that
04:14:50 9 were brought up at that time?

04:14:51 10 A. Yes.

04:14:52 11 Q. And then there were tactical ideas that
04:14:55 12 were brought up as well. And those include "bring
04:15:00 13 workers' compensation claims in-house and build
04:15:02 14 broader people risk management services
04:15:05 15 infrastructure. Target the market for greater
04:15:08 16 efficiency. Explore for [sic] reinsurance
04:15:12 17 efficiency. And enhance/increase member input (make
04:15:16 18 member-driven more tangible)."

04:15:19 19 Is that correct?

04:15:20 20 A. Yes.

04:15:22 21 Q. And then finally at the top of page 7 for
04:15:25 22 this exhibit, the next page, you advised at that
04:15:30 23 point, "The workers' compensation issue is addressed

04:15:32 1 by analyzing if we are looking at a subsidy or an
04:15:36 2 investment. In order to look at it as an investment,
04:15:39 3 we need [sic] to look at the entire package."

04:15:43 4 Is that correct?

04:15:44 5 A. Right.

04:15:47 6 Q. We're done with this exhibit.

04:16:00 7 May I have Exhibit 68, please.

04:16:26 8 These are the Local Government Center
04:16:29 9 Board of Directors minutes of May 4, 2004, the
04:16:32 10 executive session, correct?

04:16:33 11 A. Correct.

04:16:34 12 Q. And I haven't been asking you on each one
04:16:37 13 of these, but you were present for this. The one you
04:16:40 14 weren't present for you pointed out for me?

04:16:42 15 A. Yes.

04:16:42 16 Q. And Attorney Lloyd is present as well?

04:16:44 17 A. Yes.

04:16:45 18 Q. Jenny Emery is present as well?

04:16:50 19 A. Yes.

04:16:50 20 Q. And at the bottom of this page there's a
04:16:53 21 recap of hiring Jenny Emery and her national presence
04:16:57 22 and risk pool experience, correct?

04:17:01 23 A. Yes.

04:17:01 1 Q. At the middle of the next page, Jenny Emery
04:17:05 2 states, "Primex - they (Primex) have a broad mission
04:17:10 3 statement. We do not want them to define our future,
04:17:12 4 but we have to be aware that they are there. I
04:17:15 5 developed a synopsis of how to approach this." She
04:17:20 6 solicited questions and then continued with, "How
04:17:22 7 important is workers' comp to LGC's ability to
04:17:25 8 deliver on its mission and is it healthy to take the
04:17:28 9 risk? How is the Primex/Harvard Pilgrim Healthcare
04:17:33 10 product structured, and what does this suggest about
04:17:34 11 the competitive threat? In today's environment, are
04:17:37 12 there opportunities to form an alliance with
04:17:40 13 SchoolCare, the School Boards Association, or Primex?
04:17:44 14 Can the current marketplace and financial position of
04:17:46 15 the separate risk services programs be enhanced
04:17:49 16 through product surveys and financial integration?"

04:17:52 17 All those ideas were brought up?

04:17:54 18 A. Yes.

04:17:55 19 Q. And then she noted, "We have to see if the
04:17:58 20 plan we can develop [sic] can be integrated. It is
04:18:02 21 not presumed that we have to stay in the workers'
04:18:05 22 compensation business. If we should, and we can,
04:18:07 23 let's prove it. If we cannot prove it, then we are

04:18:10 1 open to that possibility."

04:18:13 2 So no decisions had been made at this
04:18:16 3 point, correct?

04:18:16 4 A. No. We're open to the possibility that we
04:18:21 5 could prove it ultimately.

04:18:21 6 (Court reporter inquiry.)

04:18:30 7 THE WITNESS: Possibility that we might not
04:18:31 8 prove it. That there might not be a projection, you
04:18:36 9 know -- have a --

04:18:41 10 (Court reporter inquiry.)

04:18:41 11 THE PRESIDING OFFICER: Stop, Mr. Andrews,
04:18:43 12 please. Stop.

04:18:43 13 THE WITNESS: I thought she asked.

04:18:48 14 THE PRESIDING OFFICER. She did ask, but
04:18:48 15 she's getting much more than what your answer was.

04:18:52 16 Okay. Let's pick it up from
04:18:57 17 Mr. Ramsdell's question, if we could. Could you read
04:19:00 18 that back to Mr. Ramsdell.

04:19:03 19 (Record read as requested.)

04:19:13 20 THE WITNESS: Correct. Wait a minute.

04:19:20 21 MR. RAMSDELL: You know what? I think this
04:19:21 22 is probably a good time to end.

04:19:22 23 THE PRESIDING OFFICER: The answer is

04:19:23 1 "Correct"?

04:19:24 2 THE WITNESS: Correct. Yes.

04:19:27 3 THE PRESIDING OFFICER: Thank you.

04:19:27 4 Mr. Ramsdell?

04:19:29 5 MR. RAMSDELL: I'd ask that we finish for
04:19:31 6 the day at this time.

04:19:33 7 THE PRESIDING OFFICER: Mr. Volinsky?

04:19:34 8 MR. VOLINSKY: No objections.

04:19:35 9 THE PRESIDING OFFICER: And other
04:19:37 10 respondents' counsel?

04:19:39 11 MR. GORDON: Concur.

04:19:39 12 THE PRESIDING OFFICER: Everyone concurs.
04:19:41 13 We'll break for the day.

04:19:42 14 Thank you, Mr. Andrews. We will
04:19:44 15 convene tomorrow morning, reconvene tomorrow morning
04:19:46 16 at 9:00 a.m. And my understanding was, unless told
04:19:50 17 otherwise, is we'll begin with Mr. Andrews?

04:19:54 18 MR. RAMSDELL: No. They have an out-of-
04:19:56 19 state --

04:19:57 20 THE PRESIDING OFFICER: We'll talk about it
04:19:58 21 afterwards. We'll close the record now. Thank you
04:20:00 22 again.

04:20:01 23 We're off.

04:20:01 1

(Whereupon, at 4:20 p.m.,

04:20:10 2

the proceedings were recessed,

04:20:11 3

to reconvene on Friday, May 4,

04:20:19 4

2012, at 9:00 a.m.)

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C E R T I F I C A T E

I, KIMBERLY A. SMITH, Certified Shorthand Reporter, Certified Realtime Reporter, and Registered Diplomat Reporter in the State of New Hampshire, do hereby certify that I reported in machine shorthand the proceedings had at the taking of the above-entitled hearing, held on the 3rd day of May 2012, and that the foregoing is a true, complete, and accurate transcript of said proceedings as appears from my stenographic notes so taken to the best of my ability, and transcribed under my personal direction.

I further certify that I am a disinterested person in the event or outcome of this cause of action.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT REPORTER.

IN WITNESS WHEREOF, I subscribe my hand and affix my Certified Shorthand Reporter seal this 16th day of May, 2012.

KIMBERLY A. SMITH, CSR, CRR, RDR