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Volume 7

Pages 1372 - 1704

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATION

No. C-2011000036

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

BEFORE DONALD E. MITCHELL, ESQUIRE
PRESIDING OFFICER

* * * * *

REPORT OF PROCEEDINGS

May 8, 2012

9:02 a.m.

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New Hampshire State Archives and Genealogical
Public Research Room
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Concord, New Hampshire 03301

Court Reporter: Cynthia Foster, LCR, RPR

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1 THE PRESIDING OFFICER: Good morning,
2 ladies and gentlemen. This is Day 7 in the
3 matter of Local Government Center, et al., and
4 we are at that stage in the proceedings where
5 the Local Government Center, Mrs. Maura Carroll
6 and Mr. Peter Curro are in their cases in chief,
7 and these cases have been integrated at least
8 through this portion of the proceedings. And
9 with that, they are about to call an additional
10 witness for direct examination. Is that
11 correct, Mr. Quirk?

12 MR. QUIRK: It is, sir. Thank you.

13 THE PRESIDING OFFICER: Okay, and you are
14 calling?

15 MR. QUIRK: Wendy Parker.

16 THE PRESIDING OFFICER: Mrs. Parker, would
17 you please stand and raise your right hand.

18 WENDY LEE PARKER, DULY SWORN

19 DIRECT EXAMINATION

20 BY MR. QUIRK:

21 Q Please state your name for the record.

22 A Wendy Lee Parker.

23 Q Ms. Parker, where do you work?

1 A Local Government Center.

2 Q And how long have you worked for the Local
3 Government Center or its former entity?

4 A It will be 23 years this June.

5 Q What's your current position with the Local
6 Government Center?

7 A Deputy Director for Risk Pool Operation.

8 Q I'm going to ask you about your work in more
9 detail, but would you tell us about your
10 educational background?

11 A I received my undergraduate degrees, I have an
12 associate's in accounting and bachelor's in
13 business administration from New Hampshire
14 College.

15 Q And do you have any experience with respect to
16 training for risk pool, specifically?

17 A I have attended national risk pool workshops
18 throughout the years. They have two annual
19 meetings in which Board members and staff come
20 together to learn what municipal pools are doing
21 around the country, and I have attended those
22 throughout the years, at least a dozen or more
23 of those, and I also spent two years serving on

1 the National League of Cities Risk Board.

2 Q Okay. So the Board that you sat on in these
3 organizations and these meetings that you went
4 to, these are all different risk pools
5 throughout the country that come together?

6 A Yes. They're municipal need based. They are
7 from around the country and they all have either
8 health insurance, workers' comp or
9 property-liability coverage that they provide.

10 Q You testified that you worked for the Local
11 Government Center or its former entity for 23
12 years. How long have you been going to these
13 national conferences?

14 A Since the beginning of my career.

15 Q Is that something LGC encourages of its
16 employees?

17 A Yes. We do.

18 Q I want to go through your work history with the
19 Local Government Center. What was your first
20 position with Local Government Center?

21 A When I arrived in 1989 I was their first field
22 representative so my position was to go around
23 the state and educate employees and communities

1 on the benefits that LGC offers. It was also a
2 time when we were implementing our first mail
3 order pharmacy program so I spent a considerable
4 amount of time on the pharmacy plan.

5 Q Just so it's clear, when you say go around the
6 state, you're talking about going to towns and
7 to cities, to counties and to School Districts?

8 A Yes.

9 Q And who do you typically meet? When you were a
10 field rep, who would you typically meet with?

11 A We would meet with employees and retirees as
12 well as the individual group members so that
13 they would understand their benefits. We spent
14 a considerable amount of time meeting with
15 Public Works employees, fire, police, school
16 teachers.

17 Q Okay. And how long were you a field service
18 representative?

19 A Two years.

20 Q And what was your next position with LGC?

21 A In 1991 I was promoted to Service and Marketing
22 Management. We were growing in membership, and
23 we needed more people in the field so we, I

1 hired additional staff to come and assist with
2 that. I manage that as well as the messages and
3 communication materials.

4 THE PRESIDING OFFICER: Excuse me. As a
5 stenographic record is being made at these
6 proceedings, could you speak a little, just a
7 little bit more slowly. I appreciate that you
8 may be a little anxious this morning. You don't
9 normally wake up every morning and testify,
10 right?

11 A This is true. Thank you.

12 THE PRESIDING OFFICER: But as you settle
13 in, you know, please don't see this as wrong,
14 but please proceed. Thank you.

15 A Thank you.

16 Q You were just talking about being a Service and
17 Marketing Manager, and it sounds like you
18 oversaw now a staff of field representatives,
19 your former position?

20 A That's correct.

21 Q And how long did you hold that position for?

22 A Five years.

23 Q And after you were, within that role, what did

1 you, what were you promoted to?

2 A HealthTrust manager.

3 Q And can you explain for us what a HealthTrust
4 Manager does for LGC?

5 A Yes. In my role as HealthTrust Manager, it was
6 my job to be responsible for all of the
7 day-to-day activities that were associated with
8 running HealthTrust so that was budgeting,
9 strategic planning, product development as well
10 as service.

11 Q And we've heard throughout this hearing that
12 Local Government Center has a number of
13 different coverage lines and pools, but for a
14 period of time, you were just the HealthTrust
15 Manager; is that right?

16 A That's correct.

17 Q And how long did you hold that position?

18 A Five years. I'm sorry. Eight years.

19 Q Eight years. And after having that position for
20 8 years, what were you promoted to?

21 A Deputy Director for Risk Pool Operation.

22 Q And that's your current position?

23 A That is my current position.

1 Q So if you could talk to us in a little bit of
2 detail about your job duties as Deputy Director
3 of Risk Pool Operations?

4 A Yes. So in that role I was doing the same
5 operational aspects of HealthTrust so as of
6 these that I mentioned, strategic planning,
7 budgeting, product development, implementation
8 but in addition to that --

9 Q Make sure you go slower so we can get it all
10 down.

11 A All of these same things I was doing now for the
12 Property-Liability Trust in its coverage lines.

13 Q Okay. And this is probably a good place to kind
14 of differentiate the two different pools that
15 LGC has. You have the HealthTrust pool, right?

16 A Correct.

17 Q And you have the Property-Liability Trust pool?

18 A Correct.

19 Q And they're separate, correct?

20 A Yes.

21 Q I want to focus on about the HealthTrust pool.
22 What coverage lines in the HealthTrust pool does
23 LGC offer?

1 A We offer medical, pharmacy, short-term
2 disability, long-term disability, life insurance
3 and dental.

4 Q So you just listed a number of different
5 coverages. Throughout this hearing we're, most
6 of the testimony is about the health plan, but
7 suffice it to say there's a number of different
8 coverage lines under the HealthTrust pool,
9 correct?

10 A Yes. There's six different coverage lines.

11 Q As you mentioned it, the prescription drug plan,
12 do you provide State of New Hampshire benefits
13 under the prescription drug plan?

14 A Yes, we do, and we have since 2005.

15 Q Is that by contract?

16 A It is.

17 Q And do you know how much money LGC has saved the
18 State of New Hampshire when it switched to LGC's
19 prescription drug program?

20 A During the last RFP process which happened in
21 2010, Commissioner Hodgdon, who is the
22 Commissioner of Administrative Services for the
23 State of New Hampshire, sent a memo to the

1 Executive Councilors and the Governor indicating
2 that through that particular RFP process, the
3 RFP that was being brought forth which was a
4 recommendation of LGC HealthTrust was saving the
5 State \$16 million over a 37-month period. A
6 three-year contract, essentially.

7 Q Okay. So if you broke that down annually, LGC
8 saved the State of New Hampshire over \$5 million
9 per year?

10 A Yes. During that contract time and that
11 contract is in effect 2011 through 2013.

12 Q Keeping with the big picture theme, and now
13 let's turn to Property-Liability Trust. What
14 different coverage lines does Property-Liability
15 Trust offer its members?

16 A We have property-liability, we have workers'
17 compensation and unemployment compensation.

18 Q And as Deputy Director of Risk Pool Operations,
19 you're in charge of everything?

20 A Yes.

21 Q How many departments do you oversee?

22 A There are four departments within the risk pool
23 operations unit.

1 Q What are they?

2 A We have enrollee service which is where we
3 manage our call center and our enrollment. We
4 have program operations which we handle
5 underwriting and reporting, we have benefits and
6 coverage which is where we do all of our
7 coverage documents, all of the education out in
8 the field of benefits, field service work, and
9 then we have our claims department, and claims
10 department handles workers' compensation claims
11 as well as property-liability claims.

12 Q And now this is done all by LGC?

13 A Yes, and then those four departments are
14 supported by other departments within Local
15 Government Center so we have an IT department,
16 HR department, communications and loss
17 prevention.

18 Q And is it fair to say this is all housed under
19 the building in Concord?

20 A Yes. We are all in one location.

21 Q Just for the record, what's the address?

22 A 25 Triangle Park Drive.

23 Q Great. And how many employees does LGC have?

1 A Approximately 115.

2 Q Since you mentioned it, I'll just ask the
3 followup question on the call center. Can you
4 talk a little bit on the call center that LGC
5 has for its members?

6 A Yes. Primarily, the call center supports the
7 HealthTrust line of coverage, although they do
8 take in all the calls for Local Government
9 Center. We receive about 38,000 calls per year,
10 and we have 6 individuals who have primary
11 responsibility for answering the phones. They
12 answer coverage questions, they answer
13 enrollment questions, they help individuals. If
14 they may be standing at the pharmacy and having
15 an issue getting their prescription filled, they
16 can work them through that process. If they
17 have claims that they are thinking of appealing,
18 they haven't been happy with the decision of one
19 of our vendors, Anthem or Caremark, they will
20 work through that with them and help make sure
21 they understand what rights they have and how to
22 go through the appeal process and we do that all
23 internally.

1 Q Okay. What else you do internally, I believe
2 you said, is underwriting and claims?

3 A Yes.

4 Q So keeping the focus on HealthTrust for a
5 moment, what are the different products and
6 services that HealthTrust provides its members?

7 A So I could probably spend all day talking about
8 that because we do a lot within HealthTrust. We
9 have over 38 medical plans that we provide to
10 our members and they have the ability to select
11 which plan best meets their local community
12 needs. They match that up with a pharmacy
13 benefit and so then all of the other services
14 that we do really support those two products.
15 And so we have a dental plan, but we also do
16 things that are administrative in service so we
17 do COBRA administration and billing.

18 There's a very large retiree population
19 associated with our member groups, and, as you
20 know, NHRS will have deductions out of retirees'
21 checks to pay for their health care. They have
22 their subsidies. Then if there's any money that
23 is not covered by those two, we have a retiree

1 billing service where we actually bill the
2 retirees and do that collection on behalf of the
3 members. The members still are in charge of the
4 retirees so we need to make sure that we are
5 servicing them and providing them information,
6 but ultimately those retirees are the group's
7 responsibility, but we know that for especially
8 our small groups they don't have a lot of
9 resources so they need us to step in and take
10 care of that for them.

11 Q You testified that there are 38 different health
12 care plans that are offered to various members
13 throughout the State of New Hampshire. Who
14 designs those plans?

15 A Staff at LGC for the most part designs them. We
16 do work closely with both Anthem and Caremark as
17 our two vendors. Caremark and Anthem are both
18 known for their innovation in products so we do
19 look to them to help us decide what the next
20 program would be. For example, when I first
21 started, we had just traditional indemnity
22 programs. We then went to HMO type of programs.
23 We then went to point-of-service programs, and

1 now Anthem has come out with a site of service
2 so what we do is we take their programs that
3 they develop and then we treat them to meet the
4 needs of public sector employees.

5 Q How many individuals does LGC ensure on the
6 health insurance side?

7 A For the HealthTrust we cover about 76,000 unique
8 individuals in one plan or another.

9 Q 76,000 unique individuals. What does that mean?

10 A The best way to say this, it's the number of
11 belly buttons that we cover. So if you think I
12 have a family of four, I'm four in that count of
13 76,000.

14 Q How many towns, cities, counties, School
15 Districts have their coverage with health
16 insurance benefits with LGC?

17 A The way we track them is we believe there's
18 about 664 eligible units within the State of New
19 Hampshire that can purchase coverage for us.
20 About 400 of those purchase medical coverage
21 with us. About 90 percent of those groups
22 purchase one line of coverage from us, whether
23 it be Property-Liability Trust coverage or

1 HealthTrust coverage.

2 Q I want to keep our focus on the HealthTrust
3 side. You've talked about 76,000 individuals,
4 belly buttons, throughout the state, and 400
5 political subdivisions. Who is the insurer for
6 all of those individuals and those entities?

7 A LGC HealthTrust.

8 Q So if LGC did not have adequate funds, is anyone
9 there to step in, pay claims, help out the
10 76,000 people throughout our state?

11 A No. We need to do that.

12 Q Okay. You heard a little bit, you were present
13 in the courtroom yesterday for Mr. Riemer's
14 testimony?

15 A Yes.

16 Q Heard a little bit about reinsurance?

17 A Yes.

18 Q Does LGC presently have reinsurance on the
19 health insurance side?

20 A We do not.

21 Q Was that an intent, was that a deliberate
22 decision?

23 A Yes. We debated that with the Board over

1 several policy years and then ultimately in 2010
2 elected not to purchase reinsurance.

3 Q Do you know the reasons behind that decision?

4 A We were spending money on premium that was going
5 out of the system so out of what would be
6 returned potentially to members and be operating
7 costs for us and felt that we were at a position
8 where we could handle that risk internally.

9 Q Okay. Was the decision made that that would
10 benefit overall the members of LGC?

11 A Absolutely.

12 Q Changing gears to property-liability,
13 Property-Liability Trust. Who and what does LGC
14 insure on the Property-Liability side?

15 A The Property-Liability side is public officials'
16 liability, but then it's also the buildings, the
17 playgrounds, all of the equipment that are in
18 the communities.

19 Q So I'm going to focus on individuals for a
20 moment. How many individuals obtain their
21 coverage through LGC's Property-Liability side?

22 A Through the workers' comp program which is where
23 we count employees we have about 25,000

1 individuals that we cover.

2 Q 25,000 individuals. And what's the value of the
3 property that LGC insures?

4 A For buildings it's about 4 billion and for
5 vehicle expenses it's about 321 million.

6 Q You testified about some of the services that
7 LGC HealthTrust provides. I want to ask you
8 some followup questions on the wellness
9 programs. Can you explain to us what the
10 wellness programs are and how they benefit LGC?

11 A Sure. Our program is called Slice of Life which
12 is our wellness program. We've had that program
13 in place since the early '90s. I believe it was
14 around 1992. And the program is focused on
15 helping individuals create a healthier lifestyle
16 for themselves because a large part of what LGC
17 HealthTrust does is try to mitigate claims.
18 Your actual claims cost in any unit or any pool
19 is what's driving increases. So about 85
20 percent of every rate on average is based purely
21 on claims experience. So as you can lower that
22 claims experience, you have a better chance of
23 having lower increases moving forward so our

1 Board has traditionally put a very large
2 investment on making sure that we keep people
3 healthy. The other thing that's different from
4 us from other insurers is that because of our
5 retirement system here in the state, when
6 someone joins or pools they're very apt to be
7 with us for a long time. So the more that we
8 can create healthy lifestyles while they're
9 younger that transforms all throughout their
10 life. Our average age in our group is about 50,
11 and so we need to make sure that we are
12 promoting that. So we do things like health
13 risk appraisals, we do things like walking
14 programs, reimbursing for parenting classes,
15 fitness classes, stress management. That's all
16 designed to help individuals better manage their
17 overall health.

18 Q And that's done right at the LGC level, correct?

19 A Yes.

20 Q Before we move on to another topic, I want to
21 talk about Anthem Blue Cross/Blue Shield. Okay?
22 And if I could have Exhibit 187, please.

23 I'm showing you an exhibit in this case.

1 It's page 3, and do you recognize this?

2 A Yes.

3 Q And what is it?

4 A It is the ID card that all of our members carry.

5 Q And I see two names on the top of the ID card.

6 What are those names?

7 A Anthem and New Hampshire Local Government
8 Center.

9 Q And the Anthem symbol is there why?

10 A Part of the services that we purchase from
11 Anthem is their network and their provider
12 discount so when someone presents this card to
13 their provider the provider understands that
14 they're using the Anthem network and the
15 discounts associated with that.

16 Q Now, even though Anthem is on the membership
17 card, they're not providing any of the insurance
18 or financial support for claims, correct?

19 A They are not.

20 Q We've heard a little bit about Anthem in this
21 case during the hearing, and I want to ask you
22 to give some historical perspective of LGC's
23 relationship with Anthem Blue Cross.

1 A So when I came in 1989 we were already working
2 with Anthem Blue Cross Blue Shield. They have
3 been called many things over the years, and we
4 have had a 27-year relationship with them, and
5 it has been a very beneficial relationship to
6 both sides. We are the exclusive provider of
7 coverage for their products in the public sector
8 which allow us to share information, allows them
9 not to pay broker fees on public sector
10 business. We share a lot of information
11 regarding trends in the marketplace, as I talked
12 about previously, product development, medical
13 management and networks, and so that partnership
14 is through a contractual relationship. We
15 generally have five-year contracts although we
16 have had longer contracts with them, and we tend
17 to negotiate them early versus waiting until
18 it's expired.

19 Q So if I understand your testimony, there are
20 some benefits to Anthem for the relationship and
21 there's benefits to LGC, right?

22 A Yes.

23 Q Now, we've heard about this exclusivity

1 contract, and I think that's what you were
2 alluding to. When did exclusivity contracts
3 between LGC and Anthem begin?

4 A 2002.

5 Q So in 2002. And I want you to put this
6 exclusivity contract into context. For all
7 bids, all towns, cities and counties, is Anthem
8 prohibited from bidding?

9 A Not on all of them.

10 Q So why don't you tell us in which circumstances
11 Anthem can provide competitive bids against LGC?

12 A Okay. So when we put the contract in in 2002,
13 and we have had a subsequent renewal since then,
14 there was an exclusion for both the City of
15 Manchester and the City of Nashua. They were
16 direct with Anthem at the time, and Anthem
17 wanted them to remain that way so there is a
18 carve-out for those two.

19 Then there was also a state law that was
20 passed regarding community rating and so for
21 groups that have under 50 employees, so 51 and
22 under, they're required, Anthem, by law to
23 provide a proposal. So of our book of business,

1 the 400 groups that I mentioned that we have in
2 our plan, about 150 of those fall below that
3 50-employee mark so they are able to bid on
4 those programs.

5 Q Okay. So it sounds like the contract with
6 Anthem is exclusive except for the state law, 51
7 employees and less, and for Manchester and
8 Nashua?

9 A That's correct.

10 Q Manchester and Nashua; are they the two largest
11 municipalities in the state?

12 A They are.

13 Q I want to change gears completely. Thank you
14 for the overview. I want to focus now on rate
15 setting, okay? Rate setting is something that
16 you testified earlier that is provided by LGC,
17 correct?

18 A It is.

19 Q And that's simply the setting of rates for the
20 various plans?

21 A Yes. We have, as Peter testified yesterday, we
22 have two renewal periods, a January group and a
23 July group, and we do rating processes for both

1 of those groups.

2 Q Okay. Can you talk about the processes for the
3 rating plan overall, and if you have to
4 differentiate between the two time frames,
5 please do.

6 A Okay. So we do set rates twice a year. As
7 Peter indicated yesterday, we also have a GMR
8 process that we do so for the July groups we
9 actually go through a two-step rating process,
10 but let me just start with a plain January
11 renewal so I can walk you through the process.

12 So what we do as staff is we work with our
13 partners which are Anthem and Caremark to get
14 claims reporting. That's the first step. We
15 then with our underwriter that is on staff at
16 LGC work to bring that together with enrollment
17 information and when we get all that information
18 together, we share that with Peter Riemer who is
19 our actuary and Peter works closely with both
20 carriers, Anthem and Caremark, and their
21 actuaries and their reporting individuals to
22 make sure that we have all the information
23 necessary to understand where our costs have

1 been historically because everything that we
2 gather is really taking a look back. Then
3 working with Peter and the other actuaries we
4 take a look forward because there's a lot of
5 pieces of the rating formula, and I believe you
6 saw a rating letter from Peter yesterday that
7 breaks out all the components.

8 One of those components that's
9 significantly important in those rates is what
10 we call trend, medical trend, and it's a factor
11 that we use to look back and say if we have
12 these claims historically what do we think those
13 same claims are going to cost during the period
14 that we're rating for. And so rating trend is
15 not just how much your claims are increasing in
16 cost, but also what is the product mix that you
17 have, what are the utilization of services that
18 you have, and are you going to have the same
19 number of office visits. Are we going to see a
20 large increase in surgery, outpatient versus
21 inpatient. It's looking at that bucket of
22 services, but then we're also looking at
23 technology and that's probably the hardest piece

1 to look at. When we're setting our rates,
2 especially for the GMR, we're looking almost 24
3 months ahead of our experience period as to what
4 those rates need to pay for. And so with
5 pharmacy, for example, new specialty drugs are
6 coming out all the time. We also have new
7 technologies that are happening so the medical
8 trend factor is what we rely on. That is
9 developed by Peter with Anthem and Caremark.
10 However, as staff we also look historically as
11 to what our trend has been. Once we have all of
12 that process together, we form a recommendation,
13 that recommendation goes to the Finance
14 Committee.

15 Q I'm going to jump in. Okay. So everything that
16 you've just been talking about happens at the
17 staff level within LGC thus far?

18 A Yes.

19 Q And it sounds like you look at, in a big picture
20 sense, two different things. You look back at
21 claims history, get an understanding of what
22 claims have been, and then you look forward at
23 medical trends and give projections. Correct?

1 A And that's the piece that Peter does.

2 Q Right. And a couple of times you said that
3 Peter works with actuaries from Anthem and
4 Caremark, correct?

5 A Yes.

6 Q So Peter's not on his own doing this. He's
7 actually working with other actuaries from
8 independent entities, correct?

9 A That is.

10 Q And just so it's clear in everybody's mind, the
11 rating periods, one is January and that's for a
12 calendar year, right?

13 A Right.

14 Q And the other one starts in July, and that's for
15 the fiscal year?

16 A Yes, and we set both of those every fall.

17 Q How many months out are you projecting rates
18 for?

19 A So when we're looking for the GMR in July, we'll
20 be setting those in October, say October of
21 2011, or I should say October of 2012 we'll use
22 this year so when I get to October, we'll be
23 setting rates that are 21 months ahead because

1 they are for the period of July 1 through June
2 30th of the following year. And when I say that
3 far ahead, that's not that October is that far
4 ahead, but the end of the experience period that
5 we can report on and actually utilize for data.

6 Q So you're setting rates right here for all the
7 way out 21 months?

8 A That's correct.

9 Q And then you started to testify after this is
10 done internally, it goes to the Finance
11 Committee?

12 A That's correct.

13 Q And is this part of the process that Mr. Enright
14 and Mr. Riemer were talking about yet?

15 A Yes, it is.

16 Q So if you could explain to us what happens when
17 it goes, once it goes to the Finance Committee?

18 A So once we gather that information, the Finance
19 Committee will meet, and in attendance at that
20 meeting are myself and our underwriters that are
21 employees of Local Government Center and Peter
22 Riemer. And Peter begins the discussion with
23 the Finance Committee by going through a rate

1 recommendation letter. The same format that you
2 saw yesterday where he walks through each of the
3 components of the rating process so that
4 everyone understands all of the factors that are
5 going into those rates and how he arrived at
6 those recommendations.

7 The Finance Committee then has a very long
8 discussion that's generally our longest meeting
9 of the year that we're talking about rates and
10 they ask us questions through that process about
11 the types of pressures we're seeing in the
12 marketplace, what we're seeing others do in the
13 marketplace, what we think the likelihood of
14 keeping our membership during that time frame
15 and they go through each of those components.

16 Q Okay. So still at the Finance Committee level,
17 you may have said it, who are members of this
18 committee?

19 A It's a subset of the Board so they are appointed
20 to committees and so we have a group of probably
21 five to six of our -- I'm not sure of the exact
22 number of the committee members who sit on the
23 Finance Committee.

1 Q So they're representatives of the towns and the
2 cities and the counties and the School District?

3 A From our Board, yes.

4 Q From the Board. And is there a debate at this
5 stage about what the right thing to do or do
6 they just accept what Peter recommends?

7 A No. They don't always recommend what Peter's
8 recommends. There's a lively debate that goes
9 on, and it can be about medical trend factor, it
10 can be about the amount of Members' Balance
11 going back to groups in that rating if there is
12 any designated to go back. It could be about
13 new products and services that we're developing.
14 For example, if we're thinking about
15 implementing a new wellness program, how we
16 think that might impact the rates and would that
17 have an impact on the overall rate increase that
18 we would need to charge in the future.

19 Q You mentioned Member Balance. At this stage in
20 the process, whether Member Balance is returned
21 and how much Member Balance is returned is
22 discussed?

23 A Yes. That's part of the Finance Committee's

1 role in establishing the rates.

2 Q And I assume the Finance Committee then votes on
3 the recommendation?

4 A They do. So they will either vote on the
5 recommendation as presented by Peter or with
6 changes that they have discussed and agreed to
7 during the meeting.

8 Q Okay. So we've talked about what happens at the
9 staff level and now the Finance Committee,
10 what's the next step in this process?

11 A The next step in the process is that we go out
12 for public hearing. There were changes in 5-B
13 that now require us to hold two public meetings
14 prior to the Board taking action on our rates,
15 and so we hold those public hearings. They are
16 required to be held ten days prior to the Board
17 meeting, and we generally have a morning public
18 hearing and an evening public hearing to allow
19 for our membership to come. We send out
20 notification to every participant member group
21 within our population and we also post that on
22 our website, and at those public meetings we go
23 through the rate recommendations, what new

1 products we may be offering, how the rates were
2 established. Sandal also makes a presentation
3 on Members' Balance, what it's for, how we use
4 it. And then at the conclusion of that meeting,
5 we take all of that feedback and will present
6 that to the Board at their meeting that they
7 will be reviewing, and, hopefully, approving the
8 rate recommendation.

9 Q So you talked about these public meetings. You
10 said that notice goes out. To every member of
11 LGC?

12 A Every member group. Yes.

13 Q Every member group. So they have an opportunity
14 to attend the public hearing?

15 A They do.

16 Q And do member groups attend, individuals?

17 A Yes.

18 Q I know Member Balance, the return of that was
19 discussed at the Finance Committee. Is it also
20 raised at the public hearing?

21 A Yes, it is.

22 Q So after the public hearing then what happens?
23 What's the next step in the process?

1 A We then do a mailing to the Board of Directors,
2 the entire Board, with the rate recommendation,
3 and then we meet with them and Peter and the
4 Finance Committee Chair who is Peter Curro walk
5 through the Finance Committee's recommendation,
6 and if there are changes, if there were changes
7 from the recommendation that Peter brought forth
8 at the Finance Committee made, we go through
9 that, and so the Board has an opportunity to
10 understand what Peter's recommendation was, any
11 changes that the Finance Committee may have
12 offered or recommended and then the Board takes
13 action on those rates.

14 Q So you said it was mailed to the entire Board.
15 I just want to be clear. What is mailed to the
16 entire Board and how long in advance of the
17 Board meeting are things mailed?

18 A We shoot for 7 days. We never do less than
19 five. And what is going out is Peter's rate
20 letter that you saw yesterday. So it's a cover
21 letter from Peter with all of the
22 recommendations laid out as to what we're doing
23 as well as the sheet that shows the overall

1 dollars associated.

2 Q And you've attended these Board meetings while
3 these issues are discussed?

4 A Yes.

5 Q How often?

6 A In both of my last two roles every single time.

7 Q Okay. And these are annual meetings?

8 A Well --

9 Q No, actually, how often?

10 A Three times a year.

11 Q Three times. Thank you. And attending these
12 meetings three times a year, for as long as
13 you've been in your last two roles, can you give
14 us a sense of the discussion generally on the
15 topic of rates and the return of Member Balance?

16 A There's a lot of discussion that happens.
17 Medical trend because it is a prediction is
18 probably one of the areas that we spend a lot of
19 time discussing because it's not, you'll never
20 have it exact. It's not a science so you can't
21 say it's going to be this exact number. So
22 there's a lot of discussion that happens around
23 that.

1 There's also a lot of discussion around
2 return of Members' Balance. That is an area
3 that can be a large discussion point because it
4 is impacting our members, and we want to be as
5 aggressive as we can with that and at the same
6 time still be conservative.

7 Q When you say there's a lot of discussion, is it
8 intense discussion, can you give us a little
9 flavor for the discussion?

10 A It can be intense. There are often very
11 differing opinions on the Board. I deal with a
12 Board of 31 individuals. They come from a
13 variety of backgrounds in a variety of
14 positions, and so the discussion can get very
15 lively.

16 Q And is one of the reasons I'll ask you of why
17 these discussions become very lively is that
18 after folks leave these Board meetings, where do
19 they go?

20 A They go home to their communities to get a rate
21 letter from us indicating whatever percentage
22 increase they're going to have.

23 Q So all the members on the Board, they leave

1 these meetings, they go back to the towns, the
2 cities, the counties, the School Districts, and
3 people get these rating letters, right?

4 A Yes.

5 Q And within the rate letters, the amount of
6 return of Member Balance is in there?

7 A Yes. If we are returning Members' Balance, that
8 is indicated in the rate letter along with any
9 new products, and if it's a period of time when
10 one of the factors say medical trend is growing
11 more than usual, we'll try to put in an
12 explanation as to why that is.

13 Q So we're still talking about the process.
14 Started right at the staff, then it went to the
15 Finance Committee, then it went to the public
16 hearing, went to the Full Board. The Full Board
17 then either votes up or down or modifies, is
18 that fair?

19 A That's correct. Yes.

20 Q What happens after the Full Board votes? What's
21 the next step in the process?

22 A The next step in the process is really when it
23 goes back to staff because what the Board

1 approves is the overall rate increase for that
2 renewal, but then we have to take that overall
3 rate increase and break it down by community.

4 Q Explain that in more detail.

5 A Okay.

6 Q What's the difference?

7 A So when Peter is looking at his information and
8 what the Board has been looking at is the effect
9 of the increase on the overall renewal. So we
10 have the two renewals, January and July. You
11 then have to translate that overall increase and
12 I'll just use a five percent increase as an
13 example, that five percent increase is an
14 aggregate of all the groups that are insured
15 with us, but then we have to go back as staff
16 and work on determining how to proportion that
17 rate increase to each of our individual groups.

18 When we do that, we look at two types of
19 groups, and the words get a little bit confusing
20 because what we call, we have for all of our
21 groups who have less than 100 employees, we call
22 those our pooled groups because what we do is we
23 take the experience of all those small groups

1 and we lump them together, and they get the same
2 increase and they have the same rates for all
3 the coverages. So if you're in community A, the
4 town of Milford, and comparing the same plan
5 with the town of Ashland, they're going to have
6 the same rates if they both renew in January,
7 and that's what we call our under 100 group. So
8 we put all of those together.

9 Then we have our groups that range in size
10 from 101 to 1000, and their own rate is based
11 primarily on their own experience but because
12 none of them are very large, even a thousand
13 person group in rating is not considered large,
14 we do some what we call credibility adjustments
15 where we take part of their own experience and
16 we look at the overall experience of our entire
17 pool renewing at that time and there's a
18 combination that's used. So there's a formula
19 that we go through for each of our groups to
20 determine what their individual rate increases
21 would be. And so if you were to review one of
22 the rate letters, either from Peter or from our
23 staff, you would see that there's a range of

1 increases that happen with around those
2 renewals. So the rating range might be from a
3 negative 2 to a plus 13, and all the groups
4 would fall somewhere in that, but if you average
5 them all together they come out with what the
6 Board did as the overall increase for that
7 renewal.

8 Q I want to focus you on return of Member Balance.
9 Okay? Heard a lot of testimony about that. Can
10 you explain to us how return of Member Balance
11 is calculated? What is it based on?

12 A It's based on the current claims. So, again, I
13 keep going back to Peter's rate letter that you
14 saw yesterday. One of the factors in that
15 letter is a return of Members' Balance if it's
16 utilized in that rating, and he turns that into
17 a percentage of incurred claims.

18 Q Whose claims?

19 A The incurred claims of the groups renewing at
20 that time period.

21 Q Okay. Incurred claims of the groups renewing at
22 that time period.

23 A Yes. So it's a combination -- let me just

1 clarify that. It's a combination of those
2 claims that have been incurred and then adding
3 the medical trend, what we predict those claims
4 to be during the time period. So it's a
5 combination of the two. So, for example, if the
6 Board voted to return \$5 million of med assets
7 or Members' Balance, in Peter's rate letter you
8 would see that \$5 million transferred into a
9 percent of projected claims. I then take that
10 factor with staff and apply that to each
11 individual group so they all get the same
12 percentage of incurred claims back.

13 Q Is Member Balance calculated in any way, shape
14 or form on how much premium a member group pays?

15 A No. We do it on the incurred claims.

16 THE PRESIDING OFFICER: Sorry. Didn't that
17 get last --

18 A It's on incurred claims.

19 THE PRESIDING OFFICER: Thank you.

20 Q So again, with the process, you're, at the staff
21 level you're determining the rates for the
22 particular groups. Once that's done, what
23 happens next?

1 A Once that's completed, there is, as I indicated,
2 a rate letter that goes out to each community
3 that talks about any special circumstances that
4 are happening during that renewal. If there's a
5 return of Members' Balance, that is indicated,
6 and that is the cover sheet.

7 The next page in the rate letter that goes
8 out is a summary that shows all of the products
9 that that particular community has, and we show
10 how much enrollment they have, what the current
11 premium is, what their new premiums would be
12 under, with the rate increase or decrease that
13 they receive, and then at the bottom of the
14 chart we put in any new programs or new
15 deductible copayment amounts for their plans
16 that we would suggest that they look at, and
17 then we mail that out to the groups.

18 Q Okay. So after you mail that out to the groups,
19 can the groups ask for a meeting to understand
20 and do they, I should ask?

21 A Absolutely. That is what our benefits and
22 coverage staff, we have benefits and coverage
23 advisors who their prior responsibility is to

1 assist with renewals. It is to assist with
2 education, understanding that. We also have
3 what we call a rating summary that goes into a
4 little bit more detail. It's more set up like
5 Peter Riemer's letters that we can go through
6 with the groups that show them all the factors
7 and all of the pieces of the ratings that we
8 would have given them?

9 Q Okay. It's quite a lengthy process. My
10 question, is that the end of the process?

11 A It's an end of the notification. There's much
12 more that happens after that.

13 Q Tell us about that.

14 A Because of our group's desires or needs for
15 budget purposes to continually look at how much
16 they can afford in their budget for health care,
17 our representatives spend several months after
18 the rates are issued meeting with groups to talk
19 about what benefit options they may want to
20 consider, how it would impact their budgets.

21 Once they decide that they may like to
22 change a benefit, we do benefit educations,
23 pretty much what I started in my career doing.

1 Going out and meeting with actual groups of
2 employees and explaining to them how the
3 benefits work, what copayments they might have,
4 those types of things.

5 We also have transmittals that are the
6 final paperwork that someone has to sign so if
7 they've made benefit changes, the group is
8 signing off to say yes, for the next
9 twelve-month period this is what our benefits
10 are going to be. So they're working on
11 education, paperwork, completing all of that.
12 So generally when we start, for example, the
13 January rates, we begin the process in August,
14 the Board generally approves them in October and
15 we finish up right before Christmas with that
16 renewal.

17 For the GMR, it happens a little bit
18 differently. We still start the process in
19 August. The Board still meets in October, but
20 then because July is where we tend to have our
21 larger groups, schools which have multiple
22 bargaining units, we spend the next several
23 months working on benefit options with them, and

1 we actually don't finish those renewals until
2 about mid June.

3 Q So the process from start to finish that you
4 just described for us this morning, how long
5 does the whole process take, approximately?

6 A So it's approximately four to five months for
7 the January renewal and seven or eight months
8 for the July renewals.

9 Q Thank you. I want to switch topics.

10 We heard some testimony on day 1 of the
11 hearing about the town of North Hampton and its
12 rates and rate increase. Did you hear that
13 testimony?

14 A I did.

15 Q Is the town of North Hampton one of LGC's
16 members?

17 A It is.

18 Q I want to hand you what's been marked as a full
19 Exhibit 460. First I'll give copies. Exhibit
20 460. And just so it's clear, Mr. Mitchell, this
21 is one that we put in after we've talked to
22 counsel for BSR, and they've agreed that it's a
23 full exhibit.

1 THE PRESIDING OFFICER: Okay. So I'll
2 interpret that as a motion to strike
3 identification and to admit as a full exhibit as
4 number 460?

5 MR. QUIRK: Please.

6 THE PRESIDING OFFICER: And there's no
7 objection, Mr. Volinsky?

8 MR. VOLINSKY: There is no objection.

9 THE PRESIDING OFFICER: Very good. It is
10 admitted.

11 Q (By Mr. Quirk) Thank you. During the testimony
12 that was elicited on day 1, we heard about the
13 town of North Hampton and a rate increase for
14 2010. Did you hear that?

15 A Yes.

16 Q What was the rate increase for 2010 for the town
17 of North Hampton?

18 A Overall, it was 27.3.

19 Q And Mr. Coutu, I believe, testified about that?

20 A He did.

21 Q The other one year Mr. Coutu testified about was
22 in 2011. Correct?

23 A Yes.

1 Q Do you recall what his testimony was on the rate
2 increase?

3 A I believe he said it was around 18 percent.

4 Q What was the actual rate increase?

5 A 14.6.

6 Q Although he didn't testify to it, what was the
7 rate increase or decrease for 2012?

8 A Negative 4.9.

9 Q So that means the rates actually went down
10 almost five percent?

11 A They did.

12 Q Let's look at the three years before the year
13 Mr. Coutu talked about. 2009. What was the
14 rate increase or decrease?

15 A Negative 1.9 overall.

16 Q Same question for 2008?

17 A .4 percent increase.

18 Q So that's less than a percent?

19 A Yes.

20 Q And how about 2007?

21 A Negative 5.1.

22 Q So is it fair to say that when you look at the
23 five-year period, it puts the rates in better

1 context?

2 A Yes.

3 Q Next I want to ask you about another topic we've
4 heard some testimony about, and that is a
5 two-year lockout, so-called lockout, that LGC
6 has with its members. Did you hear some of that
7 testimony?

8 A I did.

9 Q Can you talk to us and put the two-year lockout
10 into context, please?

11 A So the two-year lockout, although it's called
12 two years, really is a one-year prohibition
13 because groups are electing to leave in the
14 first year and then they can't come back for
15 that subsequent renewal so they are out for a
16 period of 24 months but really not allowed to
17 come back in for a 12-month period.

18 The reason for that is, some of what I
19 haven't been able to discuss today is the way
20 that within the rating process we pool costs
21 between members. One of the ones that I did
22 mention was about credibility rating so not
23 having the entire group's experience set their

1 next year's rates. We also do other types of
2 pooling and have over the years. So as, if you
3 have a member who continually opts in and out of
4 a program, they are maybe knowing that they had
5 bad claims experience, they're able to get a
6 lower quote, they leave and when the new carrier
7 sees what experience they actually have and give
8 them a larger rate increase they want to hop
9 back in. This is especially true for the groups
10 that have under 100 employees because we
11 community-rate that group so their own
12 experience doesn't set their rate. And so it
13 adds instability if we have members hopping in
14 and out on an annual business.

15 It also takes a lot of administrative work
16 to enroll groups, to disenroll groups and then
17 to enroll them again. So a combination of those
18 factors is why we have that two-year out rule.
19 We have had that since the beginning of my
20 career and it's something the Board has debated
21 over time as to whether or not we should
22 continue with it or not, and I always advocate
23 to keep that in there.

1 Q Okay. And is this two-year period, which I
2 understand you say it's more like a one-year
3 period because that first year they voluntarily
4 leave, right?

5 A That's right.

6 Q But I'll call it a two-year period. This
7 two-year period, is that consistent with state
8 law on other pooling arrangements?

9 A Yes, it is.

10 Q Okay. I'd like to show you what's been marked
11 by agreement, Exhibit 461. And Mr. Mitchell,
12 I'll represent to you that this is an
13 agreed-upon, full exhibit. I ask that it be
14 introduced into evidence and the ID be stricken.

15 THE PRESIDING OFFICER: Is there any
16 objection, Mr. Volinsky?

17 MR. VOLINSKY: No objection.

18 THE PRESIDING OFFICER: At this time I'm
19 going to ask the steno to affix -- do you have a
20 separate copy down there?

21 COURT REPORTER: No.

22 MR. QUIRK: I gave the witness the
23 originals, the marked ones.

1 THE PRESIDING OFFICER: Oh, they are
2 already marked?

3 MR. QUIRK: Yes. And I'll put those here
4 over after she testifies. Those are just your
5 copies.

6 THE PRESIDING OFFICER: I understand that,
7 but I want to get these marked. There's just
8 too much paper --

9 MR. QUIRK: They are marked.

10 THE PRESIDING OFFICER: Is the
11 stenographer's full exhibit sticker on those
12 yet? Excellent. Thank you.

13 MR. QUIRK: Did that yesterday.

14 THE PRESIDING OFFICER: How negligent of me
15 to have missed that.

16 MR. QUICK: Not at all. I think we did
17 that in your absence so you would not have known
18 about that. I appreciate the clarification.

19 THE PRESIDING OFFICER: Thank you. Please
20 proceed.

21 MR. QUIRK: Thank you.

22 Q (By Mr. Quirk) Is this a state statute RSA
23 420-G?

1 A Yes.

2 Q And does this apply to multi-employer welfare
3 arrangements?

4 A Yes.

5 Q Can you describe what that is for us?

6 A There is a, the state law allows like businesses
7 to come together for the purposes of pooling
8 risk and providing benefits to their members.

9 Q Okay. So a like business, say, like the
10 restaurants throughout New Hampshire can come
11 together and pool their risk?

12 A Yes. Motor transporters. Several of them.

13 Q I ask you to turn to the last page of this, I
14 believe, five-page exhibit, and do you see a
15 similar two-year period of a so-called lockout
16 within this state statute?

17 A Yes.

18 Q And that's consistent with what LGC does?

19 A Yes.

20 Q The last topic I want to speak with you about
21 this morning is something that we heard a little
22 bit about yesterday, this BWG. I believe it
23 stands for Benefit Work Group, and Attorney

1 Volinsky was asking Mr., I believe it was
2 Mr. Enright about it regarding the
3 Hollis-Brookline School District. Did you hear
4 that testimony?

5 A I did.

6 Q Are you familiar with this group?

7 A My staff has worked with this group, yes.

8 Q Generally speaking, are you familiar with these
9 types of groups throughout the state?

10 A Yes. We encourage our members to have these
11 types of groups. They're exactly what we need
12 within each group. By bringing a group of
13 employees together to talk about benefits,
14 they're better able to understand what they
15 have, how they can manage them, and lots of
16 times, especially for the wellness programs,
17 this is where we'll find a champion of those
18 programs that we're able to educate and help
19 move through the process of getting things at
20 the local community. We have lots of programs
21 and services that are available to members, and
22 we want them to take advantage of that. So in
23 order for us to be able to educate them, having

1 this group come together and go out and be able
2 to work directly with them allows us to get out
3 consistent information that is really important
4 to those groups. And one may ask, well, they
5 also use them to bring in your competitors to
6 shop the business, and we understand that, and
7 that's part of the process and we need to be
8 able to demonstrate our value.

9 Q Do you view them as a complement to what LGC
10 does?

11 A Absolutely.

12 Q And in that specific instance with
13 Hollis-Brookline School District, has your staff
14 actually interfaced with this organization?

15 A Yes, we have.

16 Q That's all I have, Mr. Mitchell. Thank you.

17 THE PRESIDING OFFICER: Thank you,
18 Mr. Quirk. Mr. Gordon, do you have any
19 questions of this witness?

20 MR. GORDON: No, I do not.

21 THE PRESIDING OFFICER: Thank you. Ms.
22 Myers, do you have any questions of this
23 witness?

1 MR. MYERS: I do not, Mr. Mitchell. Thank
2 you.

3 THE PRESIDING OFFICER: Okay. Your
4 witness, Mr. Volinsky.

5 MR. VOLINSKY: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. VOLINSKY:

8 Q Ms. Parker, you mentioned the public hearing
9 process for rate setting?

10 A Yes.

11 Q Last public hearing, or maybe not the last,
12 there was a public hearing in February of this
13 year, was there not?

14 A There was.

15 Q Did you attend that?

16 A I did.

17 Q There were two people in the audience, weren't
18 there?

19 A Yes. There was.

20 Q One of those people was my paralegal, right?

21 A I didn't know whose paralegal, but there was
22 someone there that was not associated with our
23 groups, yes.

1 Q Person from my office. Right?

2 A I don't know that.

3 Q The other person was a legislator, State
4 legislator?

5 A In addition to being a legislator, he's also a
6 selectman.

7 Q So you had one selectman at this public hearing?

8 A Yes.

9 Q Okay. You mentioned that 90 percent of the
10 eligible municipalities participate in either
11 the HealthTrust or the Property-Liability Trust
12 pools?

13 A In purchasing one coverage from one of those
14 pools, yes.

15 Q How many municipal entities purchase workers'
16 comp through Legislative Government Center?

17 A We have approximately 30 percent of the
18 marketplace, and I believe that's a little over
19 100 groups.

20 Q So you have about 30 percent in Workers' Comp.
21 What's the percentage that purchases health
22 through LGC?

23 A 60 percent.

1 Q So you have about twice as many eligible
2 entities that purchase health than purchase
3 workers' comp?

4 A Yes.

5 Q And it's fair to say then just considering those
6 two numbers that all of the towns and cities and
7 School Districts and counties that purchase
8 health coverage, not all of them also purchase
9 workers' comp coverage, correct?

10 A That's correct.

11 Q You said that Local Government Center as far as
12 health is concerned discontinued its purchase of
13 external reinsurance coverage?

14 A We have.

15 Q You're aware that RSA 5-B specifically provides
16 for reinsurance costs as an administrative-type
17 expense that isn't included in surplus? Are you
18 aware of that?

19 A I'm aware that you're allowed to have
20 reinsurance costs under 5-B, yes.

21 Q Whether having an exclusivity arrangement with
22 Anthem is a good thing or a bad thing, you would
23 agree with me that for many of the towns and

1 cities in the state, it prevents them from
2 directly insuring with Anthem, correct?

3 A There is a group of our members who are not able
4 to purchase direct coverage through Anthem Blue
5 Cross Blue Shield.

6 Q Right. And so if part of the defense in this
7 case is if they don't like our insurances they
8 can leave, the group that's barred from insuring
9 separately with Anthem, they have some
10 limitations on how easy it is for them to leave
11 health, correct?

12 A They still have options. We do have groups that
13 leave us to go to other carriers, but you're
14 right that they cannot go to Anthem.

15 Q And again, whether it's a good thing or a bad
16 thing, the two-year lockout is also an
17 impediment to a group just getting up and
18 leaving, is it not?

19 A They have to be sure that their current carrier
20 that they're moving to is the place that they
21 would like to be for two years. If they want to
22 come back to us, they would not be able to.

23 Q You said that Mr. Riemer works with Blue Cross

1 and with Caremark in some of his actuarial work,
2 is that right?

3 A Yes.

4 Q What he gets from them is assistance with the
5 medical trend rate setting, correct?

6 A That's correct.

7 Q They don't tell him how much to hold in net
8 assets, do they?

9 A That is not part of their discussion.

10 Q Neither one. Not Anthem and not Caremark?

11 A No. No.

12 Q All of that actuarial work to the extent there's
13 any actuarial work about how much to hold in net
14 assets, that comes exclusively through Peter
15 Riemer, correct?

16 A Yes.

17 Q Thank you. Do you have Exhibit Book 2? Towards
18 the back of exhibit you'll see Exhibit 63. Book
19 2, Exhibit 63.

20 MR. QUIRK: Thank you.

21 Q Do you have 63?

22 A I do.

23 Q Let me direct you to page 41. 41 is an example

1 of one of Mr. Riemer's rating sheets. This one
2 happens to be for the January 10 medical pool?

3 A That's correct.

4 Q And you'll see in this one you're at a time when
5 you're still purchasing external reinsurance
6 which is called stop loss, is that right? It's
7 Item 6. Do you understand that to be a
8 reference to the reinsurance?

9 A That is a reference to reinsurance. What I
10 cannot tell from this letter, and I cannot
11 remember from my memory is whether this, we were
12 pooling this internally at that point or if this
13 still included the reinsurance costs because
14 they always have been combined on one line item.

15 Q Just to answer that issue while it's fresh in
16 our minds, if you turn to page 32, same exhibit,
17 little bit closer to the front? Go down again
18 to item 6. You see here it's labeled
19 differently. It's now a claims pooling fee?

20 A Right. And we oftentimes look to modify our
21 labelling to make them more clear. I still
22 could not say with confidence whether both of
23 those line items included or excluded

1 reinsurance outside of reinsurance costs.

2 Q So the same line item, one called stop loss, the
3 other called claims pooling fee, as you sit here
4 today, you can't tell us if one is external
5 reinsurance and one is the internal handling of
6 claims excess of a certain number?

7 A No. What I'm telling you is that always
8 historically even though we purchased outside
9 reinsurance, we still did internal pooling for
10 specific stop loss claims so they've always been
11 a combination on the same line item, and the
12 exhibit that you're showing me on page 41 is
13 close to the time when we stopped purchasing it.

14 Q Right.

15 A And I cannot remember sitting here today whether
16 in that renewal the premium was included or
17 excluded because I know I believe it was July
18 2010 when we stopped buying the policy, and
19 without going back in my records I cannot
20 determine whether or not that was included in
21 this line item.

22 Q So if you think it was about July 10 that you
23 stopped purchasing reinsurance, the other line 6

1 that I'm showing you is January 12 so you
2 clearly aren't purchasing reinsurance at this
3 point?

4 A Clearly.

5 Q Staying with page 41, there are three paragraphs
6 below the rating numbers?

7 A Yes.

8 Q This is where Mr. Riemer makes clear that it's
9 for medical trends assumption that he relies on
10 Anthem and Caremark, is that right?

11 A Yes.

12 Q He also relies on HealthTrust administration for
13 information about investment income, right?

14 A Yes.

15 Q And that in part is a group you supervise?

16 A For investments?

17 Q The information about investments.

18 A No. It is not.

19 Q Who supervises -- oh, that's Keeffe.

20 A Sandal.

21 Q Move up to page 30 for me, please. Couple pages
22 ahead. This reflects the overall rate increase
23 for this time period to be 8.4 percent.

1 A Yes.

2 Q That's the number that your Board actually
3 decides upon, correct?

4 A That is.

5 Q That's the number they see?

6 A It is.

7 Q Correct? But that works out afterwards to
8 provide a range of rates from in this instance
9 minus 1.1 to a plus 12 and a half, correct?

10 A That is. That is a process that I described
11 earlier where we take that back and look at the
12 individual group's experience.

13 Q And the Board doesn't approve individual group
14 experience, does it?

15 A No. It's a rating formula that goes through and
16 produces results based, that tie back to the
17 8.4.

18 Q Turn to page 42 for me, please, same exhibit.
19 42 is an '08 rating cover letter. This will be
20 for the '09 January pool?

21 A Yes.

22 Q At this point the overall recommendation was for
23 no increase, correct?

1 A That's correct.

2 Q But that resulted in a range of a minus 13 and a
3 half to a 14.6, right?

4 A Based on the group's own claims experience, yes.

5 Q And North Hampton is one of the groups that hit
6 the 14.6?

7 A North Hampton is part of what's the under 100
8 pool and they are a July renewal. This is a
9 January renewal.

10 Q Didn't they get 14.6 in the '10 time frame? Do
11 you have the chart that Mr. Quirk had?

12 A But it's a July renewal.

13 Q What was the number? Isn't it 14.6?

14 A It is, but it's for two different groups.

15 Q Okay. Just happened to be the same number.

16 A Just happens to be the same number. They're two
17 different renewals. They're not related to each
18 other.

19 Q Okay. And the year before experiencing 14.6,
20 they experienced 27.1?

21 A .3.

22 Q .3. And that was about a \$20,000 per month
23 increase from the immediately prior year,

1 correct?

2 A I don't know the dollar amounts.

3 Q Turn the page.

4 A This shows me the total premium.

5 Q Yes. Per month.

6 A You can't really use that amounts that are
7 listed here because if you look at the detail of
8 the chart above, they change their enrollments
9 as well. So are you talking about from July 11
10 to July 10?

11 Q I'm talking about from page 2, July 9, they were
12 at about \$58,000 a month. And on page 1, they
13 went to almost 76,000 a month. Correct?

14 A Yes. And they have the same product mix.

15 Q I didn't hear.

16 A Yes. And they had the same product mix.

17 Q So they experienced about a 20,000, just under a
18 \$20,000 a month increase?

19 A For their 54 employees, yes.

20 Q And so annualized, that's almost a quarter of a
21 million dollar increase year to year, correct?

22 A Yes.

23 Q And this is in the small group pool? Less than

1 a hundred?

2 A For July. Yes.

3 Q Okay. I want to go back to one point about the
4 exclusivity with Blue Cross, Anthem Blue Cross.
5 You said that that allows us to share
6 information and have some input into Anthem's
7 design of products, is that right?

8 A Not input into their design of products. They
9 help put input into our design of products.

10 Q Okay. That's what I was going to ask you about.
11 Before the exclusivity period, Anthem designed
12 their products and you as LGC played off of that
13 design to reformulate your own, right?

14 A We did not -- in prior to 2002, we did not do as
15 much product modification as we do today.

16 Q But you did some?

17 A We did some.

18 Q And you were able to do it before exclusivity.
19 Yes?

20 A Yes.

21 Q And you were able to do it after exclusivity?

22 A Yes. I believe to a different degree, but yes,
23 we have done it in both areas.

1 Q With respect to knowing what Anthem's products
2 were, they obviously told you what their
3 products were before you signed the exclusivity
4 agreement?

5 A Yes, and product mix is just one of the many
6 things that I mentioned.

7 Q And Anthem would, Anthem was your TPA before the
8 exclusivity agreement, weren't they?

9 A They have been for 27 years.

10 Q Right. And so --

11 THE PRESIDING OFFICER: Excuse me,
12 Mr. Volinsky.

13 Q Yes. I'll get you. TPAs are third-party
14 administrators.

15 A That's correct.

16 Q They're entities that manage claims for
17 self-insurance pools?

18 A Yes.

19 Q And so when an organization like yours in the
20 health area uses a TPA, you provide your
21 claims-related information to the TPA so that
22 they can manage the claims, right?

23 A That is what happens in a traditional TPA. I

1 believe that through our relationship we are
2 sharing more information than a normal TPA would
3 share with their clients.

4 Q But you give all of your claims-related
5 information to Anthem because Anthem does all
6 the claims management, right?

7 A I was going to say I don't give it to them, they
8 have it, because the claims are submitted to
9 them and they actually do reporting for us.

10 Q Fair enough. So all of the information that
11 Anthem has now, Anthem was getting before
12 exclusivity was put in place, correct?

13 A The way the claims processing, if you're talking
14 about claims, absolutely.

15 Q And Anthem helps perform certain analyses
16 including medical trends projections on your
17 information for you today, correct?

18 A Yes.

19 Q And Anthem helped in the same way with
20 predicting medical trends before exclusivity,
21 right?

22 A The thing that we did not do prior to the
23 exclusivity was share information. They did not

1 share information with us about their provider
2 contracting, their philosophies, what they were
3 going to be changing so that was one of the key
4 points that was changed.

5 Q So to answer my question, they did do the
6 medical trend analyses before exclusivity and
7 after exclusivity, correct?

8 A They did with not as many discussion factors.

9 Q All right. Now, the provision of information
10 about provider contracting, is that a cause in
11 your exclusive contract with Anthem, you shall
12 provide us that information about provider
13 contracting?

14 A Provider discounting, I believe, is the way it's
15 worded in the contract.

16 Q Did you know that Anthem negotiated provider
17 discounts before exclusivity?

18 A Of course I knew.

19 Q Of course. And you could see it in your claims
20 processing, couldn't you?

21 A Could I see that we had discounts overall?
22 Absolutely.

23 Q Absolutely. So you knew that before

1 exclusivity, and you knew it after exclusivity?

2 MR. QUIRK: I'm just going to object to the
3 commentary by Mr. Volinsky after the witness
4 answers.

5 THE PRESIDING OFFICER: Okay.
6 Mr. Volinsky, do you feel anything that you have
7 to say?

8 MR. VOLINSKY: Don't have to say a word.

9 THE PRESIDING OFFICER: Objection denied
10 and you may continue, and we just won't lead
11 toward anything argumentative.

12 MR. VOLINSKY: Of course not.

13 THE PRESIDING OFFICER: But explanations
14 are fair game.

15 A (By Ms. Parker) So I could see historical
16 discounts that we have received, but I wasn't
17 aware of what changes may be occurring in the
18 future.

19 Q And did you have to arrange for exclusivity to
20 get that forward-looking discounting
21 information?

22 A I don't know the answer to that.

23 Q Thank you. You have long experience in the

1 direct management of, sounds like almost every
2 area of risk pools. Is that right?

3 A Of the risk pools we provide, yes.

4 Q You know their operations in exquisite detail,
5 don't you?

6 A I would hope so.

7 Q You've led -- what's the largest group of
8 employees that you've had responsibility for
9 supervising? Largest numbers?

10 A I would say close to 80.

11 Q Close to 80, and overall the whole LGC
12 organization is 115, did you say now?

13 A When I was leading 80, it was larger than that.

14 Q What is it now?

15 A What is what?

16 Q How many total employees LGC now?

17 A 115.

18 Q 115?

19 A 115.

20 Q And you've led as many as 80?

21 A When we were larger, but of -- yes.

22 Q I'm not trying to get at proportionately. I'm
23 just trying to ask for the number. It's as many

1 as 80?

2 A Yes.

3 Q And you applied for the Executive Directorship
4 of LGC, did you not?

5 A I did.

6 Q And you didn't get it?

7 A I did not.

8 Q If I can have just a moment?

9 THE PRESIDING OFFICER: Let me ask a point
10 of clarification if I might while he's taking
11 his moment. In those numbers, the 80, I
12 understood your testimony to be that the LGC's
13 total presently is 115.

14 A That's correct.

15 THE PRESIDING OFFICER: How many did you
16 supervise?

17 A About 47.

18 THE PRESIDING OFFICER: Thank you very
19 much. The answer is 47.

20 MR. QUIRK: Now?

21 THE PRESIDING OFFICER: Now.

22 MR. VOLINSKY: No further questions.

23 THE PRESIDING OFFICER: No further

1 questions. Redirect, Mr. Quirk?

2 MR. QUIRK: Thank you, Mr. Mitchell.

3 REDIRECT EXAMINATION

4 BY MR. QUIRK:

5 Q Two fairly quick points. Mr. Volinsky was
6 talking to you about some increases in the
7 premiums of North Hampton. Do you recall that?

8 A Yes.

9 Q And there are increases in the health insurance
10 industry from member to member, year to year,
11 right?

12 A Yes.

13 Q Are these increases the reason why LGC prefers
14 to return Member Balance in the form of rate
15 stabilization?

16 A There are two reasons for that, but yes, that is
17 one of them.

18 Q And why is that one of them?

19 A Because it helps stabilize the rates over time
20 periods because in a period where you're having
21 adverse claims experience, as I indicated
22 previously our group size even though our
23 largest is a thousand is still fairly small so

1 there's a lot of volatility in the claims
2 experience. So using Members' Balance to help
3 mitigate some of that increase and smooth it
4 over time is beneficial to our members.

5 Q Mr. Volinsky also asked you, and I believe it's
6 BSR's Exhibit 63, at page 41, could you turn to
7 that, please?

8 MR. QUIRK: That's Book 2, Mr. Mitchell.

9 Q And he asked you to focus on the second to last
10 paragraph that talks about medical trend
11 assumptions. Do you see that?

12 A Yes.

13 Q And he highlighted that Anthem and Caremark
14 actuaries helped Mr. Riemer determine the
15 medical trend assumption, correct?

16 A Yes.

17 Q Are you aware that when Mr. Riemer calculates
18 net assets through RBC he uses medical trend
19 assumptions?

20 A Yes.

21 Q Thank you.

22 THE PRESIDING OFFICER: Mr. Gordon,
23 anything, please?

1 MR. GORDON: No.

2 THE PRESIDING OFFICER: Okay. Ms. Myers,
3 anything?

4 MR. MYERS: No, sir.

5 THE PRESIDING OFFICER: Mrs. Parker, I have
6 a couple questions.

7 A Okay.

8 EXAMINATION BY THE PRESIDING OFFICER:

9 Q Do you remember your testimony with respect to
10 the components included in setting rates?

11 A Um-hum.

12 Q Are the components weighed in the calculation of
13 the rate? Are they assigned different weights
14 in the calculation?

15 A Are you, are you talking about like medical
16 trend and --

17 Q Yes.

18 A I can't say they're really assigned weights.
19 It's a formula. So it's a process that you go
20 through. So if you take, for example, the
21 Exhibit 41 that they had me look at and you can
22 follow the process as it goes down through.

23 Q Yes.

1 A So most of it is a percentage of incurred claims
2 is how we approach that.

3 Q It's expressed as a percentage, correct?

4 A Yes.

5 Q Is the manner of obtaining -- I'm sorry. Is the
6 manner of determining that percentage, is that
7 proprietary or is that an industry standard?

8 A I'm not sure there's an industry standard, but I
9 believe, for example, when you get to like our
10 administrative costs, we have a budget, and so
11 that budget is approved by the Board and so that
12 would be the number that Peter is turning into a
13 percent of incurred claims.

14 Q Excuse me. So that process in the actuarial
15 process when Peter is turning a number into a
16 percentage, is the manner in which that
17 computation is done, is that proprietary?

18 A No.

19 Q If I wanted to look at how that is calculated,
20 what would I look to?

21 A You would probably need to request documents
22 from us so that we could show you what went into
23 each of those line items.

1 Q What would those documents be referred -- if you
2 were to refer to those document, do you have a
3 title?

4 A No. Because it's different documents for each
5 line item so one would be our budget if you were
6 looking at our administrative costs. If you
7 were looking at the Anthem cost, it would be our
8 contract, what we pay on a per member per month
9 basis. Our pooling fee, we would need to show
10 you reports to show you how much we took out in
11 part of the rating and how we're pooling that
12 back in.

13 Q So in obtaining the overall, in setting the
14 overall risk rate, I'm sorry, premium rate, in
15 assigning and determining the risk portion of
16 that, are the components of that element
17 weighed?

18 A The risk margin line item you're talking about?

19 Q Thank you. Yes.

20 A So the risk margin, there's a certain percentage
21 that is considered on the risk margin to be what
22 we need to maintain our target balance, and then
23 there are factors that would influence whether

1 you would increase that or decrease that on any
2 year, and that would be work that Peter would do
3 directly with the Finance Committee and then the
4 Board. So for that line item there aren't
5 specific documents. There are calculations that
6 Peter goes through and then discussions in
7 judgment that's placed on that line item.

8 Q And to your knowledge the calculations that
9 Mr. Riemer performs, is that proprietary or as
10 we've come to refer, straight mathematics?

11 A I believe it's straight mathematics.

12 Q Thank you very much. One other question. Well,
13 couple questions. You've attended many Finance
14 Committee meetings and Board meetings. Correct?

15 A Yes.

16 Q And I believe your testimony was that there's a
17 significant amount of discussion on trends and
18 return to members?

19 A Um-hum.

20 Q And because of that role, you would be
21 particularly attentive to that because you
22 probably, you'd be in the barrel on that, right?

23 A Yes, I'm very involved in that process.

1 Q If you can, to help me, can you express as a
2 percentage how much is members' return and how
3 much is on the trends?

4 A Of discussion?

5 Q Yes.

6 A I go about 50/50.

7 Q Okay. And from your experience, would the
8 minutes, would the minutes then reflect that
9 same 50/50 break, would you believe?

10 A I believe they would.

11 Q Okay. Thank you. This one is a long question.

12 A Okay.

13 Q I've tried to break it down, but I have been
14 unable so please stay with me.

15 A Okay.

16 Q Do you, I don't mean necessarily you, but the
17 unit that you're responsible for, do you track
18 and maintain how you set each premium rate for
19 each member for each year?

20 A Yes. So at the individual member level.

21 Q Yes.

22 A After we, the Board does their overall, we then
23 have a file that we go and put in all of the

1 factors and then run the experience through
2 that, and we do have that historically.

3 Q Okay. And how far back would that go to your
4 knowledge?

5 A My underwriter keeps those files. I'm going to
6 say that she would be able to go back to at
7 least 2000.

8 Q Okay. Let me inquire as to years before 2000.
9 There's been earlier testimony, and I don't know
10 that you've heard it, in terms of when one of
11 the statutes came into play which is the
12 so-called 5-B, if I were to say that that was
13 1987, do you think that information can be
14 found?

15 A I do not.

16 Q Okay. Do you have any knowledge as to why it
17 could not be found? Is it gone?

18 A We have been working over the years on record
19 retention, and we don't historically keep
20 records that long. That's not part of our
21 policy.

22 Q That would be the LGC policy?

23 A Yes.

1 Q Not the policy or do you recall did HealthTrust
2 have any policy when it had a separate Board?
3 Did it have a policy on record retention?

4 A We did not.

5 Q If I were to ask you for that for a file, for a
6 file of that type, what would you call it?

7 A It's a rating calc file is what I call it.

8 Q And the people in your organization would
9 understand what that means?

10 A Yes.

11 Q Thank you. And I believe I have one more.

12 A Okay.

13 Q Understanding that there are two pool groups,
14 the January group and the July group, and
15 further understanding that you have a 100 pool,
16 is there a correlation between the 100 group
17 pool for July and for January's pools?

18 A So --

19 Q Go ahead.

20 A For our January groups, it's mainly
21 municipalities that have a January renewal date
22 because they still tend to have a calendar year
23 budget. For our July groups, it's mainly

1 school-based groups although we do have some
2 municipalities in that. So the two populations
3 do not tend to trend the same way. Their
4 experience can be very different.

5 Q Okay. So in any given year, because the July
6 group is and if I use the wrong term, give me a
7 little leeway and you give me the right term, if
8 the July group is dominated or populated more by
9 schools groups their rate increase would be,
10 would more likely than not be different than the
11 January pool?

12 A They very well could be different, and the other
13 piece that would make them different is the
14 demographics, the age mix of the two groups are
15 different, and how far out we're projecting are
16 different. So there's a lot of factors that
17 don't necessarily mean that they work in
18 conjunction with each other. We do try to set
19 trend in the fall for both groups so we look at
20 both groups together and we try to utilize the
21 same trend factor moving forward.

22 Q Thank you. You're moving closer to what I'm
23 trying to achieve, and I'm not sure I can, but

1 I'll probably only ask this one last one.

2 A Okay.

3 Q If I then were to look at the rate increases of
4 the January group and the July group from year
5 to year the correlation of the rate of increase,
6 I don't want to get too statistical but the
7 deviation factor, can you characterize that in
8 any way as on a scale?

9 A Yes. I haven't studied how the two groups
10 performed next to each other.

11 Q Nor have I.

12 A But the July group is match larger than the
13 January group so my reaction to that is that you
14 probably would find that the July group has been
15 a little bit more stable over time without as
16 much deviation, but I don't know that for sure
17 without looking. It's something I could look
18 at.

19 Q Okay. And my last question and I know I said
20 the previous one was the last, but I want to get
21 you in the same bucket, to use the jargon. You
22 heard the testimony about large numbers?

23 A Yes.

1 Q Do you believe in that theory as well?

2 A There are portions that it applies to. For
3 example, if we are purchasing administrative
4 services from an organization, the larger
5 numbers you have, the lower administrative costs
6 that you can get. On the pharmacy side, the
7 more individuals you are bringing together to
8 purchase pharmaceuticals, the larger discount
9 that you can get.

10 Q Would that hold true on discounts also to the
11 provision of medical services other than
12 pharmaceuticals?

13 A So, for example, us being able to leverage the
14 Anthem Blue Cross Blue Shield network by having
15 our population with theirs to purchase the
16 discounts that they negotiate assists them in
17 doing that because the more individuals that you
18 have going through the system the better
19 discounts you're able to negotiate.

20 Q And to put too fine a point but a simplistic
21 point for me, as the numbers go up in
22 population, the numbers come down in rate
23 setting as a rule?

1 A Your per unit cost should come down.

2 Q Per unit cost. Thank you very much.

3 A You're welcome.

4 THE PRESIDING OFFICER: Have I started
5 anything out there, gentlemen?

6 MR. QUIRK: No.

7 THE PRESIDING OFFICER: Good. You're
8 excused. Do you want to take a 5 to 7-minute
9 morning break?

10 MR. QUIRK: Thank you.

11 THE PRESIDING OFFICER: Then we're in
12 recess for 5 to 10 minutes.

13 RECESS TAKEN 10:45 A.M. - 10:50 A.M.

14 THE PRESIDING OFFICER: Returning from that
15 midmorning recess, Mr. Saturley, you have a
16 witness you wish to call?

17 MR. SATURLEY: I do, sir. Ms. Sandal
18 Keeffe.

19 SANDAL KEEFFE, DULY SWORN

20 THE PRESIDING OFFICER: Thank you. Please
21 be seated. Mr. Saturley?

22 MR. SATURLEY: Thank you, sir.

23 DIRECT EXAMINATION

1 BY MR. SATURLEY:

2 Q Ms. Keeffe, would you please state for the
3 record your name?

4 A Sandal Keeffe.

5 Q Where do you work?

6 A For the Local Government Center.

7 Q What's the address of your work?

8 A 25 Triangle Park Drive in Concord, New
9 Hampshire.

10 Q What is your position with the Local Government
11 Center?

12 A I am the Deputy Executive Director and the Chief
13 Financial Officer.

14 Q Would you take a moment and inform Mr. Mitchell
15 and the record with regards to your education.

16 A Yes. I have a bachelor's degree from Granite
17 State College in professional studies.

18 Q And do you have any professional designations?

19 A I do. I am a certified public accountant.

20 Q When did you achieve that designation?

21 A In 1994.

22 Q Have you ever attended any continuing education
23 of any sort with regards to the operation of

1 risk pools?

2 A Yes. Since my, actually predating my employment
3 at the Local Government Center, I have attended
4 various pooled risk management programs through
5 PRIMA which is the Pooled Risk Management
6 Association. I've attended programs at the
7 International Foundation of Employee Benefit
8 Programs and the National League of Cities Risk
9 Insurance Sharing Consortium.

10 Q All right. You've attended most of this
11 proceeding?

12 A I have.

13 Q Did you hear Mr. Bannon testify?

14 A I did.

15 Q Did you hear his testimony suggesting that the
16 financial statements of LGC or some of its
17 entities as far as he could tell might be
18 inaccurate?

19 A I heard him say that. Yes.

20 Q You're the CFO, are you not?

21 A I am.

22 Q And have been for a number of years?

23 A I have.

1 Q What's your understanding of the purpose of
2 financial statements?

3 A The purpose of financial statements are to
4 present fairly in all material respects the
5 financial position and transactions for the
6 entities that they are being reported for.

7 Q And who do the financial statements of LGC or
8 its entities, who do they go to?

9 A The pooled risk management program entities'
10 financial statements are sent every year to all
11 of the member groups who are part of the pooled
12 risk management programs.

13 Q And does that mean that members of HealthTrust
14 get a HealthTrust financial statement?

15 A They get both the HealthTrust financial
16 statement and the Property-Liability Trust
17 financial statement and when Workers'
18 Compensation stood on its own they also received
19 the Workers' Compensation financial statement.

20 Q What about members of the Property-Liability
21 Trust pool? What financial statements do they
22 get?

23 A They get HealthTrust Trust and

1 Property-Liability and Workers' Compensation.

2 Q So even though they aren't a member of the other
3 pool, they nevertheless receive a financial
4 statement for all the pools?

5 A That's correct.

6 Q Where else are those financial statements filed?

7 A In addition, they are filed at the Secretary of
8 State's office as required under 5-B, and we
9 also post all of our financial statements
10 including other entities on our website.

11 Q How long have those financial statements been
12 filed with the Secretary of State's office?

13 A Since before I became the Chief Financial
14 Officer at the Legislative Government Center.

15 Q Now, with regards to the members, as far as you
16 know, who typically reads the financial
17 statements?

18 A I would say probably the town administrators,
19 town managers, perhaps the business
20 administrators, superintendents, those types of
21 individuals.

22 Q Have you ever had inquiries with regards from
23 any member with regards to the financial

1 statements or their presentation?

2 A I have had them.

3 Q And that would lead you to believe that they
4 read them?

5 A Yes, it would.

6 Q And when you get an inquiry, what's your typical
7 response?

8 A I do my very best to answer the questions that
9 anybody might have about the financial
10 statements.

11 Q You heard some testimony from Mr. Coutu that he
12 had a meeting with you?

13 A I did.

14 Q You heard him say that he didn't think he was
15 satisfied with regards to the meeting, is that
16 what you heard?

17 A That's what I heard.

18 Q Outside of that meeting, with regards to any
19 inquiry that you've had from a member, do you
20 believe you've been able to satisfy their
21 inquiry?

22 A I do believe that we have been able to satisfy
23 their inquiry.

1 Q You are responsible for the presentation of the
2 information in the financial statement?

3 A I do.

4 Q Do you believe that they fairly present the
5 financial position of the entity?

6 A I do.

7 Q Are those financial statements subject to an
8 audit every year?

9 A They are.

10 Q By whom?

11 A Currently, Berry Dunn McNeil & Parker provide
12 the independent financial audit.

13 Q What's Berry Dunn's opinion with regard to the
14 financial statements?

15 A We have received unqualified opinions on those
16 financial statements.

17 Q What does that mean?

18 A It means that they have found no material
19 misstatements within the financial statements
20 and that the information is fairly presented.

21 Q Let's turn to some of the specific topics that
22 Mr. Bannon testified to. Remember that the
23 first, very first subject he brought up was the

1 scholarship fund?

2 A I do remember that.

3 Q Do you recall how the scholarship fund
4 originated?

5 A Yes. To the best of my recollection, it was
6 conversation that John Steiner and John Andrews
7 had that it would be a really nice thing if we
8 were able to provide scholarships to graduating
9 high school seniors of those employees of the
10 groups that are members in the New Hampshire
11 Municipal Association, actually Local Government
12 Center at that time.

13 Q I want to make sure I understand. Are these
14 scholarships for children of LGC employees?

15 A No. LGC employees' children are not eligible to
16 have a scholarship.

17 Q These are children of municipal employees?

18 A Municipal, school, county employees.

19 Q Their children?

20 A Their children.

21 Q And how was the money raised to fund this
22 scholarship fund?

23 A We conducted golf tournaments, we raised money

1 through outside sponsorships, some of our --
2 caremark or Medco at the time, those types of
3 individuals would provide sponsorship for the
4 program, and then there were individual fees
5 paid by those people attending the government
6 tournament to play in the golf tournament.

7 There was never any member money, if you will,
8 that went into setting up or providing funding
9 for the scholarship fund.

10 Q Do you believe that the entities that sponsored
11 any of this activity, do you believe they
12 understood that the results of their
13 contributions would be going to a scholarship
14 fund?

15 A All the marketing material that was provided was
16 very clear that the money that they were sending
17 in to sponsor the golf tournament was going to
18 be specifically used for the scholarship
19 program.

20 Q To your knowledge, was any member's money used
21 to operate any of these activities to generate
22 fund for the scholarship?

23 A At no time was any member money ever used for

1 the scholarship program.

2 Q Where is the money kept?

3 A Money is segregated in a separate bank account.

4 Q Has any of this activity, any of this
5 scholarship fund money had any impact on the
6 assets and liabilities of the members of LGC?

7 A On the LGC financial statements, no, because the
8 money that is in the cash account which is a
9 debit is balanced by an accounts payable account
10 or a liability account, if you will, for the
11 scholarship fund and in the exact same amount
12 money as a credit so those have essentially a
13 zero effect on the financial statements.

14 Q So as soon as money is put into the bank,
15 there's a corresponding liability that's set up
16 saying this is the money we owe to the
17 scholarship activity?

18 A Yes.

19 Q The books are in balance?

20 A They are.

21 Q There was an additional gift made in 2009.

22 Actually two events in 2009 that affected the
23 scholarship fund; is that right?

1 A Yes. There were two events in 2009. One was
2 that as Mr. Andrews was retiring after 34 years
3 of service, we were looking for an appropriate
4 way to recognize his service to the
5 organization. My recollection is that we had a
6 conversation with Mrs. Andrews about what might
7 John appreciate as a gift, and one of the
8 suggestions she had was some sort of a
9 contribution to the scholarship fund. So the
10 Board voted for a \$5,000 contribution to the
11 scholarship fund and the Board also voted to
12 rename the scholarship fund to the John B.
13 Andrews Scholarship Fund.

14 Q So in lieu of a direct retirement gift to him,
15 the Board actually put \$5,000 into the
16 scholarship fund to benefit the employees of
17 members of LGC?

18 A That's correct.

19 Q And they renamed it the John Andrews Scholarship
20 Fund?

21 A They did.

22 Q Was there any other event in 2009 that affected
23 the qualification and status, I guess is the

1 word I'd use, of the fund?

2 A Yes. We took steps in 2009 and I believe
3 finally finished them in 2010 that established a
4 501(c)(3) organization for the scholarship fund.
5 The purpose of that was so that contributions to
6 the scholarship fund would be charitable
7 contributions for the organizations that were
8 making those contributions. Obviously,
9 sponsorship in the golf tournament was not
10 totally a charitable distribution as required by
11 IRS regulations, but it was partially a
12 charitable contribution and partially a
13 sponsorship because they received recognition in
14 the program and in other marketing materials
15 that they were sponsoring scholarship programs.

16 Q But creating this separate entity, in fact,
17 enhanced the way in which you could approach
18 sponsors and say now it's a charitable
19 organization and you can take at least some tax
20 deduction?

21 A That's correct.

22 Q I believe that the term was used that Mr. Bannon
23 said he saw the scholarship fund come off the

1 books of LGC. Do you think that's a fair
2 representation of what happened in 2009?

3 A Well, there was never really any net effect on
4 the financial statement of LGC because of the
5 offsetting accounts so there was never, so
6 taking it off the books of LGC really just
7 separated that activity into its own separate
8 organization and provided a better
9 representation, I believe, of purpose of the
10 scholarship fund.

11 Q So there's never been any nefarious attempt to
12 somehow hide the activity of the scholarship
13 fund as far as you're concerned?

14 A Correct.

15 Q And nothing significantly or nothing changed
16 with regards to the maintenance of the funds;
17 they'd always been in a separate bank account?

18 A That's correct.

19 Q Is it fair to say that in your opinion the
20 representations and the reporting and the
21 reporting, the recording and the treatment of
22 the scholarship fund was always proper?

23 A Yes. Absolutely proper.

1 Q Do you recall some testimony from Mr. Bannon
2 with regards to an exhibit concerning the
3 ten-year history of surplus applied as rate
4 credits?

5 A I do.

6 MR. SATURLEY: I think I've opened a page
7 of a Bureau exhibit that's the Bureau's Exhibit
8 48, Mr. Mitchell, and I believe the second book.
9 I'm going to put up what she's looking at on the
10 Elmo. It will be very brief. I'm just using it
11 to identify, and then she's going to speak about
12 it.

13 Q Is that what you have in front of you?

14 A It is.

15 Q Is that what you heard Mr. Bannon speak about?

16 A I did.

17 Q What do you recall Mr. Bannon saying as part of
18 his testimony about this exhibit which pertains
19 to rate credits, does it not?

20 A It does pertain to rate credits.

21 Q What was he suggesting, that he tried to find
22 how the rate credits were treated in net assets.
23 Do you recall that?

1 A Yes, I do.

2 Q Would you care to comment on Mr. Bannon's
3 testimony about he could not make the connection
4 between this history of rate credits and its
5 impact on net assets, and Mr. Mitchell, it's
6 about midway through --

7 THE PRESIDING OFFICER: We've found it.

8 Q All right. Let me return to my question. Mr.
9 Bannon tried to make some connection between
10 this activity reflected on this chart and the
11 treatment of net assets on your financial
12 statements, am I correct?

13 A Yes, he did.

14 Q Would you describe in your understanding as the
15 Chief Financial Officer what this chart pertains
16 to and then we'll go on to determine whether or
17 not it can and more importantly should have any
18 impact or reflection on the net assets?

19 A Certainly. This chart reflects Peter Riemer's
20 work in returning net assets or Members' Balance
21 to the members as a rate credit within his
22 rating. So the rates that are issued to the
23 individual groups would be reduced, if you will.

1 First, there's the gross rate, if you will, and
2 then there is an application of the rate of a
3 credit amount, so that the net amount would be
4 then worked through all that, the rating as
5 Wendy Parker described and returned as a lower
6 rate than would otherwise have been expected
7 within the rating to those member groups.

8 Q Let's stop there for a minute. Ms. Parker as
9 you pointed out and Mr. Riemer in yesterday's
10 testimony talked about a process by which they
11 set rate and apparently that rate setting occurs
12 on a number of occasions during the year, and
13 it's an involved process?

14 A Yes, it is.

15 Q And it's your understanding that as part of that
16 rate setting process, and rate setting is
17 looking forward, am I correct?

18 A That's correct.

19 Q You're setting something, the rates, the
20 pricing, for a pool that is yet to commence?

21 A That's true.

22 Q And with regards to this chart which is the
23 history of surplus applied as rate credits, am I

1 to understand that what we're talking about is
2 when there was excess surplus, that that could
3 be incorporated into the rate setting process?

4 A That's correct.

5 Q So this chart reflects surplus that was
6 incorporated into the rate setting process, is
7 that right?

8 A Yes.

9 Q And the impact of putting surplus into the rate
10 setting process, what is the impact?

11 A The impact is that lower rates to the member
12 groups than they otherwise would have received.

13 Q All right. Is this your understanding of the
14 history of when surplus was applied as rate
15 credits for HealthTrust?

16 A Yes. It is.

17 Q All right. Now, Mr. Bannon then said that he
18 went to look in the net assets to find where
19 this was shown in your financial statements, is
20 that what you heard him say?

21 A Yes. That's what I heard him say.

22 Q And let's pause for a minute. Financial
23 statements look backwards, do they not?

1 A They do.

2 Q As opposed to rate credit process, am I correct?

3 A That's correct.

4 Q Would you expect to see in your financial
5 statement this data directly reflected?

6 A Only if Peter Riemer's rating was a hundred
7 percent accurate and those were the exact
8 results we had financially at the end of the
9 period.

10 Q Would you expect that to be the case?

11 A I would not expect that.

12 Q Did Mr. Riemer testify yesterday that that would
13 rarely, if ever, be the case?

14 A Yes, he did.

15 Q His looking for this, these percentages in net
16 assets, does that make any sense?

17 A To me, no. It makes no sense at all because
18 these are two separate things. The rate credits
19 are, for example, for the January pool the rate
20 credits are determined in October for a year
21 that begins three months later in January and
22 then the financial statements reflect exactly
23 what the results of that January through

1 December period were.

2 Q So they're different activities?

3 A Yes.

4 Q Different activities in time, right?

5 A Yes.

6 Q And one pertains to pricing?

7 A Yes.

8 Q And your financial statements encompass lots of
9 activities other than just pricing, right?

10 A They do.

11 Q They reflect operating expenses, they reflect
12 all kind of things, do they not?

13 A Yes, they do.

14 Q And they are, so the two activities are both
15 different in time and different in scope, are
16 they not?

17 A Yes. They are.

18 Q Just to end this particular subject, did you
19 find Mr. Bannon's testimony confusing?

20 A It was very confusing to me. I found it to be
21 inaccurate based on the fact that the rating is
22 not necessarily reflected in the actual results.
23 The actual results can differ substantially from

1 what is predicted in the rating.

2 Q Did you find -- I'm sorry. I didn't hear what
3 you said. Did you find Mr. Bannon's testimony
4 accurate or inaccurate?

5 A It was inaccurate.

6 Q Once again, with regards to this subject, do you
7 believe that the financial statements and the
8 reflection of the net assets to be accurate over
9 the period of time that you've been CFO?

10 A Yes. I do.

11 Q And you would not expect to see any connection
12 between the data on this chart and the
13 reflection of net assets on the continuation
14 statements of the pool?

15 A I would be extremely surprised if I found that
16 result.

17 Q I want to take you back to 1997 for a minute.

18 A Okay.

19 Q Do you recall that the HealthTrust was sued by a
20 former employee?

21 A I do.

22 Q What was his name?

23 A Bob Slattery.

1 Q Do you recall that he made claims against the
2 entity that were widely publicized?

3 A I do.

4 Q Do you remember that part of the claims that
5 were widely publicized included a charge that
6 the trust was on the way toward financial
7 insolvency?

8 A I recall that.

9 Q How did you react to that?

10 A It was very upsetting.

11 Q Why?

12 A Because it was -- actually, at that time we were
13 not on the way to financial insolvency.

14 Q May I see Exhibit 427, please?

15 MR. VOLINSKY: That is an ID exhibit, I
16 think.

17 THE PRESIDING OFFICER: Okay.

18 MR. SATURLEY: I'll hold it until she's had
19 an opportunity. That's my error.

20 THE PRESIDING OFFICER: You can take it
21 down off the screen as well, please, before I
22 turn my head.

23 MR. SATURLEY: There you go.

1 Q (By Mr. Saturley) Back in 1997, I put in front
2 of you a copy of a newspaper article. Is this a
3 newspaper article that you read in 1997?

4 A It is.

5 Q Does it have to do with the lawsuit that we were
6 just discussing?

7 A It does.

8 Q Is it something that you read and had to report
9 to the Board of Directors on?

10 A It is.

11 Q Does it contain charges that the HealthTrust
12 fund, its solvency was being questioned?

13 A It does.

14 Q Something that you had to take into account and
15 then address with the members?

16 A I did.

17 Q Is this a page, a copy from the *Union Leader*?

18 A It is.

19 Q New Hampshire's largest newspaper?

20 A It is.

21 Q Only statewide newspaper?

22 A Yes.

23 Q Mr. Mitchell, I'd move to have the ID stricken.

1 THE PRESIDING OFFICER: Mr. Volinsky, any
2 objection?

3 MR. VOLINSKY: No.

4 THE PRESIDING OFFICER: Okay. The ID is
5 stricken and the number LGC 427 is now a full
6 exhibit.

7 Q (By Mr. Saturley) Were you prompted to, as a
8 result of that you had to discuss this with the
9 Board of Directors?

10 A Yes.

11 Q Did you also have to, did you offer a memo to
12 the members of the pool to discuss this
13 situation?

14 A We did.

15 Q And did you have, were there any other events
16 that occurred in connection with this that were
17 unusual?

18 A We --

19 Q Did you have a visit?

20 A Ah. Thank you very much. Yes. We did have a
21 visit. We had a visit from the Insurance
22 Department.

23 Q The Department of Insurance?

1 A Yes.

2 Q In connection with this event and these
3 allegations?

4 A That's correct. In connection with this event.

5 Q What was that all about?

6 A The Insurance Department, after having read this
7 article in the *Union Leader*, was concerned that
8 we perhaps were insolvent. I believe, I don't
9 know, they may have gone to the Secretary of
10 State's office and pulled our financial
11 statements, but they came over to be sure that
12 we were taking steps to improve our, well, to
13 discuss what our financial position and to
14 determine whether or not we had taken steps to
15 improve our financial position. If we were
16 indeed in trouble.

17 Q Had you ever been visited by the Department of
18 Insurance any time prior to that?

19 A No. Nor since.

20 Q Did you find that an unusual event?

21 A Extremely.

22 Q Did you have any idea whether they even had any
23 regulatory authority over you?

1 A We knew they did not have any regulatory
2 authority over us.

3 Q But, nevertheless, they were concerned by these
4 charges?

5 A Obviously concerned by these charges.

6 Q I asked you if you authored a memo to the
7 members of the, members of the pool?

8 A Yes.

9 Q Is this a copy of the memo you sent?

10 A It is.

11 MR. VOLINSKY: I believe that's entered.

12 MR. SATURLEY: Thank you.

13 MR. VOLINSKY: 199.

14 MR. SATURLEY: 199. Full exhibit,
15 Mr. Mitchell.

16 THE PRESIDING OFFICER: Thank you,
17 Mr. Saturley.

18 Q (By Mr. Saturley) Were you in the habit of
19 writing memos to the members of the trust?

20 A No.

21 Q So this was also an unusual event?

22 A Yes, it was.

23 Q Did you explain to the members of the trust the

1 financial condition of the trust?

2 A Yes. We did.

3 Q What did you tell them?

4 A We told them that the, that we were in good
5 financial shape, that we did have the resources
6 available to us to pay all the claims and the
7 claims reserves that were liabilities at that
8 particular time.

9 Q So let's stop there for a minute. You had on
10 your books at that time claims, right, and
11 claims reserves?

12 A That's correct.

13 Q Those are known liabilities?

14 A That's correct.

15 Q The trust had financial resources available to
16 pay all claims and claim reserves and
17 established liabilities?

18 A That's correct.

19 Q And that's what you were informing the members?

20 A Yes.

21 Q Okay. What was the charge of the fund
22 insolvency? What topic was the charge of fund
23 insolvency directed at?

1 A It was directed at surplus.

2 Q Surplus?

3 A Yes.

4 Q Something we've called variously here net
5 assets?

6 A Members' Balance, net assets.

7 Q Members' Balance, net assets. It's also been
8 called capital?

9 A Yes.

10 Q How was the Trust's capital trending in 1997?

11 A It was trending down in 1997.

12 Q Do you recall exactly where it was in 1997?

13 A Well, I have a little --

14 Q Before we get that. Do you recall? Do you
15 recall specifically?

16 A Not without checking my notes.

17 Q All right. Do you recall in 1997 how the Board
18 thought and established a net asset or surplus
19 target?

20 A Yes. In 1997 the Board established that it
21 wanted to have a net asset or capital surplus of
22 20 percent of claims.

23 Q Did it establish that target in 1997 or was that

1 the target that it was operating under at that
2 time?

3 A That was the target it was operating under at
4 that time. It had had that target for a number
5 of years.

6 Q So is the 20 percent of claims a number that
7 we've heard in prior testimony in this case?

8 A Yes, we have.

9 Q And it's only later, some time subsequent to
10 1997, that the Board moved to an RBC analysis?

11 A That's correct.

12 Q Using it as a metric or an index?

13 A Yes.

14 Q So the index that existed in 1997 that the Board
15 used as a target was 20 percent of claims?

16 A That's correct.

17 Q All right. Now, have you looked and gone back
18 and examined what the level was in 1997?

19 A I have.

20 Q And have you looked for the years prior to 1997
21 and the years subsequent to 1997?

22 A Not all the years prior but some of the years
23 prior, and yes, some of the years subsequent to

1 1997.

2 Q What does your research reveal? You've done
3 this and you've written down some numbers on a
4 piece of paper?

5 A I have.

6 Q Why don't you go ahead -- would you like to look
7 at them?

8 MR. VOLINSKY: May I just --

9 THE PRESIDING OFFICER: Mr. Volinsky?
10 Absolutely. Do you need a copy?

11 MR. VOLINSKY: I can work without a copy as
12 long as we keep that available because I'll ask
13 some questions.

14 THE PRESIDING OFFICER: Thank you. Please
15 proceed, Mr. Saturley.

16 MR. SATURLEY: Thank you, sir.

17 Q (By Mr. Saturley) Have you done some research
18 and determined the percentage of claims with
19 regard to the years around 1997?

20 A Yes. Net assets as a percentage of claims I
21 have.

22 Q Okay. And let's start with 1994, for instance.
23 What was the percentage of net assets as a

1 percentage of claims?

2 A It was 30.2 percent.

3 Q Well in excess of the 20 percent?

4 A Yes. Well in excess of the 20 percent.

5 Q How about 1995?

6 A 1995 it was 23.4 percent.

7 Q How about 1996?

8 A 10.8 percent.

9 Q 10.8 percent?

10 A Yes.

11 Q Significantly diminished, am I correct?

12 A Yes. That's correct.

13 Q And were there any events in 1996 that you
14 recall that might have contributed to that drop
15 in net assets?

16 A There were two events in 1996 that contributed
17 to that draw on net assets. One was a
18 deliberate decision by the Board to return net
19 assets from that higher level to the lower level
20 by reducing rates, and the second was that --

21 Q Let's just pause there. Just want to
22 understand. In terms of what we've already
23 discussed, a way of returning surplus is to

1 lessen the rates?

2 A That's correct.

3 Q The Board was doing that, it had been doing that
4 at least since 1996 because that was a time when
5 they did it?

6 A Yes.

7 Q Okay. There was another event that you
8 mentioned?

9 A Yes. There was another event and that was, we
10 had introduced a new product, a point of service
11 product, and we were, we priced it at a certain
12 point that we thought would be adequate for the
13 population that we thought would select that
14 product, and it turned out that more people than
15 we expected selected that product, and the
16 claims for that product as a result were higher
17 than we expected so we had a larger draw on
18 surplus than we had expected.

19 Q Recall Mr. Riemer using the phrase "attack on
20 capital" yesterday?

21 A Yes.

22 Q Is that event that you've just described in
23 which you put out a new product as a member

1 service, I take it?

2 A Yes.

3 Q And then, unpredictable, sometimes people flock
4 to a product, is that right?

5 A That's correct.

6 Q And so that can produce more claims than
7 anticipated?

8 A Yes, it can.

9 Q And that can end up being in essence an attack
10 on capital?

11 A Yes, it can.

12 Q So you had two events. The return of capital,
13 return of surplus to the members which the Board
14 deliberately chose to do?

15 A That's correct.

16 Q And this unforeseen gravitation toward a product
17 that was not quite sure how well it was going to
18 work, and it worked overly well; is that right?

19 A That's correct.

20 Q And so those two events reduced the net assets?

21 A They did.

22 Q And it had been 23 percent in the prior year?

23 A Yes. In 1995.

1 Q And it had come down to what percent?

2 A 10.8 percent.

3 Q And what was it in the subsequent year?

4 A In 1997 it was 7.66 percent.

5 Q So this is actually the year in which this
6 lawsuit and this memo event are talking about in
7 1997?

8 A Yes.

9 Q You didn't actually know what it was for 1997
10 until the end of the year, is that right?

11 A That's correct.

12 Q So it's only after the year is closed and the
13 financial statements have been prepared, that's
14 the time it takes to know what your RBC, excuse
15 me, what your net assets as a percentage of
16 claims actually is?

17 A That's true.

18 Q When would you have known the percentage of net
19 assets of claims? When would you have finally
20 known what that was for 1997?

21 A After the year was over and after we had
22 recorded all of our liabilities and other
23 expenses of the plan for that particular year.

1 So it would have been some time in 1998.

2 Q When?

3 A Before probably the mid, before mid-1998.

4 Q Have you, using the RBC software that you now
5 own, actually gone back to recalculate what the
6 RBC was for that same period of time about which
7 you gave me the percentage of claims?

8 A Yes. I used the current year RBC software to
9 look back and determine what the RBC would be
10 for several of those years.

11 Q What was the RBC, under this method that you
12 followed, what was the RBC for 1994?

13 A 1994 the RBC was 5.08.

14 Q What was the RBC for 1995?

15 A 3.89.

16 Q 1996?

17 A 1.85.

18 Q 1997?

19 A 1.22.

20 Q And is 1997 the year in which you were being
21 criticized in a lawsuit?

22 A Yes.

23 Q As being financially insolvent?

1 A Yes.

2 Q Do you happen to recall the lawyer who wrote
3 that on behalf of Mr. Slattery?

4 A I do.

5 Q Who was that?

6 A Mr. Volinsky.

7 Q When the Insurance Department came in, how did
8 you satisfy them with regards to -- why did they
9 leave?

10 A We were able to, I don't remember if we showed
11 them documents, but we certainly had a long
12 conversation with them about the steps that we
13 were taking to improve our capital position.
14 That included that we had rate increases in July
15 of 1997 that were producing at that particular
16 time some additional increases to net assets.

17 Q Did you tell them you had a plan to rebuild
18 capital?

19 A We did.

20 Q Was that what satisfied the Department of
21 Insurance?

22 A I believe so.

23 Q Did you follow the plan?

1 A Yes.

2 Q Did it restore your capital in subsequent years?

3 A It did.

4 Q So what was, tell me about the percentage of
5 claims?

6 A The percentage of claims in 1998, at the end of
7 1998 it had gone up to 14.23 percent. At the
8 end of 1999 it had gone up to 19.34 percent.
9 And then it slipped in 2000, it went down to
10 15.46 percent. 2001, it was 16.05 percent.
11 2002, it was 14.21 percent. 2003, it was 12.86
12 percent. 2004, it was 18.14 percent. 2005, it
13 was at 22.77 percent.

14 Q Fair to say that it has rolled throughout the
15 years?

16 A Yes, it has.

17 Q Within a couple of years of the 1997 lawsuit,
18 you'd gotten back nearly to 20 percent?

19 A Yes. We had.

20 Q Was that the Board's target consistently
21 throughout the time period that we've been
22 describing?

23 A Yes, it was.

1 Q 286. I'd like to turn and go through just a few
2 notes in some of the financial statements.
3 Exhibit 286 is the 5-B filing for HealthTrust
4 back when it was a sole corporation. 286,
5 please. Mr. Mitchell, I'm going to talk about
6 page 22.

7 THE PRESIDING OFFICER: Page 22.

8 MR. SATURLEY: Yes, as it's shown on the
9 bottom of the statement. So you need to go to
10 27. Can you see that, Ms. Keeffe?

11 A I can.

12 Q Want to go to the bottom of the page, please?
13 These are Notes to the Financial Statement.
14 What are Notes to the Financial Statement, and
15 what's their significance?

16 A They provide additional supplementary
17 information to the information that is contained
18 within the financial statements.

19 Q So they aren't numbers necessarily, they're
20 explanation?

21 A Yes.

22 Q Are you involved from time to time with helping
23 prepare such information?

1 A I am.

2 Q And what does, let's look at the separate
3 information. What was the first piece of
4 information that was being provided as
5 supplemental information to the HealthTrust
6 financial statement in 2000, with regards to its
7 2002 activity? What's the first topic?

8 A On this screen?

9 Q Under paragraph 9.

10 A Paragraph 9. Thank you. The lease of office
11 space from what was then the Local Government
12 Center, Inc., which is now the Local Government
13 Center Real Estate, Inc.

14 Q So has it been consistently even before the
15 reorganization the HealthTrust was leasing space
16 from a related entity?

17 A Yes, it was.

18 Q And what's the next paragraph have to do with?

19 A The fact that the New Hampshire Municipal
20 Association purchased its health, dental, et
21 cetera, coverages for its employees through
22 HealthTrust Inc.

23 Q Okay. And under paragraph 9? Section 9?

1 Excuse me. The last paragraph. What's that all
2 about?

3 A That was to reflect the fact that the
4 HealthTrust Board and Property-Liability Trust
5 Board had decided to jointly start a workers'
6 compensation program in the year 2000 and both
7 had provided capital to start that program in
8 the amount was \$500,000 for each program.

9 Q So was that publicized to the members of
10 HealthTrust?

11 A Within the financial statements, yes.

12 Q And that's the section for which you're
13 responsible, am I right?

14 A Yes.

15 Q I'd like to next look at Exhibit 289. I'll try
16 to be a little more accommodating and actually
17 give you a copy.

18 A Thank you.

19 Q Exhibit 289 is the 5-B filing at the Secretary
20 of State's office with regards to the Local
21 Government Center Workers' Compensation Trust,
22 is that right?

23 A Yes.

1 Q And is it for the period of 2003?

2 A It is from July 1st, 2003, to December 31, 2003.

3 Q I would like to look at the page numbered at the
4 bottom, Mr. Mitchell, number 3. I believe it
5 would be page 6 of the exhibit. This is an
6 overview under a section entitled Management's
7 Discussion, am I right?

8 A Yes.

9 Q Would you just pause for a second and explain
10 what the portion of a financial statement
11 entitled Management's Discussion and Analysis is
12 all about?

13 A Surely. It's a requirement under the Government
14 Accounting Standards Board. I can't remember
15 the statement number, but that government
16 accounting, but that government financial
17 statements have a discussion by the management
18 of the financial statements and the operations
19 of their programs and that would precede the
20 actual financial statements themselves.

21 Q All right. Is this something that you were
22 involved in helping to prepare?

23 A Yes. It is.

1 Q And is every financial statement that's prepared
2 with regards to one of the Local Government
3 Center entities has such a discussion?

4 A Except for the parent, yes.

5 Q Could you explain what that is?

6 A If we were to do it at the parent level, it
7 would just be essentially giving the same
8 information that is with each of the other
9 entities' Management Discussion and Analysis.
10 It would make the financial statements
11 excessively long.

12 Q And so the analysis is that since it's contained
13 in the separate pieces it need not be contained
14 in the parent's financial statement?

15 A That's correct.

16 Q This is a statement with regard to Workers'
17 Compensation Trust for 2003.

18 A Yes.

19 Q Do you recall when the compensation trust,
20 Workers' Compensation Trust, first was organized
21 as a separate pool?

22 A Yes.

23 Q With its own separate financial statement?

1 A That's correct, on July 1st, 2003.

2 Q So this is the first statement with regards to
3 the pool as a separate entity?

4 A That's correct.

5 Q And indeed that's what the first paragraph of
6 the overview is all about, is it not?

7 A It is.

8 Q So that's an explanation of the fact that in
9 2003 the operation of the workers' compensation
10 pool was organized on its own?

11 A Yes.

12 Q Turn the page, please. The section there called
13 Operating Results. Right?

14 A Yes.

15 Q Take a look at that paragraph. What's being
16 discussed in this section of the financial
17 statements?

18 A The fact that there was a loss in the results
19 for the Workers' Compensation program and the
20 reasons for those losses.

21 Q Also being said, for instance, that the Board
22 understood that this was going to operate at a
23 loss, isn't that right?

1 A That is correct.

2 Q And that Board is saying this to anybody who
3 reads the financial statement, correct?

4 A Yes.

5 Q And that would include the members?

6 A Yes, it would include the members.

7 Q And every member, regardless of whether they
8 were a Workers' Compensation Trust pool member
9 or not, got this financial statement?

10 A They did.

11 Q It was filed with the Secretary of State's
12 Office?

13 A It was.

14 Q Is there a suggestion that the Board understands
15 it's going to continue to operate at a loss for
16 a period of time? In the very first sentence?

17 A Yes.

18 Q And what is the definition of a loss as it's
19 expressed to you?

20 A That the income to the program was insufficient
21 to meet all of the expenses of the program.

22 Q Would you turn to page 6? Six at the bottom. I
23 believe it would be 9. Do you have that in

1 front of you?

2 A Yes, I do.

3 Q Again, this is included in a discussion of the
4 year's results and a discussion of the operation
5 of this particular Trust?

6 A Yes, it is.

7 Q And what are you telling the members and anyone
8 who had access to the financial statement?

9 A That the Local Government Center was going to
10 continue to support the Worker's Compensation
11 Trust even with the losses that it was
12 sustaining because it believed that it provided
13 an important alternative in the source of
14 workers' comp and unemployment compensation
15 coverage to its members.

16 Q So the Board has concluded and it is reported in
17 this financial statement, available to members
18 of the Secretary of State and anybody else who
19 wants a copy, that Workers' Compensation Trust
20 provides an important alternative source of
21 worker's compensation for the members, right?

22 A That's correct.

23 Q And that it intends to support it?

1 A Yes. The last sentence is particularly
2 important, I think, because it says the Board is
3 committed to Workers' Compensation Trust in the
4 long-term and believes it provides an important
5 service to both members and nonmembers.

6 Q I'd like to look at page 290, please. 290 is
7 the 5-B filing with the Secretary of State's
8 office for Property-Liability Trust and the
9 Workers' Compensation Trust for June 2003?

10 A It is.

11 Q I'd like to turn to the page that at the bottom,
12 Mr. Mitchell, is number 5. I believe it is page
13 16. Do you have page 5 in front of you?

14 A I do.

15 Q That's a beginning of the discussion of the
16 operating results?

17 A It is.

18 Q And what does that have to say with regards to
19 the operating expenses, et cetera, for this
20 particular set of trusts?

21 A It says that there was a decrease in the net
22 assets of about 1 million dollars, that there
23 was a dividend declared for Property-Liability

1 Trust program participants of \$500,000; that the
2 Board consciously planned for a use of the net
3 assets, and they understood that the Workers'
4 Compensation Trust would operate at a loss until
5 there were sufficient contributions earned to
6 meet expenses.

7 Q All right. Let's sort of work backwards from
8 what you just read. The Board is announcing and
9 disclosing from the start that it has understood
10 from the start that it was going to operate at a
11 loss?

12 A That's correct.

13 Q Next sentence backwards. When planning for
14 fiscal year 2003, the Board consciously planned
15 for a use of Members' Balance for that purpose.
16 Correct?

17 A Yes, for that purpose and also for a three-year
18 rating cycle for Property-Liability Trust
19 members.

20 Q So the Board is, again, disclosing what it's
21 doing with regards to its use of net assets?

22 A Yes, it is.

23 Q Now, talk to me about the next sentence back for

1 a minute and the second paragraph. This
2 \$500,000 dividend. Can you explain that to me,
3 please?

4 A Certainly. For many years the
5 Property-Liability Trust when it knew it had
6 excess surplus would declare a dividend to the
7 members of the trust. It looked at each year,
8 if you will, coverage year as it stood on its
9 own. It looked at the members that contributed
10 to that coverage year and determined based on
11 the total contributions from the members what
12 each individual member had, what its proportion,
13 each member's proportional share was of the
14 total contributions.

15 It then looked at what the total losses
16 were for that particular fund year and applied
17 the percentage of contribution to the losses,
18 the total losses, to develop for each member
19 what its share essentially of the losses should
20 be based on their contributions.

21 Q Right. I want to work through that again
22 because I'm not sure I follow you.

23 A That's good.

1 Q And this is particular interest to me because
2 you heard some testimony from a Mr. Fryer?

3 A Yes.

4 Q Recall Mr. Fryer's testimony?

5 A Yes, I do.

6 Q He was a lawyer from Maine, had something to say
7 about securities?

8 A Yes.

9 Q Had something to say about pro rata? Do you
10 remember him using that word?

11 A Yes, I do.

12 Q Okay. So that's why I'm particularly interested
13 in this return that you're talking about. I'd
14 like you to explain it again a little more
15 slowly and remember that I'm not a CPA and I'm
16 not a CFO. I'm just a lawyer. Explain to me
17 what you just said, please.

18 A Each year we would take in, say, just for
19 simplicity sake, a hundred thousand dollars of
20 premium income. And say that I'm a member and I
21 contributed \$5,000 of that money so I had 5
22 percent, if you will, of the total amount that I
23 contributed toward that block of money. Say,

1 for instance, that the total losses for that
2 year were going to be \$90,000. So my share of
3 those losses is five percent of the 90,000 or
4 \$4500. Then say, for instance, my losses for
5 that year were \$6,000. I would have a deficit,
6 if you will, of \$1500. But say my losses were
7 \$4,000. Then I would have a benefit of \$5,000.
8 So if my losses were --

9 Q \$500.

10 A \$500. Yes. Thank you. So if my losses were at
11 the, I think I said \$6,000 level, I wouldn't be
12 eligible for a dividend because my losses
13 exceeded what my share of the loss fund was at
14 \$4500. If my losses were the, at the \$4,000
15 level, I would have a \$500 benefit so I would be
16 entitled to some share of the overall dividend
17 that was declared for that particular year.

18 Q So once the Board declares a dividend, as it did
19 here?

20 A Yes.

21 Q Declared a \$500,000 dividend?

22 A Yes.

23 Q The first thing that people do is look at the

1 aggregate result of everybody in the pool, more
2 or less?

3 A Yes.

4 Q And established a pro rata percentage?

5 A Yes.

6 Q But that's only the first step, am I correct?

7 A That's correct.

8 Q That part might be pro rata?

9 A Yes. That part, yes. It's definitely pro rata.

10 Q But then is that what determines their amount of
11 the dividend?

12 A No.

13 Q What determines their amount of the dividend is
14 in fact their own experience as compared to the
15 pool experience; is that right?

16 A Essentially, yes.

17 Q And so if their own experience was worse, they
18 might not get any dividend. They may not be
19 allowed to participate?

20 A That's correct.

21 Q Exhibit 293. Do you have Exhibit 293?

22 A I do.

23 Q Is this the 5-B filing for the Workers'

1 Compensation Trust for the year ending December
2 31, 2004?

3 A I believe so.

4 MR. SATURLEY: Mr. Mitchell, I'm going to
5 ask her about questions regarding page, says at
6 the bottom page 4. It would be page 7.

7 Q (By Mr. Saturley) Do you have page 4 in front
8 of you?

9 A Yes.

10 Q Do you see again under the management's
11 discussion there's a section on operating
12 results?

13 A I do.

14 Q What's the first paragraph inform the members
15 and anyone else who has possession of the
16 financial statement?

17 A That the Board understood that the Workers'
18 Compensation Trust was going to operate at a
19 loss until there were sufficient contributions
20 earned to meet expenses.

21 Q And, indeed, it says the amount?

22 A Yes, it does. \$535,300.

23 Q Would you turn, please, three pages forward in

1 the document? This was the conclusion of the
2 Management's Discussion?

3 A Yes, it is.

4 Q And is it continued to be a conclusion and an
5 informational statement to the members that the
6 Local Government Center continues to support the
7 Trust?

8 A That's correct.

9 Q If you look at the last sentence, it says it's
10 made a long-term commitment to the trust?

11 A That's correct.

12 Q Because it believes the trust provides an
13 important service to both members and
14 nonmembers?

15 A Yes.

16 Q Did you understand that that was the Board's
17 belief and conclusion?

18 A I did.

19 Q At that time?

20 A I did.

21 Q I'm not going to go through all the financial
22 statements, but is it your understanding and is
23 it your memory that similar statements and

1 similar information are contained in the
2 financial statements that LGC generated and
3 provided both to the Secretary of State's office
4 as 5-B filings and to its members in the years
5 subsequent?

6 A Yes, it is.

7 Q I'd like to look at Exhibit 296, please. You
8 have Exhibit 296 in front of you?

9 A I do.

10 Q This is the HealthTrust 5-B filing for the year
11 ending December 31, 2006?

12 A It is.

13 Q Filed at the Secretary of State's office?

14 A Yes.

15 Q I'd like to ask you about a section that appears
16 on the page with numeral 10 at the bottom which
17 I believe would be 13?

18 A Yes.

19 Q Do you have that in front of you?

20 A I do.

21 Q Is this a discussion of the RBC ratio?

22 A Yes.

23 Q And basically what's being discussed and

1 disclosed?

2 A It's being disclosed the amount of the 4.2 RBC
3 ratio and why and how the Board worked to get to
4 that goal, and then, additionally, it talks
5 about the additional amount that it designated
6 for the RBC in the amount of 7.1 million dollars
7 for future administrative needs.

8 Q First, this is a December 2006 financial
9 statement?

10 A It is.

11 Q If I went back to earlier financial statements,
12 would I find the disclosure and the discussion
13 of the 4.2 RBC?

14 A I believe you would.

15 Q What I'm interested in is the last sentence or
16 two of the top paragraph. This is about a
17 certain amount designated for future
18 administrative needs.

19 A Yes. It is.

20 Q We've heard some discussion of that in this
21 hearing, haven't we?

22 A Yes.

23 Q That's the .5 RBC topic that's been discussed a

1 number of times?

2 A Yes.

3 Q What's your understanding of what that was all
4 about?

5 A The trust had, was planning for the potential of
6 adding to the facility, expansion of the
7 facility, and also for the purpose of any
8 capital expenditures for things like a
9 technology system, and subsequent to this, we
10 actually had expenditure of funds for an
11 enrollment system. The Board was establishing
12 this so that they would not have to provide for
13 those types of expenses within each rating cycle
14 that the money would be already set aside and
15 available for those purposes when it became
16 needed.

17 Q Are the items that you just mentioned as part of
18 the, that were contemplated by the Board, are
19 these long-term assets that you're talking
20 about?

21 A Long-term in the sense that we may not be doing
22 it tomorrow. We might be doing it a few years
23 from now.

1 Q You might not even get to it in the next twelve
2 months?

3 A That's correct.

4 Q Once you've done it, are they assets that will
5 give you a long-term payoff?

6 A Yes, they are.

7 Q Also not something that would be consumed within
8 a 12-month cycle?

9 A That's correct.

10 Q Sounds like they might even be treated as or
11 thought of as a capital item? In the sense of a
12 purchase of a physical thing, a computer system
13 is a physical thing?

14 A That's correct. It is.

15 Q So both, they're long-term and payoff and it's
16 not clear whether they're going to be actually
17 paid for in the next 12 months, and I take it
18 the amount was not particularly yet known?

19 A That's correct.

20 Q And the Board said given that, we know we want
21 to do it, we don't know how much we're going to
22 spend specifically, we don't know specifically
23 when we're going to do it, therefore, let's not

1 do it through the rating process?

2 A That's correct.

3 Q And so then the Board set aside this amount?

4 A It did.

5 Q Was it an amount that they expected to
6 specifically spend as administrative costs in
7 the next twelve months?

8 A No.

9 Q Did you consider it an appropriate thing for
10 them to do?

11 A Absolutely. They -- and even under 5-B they
12 allowed for the administrative expenses of the
13 fund, and this is a future administrative fund,
14 potential administrative expense of the fund.

15 Q After -- how long did this stay in place?

16 A I believe for three years.

17 Q And once some of these expenses had been
18 actually incurred and administered and the
19 things were in place, then what did the Board do
20 with regards to this particular reserve?

21 A It eliminated this reserve.

22 Q Did this reserve, this particular .5, have
23 anything to do with the 4.2 portion of surplus

1 that the Board considered and put in place a
2 number of years prior?

3 A No. They were two separate.

4 MR. SATURLEY: May I just have one more
5 second, Mr. Mitchell, to look at my notes?

6 THE PRESIDING OFFICER: Certainly.

7 MR. SATURLEY: I have nothing further for
8 Ms. Keeffe.

9 THE PRESIDING OFFICER: Mr. Gordon?

10 MR. GORDON: No questions.

11 THE PRESIDING OFFICER: Mr. Howard?

12 MR. HOWARD: No, thank you, Mr. Mitchell.

13 THE PRESIDING OFFICER: Given we're at high
14 noon, do the attorneys have any suggestions to
15 me as to whether or not -- this is the
16 appropriate time before we go on to
17 cross-examination? Mr. Volinsky?

18 MR. VOLINSKY: I assume I'll be 45 minutes
19 or so.

20 THE PRESIDING OFFICER: Okay. Why don't we
21 take our lunch recess then at this time and
22 we'll return at 1:15.

23 LUNCH RECESS TAKEN 11:58 A.M. - 1:21 P.M.

1 THE PRESIDING OFFICER: Good afternoon,
2 ladies and gentlemen. We have Ms. Sandal Keeffe
3 still on the stand under Direct Testimony by
4 Mr. Saturley. Please proceed, sir.

5 Q (By Mr. Saturley) Thank you, Mr. Mitchell.

6 Ms. Keeffe, you have before you a sheet of
7 paper that's been marked as Exhibit LGC 42. It
8 contains a series of numbers. Is that a sheet
9 of paper that you prepared?

10 A It is.

11 Q Your handwriting?

12 A It is.

13 Q Based on research you conducted?

14 A That's correct.

15 Q Compiling certain information with regards to
16 net assets of the percentage of claims for the
17 years 1994 through 2005 as it pertains to
18 HealthTrust?

19 A Yes.

20 Q And certain calculations of RBC for the years
21 1994 through 1997?

22 A Yes.

23 Q Even though HealthTrust wasn't using RBC at the

1 time, you've done it based on the software that
2 you have in place now?

3 A I did.

4 Q Again, you prepared this yourself with your
5 handwriting?

6 A Yes.

7 MR. SATURLEY: Mr. Mitchell, I move to have
8 the ID stricken. I believe I have concurrence.

9 MR. VOLINSKY: No objection.

10 THE PRESIDING OFFICER: Very good. Then it
11 is stricken and is admitted as LGC 42. Thank
12 you. Please proceed.

13 MR. SATURLEY: I have no further questions.
14 Mr. Volinsky's witness.

15 THE PRESIDING OFFICER: Mr. Volinsky, there
16 being no other questions to come from Mr. Gordon
17 or Mr. Howard, please proceed.

18 MR. VOLINSKY: Thank you.

19 CROSS-EXAMINATION

20 BY MR. VOLINSKY:

21 Q Still have the handwritten chart marked as 462
22 in front of you?

23 A I do.

1 Q We'll put it up here on the screen for us. You
2 mentioned a lawsuit by a terminated LGC or
3 HealthTrust at that time employee named
4 Slattery, right?

5 A Yes.

6 Q And that lawsuit resulted in a *Union Leader*
7 article which was dated in October '97, correct?

8 A Yes.

9 Q And that's what we had up on the screen this
10 morning?

11 A Yes.

12 Q And Mr. Slattery, in essence, claimed that he
13 was wrongfully terminated because he had
14 complained about HealthTrust trending toward
15 insolvency, and he claimed he was fired for
16 that, right?

17 A I don't recall the reasons he claimed he was
18 fired.

19 Q Okay. But you did some calculations. Let me
20 ask you about those. The news article that we
21 saw was in 1997, correct?

22 A Yes.

23 Q And you calculated the RBC for that year as

1 1.22, is that correct?

2 A Yes, as of December 31st.

3 Q Right. And the year before you calculated it as
4 1.85?

5 A Yes.

6 Q And the year before that 3.89?

7 A Yes.

8 Q So from '95 through '97, you would agree with me
9 that your RBC dropped quite a lot?

10 A It did.

11 Q And you've been in the courtroom throughout this
12 case, haven't you?

13 A I have.

14 Q So you've heard a lot about how regulators
15 consistent with the NAIC use a 2.0 RBC level as
16 a point in time when the regulators ask for a
17 plan if a company drops below that?

18 A Yes.

19 Q So you would agree with me that in 1996,
20 HealthTrust was below 2.0?

21 A I would.

22 Q And you would agree with me that in '97, it was
23 even further below 2.0?

1 A I would.

2 Q And '97 is when the Department of Insurance paid
3 HealthTrust a visit, correct?

4 A It did.

5 Q And in that visit, they asked you why your
6 results were depressed as they were, correct?

7 A That's my recollection.

8 Q And you gave them an explanation?

9 A Yes.

10 Q And they asked you what your plan was to improve
11 results?

12 A That's correct.

13 Q And you gave them an explanation?

14 A Yes.

15 Q And then the following year, is there a reason
16 why you didn't calculate RBC for '98?

17 A I just didn't go any further than that.

18 Q You would agree with me judging by the other
19 column that you probably exceeded 2.0 in the
20 following year?

21 A Really, I couldn't say that. Certainly, the net
22 assets as a percent of claims certainly did
23 approximately double.

1 Q Okay. And so if the percent of claims
2 approximately doubled and you were at 1.22 in
3 '97, you don't know enough, can't agree with me
4 that your RBC probably went over 2.0 in '98?

5 A The calculation for risk-based capital, the
6 components of that calculation could have, let
7 me back up.

8 The RBC calculation requires information
9 for a particular, each particular year and the
10 information from one year to the next year can
11 change enough so that simply because your net
12 assets increase, double, doesn't necessarily
13 mean that your RBC is going to have the same
14 result.

15 Q Let me ask you. Did your business risk change
16 substantially from '97 to '98.

17 A I would have to go back and look at the
18 financial results and at the components of
19 risk-based capital to determine that and sitting
20 here I don't recall.

21 Q Do you know what business risk is in the context
22 of RBC?

23 A If you're talking about our level of

1 contributions versus our claims and other
2 components, yes.

3 Q Okay. If I were talking about business risk as
4 the risk that your clients don't pay you, they
5 default, they're late, they go bankrupt, you
6 don't understand that that's what business risk
7 means in the context of RBC?

8 A That is, I believe that's one component of RBC
9 is the level of your receivables.

10 Q Did your asset investment portfolio change
11 significantly from '97 to '98?

12 A I don't recall.

13 Q You would agree with me that the only visit you
14 got from the Department of Insurance was when
15 you were at a calculated RBC below, well below
16 2.0?

17 A Yes.

18 Q And you didn't have to file a formal plan. You
19 just had to explain what your endeavors would be
20 to come back to a higher level of capital,
21 right?

22 A Remember that we did not calculate RBC at that
23 time. This is a retrospective look at what RBC

1 would have been.

2 Q Understand.

3 A But the Department of Insurance didn't require
4 us, they had no regulatory authority under 5-B,
5 but they were concerned and they did not require
6 us to file a plan.

7 Q And then they never came back again?

8 A Not to my recollection.

9 Q From what you understand about RBC use by
10 insurance commissioners, isn't that an example
11 of how it's supposed to work in that a health
12 insurer drops below 2.0, the Insurance
13 Commissioner makes inquiry, receives some
14 information about a plan, and then if it goes
15 back over 2.0 the Insurance Commissioner goes
16 away? Isn't that generally what's supposed to
17 happen with RBC?

18 A That's my understanding.

19 Q And in the case of HealthTrust in the mid '90s,
20 that's exactly the way it worked, right?

21 A I can't say, I can't speak to the RBC value, but
22 certainly our surplus did improve during mid or
23 beyond 1997, our surplus did improve and we did

1 not have another visit from the Insurance
2 Department.

3 Q Thank you. I would refer everyone to LGC 199,
4 please. Can you see the screen?

5 A I can.

6 Q I'll just give everyone a second to get there.

7 This is the memo you wrote after the *Union*
8 *Leader* article?

9 A It is.

10 Q And you sent it to Town Managers,
11 Superintendents, Business Managers, County
12 Administrators?

13 A Yes.

14 Q Did you send it to anyone else?

15 A I don't recall.

16 Q You haven't listed any Board of Selectmen or
17 School Board members or County Commissioners on
18 this list here?

19 A We did not list them.

20 Q And you didn't send it to them either, did you?

21 A Not to my recollection.

22 Q I want to take you to the last paragraph on the
23 second page, particularly this last sentence,

1 sorry, second to last paragraph, last sentence.
2 Although the Trust is not required to do so, it
3 also meets reserve requirements established by
4 New Hampshire statutes.

5 A Yes.

6 Q What statutes were you talking about?

7 A They were the MEWA statutes.

8 Q The which?

9 A MEWA. Multiple Employer Welfare Administrators.
10 I believe you had that statute, somebody had
11 that statute out this morning.

12 Q That's the one about Associational Health
13 Pooling?

14 A Yes.

15 Q But you weren't an Associational Health Pool,
16 were you?

17 A No. We used the -- there was no basis in 5-B or
18 anywhere else to determine what was an
19 appropriate level of surplus, and we wanted to
20 know how we measured against something that was
21 closely related to us so we used that as a
22 baseline.

23 Q Did those programs that you call MEWA?

1 A MEWA.

2 Q Multiple --

3 A MEWA.

4 Q And that stands again for?

5 A Multiple Employer Welfare Associations.

6 Q And those associations are under the regulatory
7 supervision of the New Hampshire Insurance
8 Commissioner?

9 A That's my understanding.

10 Q And they have to meet a 2.0 RBC, do they not?

11 A At the time that we were referring to this, it
12 was a different standard.

13 Q Today?

14 A I do not know today.

15 Q You say here in this full paragraph, Trust
16 Member Balance is free surplus which is not
17 associated with its reserve for claims. That
18 means that HealthTrust at least at this time had
19 reserves specifically set aside to pay claims
20 and they were different than Member Balance,
21 correct?

22 A It's currently the same way today in that there
23 is a liability for claims that are payable. In

1 other words, that our carriers have invoiced us
2 for that we have not paid for the claims that
3 were incurred during a specific period, and
4 another liability for incurred but not reported
5 claims that Mr. Riemer helps us set.

6 Q So at that time, you considered the Trust to be
7 in sound financial position because it's now
8 meeting and should in the future meet its claims
9 reserve and other financial requirements, right?

10 A That's correct.

11 Q And this is when you had a RBC of -- 462,
12 please? This is 1997. 1997 you had an RBC of
13 1.22, correct?

14 A We were not measuring RBC at the time but as a
15 look back, yes, it was 1.22.

16 Q You were trying to be honest with everyone when
17 you told them that you were financially sound in
18 this October '97 memo, right?

19 A I was.

20 Q Thank you. Switching topics. Every year each
21 of the subsidiaries and the parent issues
22 audited financial statements?

23 A Yes.

1 Q An audited financial statement include a
2 presentation of the financial numbers about the
3 particular entity in question, correct?

4 A Yes.

5 Q They also include Management's Analysis,
6 correct?

7 A Yes.

8 Q The auditors do not audit and approve
9 Management's Analysis, do they?

10 A They certainly review it and give us comments on
11 it.

12 Q They don't audit and approve Management's
13 Analysis, do they?

14 A No. They do not.

15 Q Thank you. You went through some audited
16 financial statements with Mr. Saturley from the
17 2002/2003 time frame concerning workers' comp?
18 Remember those?

19 A Yes.

20 Q And you showed us where in the financial
21 statements there were contributions being made
22 from one entity to workers' comp? You pointed
23 that out to us, do you recall that?

1 A Yes.

2 Q You were here for Mr. Andrews' testimony?

3 A Yes.

4 Q Did you hear Mr. Andrews testify that a reason
5 that your organization decided to subsidize
6 workers' comp was because workers' comp was the
7 strongest Primex program, do you remember that
8 testimony?

9 A Not specifically, no.

10 Q Do you remember it generally?

11 A Yes.

12 Q Anywhere in your financial statements did you
13 disclose that HealthTrust was subsidizing
14 workers' comp because workers' comp is Primex's
15 strongest program?

16 A That was not the only reason that the strategic
17 plan was adopted by the Board nor was --
18 HealthTrust was sending a contribution to the
19 parent and the parent then distributed the
20 contribution.

21 Q So did you disclose in any of the financial
22 statements that went to each of the members, was
23 posted on your website, went to the Secretary of

1 State's office, did you disclose that one of the
2 reasons why workers' comp was being subsidized
3 by HealthTrust was because workers' comp was
4 Primex's strongest program?

5 A No.

6 Q Thank you. Switching topics. Currently,
7 Property-Liability and Workers' Comp are
8 combined into one LLC, is that correct?

9 A Yes. It is.

10 Q Property-Liability and Workers' Comp pays less
11 than fair market value for its lease rates, does
12 it not?

13 A To the real estate company?

14 Q Yes.

15 A Yes.

16 Q NHMA is an affiliate organization in this
17 enterprise, is it not?

18 A Yes.

19 Q NHMA pays less than fair market value to the
20 real estate company for its lease, does it not?

21 A It does.

22 Q HealthTrust pays less than fair market value to
23 the real estate company for its lease, right?

1 A Yes.

2 Q Switching topics one more time. I give you Book
3 5 of our exhibits. It should have 69 in it.
4 It's the only exhibit.

5 THE PRESIDING OFFICER: My favorite
6 exhibit, Mr. Volinsky. Go ahead, please.

7 Q Before I ask you about that a particular part of
8 69, when you reviewed the financial statements
9 with Mr. Saturley, you remember coming across
10 the financial statement that wrote about
11 returning dividends from Property-Liability
12 program?

13 A Yes.

14 Q And at that point, at least, which is '02-'03,
15 surplus was returned to members in the form of
16 dividends, correct?

17 A Property-Liability, yes.

18 Q That's what I mean, from Property-Liability?

19 A Yes.

20 Q So you could identify what the organization
21 considered to be surplus because it was returned
22 in a dividend at that point in time, correct?

23 A Yes.

1 Q Over time, property and liability switched from
2 returning surplus and dividends to using that
3 money as a means of financing rate credits?

4 A That's correct.

5 Q And so instead of returning dividends, property
6 and liability returned monies for LGC as rate
7 stabilization?

8 A Yes.

9 Q Now, turn to 69, page 1369. So it would be near
10 the very end. Sorry. Not 1369. 1236. Are you
11 there?

12 A Yes.

13 Q 1236 is a page from the 2010 audited financial
14 statements for Property-Liability, is that
15 right?

16 A It is.

17 Q And if you look near the top of the page you'll
18 see there's a section for Board-designated
19 assets?

20 A Yes.

21 Q These are your organization's representation of
22 how much is in each of these two funds; one for
23 something called competence level at 90 percent

1 and one something called rate stabilization.

2 Correct?

3 A Yes.

4 Q And the rate stabilization fund is almost 3.1
5 million?

6 A Yes.

7 Q Would you agree with me that that 3.1 million
8 even by your own count constitutes surplus in
9 the Property-Liability program?

10 A Yes.

11 Q Thank you. All set with that one. Let me give
12 you Book 1. Asking to turn to Exhibit 15.
13 Exhibit 15 is Mr. Andrews' employment contract?

14 A Yes.

15 Q And in it, at paragraph 2.1, there's a
16 description of his duties from the contract?

17 A Yes.

18 Q Remember I asked you about this at deposition?

19 A I do.

20 Q And essentially, Mr. Andrews' duties are
21 virtually the same as Ms. Carroll's duties after
22 she became Executive Director, correct?

23 A That's correct.

1 Q And in part Mr. Andrews and then later Ms.
2 Carroll were responsible for recommending to and
3 carrying out the policies and programs
4 established by the Board, correct?

5 A Yes.

6 Q And you've been a member of the leadership team
7 at the Local Government Center, have you not?

8 A Yes. I have.

9 Q Were you a member under John Andrews'
10 directorship?

11 A I was.

12 Q Are you currently under Ms. Carroll's
13 directorship?

14 A I am.

15 Q As a member of the leadership team, do you meet
16 from time to time with the Executive Director?

17 A We do.

18 Q Do you talk with or did you talk first with
19 Mr. Andrews about policies he might recommend to
20 the Board of Directors?

21 A I'm sure.

22 Q From time to time?

23 A I'm sure we did.

1 Q And moving forward to Ms. Carroll, do you talk
2 with Ms. Carroll from time to time about
3 policies she might recommend to the Board of
4 Directors?

5 A We do.

6 Q You are the most senior financial officer at
7 LGC; is that right?

8 A Yes.

9 Q And you agree with me, do you not, that audited
10 financial statements are the responsibility of
11 management?

12 A They are.

13 Q And that management includes you?

14 A Yes.

15 Q And it includes the Executive Directors?

16 A Yes.

17 Q Mr. Andrews in his time and Ms. Carroll now?

18 A Yes.

19 Q Changing topics. You are familiar, are you not,
20 with what has been called in this case the
21 workers' comp subsidiary.

22 A I am.

23 Q And that subsidiary according to the Local

1 Government Center totals some \$17.1 million,
2 correct?

3 A From the HealthTrust to the workers'
4 compensation program.

5 Q Right. You consider the workers' comp program
6 to have paid itself a subsidiary, don't you?

7 A As part of the strategic plan, yes.

8 Q The financial statements, the audited financial
9 statements, let's go from 2005 to 2009.
10 Anywhere in that time frame is the money paid
11 from HealthTrust to parent identified as a
12 subsidiary?

13 A Not to my recollection.

14 Q As a matter of fact, those financial statements
15 don't even identify the money going from health
16 to workers' comp. They show it going from
17 health to parent and then parent makes a
18 distribution to workers' comp, correct?

19 A That's the appropriate way to reflect the money
20 flowing from HealthTrust in the financial
21 statements.

22 Q To your knowledge, can you identify a specific
23 notice, anything close to the memo you wrote in

1 '97 that was distributed to members of any of
2 the pools telling those members specifically
3 HealthTrust this year is subsidizing workers'
4 comp to the tune of however much money was
5 involved?

6 A No.

7 Q To your knowledge, has any member actually voted
8 to authorize the payment of what we call the
9 workers' comp subsidiary?

10 A It was a Board policy. It was not a member
11 voted-on policy.

12 Q To your knowledge, has any member organization
13 internally so a Board of Selectmen in their town
14 voted specifically to approve the workers' comp
15 subsidiary?

16 A There wouldn't be such a vote because it was a
17 LGC Board decision for that, for the strategic
18 funding.

19 Q The Local Government Center had the financial
20 wherewithal to capably set the rates for
21 workers' comp so that those rates would cover
22 the cost of claims and administration in
23 Workers' Comp, correct?

1 A It did.

2 Q It could have set a sufficient rate to cover
3 claims and related expenses, could it not?

4 A It could.

5 Q The Board chose, chose, intentionally, not to do
6 so?

7 A It did. And I think that there needs to be a
8 further explanation of that.

9 Q Go right ahead.

10 A The Board back in 1999 made a decision to
11 establish a workers' compensation program in
12 response to our members' requests that we do so,
13 and at that time, as I testified this morning,
14 \$500,000 went from the HealthTrust and \$500,000
15 went from the Property-Liability Trust to begin
16 the establishment of that program. Then as the
17 years progressed, the Board recognized that the
18 program wasn't growing in the way that it needed
19 to to be able to provide for financial viability
20 for that program in an economic sense because
21 the membership was so small. It also had
22 requests from the members to be able to have
23 rates that would allow them to make a change

1 from Primex to LGC.

2 So at that time, it decided that it was in
3 the best interest of both the members and the
4 nonmembers to establish a plan to be able to
5 provide additional support to the workers'
6 compensation program over a period of time until
7 the workers' compensation program got to a point
8 where it could be financially viable on its own.
9 In other words, its income would support the
10 expenses of the program.

11 Q Done?

12 A Yes.

13 Q This subsidizing of the workers' comp rates,
14 another way to say that is workers' comp charges
15 premiums that are deficient to cover the costs
16 and claims of the workers' comp program,
17 correct?

18 A The Board established a competitive rate, and it
19 knew that that rate would be insufficient to
20 cover the cost of the program.

21 Q So when you use the word insufficient, that's
22 also another way of saying the rates are
23 deficient. Right?

1 A Yes.

2 Q Premium deficiencies are something that you have
3 to report in your annual financial statements,
4 correct?

5 A Yes.

6 Q I won't take us back through all the statements
7 that are there in the files. One of the reasons
8 that the Board chose to charge deficient
9 premiums is because it enhanced workers' comp's
10 ability to compete against Primex, correct?

11 A That's one of the reasons.

12 Q Thank you. Every few years the Local Government
13 Center goes through a strategic planning
14 process, does it not?

15 A It has.

16 Q I think your last was in 2010 or '11?

17 A I believe we finished it in 2010.

18 Q Okay. I'll accept that. As a goal for the 2010
19 strategic planning exercise by the Local
20 Government Center, the goal is to make workers'
21 comp more financially self-supporting by 2015,
22 correct?

23 A Yes.

1 Q So the subsidiary payments started in 2005,
2 correct?

3 A They did.

4 Q And so if the goal is to make workers' comp more
5 financially self-supporting by 2015, that would
6 involve ten years' worth of workers' comp not
7 being financially self-supporting, correct?

8 A To varying degrees, yes.

9 Q As a matter of fact, workers' comp cannot
10 currently pay all of its debts that are due,
11 correct?

12 A If you were including the note from HealthTrust,
13 that's correct.

14 Q The first time, when you say the note from
15 HealthTrust, the note to HealthTrust to pay 17
16 million, \$17.1 million?

17 A Yes.

18 Q And that was the result of a resolution in June
19 of '11, correct?

20 A It was.

21 Q And as late as May of '11, you didn't know that
22 HealthTrust's transfer of \$17 million to
23 workers' comp was a loan, did you?

1 A I did not.

2 Q LGC has had, I think, since '06 in place an
3 intercompany loan policy, has it not?

4 A It has had an intercompany loan policy.

5 Q And that provides to, it allows one LGC entity
6 to lend money to another LGC entity, correct?

7 A It does.

8 Q And it provides for payment of interest when
9 intercompany loans are made consistent with the
10 policy, correct?

11 A Yes. At a very low rate.

12 Q But interest nonetheless?

13 A Interest nonetheless.

14 Q The \$17 million note contains no provision for
15 interest whatsoever, does it?

16 A That's correct. The Board had extensive
17 discussions at its June 2011 Board meeting
18 regarding whether or not to charge interest on
19 the note, and it made the decision to not charge
20 interest on the note.

21 Q As a matter of fact, there was a Board member
22 that was absolutely opposed to any note
23 recognizing the debt, isn't that right?

1 A As you reminded me at my deposition, yes.

2 Q And that Board member was Peter Curro, correct?

3 A That's what you stated at my deposition, yes.

4 Q And do you have any reason to disagree with
5 that?

6 A No.

7 Q Okay.

8 A I just meant I didn't remember.

9 Q I wasn't quarrelling with you.

10 A Okay.

11 Q Member communities have asked for repayment of
12 the workers' comp subsidiary that they attribute
13 to their assets, correct?

14 A That they attribute to their contributions.

15 Q Okay. I'll accept that. That's a correct
16 statement, member communities have asked for
17 repayment to the member community amounts paid
18 in subsidiary to workers' comp, correct?

19 A They have.

20 Q Dover's made that demand?

21 A I believe so.

22 Q Portsmouth's made that demand?

23 A Yes.

1 Q Claremont's made that demand?

2 A I don't recall.

3 Q John Scrutton, does that ring a bell?

4 A John Scruton?

5 Q Scruton?

6 A I don't honestly recall.

7 Q Rochester's made that demand?

8 A I don't recall all the communities that have
9 made that demand.

10 Q Are there any communities you recall that I
11 haven't mentioned?

12 A No.

13 MR. VOLINSKY: If I can have just one
14 moment. I have nothing further, Judge.

15 THE PRESIDING OFFICER: Thank you.
16 Mr. Saturley, anything further?

17 MR. SATURLEY: Could I have a moment?

18 THE PRESIDING OFFICER: Certainly.

19 REDIRECT EXAMINATION

20 BY MR. SATURLEY

21 Q Thank you, Mr. Mitchell. Ms. Keeffe, back in
22 1997?

23 A Yes.

1 Q Did you make a distinction between claims
2 liabilities and reserves and capital?

3 A Yes.

4 Q What's the difference?

5 A Claims liabilities are things that we know or
6 are fairly certain that will happen, occur, and
7 capital, if you will, would be for things that
8 we don't foresee happening.

9 Q So in the one bucket you have things you know
10 about?

11 A Yes.

12 Q In the other bucket you have things you don't
13 know about?

14 A That's correct.

15 Q And you set aside money for both of those
16 purposes; is that right?

17 A Yes. That's correct.

18 Q And then in 1997, which of those buckets did you
19 feel LGC or HealthTrust was adequately prepared
20 for?

21 A The ones that we could foresee. The claims
22 liabilities.

23 Q Is that what you told the members, is that what

1 you wrote the members?

2 A Yes, it is.

3 Q With regards to the known claims and the known
4 liabilities, we are fully funded?

5 A That's correct.

6 Q How did you feel about the other, the unknown
7 claims? The unknown events, the unknown things
8 that might happen, the sort of things that Peter
9 Riemer talked about? Where was HealthTrust with
10 regards to that pool of capital?

11 A We had depleted it because of unknown events.

12 Q Actually an unknown event had contributed to
13 deplete it?

14 A That's exactly correct. The unknown event was
15 the introduction of the new point of service
16 product and the number of people who moved to
17 that product that we did not expect so then we
18 had additional claims that we did not expect.

19 Q So how did the Board feel that it should address
20 its level of capital in 1997?

21 A Well, after it was depleted for that unknown
22 event, the Board felt the strong need to
23 replenish the capital so that it would be in a

1 better position for additional future unexpected
2 events.

3 Q Indeed, isn't that one of the things that's
4 actually contained in the memo is a line to the
5 members saying we've actually started to
6 replenish our capital?

7 A That's correct.

8 Q And you told them exactly where you were for the
9 first set of months of the year, said this is
10 where we are on our plan to rebuild?

11 A That's right.

12 MR. SATURLEY: One minute, Mr. Mitchell?

13 THE PRESIDING OFFICER: Surely,
14 Mr. Saturley.

15 MR. SATURLEY: I'm all set.

16 THE PRESIDING OFFICER: Thank you,
17 Mr. Saturley. Mr. Gordon, any questions?

18 MR. GORDON: No.

19 THE PRESIDING OFFICER: Mr. Howard?

20 MR. HOWARD: No.

21 THE PRESIDING OFFICER: Mr. Volinsky?

22 MR. VOLINSKY: No.

23 THE PRESIDING OFFICER: Ms. Keeffe, I have

1 a couple that I'd like to ask of you.

2 EXAMINATION BY MR. MITCHELL:

3 Q Having sat through all these proceedings you're
4 aware that I have quite a few boxes of exhibits?

5 A Yes.

6 Q And you're also aware that they, that the
7 minutes of many of the committee meetings,
8 Finance Committee meetings and the joint boards
9 since the reorganization are contained in those?

10 A Yes.

11 Q Okay. As part of your duties with the LGC do
12 you regularly review minutes of the meetings of
13 these various committees either as part of a
14 leadership team or just as CFO?

15 A I do.

16 Q Do you have input to correct those minutes
17 before they're finally done, circulated?

18 A Yes.

19 Q I believe someone testified to that earlier last
20 week.

21 A Um-hum.

22 Q As the process was described by Ms. Parker
23 earlier this morning on rate setting was being

1 given, were you here?

2 A Yes, I was.

3 Q Did you hear that testimony?

4 A I did.

5 Q And she described that process, and from your
6 experience, long experience with LGC, in
7 reference to -- it is your belief that I would
8 find reference to support that process if I read
9 the minutes that I have that would be around
10 those dates?

11 A Yes. You would.

12 Q Okay. Thank you. You certainly are familiar
13 with the term materiality as it relates to
14 audits, yes?

15 A Yes, I am.

16 Q What do you understand materiality to mean as it
17 is used by your auditors over the period of time
18 we've discussed here, and I believe you said
19 Berry Dunn?

20 A Berry Dunn.

21 Q Are the auditors.

22 A Yes.

23 Q And they became your auditors when,

1 approximately?

2 A In 2001, I believe.

3 Q What do you understand materiality to mean?

4 A Berry Dunn would actually for each company set a
5 materiality threshold. They don't disclose that
6 to us. That would be improper for them to do
7 so. They then review the financial, pardon me,
8 the financial information to determine whether
9 or not there are any amounts that would be
10 material to the financial statements that would
11 either be misclassified in some way or not,
12 would not have been reported or would have been
13 misreported.

14 Q Okay. Thank you. Just a couple more, if you'll
15 bear with me.

16 A Sure.

17 Q Do you recall bringing testimony this afternoon
18 that related to contributions to administrative
19 expenses? It began with discussions about the
20 so-called .5 RBC?

21 A Oh, earlier today, yes.

22 Q Yes.

23 A Yes.

1 Q And I'm not sure that my question relates to the
2 .5. I just want to orient you as to where you
3 were in your testimony.

4 A Um-hum.

5 Q Are contributions from the trust to the LGC
6 parent for administrative costs, are those
7 contributions segregated in your financial
8 reports?

9 A The, there are notes in the financial statement,
10 if I'm understanding your question correctly,
11 I'll answer it and then you can let me know if
12 it's on point or not.

13 Q I'm sure --

14 A Within the financial statements there are notes
15 in each organization's financial statement that
16 says how much money they have paid the Local
17 Government Center for operational costs, in
18 other words, reimburse LGC for operational cost,
19 is that what you're referring to?

20 Q Yes.

21 A Okay.

22 Q Coming out, are the administrative expenses
23 themselves in your financial statements and by

1 that I want to include any financial statements
2 that you keep, not just the annual financial
3 statement, would I be able to trace out, track
4 out, the administrative expenses by proportion
5 or directly attributed to, for instance, an
6 administrative cost of HealthTrust,
7 administrative cost due to Workers' Compensation
8 Trust, et cetera?

9 A I'm not sure I'm exactly following your
10 question.

11 Q Let me try an example, and I do this at some
12 risk to me, but let me try this example.

13 Does the, during your tenure with the LGC,
14 have you had occasion to participate in the
15 formulation of any grants? That whereby you
16 obtained grant money from some other source?

17 A No. We have not done that.

18 Q So federal grant programs, state grant programs,
19 philanthropic, other nonprofits contributing
20 you've not sought those kind of funds?

21 A We have not.

22 Q Has there ever been a reason to determine how
23 much administrative expense, what is the

1 administrative expense of workers' comp separate
2 from PLC Trust, separate from HealthTrust?

3 A Yes. As part of our budgeting process currently
4 we develop the overall budget for all of the
5 Local Government Center. And for, there are
6 pieces that we know are directly attributable to
7 the cost of those programs, and then there are
8 other expenses, for example, the cost of the
9 finance staff and the IT staff and the Human
10 Resource staff and those types of staff that are
11 spread across all of the programs so we do go
12 through that process.

13 Q When they're spread across?

14 A Yes.

15 Q Are they apportioned?

16 A They are apportioned.

17 Q And what would be the name of that document if I
18 were to ask you for it?

19 A I think I call it the allocated budget.

20 Q Did I understand from your testimony that you
21 have a role in managing the financial
22 investments of LGC?

23 A I don't --

1 Q In the trust?

2 A There is an investment policy that governs how
3 we invest our funds. We have an outside
4 investment manager, Wellington Management, that
5 actually manages the funds that are under
6 management. And we have an investment advisor,
7 Strategic Asset Advisors, who has the right of
8 monitoring those investments and doing an
9 assessment of Wellington's performance on an
10 annual basis. Is that what you were looking
11 for?

12 Q In part.

13 A Okay.

14 Q So I at least know what to call it and now
15 making reference there, in the investment
16 policy, are the excess surplus funds, I believe
17 they're called, on your, one type of your
18 financial statements, are they commingled under
19 Wellington or any other investment holding?

20 A The HealthTrust has an investment, as part of
21 the investment policy, HealthTrust has an
22 allocation, an asset allocation policy.

23 Wellington manages HealthTrusts portfolio to

1 that allocation policy and the same would be
2 true for Property-Liability and Workers' Comp,
3 if I'm interpreting your question correctly.

4 Q You are indeed. We're making good speed here
5 now.

6 A Okay.

7 Q And what would I, what document would I refer to
8 if I was looking for that information?

9 A It's within our involvement policy itself and
10 then within each of the financial statements,
11 the audited financial statements, you will see
12 on the balance sheet investments, and those
13 investments would be according to the investment
14 policy established for each program.

15 Q Okay. Were you here on the first day of these
16 proceedings?

17 A I was.

18 Q Have you had an occasion to view the Petition at
19 any time, the Amended Petition that the BSR
20 filed against the LGC?

21 A I don't believe I've looked at that since it was
22 originally filed.

23 Q If I represented to you that the BSR who brought

1 this Petition has asked that if I were to find,
2 and I want to underscore if, if I were to find
3 that there were funds that should be returned to
4 the members, meaning the political subdivisions,
5 with respect to the HealthTrust on under 5-B,
6 that if I were to do that, that I would, in
7 essence, would develop a scheme by which to
8 return those funds.

9 A Um-hum.

10 Q Do you remember that first day when that was
11 asked of me?

12 A Vaguely.

13 Q Okay. But would you accept my representation
14 that --

15 A I certainly would.

16 Q In that request, it was something of that order?

17 A Yes.

18 Q If I or if you as a CFO for completely other
19 reasons had to recapture, what documents and
20 again, if you could provide me titles, what
21 documents would you refer to, and how, what
22 documents would you refer to that would most
23 accurately describe the contributions in so that

1 a distribution out might be computed accurately.

2 Do you understand that rather lengthy --

3 A I think I do.

4 Q Help me out, please?

5 A I'll do my best.

6 Q Surely.

7 A Within the information that we have available at
8 Local Government Center, we would certainly have
9 reports that we could run that would show by
10 participating member group how much they have
11 contributed to HealthTrust for purchasing health
12 coverage or other coverage, whatever coverage
13 they might be purchasing, how much they have
14 been invoiced, if you will. Is that what you're
15 referring to?

16 Q That would certainly be one element.

17 A So you could request that information for any
18 period of time that you wanted. I'm not sure
19 how we would do it prior to the current
20 enrollment system that we have, but I believe
21 there's a way to get that information.

22 Q What is the date of your enrollment system that
23 you have now?

1 A I'm looking to Wendy Parker because I'm not
2 remembering exactly.

3 Q How about just approximately?

4 A 2008 perhaps?

5 Q Okay. But you do believe that there would be
6 ways to look back further than that?

7 A Yes, I do.

8 Q What are those documents referred to as?

9 A Member, contributions by member?

10 Q Thank you. Being an expert, if you allow me to
11 use that term, on the finances of LGC?

12 A Um-hum.

13 Q And its other entities?

14 A Um-hum.

15 Q And in light of the response you just gave me
16 about finding the connections in, and can I
17 presume that we could also net out any special
18 deductions that would be cast upon any of those
19 political members as money was distributed
20 forward?

21 A Are you talking about claims payments on behalf
22 of those particular members?

23 Q Anything that, for instance, would set them

1 aside from contributions in treatment that we
2 would use for all political subdivisions?

3 A I don't know that we have any such --

4 Q Okay.

5 A -- charges, if you will, if I'm understanding
6 you correctly.

7 Q You are, and thank you for that answer because I
8 haven't heard any at least to this point.

9 Also being expert in the finances of LGC,
10 and the operation of trusts, if I looked at any
11 of your financial records, would I be able to
12 determine the contributions in by political
13 subdivisions who are currently members?

14 A Um-hum.

15 Q Can I back up just a little bit?

16 A You may.

17 Q I meant to say who are not currently members but
18 had been members in the past.

19 A Yes. You would.

20 Q Okay.

21 A We would have that historical information.

22 Q Okay. Thank you very much for your patience.

23 A You're welcome.

1 THE PRESIDING OFFICER: Did I start
2 anything, gentlemen? Anything further from
3 counsel? I try not to.

4 MR. SATURLEY: I don't think so,
5 Mr. Mitchell.

6 THE PRESIDING OFFICER: Thank you.
7 Mr. Gordon?

8 MR. GORDON: No.

9 THE PRESIDING OFFICER: Mr. Howard?

10 MR. GORDON: No.

11 THE PRESIDING OFFICER: Mr. Volinsky?

12 MR. VOLINSKY: No, sir.

13 THE PRESIDING OFFICER: Then you're
14 excused. Thank you very much.

15 Do we want to take just a three-minute
16 break to move things around? Okay. This will
17 be an in-place three-minute break to get ready
18 for the next witness.

19 RECESS TAKEN

20 THE PRESIDING OFFICER: Returning from a
21 break then, Mr. Quirk, you have another witness
22 to call, correct?

23 MR. QUIRK: We do. Thank you,

1 Mr. Mitchell. We call Mark McCue.

2 MARK MCCUE, DULY SWORN

3 DIRECT EXAMINATION

4 BY MR. QUIRK:

5 Q Please be seated, please. Please state your
6 name for the record.

7 A My name is Mark McCue.

8 Q Good afternoon. Mr. McCue, how are you
9 employed?

10 A I'm a partner at Hinckley, Allen & Snyder LLP.

11 Q How long have you been a partner at the law firm
12 of Hinckley, Allen & Snyder?

13 A I have been a partner since June 15th, 2005.

14 Q Has Hinckley, Allen & Snyder and you and others
15 in that firm been outside counsel to the Local
16 Government Center?

17 A Yes. We have.

18 Q Have Hinckley, Allen & Snyder and you been
19 outside counsel on corporate governance and
20 organizational structures and issues regarding
21 the operation of its risk pools?

22 A Yes. We have.

23 Q And I'm going to ask you a number of questions

1 about your work with them on those issues in a
2 few minutes, but could you give us your
3 educational background?

4 A Sure. I received my undergraduate degree from
5 Brown University in 1981. I received my JD from
6 Boston University School of Law in 1985. And
7 then I also received a master's in LLM in
8 taxation also from Boston University School of
9 Law in 1991.

10 Q Could you briefly go through your employment
11 history for us?

12 A Sure. Started with the firm of Castaldo &
13 Malmberg as an associate out of law school.
14 Became a partner when that firm merged into Orr
15 & Reno of Concord, New Hampshire. I was a
16 partner and that was 1994. In 2001, I left Orr
17 & Reno to become Of Counsel at Sheehan, Phinney,
18 Bass + Green which was based in Manchester, New
19 Hampshire, and then from there I joined
20 Hinckley, Allen & Snyder on June 15th, 2005.

21 Q Great. Thank you.

22 A I am a partner at Hinckley Allen as well as the
23 chair of its health care program group.

1 Q And you're in the Concord office at Hinckley
2 Allen. Can you tell us how many lawyers are in
3 the firm and where your offices are?

4 A Sure. We're a regional firm. We have five
5 offices. As you mentioned, I'm in the Concord
6 New Hampshire office. We have an office in
7 Boston, Providence, Hartford, Connecticut and
8 Albany, New York. We have approximately 130
9 lawyers throughout those five offices.

10 Q Do you specialize in any special area of the
11 law?

12 A Since I was admitted in 1985 I've been a
13 corporate and transactional lawyer, mostly for
14 closely held and charitable organizations. I
15 have done a number of types of law but primarily
16 in the last ten or so years we group my clients
17 into two groups. Health care entities and
18 organizations and what I call sort of
19 quasi-governmental entities which would include,
20 for instance, the New Hampshire Health Plan
21 which is the state's high risk pool for
22 individuals as well as New Hampshire Healthy
23 Kids.

1 Q All right. And you mentioned that you have a
2 specialty in health care law. Have you done,
3 can you give us a couple of examples of some
4 work that you've done in that area?

5 A Yes. I've done, organizational issues come up a
6 lot of in health care and since actually I've
7 practiced law in the late '80s, health care
8 entities have structured themselves in systems
9 so I have worked as early in the 1980s working
10 with New Hampshire hospitals that have created
11 additional affiliates in the system structure.
12 Most recently, I assisted Dartmouth-Hitchcock in
13 the creation of a parent as well as an LLC
14 subsidiary and have recently worked for one of
15 the continuing care retirement communities in
16 the state which is creating a similar parent
17 structure so it can conduct broader activities.

18 Q Could you tell us how the Local Government
19 Center became a client of Hinckley Allen?

20 A Yes. A partner at our firm, Bob Lloyd, has
21 represented from what I understand New Hampshire
22 Municipal Association which is now Local
23 Government Center since the late 1970s. He was

1 a partner at Cleveland, Waters & Bass. He had a
2 brief stint as a solo attorney, and then he
3 joined Hinckley Allen & Snyder I believe in 2001
4 and with him he brought representation of Local
5 Government Center.

6 Q You testified earlier that you joined Hinckley
7 Allen in June of 2005. Can you tell us one of
8 the reasons why you came to work for Hinckley
9 Allen?

10 A Yes. In addition to bringing my practice, I
11 also was asked to assist Bob Lloyd who at that
12 point had an active practice and particularly
13 with two of his bigger clients, one of them
14 being Local Government Center. So almost
15 immediately after my arrival in June 2005 I
16 began working with Local Government Center
17 assisting Attorney Lloyd and working directly
18 with the client on matters.

19 Q Great. So you've worked with Local Government
20 Center since your beginning of time at Hinckley
21 from June 2005 and then Attorney Lloyd retired
22 in January 2007 and you continued on?

23 A Yes. Actually, Attorney Lloyd went in-house

1 with his other large client, Jaguar Mining,
2 Brazilian Resources, and at that point
3 transitioned the relationship for Local
4 Government Center over to me.

5 Q And how would you describe Hinckley Allen's role
6 as outside counsel for the Local Government
7 Center?

8 A We do a variety of things. We've obviously
9 outside corporal counsel so we represent or we
10 assist the organization in corporate governance.
11 I attend all Board meetings and committee
12 meetings, and the few times I've had scheduling
13 conflicts other colleagues have done so. We
14 also provide compliance advice and that comes
15 sort of in two buckets. One is the corporate
16 structure's compliance with RSA 5-B, and the
17 other is the operation of the risk pools and
18 compliance with the requirements of RSA 5-B.

19 We also have provided tax advice with
20 respect to maintaining tax exemption under
21 Section 115 of the code as well as reporting
22 under Section 1099. We have done various
23 contractual matters, other miscellaneous

1 matters, and my partners who are expert in ERISA
2 assisted and continue to assist Local Government
3 Center with respect to the defined benefit plan.

4 Q Great. Thankfully, we won't be getting into
5 ERISA side here. But we have been talking quite
6 a bit about RSA 5-B?

7 A Yes.

8 Q And I take it that you and your members in your
9 firm have advised Local Government Center on
10 issues surrounding RSA 5-B?

11 A Yes. We have.

12 Q And you also testified about Board meetings.
13 Can you talk about the practice that Local
14 Government Center had concerning counsel at
15 Board meetings?

16 A The practice, as far as I know it went back
17 through history with Bob Lloyd. They would have
18 and require our firm to be present at every
19 Board meeting and every committee meeting and at
20 pertinent staff meetings. LGC follows a very
21 iterative process so they want each step of that
22 process to be well informed by counsel.

23 In addition, it's a member-run

1 organization. Members travel from throughout
2 the state, very dedicated individuals, and they
3 have important decisions to make and frequently
4 because of the complexity of what they do, legal
5 issues will arise. So it was the desire of the
6 Board leadership as well as leadership staff
7 within LGC to have an attorney present so that
8 they could be fully informed and come to a
9 decision at that time rather than either
10 postpone a decision or have a decision
11 uninformed by legal advice.

12 Q In addition to having counsel present at the
13 Board meetings, was it also routine to have
14 counsel present at committee level meetings?

15 A Yes.

16 Q And did you personally attend some of those
17 meetings?

18 A I attended almost all of those, and, again, if I
19 had a scheduling conflict I would check.
20 Sometimes I would have a colleague depending on
21 what the agenda was and whether a legal issue
22 was likely to arise or on rare occasions it was
23 clear that it was unlikely that legal issues

1 would arise and we wouldn't attend, but for the
2 most part I regularly attended committee
3 meetings as well.

4 Q Can you give us a sense then how often, say, on
5 a monthly or yearly basis you would or someone
6 from your firm would either attend a committee
7 meeting or a Board meeting for LGC?

8 A Yes. Board meetings were approximately
9 bimonthly so at least six a year, and then
10 there'd be special meetings. Committee meetings
11 were staggered so I would say at least I would
12 attend one a month if not a few a month. It was
13 a regular item on my calendar.

14 Q So attending one or a few a month over the span
15 of years, I take it you got a good sense of how
16 this Board and how the committees operate?

17 A I did.

18 Q Can you talk to us a little bit about your
19 observations of how the Board operated?

20 A I would love to because it's very hard to
21 appreciate what this Board has done and what
22 this organization does unless you actually are
23 there, and I've had the benefit of being there

1 at each step, each phase and seeing these
2 dedicated volunteer members and I have to say
3 two things. One is that they followed a very
4 careful process to make sure that they were well
5 informed, that it was deliberative, that it was
6 compliant with good corporate governance as well
7 as statute, but I also, I know there's been a
8 lot of talk about lively discussion and there
9 certainly was robust discussion and lively
10 discussion, but I fully appreciate particularly
11 as a health care lawyer and having represented
12 other charitable organizations that this was an
13 incredibly informed Board. These Board members
14 understood what they were doing, they understood
15 pooled risk management programs. They worked
16 hard to make sure that they understood. They
17 would ask consultants, actuaries, you heard
18 Mr. Riemer in how good he is at educating. They
19 would take advantage of that. They would ask
20 him if they didn't understand something to
21 educate them. And I also appreciated that as
22 Board members rotated through, the more senior
23 Board members took the role of educating the

1 newer members of the Board on how the risk pool
2 operated. They would step back if there were
3 terms that the more regular members of the Board
4 were used to they would stop and ask staff to
5 explain what is RBC, what does this term mean,
6 so that they were very careful to make sure
7 everyone understood what they were doing and
8 became experts.

9 Q I believe you wrote a memo in April 2007 that we
10 will talk about a little bit later, but you
11 described the discussion at this board as robust
12 discussion. Do you recall writing that?

13 A I do.

14 Q Is that consistent with what you're telling us
15 now?

16 A It is very consistent, and it's, again, I've
17 represented a number of boards where Board
18 members are representative of different
19 constituencies, and this is such an
20 organization. Purposefully, it's designed so
21 that the membership is represented by a Board
22 and each Board member brings its constituencies'
23 perspective, needs, voice to the table and then

1 they actively portray the needs of the members
2 and give voice to the members through their
3 discussions, but ultimately what they do and
4 what they appropriately do is make a decision
5 which is in the best interest of LGC which is
6 what they are there to represent. They're there
7 to bring their voice. There's a diversity of
8 discussion which enriches the decision, and then
9 they make the decision in the best interest of
10 the group.

11 Q When you first started representing Local
12 Government Center and were told, I assume, that
13 RSA 5-B, the law in New Hampshire, governs these
14 risk pools, did you review the statute?

15 A I did review the statute, and then my review
16 intensified when Bob Lloyd announced that he was
17 transitioning in-house and would be
18 transitioning Local Government Center
19 representation full-time to me. So I also
20 reviewed legislative history, and then as you
21 mentioned with the April 2007 opinion I went
22 beyond that and did a lot of research, read
23 articles and industry standards about risk pools

1 nationally.

2 Q And in your opinion in providing advice to LGC
3 having reviewed the statute and the legislative
4 history, what role does the Board of Directors
5 have concerning decisions for their risk pools?

6 A They are the deciding body in terms of the
7 operation of the risk pool. They determine
8 reserves with the advice of actuaries. They
9 assess claims that need to be paid including
10 incurred but not yet reported claims. They also
11 have to assess the administrative needs and
12 expenses of the organization and make sure those
13 are addressed.

14 Q And those decisions are left to the Board of
15 Directors to make?

16 A Board of Directors, correct.

17 Q And how do they go about making those types of
18 decisions for the organization?

19 A Well, again, they bring, when it's appropriate
20 they will bring in consultants. They will have
21 actuaries, they'll have underwriters when
22 they're looking at medical trend. And what
23 others in the health industry are doing, they'll

1 bring in representatives of Anthem to inform the
2 discussion, and they'll rely on me for legal
3 advice as to what 5-B requires and any other
4 requirements.

5 Q I'm going to shift gears a bit and speaking of
6 what 5-B requires, can you discuss for us the
7 organizational structure of Local Government
8 Center and its pools?

9 A Sure. As a result of the 2003 reorganization, I
10 would describe it as an integrated system, and,
11 again, relying on my health care experience this
12 is very common in the health care hospital world
13 where you have an integrated organization, it's
14 governed by a single Board of Directors. It
15 does have, in its various lines of coverage
16 known as pools, it houses them in single member
17 limited liability companies, but those are
18 member-managed so that they're managed by their
19 member which is Local Government Center, Inc.,
20 and a corporation acts through its Board of
21 Directors so they're essentially managed by the
22 Board of Directors of Local Government Center.

23 Q Okay. So Local Government Center, Inc., the

1 parent as we've been calling it through this
2 proceedings, is a nonprofit corporation,
3 correct?

4 A It's New Hampshire RSA 292 nonprofit
5 corporation.

6 Q And then there are two different entities that
7 you are starting to talk about. We have
8 HealthTrust, LLC, right?

9 A Right.

10 Q And then we have Property-Liability Trust, LLC,
11 correct?

12 A Correct.

13 Q And these are limited liability companies?

14 A That's right.

15 Q And can you describe in a general sense how
16 under New Hampshire law limited liability
17 companies are managed, the various ways?

18 A Yes. LLCs are created under RSA 304-C and
19 essentially there are two options for a
20 management structure. One is to identify a
21 manager or a Board of Managers which is more
22 similar to a corporation where shareholders will
23 elect a Board of Directors.

1 The other alternative is to have a
2 member-managed LLC and the statute specifically
3 says in the absence of an operating agreement,
4 which is not a requirement, in the absence of an
5 operating agreement nominating and electing a
6 manager or Board of Managers, then management
7 shall be invested in the members. In this case,
8 they're single members LLCs. So management of
9 those pools by law by RSA 304-C is vested in the
10 Board of Directors of LGC.

11 The reason they are, clearly RSA 5-B would
12 permit a single corporation with a single Board
13 to have various lines of coverage. This is just
14 one more sophisticated step beyond that, and it
15 house the pools because under standard corporate
16 practice when there's different activity you
17 will put them in LLCs or other liability
18 insulating entities to protect the liabilities
19 of each other, but the governance structure was
20 an unified structure and that was really the
21 decision of all of the entities in 2003.

22 Q Is there any question in your opinion that the
23 organizational structure of LGC and its pools

1 that we've been talking about is valid under RSA
2 5-B?

3 A There is no question the current structure is
4 valid and fully compliant with the requirements
5 of RSA 5-B.

6 Q So I want to pull up RSA 5-B so we can go
7 through specifically the requirements under the
8 law for organizational structure.

9 A Sure.

10 Q Would you pull up, please, the Joint Exhibit 1?
11 I'm going to hand you the Joint Exhibit that we
12 have in this case. You both have copies? And
13 ask you to turn to the first, it's RSA 5-B and
14 for purposes of the screen it's page, I believe
15 it's 5, Tammy. Try 4. Great. Thank you. So I
16 want to go through with you the specific
17 requirements under RSA 5-B regarding how a risk
18 pool management program can be organized and set
19 up. Before I do that, you've read the Amended
20 Petition in this case, correct?

21 A I have.

22 Q And what we're focusing on is Count 1 of the
23 Petition, right?

1 A Correct.

2 Q The allegation by the Bureau of Securities that
3 the legal structure of LGC and its pools is
4 invalid?

5 A Right.

6 Q So if you follow along with me, it says each
7 pooled risk management program shall meet the
8 following standards of organization and
9 operation, and it goes on. Can you tell us with
10 respect to the organizational structure what the
11 requirements are?

12 A Sure. With respect to the organizational
13 structure there are three essential elements
14 that are outlined in RSA 5-B:5 Section 1 and
15 they are found in Section subparagraph A that
16 they exist as a legal entity organized under New
17 Hampshire law. LGC, and, again, I should take a
18 step back, it talks about pooled risk management
19 program. In my view the pooled risk management
20 program is the unified system structure that
21 I've described with LGC as the overriding parent
22 and each of the single member member-managed
23 LLCs comprising that program because a program

1 is entitled to have various lines of coverage.
2 So the program is LGC and each of its entities
3 organized as legal entities under New Hampshire
4 law. They meet that standard.

5 The second organizational standard is found
6 in paragraph B, that they be governed by a
7 Board, the majority of which is comprised of
8 elected or appointed public officials, officers,
9 or employees. Again, as I've mentioned through
10 the single member LLC structure, the member is
11 Local Government Center, Inc. It is, therefore,
12 obligated to manage each of those pools. It
13 does so through its Board of Directors and that
14 Board of Directors is governed by bylaws. Which
15 gets us to the third component which is found
16 under paragraph E that it be governed by written
17 bylaws and describes what shall be in the bylaws
18 again. The bylaws of Local Government Center
19 govern the activities of its Board of Directors,
20 that Board of Directors acting on behalf of LGC
21 in its role as member of the LLC manages each of
22 those pools.

23 Q So I want to break this down a bit. With

1 respect to the first requirement, that the
2 pooled risk management program exists as a legal
3 entity organized under New Hampshire law,
4 focused on Local Government Center, Inc., the
5 parent. Is that a legal New Hampshire entity?

6 A Yes, it is.

7 Q Same question for HealthTrust LLC, legal New
8 Hampshire entity?

9 A Also a legal New Hampshire entity.

10 Q Same question for Property-Liability Trust LLC;
11 is that a legal New Hampshire entity?

12 A Yes, it is.

13 Q And in fact, I will hand you first Exhibit LGC
14 Exhibit 442. Tammy, if I could have 442,
15 please. If you could blow up the first
16 paragraph?

17 Hand you what's been LGC Exhibit 442, it's
18 a full exhibit. Can you tell us what this
19 document is.

20 A Sure. It's what we corporate practitioners
21 refer to as a Certificate of Good Standing Legal
22 Existence. It's issued by William M. Gardner,
23 New Hampshire Secretary of State, and what it

1 informs you is that the Local Government Center
2 HealthTrust LLC was validly formed on June 26th,
3 2003, and, therefore, it exists as a New
4 Hampshire LLC and has continued to file the
5 required Annual Reports and made the annual
6 filing fees which keep it in good standing in a
7 legal existence in the State of New Hampshire.

8 Q What's the date of this Certificate of Good
9 Standing for Local Government Center
10 HealthTrust, LLC?

11 A The date on the certificate is November 8th,
12 2011.

13 Q 446, please? Handing you what's been marked as
14 a full Exhibit LGC 446, and ask you if you can
15 tell us what this document is.

16 A Sure. It's another Certificate of Good Standing
17 Legal Existence. This, again, issued by William
18 M. Gardner, the New Hampshire Secretary of
19 State, certifying that Local Government Center,
20 Inc., is a New Hampshire nonprofit corporation
21 formed March 1st, 1941, and since that time has
22 paid annual dues and made annual filings so that
23 it has remained in good standing and is and has

1 been in legal existence in the State of New
2 Hampshire.

3 Q What's the date of this certificate from the
4 Secretary of State's office?

5 A November 8th, 2011.

6 Q Is that after the date of the Petition that was
7 filed in this case?

8 A Yes. It is.

9 Q One more to cover. I'll show you what's been
10 marked LGC 445. Ask you if you can tell us what
11 this document is.

12 A It's another Certificate of Good Standing of
13 Legal Existence. This time with respect to
14 Local Government Center Property-Liability
15 Trust, LLC. Again, it's signed and issued by
16 William M. Gardner, New Hampshire Secretary of
17 State, certifying that Local Government Center
18 Property-Liability Trust, LLC was formed as a
19 New Hampshire limited liability company on June
20 26th, 2003, and that since that time has made
21 the requisite annual filings, paid the requisite
22 fees so through the date of this certificate has
23 remained in good standing and in existence in

1 the State of New Hampshire and the date of this
2 certificate is November 8th, 2011.

3 Q Thank you. So getting back to the statute and
4 the requirements, page 4, please? Blow up the
5 first section. We've talked about the first
6 requirement for organizational structure that it
7 exists as a legal entity and covered the parent
8 and the two subs. The other requirement is that
9 the pooled risk management program be governed
10 by a Board of Directors.

11 A Correct.

12 Q Can you tell us why that provision is satisfied
13 with respect to the LGC structure?

14 A Again, the two pools have been housed in single
15 member LLCs for purposes of insulating their
16 liability, but because they're structured as
17 member-managed LLCs it has a sole member which
18 is Local Government Center, and Local Government
19 Center is governed by a Board. That Board,
20 therefore, manages and is obligated to manage
21 each of the LLCs' housing pools and, therefore,
22 it manages those pools. That Board of Directors
23 of LGC is composed not just a majority but

1 entirely of elected and appointed public
2 officers, officials, and there is not a
3 requirement that employee representatives be on
4 the Board, but I believe approximately 20
5 percent of the LGC Board has employee
6 representatives.

7 Q So going to the third requirement set forth in
8 E, that the pooled risk management program be
9 governed by Bylaws. Can you explain to us why
10 in your opinion that is satisfied with respect
11 to the structure of LGC?

12 A Yes. Again, it's because of the nature of a
13 single member member-managed LLC. Again, the
14 single member is Local Government Center, Inc.,
15 corporations act with their Board of Directors.
16 Those Board of Directors are obligated to follow
17 bylaws, the written bylaws are those bylaws of
18 Local Government Center, and I believe they
19 explicitly state that they govern the activities
20 of the Board of Directors not only in its
21 management of Local Government Center but also
22 in its role as acting on behalf of LGC in being
23 the member-manager of the risk pools,

1 healthTrust and Property-Liability Trust.

2 Q Thank you. Being a health care attorney, do you
3 have an opinion or have experience as to whether
4 this type of structure that you've just
5 described for LGC is common for health care
6 providers?

7 A Yes. Again, it has been, was common in the
8 1980s to have a system structure, and, again,
9 part of it is to coordinate various activities
10 which when they're integrated you can pass on
11 expertise such as quality of care to
12 subsidiaries, you can have the benefit of
13 administration being centralized. It provides
14 for a more efficient management, it provides for
15 a more directed management to make sure the
16 purposes of the enterprise are being met. So
17 this is done in the health care world, and,
18 again, particularly following the Affordable
19 Care Act in the impetus to affiliate and
20 integrate different types or different elements
21 of the health care delivery system, this system
22 structure has become popular again.

23 Q So thus far, you've testified that LGC's

1 structure is consistent with RSA 5-B, in
2 compliance with RSA 5-B, I should say, and it's
3 common among health care organizations. Is LGC
4 structure also consistent with another risk pool
5 in the State of New Hampshire?

6 A To my knowledge it is consistent with Primex
7 which is one of the other two pooled risk
8 management programs existing in New Hampshire
9 qualifying under RSA 5-B.

10 Q I'm going to hand you what's been marked for
11 identification right now LGC 454. Don't put it
12 up on the screen quite yet. And ask you if you
13 recognize this document.

14 A Yes, I do.

15 Q Is this an affidavit of Ty Gagne?

16 A Yes. It is.

17 Q He is the Chief Executive Officer of Primex?

18 A Correct.

19 Q And have you reviewed this document?

20 A Yes, I have.

21 Q And is this document and the statements herein
22 consistent --

23 MR. VOLINSKY: Objection.

1 THE PRESIDING OFFICER: Mr. Volinsky?

2 MR. VOLINSKY: Yes, Mr. Mitchell. As you
3 may recall, you authorized the deposition of
4 Mr. Gagne and Ms. Duquette. Those depositions
5 were never held. This affidavit is not anything
6 I participated in or was provided an opportunity
7 by Mr. Quirk and his firm to participate in.
8 Mr. Gagne isn't here, isn't on the witness,
9 upcoming list of witnesses. I'd object to it.

10 THE PRESIDING OFFICER: Understood.
11 Anything in rebuttal?

12 MR. QUIRK: Yes. Thank you, Mr. Mitchell.
13 This is an affidavit sworn to by Ty Gagne under
14 oath. There's no requirement to have an
15 opposing counsel participate in an affidavit.
16 This opposing counsel did know, however, that
17 this was in process with Primex. They were in
18 the loop on that. And this is an affidavit, a
19 sworn statement regarding Primex's structure
20 which will be helpful to the tribunal. It's
21 regarding its reserves and surplus, all things
22 helpful to this hearing. The rules of evidence
23 do not apply, the strict rules of evidence.

1 That said, this statement is sworn to, under
2 oath and before a notary public.

3 THE PRESIDING OFFICER: Thank you,
4 Mr. Volinsky, further and last chance.

5 MR. VOLINSKY: Yes, sir. This isn't so
6 much a hearsay objection as a process objection.
7 They requested and received a specific order
8 allowing deposition. They did not hold the
9 deposition, they did not offer me an opportunity
10 to participate in this affidavit process. This
11 is a violation of the rules and processes of
12 this proceeding, not necessarily the hearsay
13 rules which I understand do not apply. So I
14 object to it.

15 MR. QUIRK: For purposes --

16 THE PRESIDING OFFICER: Second?

17 MR. QUIRK: Thank you. If I may. For
18 purposes of the record this does not violate the
19 process under RSA 421, the hearing procedure
20 act, 26 A, thank you, and is consistent with
21 that act, and certainly this evidence will be
22 germane, relevant and I submit reliable to this
23 hearing process on the issues that are centrally

1 in dispute.

2 THE PRESIDING OFFICER: Let me make an
3 inquiry of you, Mr. Quirk. When you say that
4 they're going to be helpful to me, my
5 understanding, would you give me a, could you
6 proffer an offer as to how knowledge of another
7 HealthTrust which is not subject to these
8 proceedings will be helpful to me in making my
9 determination?

10 MR. QUIRK: Sure. Be happy to. One of the
11 allegations in this case is that LGC acted
12 unreasonably regarding certain things. The fact
13 that others in the State of New Hampshire acted
14 in a similar and in some instances exactly same
15 manner will go to the issue of reasonableness.

16 With respect to the corporate structure
17 issue, it will be relevant as to whether LGC has
18 a proper organizational structure. It's
19 relevant because this is a statement under oath
20 by Ty Gagne, confirming their structure. The
21 next document that I'm going to be showing the
22 witness is an exhibit that the Bureau has
23 listed, Primex's agreement with the state, which

1 similarly talks to the structure.

2 THE PRESIDING OFFICER: Mr. Volinsky, are
3 you going to tell me that this is of the ilk of
4 the lemmings going over the cliff?

5 MR. VOLINSKY: I wasn't planning to say
6 that, quite frankly.

7 THE PRESIDING OFFICER: Okay. I'll let you
8 have your own words, sir. Go ahead.

9 MR. VOLINSKY: Number one, there is a
10 relevance issue, but number two, had the Local
11 Government Center followed through with its
12 deposition, I could have participated in that
13 process. The information that is germane to you
14 would have had the benefit of both sides
15 participating and contributing to the
16 development of that germane information, and we
17 wouldn't have a one-sided affidavit drafted by
18 the Local Government Center underpinning your
19 decision.

20 THE PRESIDING OFFICER: I'm going to deny
21 your objection. I'm going to allow you to go
22 further with your questioning in this regard,
23 and you say you have another similar document

1 that you're next going to submit as well?

2 MR. QUIRK: I believe it's on the Bureau's
3 list, and it's been a full exhibit, I believe.

4 THE PRESIDING OFFICER: Okay. So we won't
5 have the same problem with the next one?

6 MR. QUIRK: Correct.

7 THE PRESIDING OFFICER: All right. So you
8 did not involve Mr. Volinsky in the process of
9 soliciting and taking the affidavit, his
10 affidavit, correct?

11 MR. QUIRK: How the process worked is we
12 worked with Primex pursuant to your order. They
13 provided us with documents.

14 THE PRESIDING OFFICER: Sure.

15 MR. QUIRK: Those documents were provided
16 to the Bureau. All the documents. Thereafter,
17 the affidavit was drafted. It's my
18 understanding, and I'm happy to hear from
19 Attorney Volinsky, but Primex's outside counsel,
20 brought them in the loop on this affidavit. To
21 answer your question, they didn't have input
22 into the statements, but they certainly were
23 free to get an affidavit from Mr. Gagne and in

1 fact had numerous meetings with Primex prior to
2 this hearing.

3 THE PRESIDING OFFICER: Okay. I'm
4 remaining with my ruling, and I just asked that
5 question to say that I'm going to assign it its
6 appropriate weight, being aware that it was not,
7 if you will, subject to inquiry, the executive
8 officer whoever's affidavit is was not subject
9 to questioning by Mr. Volinsky at what he may
10 have expected was going to be a deposition, and
11 I will assign it, you know, its appropriate
12 weight in that regard. But you may proceed.

13 MR. QUIRK: Understood. Thank you.

14 Q (By Mr. Quirk) If you could pull up 454,
15 please?

16 THE PRESIDING OFFICER: Mr. Volinsky, since
17 I'm going to be, the next document, from what I
18 understand from the offer is going to be the
19 agreement that BSR made with Primex.

20 MR. VOLINSKY: Yes, sir.

21 THE PRESIDING OFFICER: Is that agreement
22 signed by this Ty Gagne as well?

23 MR. VOLINSKY: I think so. I think he's,

1 yes.

2 THE PRESIDING OFFICER: Okay. Fine.

3 MR. QUIRK: For purposes of the record, LGC
4 obviously was not involved in this drafting of
5 this document, but the Bureau did and Ty Gagne
6 has signed it on March 26th.

7 THE PRESIDING OFFICER: You understand why
8 I couldn't say that.

9 MR. QUIRK: Thank you. I just wanted to
10 clarify the record. Thank you.

11 THE PRESIDING OFFICER: Go right ahead.

12 MR. QUIRK: Appreciate that.

13 Q (By Mr. Quirk) I'm showing you now what's been
14 marked as a full exhibit, LGC 454. Have you
15 reviewed this document?

16 A Yes. I have.

17 Q It's an affidavit of Ty Gagne, the Chief
18 Executive Officer of Primex, correct?

19 A Correct.

20 Q And if you could go to page 2, there are several
21 paragraphs starting at the top of page 2
22 regarding Primex's structure, and can you
23 explain to us Primex's structure regarding --

1 and it's really set forth at paragraph 7.

2 A Right. And that's where my focus is. Paragraph
3 7 describes Primex as having a single entity
4 that operates multiple coverage lines as does
5 Local Government Center. The coverage lines are
6 property and liability, workers' compensation,
7 unemployment compensation and health insurance.
8 Again, those are the lines of coverage provided
9 under a single management program by Local
10 Government Center.

11 The third sentence, membership in Primex's
12 coverage lines are not identical. Again, there
13 is, I think, direct comparison. That same
14 feature is found on Local Government Center and
15 its risk pools. The Primex trust is governed by
16 one Board, one trust agreement, one set of
17 bylaws. Again, LGC has one Board, one set of
18 bylaws.

19 Q Okay. So to break this down a bit you have
20 Primex being one trust, right?

21 A Right.

22 Q And under it you have multiple lines of
23 coverage?

1 A Correct.

2 Q And the lines of coverage do not have identical
3 members in each line of coverage?

4 A That's correct.

5 Q And this entity, Primex, is governed by one
6 Board, right?

7 A Correct.

8 Q And this entity, Primex, has one set of bylaws,
9 correct?

10 A That's correct.

11 Q And in that regard is it consistent with LGC's
12 structure?

13 A Yes, it is.

14 Q Now, this affidavit has additional items in it
15 regarding reserves and surplus that we may touch
16 on, but I just want to focus right now on the
17 corporate structure and turn your attention to
18 paragraph 6, the second sentence. And it
19 involves one of the former entities that merged
20 in 2001 to make Primex. It's New Hampshire
21 School Board's Insurance Trust. Can you read
22 that second sentence?

23 A Sure. It says in 2000, NHSBIT which is defined

1 as New Hampshire School Board's Insurance Trust,
2 had multiple coverage lines all governed by a
3 single Board and one set of bylaws.

4 Q Similar organizational structure?

5 A Yes, it is.

6 Q We may return to the affidavit, but for now,
7 could I have 334, please? Handing you what's
8 been marked 334 which is a full exhibit in this
9 case, and I'll represent to you it's a Risk Pool
10 Practices Agreement between the Bureau of
11 Securities and Primex. Could you turn to the
12 second -- it's the last page of the agreement so
13 it will be page 10 of the agreement.

14 THE PRESIDING OFFICER: While he's looking
15 at that, Mr. Quirk, I just want to confirm. Did
16 we get 454 admitted in the record?

17 MR. QUIRK: I've been told to move to
18 strike the ID and I ask that it be a full
19 exhibit.

20 THE PRESIDING OFFICER: Thank you very
21 much.

22 Q (By Mr. Quirk) So turning to page 10 of the
23 Risk Pool Practices Agreement, can you tell us

1 who signed this agreement?

2 A Yes. There are two signatories. One is by Ty
3 Gagne, the CEO, through the authorized signing
4 on behalf of New Hampshire Public Risk
5 Management Exchange known as Primex. The second
6 signature and second party is the New Hampshire
7 Secretary of State by the Secretary of State
8 himself, William Gardner. One is dated March
9 26th, 2012. The other signature, March 23rd,
10 2012.

11 Q So this is an agreement between Primex and the
12 Secretary of State that was signed in March
13 2012, just a couple months ago?

14 A Right.

15 Q And I would ask you to turn to page 1. I want
16 to hit a few points in the agreement, and it all
17 gets back to this corporate structure in really
18 Count 1 of the Bureau's Amended Petition. You
19 can keep going down, please. It's right above
20 1.3. This sentence right here, if you could
21 read that sentence into the record, please.

22 A It is the intent of the parties that the
23 operation of the Primex pools be consistent with

1 the letter, spirit and intent of RSA Chapter 5-B
2 and this agreement and that the operation of
3 pooled risk management programs by Primex be
4 open, transparent and for the sole and exclusive
5 purpose of supporting the political subdivisions
6 participating in the pools.

7 Q So they want this -- it is the intent of the
8 parties that this be consistent with 5-B and the
9 agreement, right?

10 A Their stated intention in this contract, yes.

11 Q If you could turn to page 3, there is a section
12 entitled the Primex operations.

13 A Yes.

14 Q And it confirms much of which is in the
15 affidavit but is part of this agreement and
16 signed by the Secretary of State. It's Primex
17 operates as a New Hampshire Trust. Correct?

18 A Correct.

19 Q And under this agreement, how many Bylaws are
20 there for this entity?

21 A There's one set of bylaws.

22 Q There's one Board, correct?

23 A And one Board.

1 Q And in 1.11, it talks about the various lines of
2 coverage, correct?

3 A Correct.

4 Q And in 1.12 it talks about the health coverage,
5 right?

6 A Yes, it does.

7 Q On the next page at Section 2.1 it talks about a
8 requirement that if Primex in the future offers
9 employee benefit coverages, it will create and
10 maintain such coverages a separate and distinct
11 risk pool entity. Do you see that?

12 A I see that. Yes.

13 Q Is there any requirement under RSA 5-B that that
14 happens?

15 A No. This is not a statutory mandate. There's
16 nothing mandating this under RSA 5-B. I would
17 view this as a voluntarily contractual
18 commitment by Primex.

19 Q Because, in fact, as we just saw they operate a
20 number of different lines of coverage under one
21 trust?

22 A Correct.

23 Q Change gears and talk about this agreement in

1 respect to surplus and reserves. If you could
2 go to page 5 of the agreement? Actually, I'm
3 sorry, Tammy, if you could go to page 6 first.

4 If you focus on paragraph 3.4. We've heard
5 a lot about reserves, setting of reserves, and
6 did you actually hear testimony by the Bureau's
7 expert of a recommended RBC level?

8 A I have heard sporadically. I can't say that
9 listening to the livestream I heard every word,
10 but I did get the gist of his testimony, yes.

11 Q I'll represent to you that there's various
12 recommendations by the Bureau's experts of RBC
13 of 2.1 or 2.4 or thereabouts. Okay? Can you
14 tell us what the RBC level is that the Bureau
15 agreed to with Primex just in March 2012?

16 A In this agreement it's a target level not to
17 exceed 3.0 as determined by Primex.

18 Q If you go to the page prior to this one at 3.1?

19 A Um-hum.

20 Q Is there a provision under 3.1 for the Board to
21 go above RBC 3.0?

22 A Yes. There is. Section 3.1 empowers the Primex
23 Board to exceed RBC 3.0 through a procedural

1 process of providing advanced notice to its
2 members and explaining its reasoning for doing
3 so.

4 Q Okay. So if I understand your testimony and you
5 see from the document, the Bureau agreed to RBC
6 3.0, but then also said you can go above it,
7 just provide notice and a meeting, right?

8 A Correct.

9 Q And what is the, who has the discretion, if you
10 will, to go above this 3.0, RBC?

11 A Its Board of Directors, and I would say this is
12 reflective of the statute RSA 5-B which puts the
13 power and the responsibility to determine
14 appropriate reserve levels in the Board of
15 Directors after deliberation and actuarial
16 analysis.

17 Q And do they use a term at the first part of 3.1
18 what the Board has to exercise?

19 A Sound business judgment.

20 Q Can you talk to us a little bit about what sound
21 business judgment is?

22 A Sure. It's what is required of business
23 entities and has been exercised certainly by the

1 Local Government Center Board of Directors.

2 It's a requirement that you understand the
3 purposes of the organization, that you take into
4 consideration various potential liabilities, its
5 administrative needs and expenses, that to the
6 extent you need expert advice on issues such as
7 reserves you consult with appropriate experts
8 such as actuaries and following the advice of
9 experts doing your due diligence, asking
10 questions, having a deliberative process, you
11 determine based on your understanding of the
12 purpose of the organization, gathering all the
13 evidence, having a discussion with your peers
14 you decide in your business judgment what's best
15 for the organization.

16 Q Now, LGC's Board exercised its sound business
17 judgment and adopted a RBC above 3.0 and that is
18 4.2, right?

19 A Correct.

20 Q Now, if someone were to say, well, this
21 agreement is just for employer type of pools,
22 just for the Workers' Comp or
23 Property-Liability, that doesn't apply to

1 Health, is there any distinction under RSA 5-B
2 for the setting of reserves on that basis?

3 A No.

4 MR. QUIRK: If you feel she's okay, if you
5 want to take a 5-minute break, I can keep going.

6 THE PRESIDING OFFICER: Please continue.

7 Q (By Mr. Quirk) Moving on with the agreement, I
8 ask you to go to page 7 at paragraph 4.0.

9 A Yes.

10 Q And that's entitled Annual Return of Surplus?

11 A Correct.

12 Q And can you tell me what the agreement is
13 regarding the return of surplus?

14 A It talks about that there will be an annual
15 return of surplus determined by Primex, and it
16 needs to advise its members electronically or in
17 writing the amount of surplus. It also allows
18 the Board to determine how much the member's
19 entitled to receive in return of the surplus and
20 when that member will receive what's called a
21 premium holiday as a repayment of surplus to the
22 members.

23 Q And it gives that discretion about how much to

1 return in surplus to the Board?

2 A The determination of what the surplus is given
3 to the Board of Primex.

4 Q And here the agreement has a requirement of the
5 return of surplus of a premium holiday, correct?

6 A Correct.

7 Q Are you familiar with that term?

8 A I can -- I am interpreting it as --

9 Q If not, it's okay.

10 A Yes, I understand.

11 Q Is that term found anything within RSA 5-B?

12 A No, it's not.

13 Q With respect to the return of surplus, what
14 requirements are in RSA 5-B?

15 A RSA 5-B requires the return of surplus. It's
16 silent as to how the method of the return, the
17 timing of the return. In fact, it doesn't
18 really specify what surplus is other than by
19 requiring the Board to consider reserves,
20 administrative expenses, cost of reinsurance and
21 other operational items before it gets to what,
22 presumably after you account for all of that you
23 have surplus.

1 Q I want to turn back and look at paragraph 3.0.
2 It's on page 5?

3 A Yes.

4 Q And it talks about what Primex did for the
5 return of surplus before this agreement on
6 premium holiday. Does it show that they had it,
7 return surplus to members in the form of cash
8 and in recent years crediting rates?

9 A Yes.

10 Q And is crediting rates consistent with how LGC
11 presently returns surplus?

12 A It is consistent with how LGC returns surplus,
13 and from my research is also very consistent
14 with how other pools nationally do it.

15 Q Then the last sentence of 3.0, can you read that
16 to us?

17 A Primex agrees to implement the Bureau's
18 preferred surplus return methodology.

19 Q The word preferred is there, correct?

20 A Yes.

21 Q There's no statement that it's required to
22 return surplus by form of premium holiday
23 required by statute, right?

1 A Correct. To me this infers that there's no
2 statutory requirement that the Bureau, the
3 Bureau's judgment is that it would like to see
4 this and Primex's contractually and voluntarily
5 agreed to follow that method. Not a statutory
6 requirement.

7 Q One final point on this document for now, and I
8 ask you to turn to page 7 and it concerns
9 investments, and there's a number of paragraphs,
10 5.0 through 5.5. Do you see that?

11 A Yes.

12 Q From your work with the risk pools and review of
13 RSA 5-B, is there any requirement as to how to
14 invest risk pool money?

15 A No. There's no statutory requirement or
16 guidance.

17 MR. QUIRK: May I have a moment,
18 Mr. Mitchell?

19 THE PRESIDING OFFICER: Yes. Certainly.

20 (Off-the-record discussion)

21 MR. QUIRK: Mr. Mitchell, I'm done with
22 this document. This may be a good time to take
23 the afternoon break. I'm happy to proceed if

1 you would like me to, but it would be a natural
2 place to take a break.

3 THE PRESIDING OFFICER: How much more do
4 you have with this witness on direct, sir?

5 MR. QUIRK: I have approximately half hour.
6 Or I could -- I'll speed it up. 15, 20 minutes.

7 THE PRESIDING OFFICER: In trade for your
8 break?

9 MR. QUIRK: No. Let's push on then. I'm
10 just sensitive about my break here. We'll push
11 on.

12 Q (By Mr. Quirk) Changing gears a bit, I'm going
13 to move on to specifics with respect to RBC in a
14 moment, but before we do that, I want to kind of
15 go back a little bit and talk about the
16 corporate structure quickly.

17 A Sure.

18 Q We've had some testimony throughout the hearing
19 process about Delaware and a merger through
20 Delaware, whether it worked, whether it didn't
21 work. Can you just tell us briefly, kind of put
22 this issue in context?

23 A Yes. This issue has come up a lot, and I think

1 it's unfortunately distracting to people. In
2 2003, you had New Hampshire Municipal
3 Association. It had created two nonprofit
4 corporations to run HealthTrust,
5 Property-Liability. For various reasons, all
6 good sound business judgment reasons, the Boards
7 of all those entities decided they wanted to be
8 unified to be an organized system. So the goal
9 was to take those three entities and put them
10 into a structure, whether it be a single Board,
11 a unified purpose, consolidation of resources,
12 consolidation of resources. There was a desire
13 to do that under New Hampshire law at the time
14 or continuing.

15 RSA 292 which governs nonprofit
16 corporations is an old statute enacted decades
17 and decades ago. It is not a particularly
18 modern statute. It doesn't even contemplate
19 LLCs because when it was enacted LLCs were not,
20 they may have been in existence in Europe, but
21 they weren't used in this country so there's no
22 express authorization under New Hampshire law
23 for the merger of corporations into LLCs.

1 So there was an attempt and this is a
2 common corporate practice to go through a series
3 of simultaneous transactions through Delaware
4 creating shell corporations so that you
5 basically had a simultaneous steps through the
6 State of Delaware all permitted by the statutes
7 of both states, and you end up in New Hampshire.
8 Essentially, all the assets stay in New
9 Hampshire. The governance, you can go up to 25
10 Triangle Park, nothing would be moved. You
11 could go to the bank accounts and nothing's been
12 moved. The result is form over substance. You
13 conveyed the or transformed the corporations
14 into LLCs.

15 That process was not done. The mechanics
16 of it were done improperly. It was defective.
17 Therefore, it didn't ever happen. The RSA 292
18 corporation stayed in New Hampshire. The New
19 Hampshire LLCs were validly created, and the
20 assets of the corporation were managed and
21 operated by the LLCs. Nothing ever left New
22 Hampshire. It was an unfortunate exercise. The
23 goal typically in doing that is you could have

1 done a dissolution. We could have done a
2 transfer. Typically, lawyers focus on issues
3 such as taxation. There was concern, they
4 thought it would be best if we did a merger so
5 there would be no issue as to whether the IRS
6 ruling that the corporations complied with RSA,
7 with Section 115 of the code would transfer to
8 the LLC. So it was a very legalistic goal,
9 wasn't done properly.

10 The bottom line is that the end of the day
11 you had New Hampshire corporations, the assets
12 were in New Hampshire corporations and the error
13 was corrected subsequently by a revival of the
14 charters of the corporations. So messy but end
15 result is everything is in compliance.

16 Q You said at the end of the day there were
17 revivals that created the situation?

18 A Right.

19 Q Okay. And just so the record's abundantly
20 clear, Local Government Center, Inc., was it at
21 any point in time a Delaware entity?

22 A No.

23 Q HealthTrust, LLC, at any point in time was it a

1 Delaware entity?

2 A No.

3 Q Property-Liability Trust, LLC, at any time was
4 it a Delaware entity?

5 A No. It was not.

6 Q Does any of this have any effect upon your
7 opinion that LGC, Inc.'s and its structure is
8 legal pursuant to 5-B?

9 A It does not change my opinion that the structure
10 is compliant fully with RSA 5-B.

11 Q I'm going to turn to risk-based capital and
12 surplus, and I'm going to move this along fairly
13 quickly because there's some time constraints,
14 and I know you have to finish today because you
15 have prior commitments tomorrow.

16 You've testified about reserves and
17 surplus. Keep hearing about statute says return
18 surplus, return surplus. When is surplus to be
19 returned under RSA 5-B?

20 A It's a, well, first, you have to have surplus
21 and when you have surplus it's to be returned.
22 It's silent as to the method and timing.

23 Q What has to be determined first before you

1 determine what surplus there is?

2 A The first steps obviously are sound business
3 judgment following actuarial advice. You need
4 to set adequate reserves for contingent
5 liabilities which are what Mr. Riemer and Ms.
6 Parker have described. Medical trends,
7 unexpected membership. It's a predictive
8 business. There's no certainty in this business
9 so it's all the unknowns that you can make
10 educated guesses, but you can't know with
11 certainty. You also have to set aside for the
12 known claims and what's called IBNR, incurred
13 but not yet reported claims. You also have
14 administrative expenses, you have to operate and
15 run this organization so you have to set aside
16 sufficient monies to operate and administer the
17 program, and then at the end -- and if you're
18 paying reinsurance it's another cost. At the
19 end of the day after you made the set-asides and
20 make the payments you will get what the Local
21 Government Center refers to as Members' Balance
22 and that's your surplus.

23 Q And return all earnings and surplus in excess of

1 any, any amounts required for administration,
2 claims, reserves and it goes on to talk about
3 excess insurance.

4 A Correct.

5 Q Reserves singular or plural?

6 A Plural.

7 Q It's plural and who determines what is the
8 appropriate level of reserves under RSA 5-B?

9 A Well, it's the whole nature of an RSA 5-B
10 organization. It's like a cooperative. It's
11 member driven, it's member managed, it's member
12 run. It's for the members. So it's the Board
13 of Directors which is a representative body.
14 The members act through a representative Board
15 of Directors. So it's the LGC Board of
16 Directors that determine appropriate reserves.
17 Using sound business judgment for those reserves
18 relating to claims and contingent liabilities,
19 they rely on the advice of actuaries with
20 respect to reserves for capital projects or
21 infrastructure that they need for the
22 administration of the pools' Board of Directors
23 knows that and rely on staff. They don't need

1 an actuary for that.

2 Q And you said as far as actuaries, there are
3 requirements as to what actuaries have to do
4 under subset F?

5 A Yes.

6 Q And from your involvement attending Board
7 meetings, committee meetings, did LGC comply
8 with F regarding how it came to its reserves?

9 A Yes, it did. It relied on, as I've said before,
10 a lot of consultants including Mr. Riemer first
11 at staff level and then at the committee level
12 and then at the Board level. A very iterative
13 process. Mr. Riemer being present at each level
14 providing advice. He was actively questioned.
15 If people didn't understand he provided an
16 education, and he would confirm each year the
17 reserves that were set aside as appropriate.

18 Q Staying on the topic of reserves we've heard a
19 little bit today in fact this .5 RBC and the use
20 of this for administrative expenses. Are you
21 aware of that practice?

22 A Yes, I am.

23 Q Do you believe that that complies with RSA 5-B,

1 and if so how?

2 A I do because it's, again, it's within the
3 purview and within the obligation of a Board of
4 Directors of a pooled risk management program to
5 determine what administrative expenses are
6 required to anticipate larger infrastructure
7 improvements and have set-asides.

8 Again, RBC was a method of quantifying a
9 reserve or a bucket. It was a reference to a
10 bucket. The goal of the Board of Directors was
11 to have that money set aside so it wouldn't have
12 to create great destabilization to do things
13 like replacing computers, to do infrastructure
14 improvements to the facility, so the RBC, they
15 were accustomed to using RBC as a way to define
16 the reserve bucket so they used that
17 nomenclature to define the boundaries of their
18 administrative reserve.

19 Q Okay. And through your work with LGC and your
20 work as a health care attorney, did you have
21 involvement with some organizations, AGRiP and
22 NAIC, regarding this issue about reserves and
23 surplus?

1 A It actually wasn't through my work with other
2 organizations. It was a specific request by one
3 of the employee representatives on the Board of
4 Directors who also served on the Finance
5 Committee in April of 2007. He, again, was
6 curious. As you've heard, RBC 4.2 was policy of
7 the Board. That policy was revisited every
8 single time rates were set. There was a lot of
9 tug and pull. These Board members are on the
10 front lines with the Selectmen and with their
11 towns in presenting budgets. They have a keen
12 interest in keeping reserves as low as possible.
13 So they would challenge the 4.2 whenever
14 possible.

15 So one of the Board members who was an
16 employee rep, Tim Ruehr, said what is the
17 statute requirement, and it was at that point I
18 informed, I read him the statute because I have
19 it with me at all these meetings, and he was
20 concerned that the statute was silent and wanted
21 a written opinion. Bob Lloyd, my predecessor,
22 had provided oral advice throughout these
23 processes as to the propriety of the RBC 4.2 as

1 well as the return of surplus.

2 So I looked, I agreed to do a written
3 opinion. I looked at the statute. The statute
4 is silent in terms of how return is to be done
5 and timing. I looked carefully at the
6 legislative history. Nothing in the legislative
7 history of RCA 5-B provided any guidance.

8 Therefore, I went nationally to industry
9 standards, contacted the National League of
10 Cities. They referred me to the Association of
11 Governmental Risk Sharing Pools, AGRiP, which
12 through my research had taken over the National
13 Association of Insurance Commissioners in the
14 late 1980s, actually the 1990s, when risk pools
15 were starting to flourish because of the lack of
16 private insurance or commercial insurance. They
17 tried to come up with a survey of laws and of
18 these entities and other states, found that it
19 was too hodgepodge so the NAIC declined to come
20 up with any standards or to even provide, the
21 NAIC typically will create a model act to govern
22 types of insurance regulation. They declined to
23 do so in this case because the regulations state

1 to state which were such a hodgepodge.

2 AGRiP tried to come up with standards and
3 so it has members who have pools throughout the
4 country. They informed us that the industry
5 standard in returning surplus were either, there
6 was three basic methods and one was to provide a
7 cash distribution of surplus. Another was to
8 use surplus to invest and create a new program,
9 a new line of coverage, to subsidize a new line
10 of coverage, and the third was for rate
11 stabilization. And so they indicated rate
12 stabilization was one of the primary factors of
13 those three that drove most of the industry
14 pools throughout the nation.

15 So I took that information and then I
16 looked at how RSA 5-B is structured, and it puts
17 great weight on the Board of Directors and the
18 fact that they have all the incentive in the
19 world to keep reserves as low as possible
20 because, again, they go back to the front lines,
21 that's why they're not regulated by Insurance
22 Departments. In fact, very few, at the time of
23 my research four or five years ago, very few

1 were actually regulated by insurance company.
2 There were filing requirements, but there's no
3 active regulation.

4 Q Let me just jump in there. You said Board
5 members have every incentive to keep the
6 reserves low, I believe, and --

7 A Yes.

8 Q Then you said because they have to go back. Can
9 you explain what you mean?

10 A Yes. They have to go back to the Selectmen, to
11 the town meetings, and they have to live with
12 the decisions that they make on behalf of the
13 entity. Those decisions that get turned into
14 rates for their particular town or School
15 District, and they're right on the front line
16 answering to the Board of Selectmen and to their
17 taxpayers in their town why this was done.

18 Q So you've highlighted three different ways to
19 return surplus. You have cash, you have
20 investing in a new program or subsidizing a new
21 program or rate stabilization?

22 A Correct.

23 Q You chose rate stabilization?

1 A Well, the Board chose rate stabilization. I
2 advised that because they had been given that
3 obligation, given that responsibility because
4 the statute gives such great -- that's the way
5 these are structured. They're not regulated
6 organizations, they're member-run organizations.
7 Their Board was a hundred percent representative
8 of members, not just majority representative of
9 members. So by statute, the nature of the
10 statute gives great weight to the Board.

11 So I said as long as and I confirmed that
12 the Board followed the appropriate process that
13 its recognition of the members' desire for rate
14 stabilization should be honored. I also finally
15 pointed out in my tax world that there's a legal
16 doctrine known as the step doctrine. That if
17 you look through the various steps of a
18 transaction you can really recharacterize the
19 transactions. You don't need to go through
20 steps. If you're going to go from 1 to 2 to 3
21 to 4, you can see where you're going to end up,
22 and the way I applied that here is you could
23 certainly return surplus in the form of cash at

1 the end of a year, but then you're going to have
2 to require higher rates the second year or the
3 very next year, and that's exactly what the
4 members don't like. The town budgets aren't set
5 up to have a pile of cash come in unexpectedly
6 at the end of the year and then to have to
7 appropriate even more for rising health costs.
8 So rate stabilization is a very important member
9 desire and requirement.

10 Q We heard testimony earlier today and the first
11 day about North Hampton having some increases
12 and then some decreases, leveling off, and this
13 rate stabilization is the mechanism to return
14 surplus helps level that out?

15 A Right.

16 Q I'm showing you what's been marked as a full
17 exhibit, LGC 381, and ask you if you recognize
18 that.

19 A Yes. I do. It's the opinion letter I was
20 referring to regarding the method of returning
21 surplus that had been requested by the Finance
22 Committee.

23 Q Okay. I'm going to -- you've talked about this,

1 and it's in evidence for the Hearing Officer to
2 read, but I just want to hit a couple points
3 quickly, in addition to what you've talked
4 about. Page 2, please. At the bottom of the
5 page it says it is clear under RSA 5-B:5 that
6 LGC may establish more than one reserve, and it
7 is customary among pooled risk management
8 programs and in the insurance industry to
9 establish reserves against adverse trends,
10 growth in coverage and unanticipated events. Do
11 you see that?

12 A Yes. I do.

13 Q Is that what you were focusing on in the
14 statute, how reserves is plural?

15 A Yes.

16 Q And then in that same paragraph you talked in
17 2007 about the robust discussion and debate
18 among members?

19 A Correct.

20 Q I'm not going to go over the document. The
21 document can speak for itself, and it's in
22 evidence as a full exhibit, but I want to go
23 back quickly to what you said about when you did

1 research through AGRiP and some national pooling
2 about how surplus is returned. The second one
3 was investing in new programs and subsidizing
4 new programs?

5 A Correct.

6 Q Are you, do you know that that's what LGC did
7 with respect to its Workers' Comp program?

8 A Yes.

9 Q Is that similar to what you're talking about
10 there?

11 A Yes, it is, and we've heard this from insurance
12 consultants to the LGC Board. It's in effect
13 literally impossible to create a line of
14 coverage in a competitive marketplace unless you
15 have sufficient subsidies and reserves in order
16 to charge market rates. If you were coming in
17 de novo without any support, the rates you might
18 have to charge in order to build reserves would
19 put you out of the marketplace and you'd never
20 get off the ground. Similar to any line of
21 business or company creating a new office or a
22 new plant, there's an investment. So there's an
23 investment in the program.

1 Q So if we've heard throughout this case by the
2 Bureau that this notion of HealthTrust providing
3 monies for another pool, somehow this crazy
4 notion, something out of the blue, it's actually
5 consistent with what you learned about what risk
6 pools do throughout the country?

7 A Correct.

8 Q Is it also consistent with RSA 5-B?

9 A Yes, it is.

10 Q And on this topic of strategic support and
11 that's what we're talking about when we're
12 talking about the monies to workers' comp,
13 right?

14 A Right.

15 Q Show you what's been marked as a document LGC
16 425. Full 425 up, please. I believe this is
17 the last document I'll show you this afternoon.
18 And after you review that, if you could tell us
19 what that document is?

20 A This is a document that I drafted in
21 collaboration with LGC Board leadership and
22 senior staff, and the genesis of it was as the
23 Bureau was starting its investigation, there

1 were a lot of, there were a lot of press
2 statements, releases from various parties.
3 LGC's goal was to help people understand the
4 complexities not only of what they do but what
5 the 2003/2004 strategic plan was all about.

6 Q Can you summarize that for us, what the plan was
7 all about?

8 A Sure. Really the catalyst for the plan was the
9 fact that they were having increased
10 competition, but the purpose of this strategic
11 plan was not to react to that competition. It
12 was to get stronger and recognize that it was in
13 a competitive marketplace, and it did much more
14 than establish a new plan. It established a
15 stable Workers' Comp because members wanted a
16 one-stop shop. They wanted various lines of
17 coverage. It was responsive to members' needs.
18 It also provided for more financial stability to
19 all of the pools, to the benefit of all of the
20 pools to have. Similar to investments, the
21 broader your portfolio the better you're
22 protected against risk so it was enhancing all
23 of the pools under this integrated system.

1 It also was designed to unify
2 administrative resources so they'd be more
3 efficient. They'd be more nimble and be
4 responsive to members. It also streamlined the
5 governing structure so that as an integrated
6 system bringing various lines of coverage it
7 could coordinate those lines of coverage in a
8 responsive way to member needs and in an
9 efficient way.

10 Finally, and this I find as a health care
11 lawyer very innovative and perhaps 8 years
12 before its time, this program was focused on
13 paying dollars for wellness and prevention as
14 opposed to treatment, and it's become known now
15 after the Affordable Care Act that dollars spent
16 on treatment are much higher than dollars spent
17 on prevention. And by having a Workers' Comp
18 program in the mix, it then allowed LGC to use
19 its prevention expertise, and, remember, pooled
20 risk management programs aren't just the pooling
21 of risk, but they're also the pooling of the
22 cost for risk management. So LGC is expert in
23 risk management. It then can across all lines

1 of coverage manage the health of municipal
2 employees, and, therefore, reduce, ideally, the
3 cost of plans.

4 Q And that's set forth, what you just testified,
5 in the document that's a full exhibit, 425?

6 A Right, and then to implement that there were
7 various positions that had to be created and
8 funded and this document provides those.

9 Q Thank you.

10 MR. QUIRK: Mr. Mitchell, may I have a
11 moment?

12 THE PRESIDING OFFICER: Surely.

13 MR. QUIRK: No further questions,
14 Mr. Mitchell. Thank you. Thank you, sir.

15 THE PRESIDING OFFICER: Thank you,
16 Mr. Quirk. Mr. Gordon, do you have any
17 questions?

18 MR. GORDON: No.

19 THE PRESIDING OFFICER: Mr. Howard?

20 MR. HOWARD: Nothing.

21 THE PRESIDING OFFICER: Mr. Volinsky,
22 before -- I anticipate that you have questions.

23 MR. VOLINSKY: Couple.

1 THE PRESIDING OFFICER: Before you do that,
2 do you have a good faith estimate of how long
3 your cross-examination will take?

4 MR. VOLINSKY: 45 minutes to an hour.

5 THE PRESIDING OFFICER: Please proceed.

6 MR. VOLINSKY: Thank you.

7 CROSS-EXAMINATION

8 BY MR. VOLINSKY:

9 Q Good afternoon, Mr. McCue.

10 A Good afternoon, Attorney Volinsky.

11 Q You are a corporate and business lawyer, are you
12 not?

13 A Yes, I am.

14 Q So you know that in New Hampshire, an LLC is a
15 form of corporate entity, correct?

16 A Business entity, correct.

17 Q You need to speak up a little.

18 A Yes, it is.

19 Q And currently, the LGC's HealthTrust program is
20 organized in an LLC, is it not?

21 A Its assets were in an LLC, and it's a
22 member-managed LLC, yes.

23 Q And now the Property-Liability and Workers' Comp

1 program is in a second LLC, correct?

2 A The pool is in an LLC, correct.

3 Q Separate and apart from these insurance type
4 programs, there's NHMA?

5 A Correct.

6 Q Which is also an LLC?

7 A Yes.

8 Q And sitting above these three LLC entities is
9 another corporate entity that we call parent.
10 Right?

11 A Yes.

12 Q And then parent also owns the Real Estate LLC?

13 A That's actually a corporation.

14 Q Corporation. So in the LGC enterprise, am I
15 correct that we have one, two, three, four, five
16 separate legal entities?

17 A Yes. There are five separate, well, five legal
18 entities. They're all coordinated through a
19 parent structure.

20 Q Each one is separately registered with the
21 Corporate Division at the Secretary of State?

22 A Yes, it is.

23 Q Because each one is a separate legal entity,

1 right?

2 A Yes.

3 Q You talked a lot about what you knew of Primex?

4 A I did.

5 Q Primex is one entity, is it not?

6 A Yes, it is.

7 Q Primex does not have subsidiaries, does it?

8 A It does not.

9 Q Primex does not have a real estate holding
10 company?

11 A I don't know.

12 Q Certainly doesn't have subsidiary LLCs, does it?

13 A That's correct.

14 Q When an organization is organized in this
15 fashion with LLCs subordinate to a parent, all
16 of the fiduciary duties run upward toward the
17 parent?

18 A Correct.

19 Q The parent doesn't have a fiduciary duty to the
20 sub, does it?

21 A It doesn't have a fiduciary duty, but it has a
22 management obligation under the structure of a
23 single member LLC and in exercising that power

1 it has obligations.

2 Q Understood. In New Hampshire, an LLC can be
3 managed with a Board of Directors, can it not?

4 A It can.

5 Q And if it is managed with a Board of Directors,
6 that Board of Directors for the LLC can adopt a
7 set of bylaws, could it not?

8 A It could. It's more typically an operating
9 agreement, but it could, yes.

10 Q And if there were a Board right here at the
11 HealthTrust, LLC, that Board would have
12 fiduciary responsibilities to this program
13 directly, right?

14 A That Board would have the same responsibilities
15 to that program as the member parent does,
16 identical type of responsibilities.

17 Q But you would agree with me that there is no
18 Board here?

19 A Correct.

20 Q Not at this level. At the LLC level.

21 A Correct.

22 Q Although there could be?

23 A There could be.

1 Q And there is no set of bylaws here at the LLC
2 level?

3 A That's right.

4 Q And you agree there could be, right?

5 A There could be.

6 Q And in the Primex one-entity model?

7 A Um-hum.

8 Q There is one Board for the one entity, correct?

9 A There's one Board for the pooled risk management
10 program, and LGC has one Board for its pooled
11 risk management program.

12 Q We'll get to that in a second --

13 MR. QUIRK: Let him finish.

14 THE PRESIDING OFFICER: I'm going to just
15 interject. You're all attorneys, including the
16 witness. You're all very bright individuals,
17 but you all have specific roles today.
18 Mr. McCue, would you wait until he completes his
19 question?

20 THE WITNESS: Sure.

21 THE PRESIDING OFFICER: And then answer it.
22 And Mr. Volinsky, would you extend the same
23 courtesy, and we'll progress from there.

1 MR. VOLINSKY: Be glad to.

2 Q (By Mr. Volinsky) The Primex legal entity has
3 one Board, correct?

4 A That's correct.

5 Q That Primex legal entity has one set of bylaws?

6 A To cover all of its lines of coverage, yes.

7 Q I'm sorry. The Primex legal entity has one set
8 of bylaws?

9 A It has one set of bylaws, yes.

10 Q Thank you. Risk pools in New Hampshire have to
11 meet certain standards in order to be exempt
12 from insurance regulation and taxation, correct?

13 A That is correct.

14 Q And risk pools in New Hampshire also have to
15 file what are called informational filings each
16 year with the Secretary of State's office?

17 A That's correct.

18 Q And each risk pool has to do that?

19 A Each pooled risk management program has to do
20 that.

21 Q Yes. I'll accept your correction.

22 Let me refer you to Exhibit LGC 3306. This
23 happens to be the 2010 informational filing

1 under 5-B?

2 A Um-hum.

3 Q For HealthTrust, correct?

4 A That's what it says, yes.

5 Q I'll zoom a little bit so you can see it.

6 A Yes.

7 Q Informational filing, 5-B, for HealthTrust,
8 correct?

9 A Correct.

10 Q This is one informational filing for one risk
11 management pool program, correct?

12 A It's for one of the risk pools within the LGC
13 pooled risk management program reporting at the
14 level at which the activity occurs.

15 Q Let me refer you now to Exhibit LGC 305. We're
16 also looking at 2010. This is again an
17 informational filing under RSA 5-B?

18 A Correct.

19 Q This is a separate informational filing for a
20 separate risk management pool program, this time
21 called Property-Liability Trust.

22 A Again, it's a filing on behalf of the pooled
23 risk management program of LGC at the activity

1 level within the risk pool Property-Liability
2 Trust, LLC.

3 Q You would agree with me that LGC files two
4 separate informational filings for two separate
5 risk management pool programs, as indicated in
6 305 and 306 as I've just displayed to you, is
7 that not correct, Mr. McCue?

8 A I would not say it that way, Mr. Volinsky. I
9 would say that it files, rather than a
10 consolidated filing for its pooled risk
11 management program, Local Government Center, it
12 makes separate filings for its risk pools which
13 are housed in member-managed LLCs similar to a
14 corporation's financial statements where it
15 could file on a consolidated basis, but it's
16 more transparent to file at the activity level.
17 Subsidiary activity.

18 Q Do you know that Local Government Center also
19 does file its consolidated financial statements?

20 A I'm assuming it does, but I don't know that.

21 Q Relevant to this case, your client is the Local
22 Government Center group of companies, correct?

23 A Yes. Correct.

1 Q Hinckley Allen, your law firm, has never
2 represented Maura Carroll as an individual, has
3 it?

4 A It has not.

5 Q Hinckley Allen, your law firm, has never
6 represented Peter Curro as an individual, has
7 it?

8 A No. It has not.

9 Q Hinckley Alan still represents the Local
10 Government Center group of companies, does it
11 not?

12 A It does, although our active role has been
13 reduced recently to advice on the defined
14 benefit pension plan.

15 Q But it continues to have an active role?

16 A Until this proceeding is finished, no. From the
17 beginning of this proceeding, we have not taken
18 an active role given the proceeding.

19 Q And it doesn't give, your firm doesn't give
20 advice about the defined benefit plan?

21 A It does.

22 Q And so that's --

23 A It has an active role with respect to the

1 defined benefit plan. The retirement plan.

2 Q That's what I mean. So as far as the defined
3 benefit plan, still active? Correct?

4 A It is active sporadically, yes, active.

5 Q Active as needed?

6 A As needed.

7 Q And as far as the other business and corporate
8 issues for the Local Government Center, your
9 firm is on hiatus until this proceeding is done?

10 A It's not my decision, and I also recognize that
11 they have in-house counsel which was something
12 new to Local Government Center so I'm sure that
13 would change their need for our firm.

14 Q Your understanding, though, is that you're on
15 hiatus until this is over?

16 A Yes.

17 Q Yes?

18 A (Nods yes.)

19 Q Do you understand that your firm may have some
20 legal liability if its advice given to the Local
21 Government Center is proven wrong?

22 A I see that there's that potential, yes.

23 Q Robert Lloyd is no longer with your firm?

1 A That's correct.

2 Q I couldn't hear who you said he's gone to as his
3 new employer. Could you say that again?

4 A He is in-house counsel for Jaguar Mining.

5 Q Jaguar Mining?

6 A Yes.

7 Q Where is that located?

8 A It's located in Concord, New Hampshire, and it
9 operates a gold mining operation in Brazil.

10 Q But it's located here in Concord?

11 A Yes, and it's traded on the Toronto Stock
12 Exchange.

13 Q Okay. You provided testimony about the Delaware
14 registration and what was happening with respect
15 to it?

16 A Yes.

17 Q Obviously, you weren't on board at that time?

18 A That's correct.

19 Q So you're summarizing for us information that,
20 in part, you've determined from documents,
21 correct?

22 A Yes.

23 Q And in part has been told to you?

1 A Mostly from documents.

2 Q Has Robert Lloyd given you information about
3 what he was trying to accomplish in 2003 with
4 the reorganization?

5 A He did in 2005 when he explained the structure
6 to me.

7 Q Okay. Let me refer you to Exhibit 40 which I
8 think is Book 1.

9 A Yes.

10 Q It's at the back of Book 1. You'll see three
11 documents together in Exhibit BSR 40. The first
12 being a letter addressed to a Dear Jane by a B.
13 Luneau?

14 A Yes.

15 Q Mr. Luneau was at the time of this letter or
16 three a lawyer with your firm?

17 A Yes. To my knowledge, he was an associate at
18 our firm.

19 Q Is he still with your firm?

20 A No. He's not.

21 Q Did he do corporate-related work as an associate
22 in '03?

23 A That's my understanding. Yes.

1 Q And can you see from the letter that he's
2 writing to Jane thanking her for speaking with
3 him on the phone about an LLC merger matter?

4 A Yes. Although I have to, I would like to make
5 the caveat that this, we produced this, we
6 thoroughly reviewed our files. This was an
7 electronic file. I didn't have a signed copy.
8 I'm assuming this represents the final version
9 that was signed and mailed, but I don't know
10 that.

11 Q Okay. Did you review it recently enough so that
12 you can talk about it without taking a moment to
13 read it?

14 A I'd like to take a moment.

15 Q That's why I'm asking. Just look up when you've
16 read the Dear Jane letter.

17 THE PRESIDING OFFICER: While he's looking
18 at that, Mr. Volinsky, our records?

19 MR. VOLINSKY: ID.

20 THE PRESIDING OFFICER: Yes. Okay.

21 A I finished reading it.

22 Q Good?

23 A Yes.

1 Q Okay. And if you'll note the letter written by
2 Mr. Luneau is dated June 25, '03?

3 A Yes.

4 Q And then if you turn in a couple of pages,
5 you'll find a letter to Suzanne Gorman who was
6 an Assistant Attorney General at the time, also
7 dated June 25, '03?

8 A Yes.

9 Q And at the very start of that, Suzanne is
10 advised that the author of this letter is faxing
11 over a letter dated June 25 from Brian Luneau?

12 A Yes.

13 Q And the letter that I'm referring to now is
14 signed by a Jane Northcott?

15 A Correct.

16 Q And then the last document is an e-mail from
17 Suzanne Gorman to Jane Northcott about the
18 subject of merger of nonprofit into a New
19 Hampshire LLC, do you see that?

20 A I see that as a middle document.

21 Q Middle document.

22 A May I have a moment to review it?

23 Q Yes. Just look up when you're done.

1 A Yes.

2 MR. VOLINSKY: Mr. Mitchell, I'd move to
3 strike the identification on BSR 40, please.

4 THE PRESIDING OFFICER: Any objection?

5 MR. QUIRK: No objection to this coming in
6 as a full exhibit with the caveat that the first
7 letter is unsigned, and it's uncertain whether
8 that was the final copy of that letter.

9 THE PRESIDING OFFICER: All right. With
10 that remark, I'll allow it in.

11 MR. VOLINSKY: Thank you.

12 THE PRESIDING OFFICER: Seeing no
13 objection.

14 MR. VOLINSKY: Unless I am mistaken --
15 thank you, first of all, but unless I'm
16 mistaken, the first letter is also LGC Exhibit
17 371 in the same exact form as a full exhibit
18 just for the record.

19 THE PRESIDING OFFICER: Thank you for that
20 cross-indexing.

21 Q (By Mr. Volinsky) Mr. McCue, the letter to
22 Suzanne Gorman from Jane Northcott?

23 A Yes.

1 Q In the middle of the page says I told Attorney
2 Luneau that since there is no provision under
3 292:7 to allow merger between nonprofits and
4 LLCs that we could not accept the filings.

5 A Correct.

6 Q You see that?

7 A Yes.

8 Q And then Suzanne Gorman's email is an email to
9 Ms. Northcott essentially agreeing with that
10 analysis, am I right?

11 A Yes.

12 Q So in trying to merge these entities, an
13 associate in your firm tried to convince the
14 Secretary of State's office that this form of
15 merger, nonprofit into an LLC, could occur in
16 New Hampshire under New Hampshire law, and,
17 evidently, was told it could not be done,
18 correct?

19 A I think that he saw that the statute was silent;
20 that there was no expressed authorization,
21 inquired whether in the absence of a
22 prohibition, Secretary of State would accept the
23 filing.

1 Q I'm not trying to fault him. That is his
2 analysis. And then he was told can't do it.

3 A Would not accept it. Yes.

4 Q And then Mr. Luneau, at least according to this
5 letter, asks for a call back to discuss. Please
6 note that we intend the mergers to close on June
7 30th, correct?

8 A Correct.

9 Q Actually, these companies were merged in
10 Delaware on the 26th of June, 2003?

11 MR. QUIRK: Object to the question. It
12 mischaracterizes the state of the evidence to
13 the extent that it says it was merged into
14 Delaware.

15 MR. VOLINSKY: I can rephrase. I'll
16 withdraw it.

17 THE PRESIDING OFFICER: Withdraw it.

18 Q There were filings in Delaware the very next day
19 after this letter on June 26th, '03, right?

20 A Correct.

21 Q And those filings attempted to create Delaware
22 shell corporations, did it not?

23 A It did.

1 Q And attempted then to merge New Hampshire
2 corporations into the Delaware shell
3 corporations?

4 A Which is a permitted activity, yes.

5 Q All before June 30th, right?

6 A With the stated effective date of June 30th
7 although I recognize from having reviewed this
8 that there was an inconsistency and a
9 scriveners' error and one did not state June
10 30th. It stated, I believe, effective upon
11 filing.

12 Q Which would have been the 26th, correct?

13 A Right.

14 Q You just need to articulate.

15 A Yes. And, again, we've articulated, we've made
16 clear that we believe that was a scrivener's
17 error but yes.

18 Q So the idea of going to Delaware resulted from
19 specific advice to a lawyer in your firm that
20 the filing proposed would not be accepted under
21 New Hampshire law by the New Hampshire Secretary
22 of State?

23 A From, the administrative official at the

1 Secretary of State did advise that they would
2 not accept the filing of a direct merger of the
3 New Hampshire RSA 292 corporation to a New
4 Hampshire LLC, yes.

5 Q Now, do you say that your firm advised John
6 Andrews of the trip to Delaware for filing or
7 did not advise him?

8 A Our firm did advise that there is a method by
9 which you can legally and because -- the
10 corporate and LLC laws in Delaware are renowned
11 as being the more advanced, the more thought
12 out, they do contemplate the merger of a
13 nonprofit with an LLC, and, again, the New
14 Hampshire nonprofit corporation existed well
15 before LLCs were a notion in this country. They
16 haven't been updated, they haven't been
17 modified.

18 So it is a practice among corporate
19 practitioners in New Hampshire to take advantage
20 of Delaware to set up shell corporations, a
21 shell corporation in Delaware, a mirror image
22 LLC, so that you have a merger of a New
23 Hampshire nonprofit with a Delaware nonprofit

1 permitted by both of those states. Then you
2 have a simultaneous merger, the Delaware
3 nonprofit corporation with a Delaware LLC,
4 recognized by Delaware law and taking place in
5 Delaware, again simultaneously, and then the
6 Delaware LLC merging in with a New Hampshire LLC
7 which is a mirror image of the New Hampshire
8 corporations, again, that leg of the trip
9 through Delaware is recognized as lawful in both
10 states, New Hampshire and Delaware. And so all
11 of those are permitted and acknowledged and
12 authorized by law.

13 Q My question, Mr. McCue, was simply, did you all
14 tell Andrews that you were doing that?

15 A I can only -- I was, again, started practice at
16 Hinckley Allen in 2005. This occurred in 2003.
17 From my observations of Attorney Lloyd, he would
18 always consult and advise clients and inform
19 clients. It's not our firm's practice to do
20 something of that nature without informing the
21 client.

22 Q So if we talked in terms of Mr. Lloyd's habit,
23 his habit would have been to advise the client

1 of the effort to go register in Delaware as
2 you've now described?

3 A Right.

4 Q Go to Exhibit 17 for me, please? Should be in
5 the same book which is Book 1.

6 THE PRESIDING OFFICER: For clarification
7 from me, Mr. McCue, Ms. Northcott, is she an
8 attorney?

9 A That's a question I asked of Attorney Volinsky.
10 She, I believe, is the Administrator at the
11 Secretary of State. She's not an attorney. It
12 looks like she sought advice from the Attorney
13 General's office.

14 THE PRESIDING OFFICER: You agree with
15 that?

16 MR. VOLINSKY: Except that I believe she's
17 retired now.

18 A She was not an attorney. That's why I pointed
19 out in my response that it was an administrative
20 response to our inquiry.

21 THE PRESIDING OFFICER: Thank you. Please
22 proceed.

23 Q Exhibit 17 is a letter dated September 6th, 2006

1 and then it has handwriting on it.

2 A Yes.

3 Q And the handwriting is initialed CAO?

4 A Yes.

5 Q See where I am?

6 A That's Claudia Olford. She's a corporate
7 paralegal in our office.

8 Q And she makes reference to MSM doing something?

9 A Yes.

10 Q Is that you?

11 A That would be me.

12 MR. VOLINSKY: I'd move to strike the ID on
13 BSR 17.

14 MR. QUIRK: No objection.

15 THE PRESIDING OFFICER: Okay. Seeing no
16 other objections from Mr. Gordon or Mr. Howard,
17 it's admitted as a full exhibit. BSR 17.

18 Q (By Mr. Volinsky) If you need to take a moment
19 to read it just do it and then look up.

20 A Okay. All set.

21 Q This is a letter written by the paralegal, Ms.
22 Olford, to John Andrews, correct?

23 A Yes.

1 Q But instead of it being mailed, you
2 hand-delivered it to him, correct?

3 A Correct.

4 Q And you hand-delivered it to him on September
5 7th, 2006, correct?

6 A According to that notation, yes.

7 Q Any reason to doubt the accuracy?

8 A I don't have a reason to doubt that.

9 Q In looking at the language of the letter,
10 essentially it's advising Mr. Andrews of a
11 Delaware merger of the LGC companies and some
12 problems that had occurred with that, correct?

13 A When I was asked to assist with the merger of
14 Workers' Comp back into Property-Liability Trust
15 in New Hampshire, in the course of doing that, I
16 became aware or actually, Claudia, the paralegal
17 become aware that the filing had not been done
18 with the failed merger.

19 Q Understood.

20 A Through Delaware.

21 Q Okay. And so in September of 2006, you went to
22 Mr. Andrews and you told him about the problem
23 with the filing in Delaware?

1 A Correct.

2 Q So as of 2006, we don't have to rely on habit
3 testimony with respect to Mr. Lloyd. In 2006,
4 you personally discussed with Mr. Andrews that
5 his, that the LGC companies had been registered
6 in Delaware, correct?

7 A That was part of the simultaneous merger through
8 Delaware. Again --

9 Q I'm not quarreling with that. I'm just trying
10 to ask the time frame.

11 A Yes. In 2006, I was referencing the process
12 that I described was attempted in 2003 and
13 failed to go simultaneously through Delaware
14 because Delaware recognizes the merger of a
15 nonprofit corporation with an LLC. Yes.

16 Q With the risk that maybe you'll repeat that one
17 more time, let me just ask. You told him in '06
18 that Delaware was involved for corporate
19 registration, correct?

20 A Correct. As part of the 2003 reorganization.

21 Q I shouldn't have taken the risk.

22 So if the Local Government Center and
23 Mr. Andrews publicly announced they didn't know

1 anything about Delaware until it came up in the
2 Secretary of State's reports in the 2010/2011
3 time frame, you knew that at least on your
4 personal knowledge you spoke directly to the
5 Executive Director four years prior about the
6 Delaware registrations, correct?

7 A Not correct. I listened carefully to your
8 question and your question was that referencing
9 public statements about being unaware. I
10 believe the public statements were that they
11 were unaware that there were problems with the
12 way it was done and the mechanics of it. At the
13 time that I met with him in 2006, I was not
14 aware of the mechanics nor did I have reason to
15 look backward to all the steps. I had assumed
16 it was done the way I was familiar with as a
17 corporate attorney, but I wasn't there in 2003.
18 This filing irregularity didn't give me cause to
19 look backwards nor did I discuss that with
20 Mr. Andrews.

21 Q But you did discuss the fact of Delaware being
22 involved?

23 A Yes.

1 Q Thank you. You've talked about the involvement
2 and levels of understanding of the members of
3 the Board at the Local Government Center in your
4 Direct Testimony, correct?

5 A Yes. Correct.

6 Q And you've given them high marks in both
7 regards?

8 A I do.

9 Q As recently as 2010, were there not Board
10 members raising concerns about governance
11 practices at the Local Government Center?

12 A In 2010 we actually solicited the opinions of
13 all Board members in an effort to -- as I do
14 with all my clients -- to look at practices,
15 continuously improve practices, and so we
16 solicited critique and criticism in an effort to
17 improve. Yes.

18 Q And one of the people you solicited information
19 from was Board member Karen Hill?

20 A I recall that. Yes.

21 Q And Karen Hill -- actually, you were working at
22 that point as an assistant to the consultant
23 Jenny Emery, right?

1 A No.

2 Q Okay. Let me break it down then. Jenny Emery
3 was a consultant?

4 A Jenny Emery was a consultant, yes.

5 Q And she was conducting a review of how the Board
6 felt about the operations of Local Government
7 Center at the time, was she not?

8 A It was part of a review that was a special
9 committee was created by the Board known as the
10 SMO Committee.

11 Q Just tell us what SMO means.

12 A I think it referred to Strategic Management and
13 Operations, and, again, it was a comprehensive
14 review. The Board decided that it was time to
15 look at its structure, and it had done so in
16 2003. It had reorganized. Let's look and see
17 what we've done, see if we're doing it well, see
18 if we can improve.

19 They engaged a group of consultants. I was
20 one to look at the legal issues. Jenny Emery
21 was one to look at insurance standards, given
22 her knowledge and advice to LGC. There was also
23 Jeff White who was a principal at Helms &

1 Company who has management expertise and has
2 taken over the management of many health care
3 entities, and he reviewed the management
4 practices. And there was a fourth consultant, I
5 think, who works with the National League of
6 Cities whose name has escaped me to provide some
7 industry perspective. So it was very
8 comprehensive review, again, of strategy,
9 structure, operations, and so one of our
10 exercises was to actively solicit the comments
11 of Board members and to get, to encourage them
12 to be open, we agreed to meet with them. Rather
13 than to have it be in a Board meeting, have it
14 be with senior staff, we wanted them to be as
15 open as possible so those four consultants broke
16 the Board into small groups and Karen Liot Hill
17 was part of my group and I encouraged her to
18 talk with them. Yes.

19 Q In part, Ms. Hill talked to you through an
20 email, right?

21 A Yes.

22 Q And based on her email you concluded, the need
23 for a Board education is pretty evident,

1 correct?

2 A I would like to see the email because I don't
3 recall it clearly.

4 Q Okay. Did -- well, let me get it for you.
5 Exhibit 41 which is Book 2. You can switch from
6 that to this. 41 and then go to page 51. 41,
7 51. You'll see marked at the bottom right there
8 are numbers inserted. Hang on a second. Let me
9 tell you what's there and then you can read it
10 all. So you'll see that 51 is the end of a
11 three-page email string?

12 A Yes.

13 Q That goes to 53. So if you want to read it in
14 order?

15 A Um-hum.

16 Q Start at the bottom of 52 which is Ms. Hill's
17 e-mail to you?

18 A Yes.

19 Q And then you'll go to your email to her?

20 A Um-hum.

21 Q And then your email to Ms. Emery and up. Okay?
22 And just look up when you're done.

23 A Yes. Yes.

1 Q Okay. Let me, turn to page 51 for me.

2 A Yes.

3 Q These three emails happen to all have been
4 written January 6th, 2010, correct?

5 A Correct.

6 Q Ms. Hill wrote her first email at 5:03 p.m.,
7 correct?

8 A No. She wrote hers at January 6th, 12:46 p.m.

9 Q Oh, I'm sorry. January 6th, 12:46 and then you
10 wrote back to her at 5:03?

11 A Yes.

12 Q On 51. And then after writing back to her, you
13 wrote 36 minutes later to Jenny Emery?

14 A Yes.

15 Q And then 14 minutes later, Emery wrote back to
16 you?

17 A Yes.

18 Q Okay. So let's start with your email in the
19 middle of page 51. You concluded in that email,
20 did you not, to Ms. Emery that the need for
21 Board education was pretty evident. Correct?

22 A It was definitely evident with respect to her,
23 yes, and her viewpoints.

1 Q So it's only her that you're talking about here?

2 A Well, if you have a Board member that has these
3 misconceptions, then it means that you could
4 always do a better job, but I don't think that
5 this is reflective of the education level and
6 knowledge of the full Board.

7 Q Okay.

8 A One person's opinion.

9 Q I'm sorry?

10 A It was one person's opinion and input, yes.

11 Q So Ms. Hill was somewhat deficient in her
12 education on these issues?

13 A I don't say that she was deficient. I would say
14 that she clearly was not understanding some of
15 the concepts that a Board member should
16 understand, and, therefore, to me it means that
17 we could, we can always do a better job and that
18 was the point of the SMO committee was not that
19 we're doing a bad job but how can we do it
20 better.

21 Q You, obviously, the pages, the words are on the
22 page. You didn't write that Ms. Hill needs
23 better education. You wrote the Board's

1 education -- the need for Board education is
2 pretty evident is what you wrote, correct?

3 A I did because typically you don't know when you
4 have a Ms. Hill in your midst and so I would
5 educate the entire Board. I wouldn't try to
6 direct it to whom I would guess would be having
7 a difficult time understanding some of the risk
8 pool concepts.

9 Q Ms. Emery responded back to you, quote, it
10 speaks directly to ineffective governance. You
11 see where I am?

12 A Yes.

13 Q Did you understand what she meant there?

14 A I think she was making a general statement, and
15 because we were looking at the organization
16 based on organizational standards, if you have
17 directors that don't understand some of the
18 concepts of what you do, then it's difficult to
19 have governance. But again, the whole purpose
20 of this exercise was to find out if such people
21 exist, and again, if you look at my middle email
22 to Jenny that talks about this was the only
23 interview input I received so this was a

1 solitary response of this nature. It was not
2 something -- in fact, it was a more
3 comprehensive survey done of the Board, and
4 people felt they were pretty well-educated.
5 This was an effort to dive deeper to find the
6 sort of the aberrational people, the people on
7 the outskirts which is always what you aim to,
8 where you aim to improve.

9 Q So are you saying that Ms. Hill was an
10 aberrational person?

11 A I don't know.

12 Q Okay. How would you compare for me Ms. Hill's
13 level of education about issues concerning Local
14 Government Center to, say, the Board Chair's,
15 Mr. Enright's, level of education on the topic?

16 A His level of education has been informed by
17 years of experience so I think he would be more
18 informed, and, again, as I mentioned in my
19 direct testimony, one thing I'm impressed by
20 this Board, obviously there are new members, new
21 members have a learning curve and the more
22 senior members who had gone through that
23 learning curve took the responsibility to help

1 to educate the newer members and to ask staff to
2 explain things as well as consultants.

3 Q You know what I mean when I say rating process?

4 A Yes.

5 Q Would you say that Mr. Enright in your opinion
6 is well informed about the specifics of the
7 rating process used by the Local Government
8 Center?

9 A I think Mr. Enright is well informed of the
10 process and what the purpose of it is, yes.

11 Q Well informed?

12 A I think he's informed. He's informed
13 sufficiently to exercise sound business
14 judgment, and he's certainly not a professional
15 actuary. He's not that well informed, but he's
16 certainly informed enough to perform the duties
17 of the Board and exercising sound business
18 judgment for risk pool.

19 Q Do you consider Mr. Enright to be almost
20 completely reliant on the staff's advice with
21 respect to rating?

22 A I don't say almost completely reliant, no, but
23 in a vacuum, all of the Board members could not

1 establish rates. They certainly have to rely
2 initially on proposals from experts through the
3 staff. Just as you or I could understand rating
4 concepts, we understand Board governance, but
5 certainly, Mr. Volinsky, neither you nor I would
6 be able to come in a room and establish rates
7 for such a large risk pool.

8 Q Let me turn you to page 53 of the same exhibit.
9 At the top of the page, Ms. Hill has written to
10 you about the apparently negative influence
11 legacy of John Andrews. You see where I am?

12 A Yes.

13 Q Did you understand what she was talking about or
14 writing about, rather, when you got this email?

15 A This had to do with discussions through the
16 years with the firefighters litigation.

17 Q Only the firefighters or was that just the most
18 glaring example?

19 A I don't know. I recognized it in reviewing it
20 now is as the firefighters.

21 Q Yes. Look at the second line towards the right.
22 The sentence that begins, there seemed to be a
23 number of issues that we are all dealing with,

1 comma, the debacle with the firefighters being
2 the most glaring example, et cetera, driven
3 largely by the former Executive Director.

4 So are you aware of other issues that were
5 also driven by the former Executive Director?

6 A I'm not.

7 Q You're not?

8 A No.

9 Q Did you ever hear the former Executive Director
10 talk about creating the workers' comp subsidy
11 just to go at Primex because workers' comp was
12 their strongest program?

13 A I've heard Mr. Andrews like I've heard every
14 Board member or client speak with emotion at
15 times, and as I've mentioned and acknowledged
16 the competitive atmosphere was a catalyst for
17 the Boards of the various entities in 2003 to
18 determine how they could best be responsive to
19 the competition of the marketplace, but more
20 importantly how they could be a better, stronger
21 organization sustainable in the future for the
22 benefit of their members.

23 Q Did you also hear Mr. Andrews speak with

1 emotion, to use your term, about his former
2 assistant, Paul Genovese?

3 A On one occasion I heard a reference to
4 Mr. Genovese. Again, because I was not with, I
5 had been representing only since 2005, I was at
6 the time not aware of what he was referring to.

7 Q Did you ever hear him refer to Genovese as a
8 traitor?

9 A No.

10 Q You know Genovese was the head of Primex?

11 A I learned that later after I -- I heard the
12 comment.

13 Q Did you understand that Ms. Hill was concerned
14 that the Board had not sufficiently exercised
15 its oversight role? Top paragraph?

16 A Yes. I understand that that was her concern.
17 Again, she wasn't on the Board at the time and
18 so I think she was dealing with the aftermath of
19 a long protracted litigation, and in that
20 context and with that knowledge base I think she
21 was expressing dismay.

22 Q Your partner, Chris Carter, was the lead
23 litigator in the firefighters litigation,

1 correct?

2 A Initially and then Mr. Saturley took over.

3 Q Before Mr. Saturley took over.

4 A Yes.

5 Q Did your firm know that John Andrews had been
6 using the right-to-know law to get documents
7 from Primex?

8 A I became aware that Mr. Andrews had thought of
9 that, and again, like many clients, he can be an
10 emotional person. I suspect he clearly was
11 frustrated, that -- and I don't want to go into,
12 this isn't about the right-to-know law. But
13 there were legitimate issues as to whether this
14 type of entity was subject to the right-to-know
15 law, and I'll just leave it at that. And he was
16 frustrated at the lack of progress in getting a
17 court to understand that, and at one point
18 decided well, if I'm going to be subject to this
19 then I'll use it. So --

20 Q I'll use it against another risk pool?

21 A I think that was his -- I mean --

22 Q You didn't end the litigation at that juncture,
23 did you? Your firm?

1 A That wasn't part of the litigation, no. That
2 was just an action. We didn't advise
3 Mr. Andrews to do that. I became aware of it
4 subsequently.

5 Q Switching topics. In 2007, Workers' Comp was
6 combined with Property-Liability into one LLC?

7 A Yes.

8 Q That was done in part to bolster the balance
9 sheet for Workers' Comp, was it not?

10 A It was done to solidify the financial
11 relationship, and also, yes, it was reflective
12 of the way they had been organized previously.
13 But yes, it was designed to make them more
14 financially stable. Yes.

15 Q And in part, that bolstering of the balance
16 sheet occurred because all of the assets of
17 Workers' Comp were combined with the assets of
18 PLT into one corporate entity, correct?

19 A Into one LLC.

20 Q And an LLC is a corporate entity, right?

21 A Governed by LLC, yes.

22 Q One corporate entity?

23 A Pooled risk management programs, again, combine

1 lines of coverage so yes, they combine their
2 lines of coverage into a single entity.

3 Q One corporate entity?

4 A Yes.

5 Q Thank you. And so the assets were combined, the
6 liabilities of the two lines of coverage were
7 also combined into one LLC, correct?

8 A Correct. But reported and segregated separately
9 but as a legal entity one legal entity housed
10 those two separate lines of coverage, yes.

11 Q Thank you. And when Workers' Comp had claims
12 and administrative expenses that it incurred,
13 the combined assets of both programs now in one
14 entity could be used to pay those claims and
15 expenses?

16 A I don't believe that's how they were used,
17 but --

18 Q I didn't ask how.

19 A Yes.

20 Q I asked could be used. Correct?

21 MR. QUIRK: Interject here, if I could. I
22 just don't want this to get argumentative. I'd
23 just ask him to answer the question and allow

1 him to fully complete his answer before we have
2 the next question.

3 THE PRESIDING OFFICER: Okay.

4 Mr. Volinsky, do you feel the need to say
5 anything?

6 MR. VOLINSKY: No.

7 THE PRESIDING OFFICER: Okay. I've
8 significantly or substantially warned everybody.
9 I've complimented people at being intelligent.
10 I spoke with this witness before he took the
11 stand, and I don't see this is argumentative. I
12 think I let them go back and forth at each other
13 twice, and then if they get beyond that, they
14 both know I'll weigh in as I have earlier in
15 these proceedings. So I think, Mr. Volinsky,
16 you're entitled to your answer, and then,
17 Mr. McCue, after you answer his question, you
18 can explain if you feel the need to.

19 A Okay.

20 Q So my question, Mr. McCue, wasn't whether it's
21 occurred in that way, but the combining of the
22 two into one LLC means that if Workers' Comp was
23 deficient in assets, the assets of PLT would,

1 would come into play. Correct?

2 A They are available to be used legally, yes.

3 Q Right. And there's --

4 THE PRESIDING OFFICER: Excuse me.

5 Mr. Volinsky, the rule was he would have an
6 opportunity to explain.

7 Q Yes. Go ahead. I thought he was done.

8 A It's been a while and I honestly don't recall
9 the contractual relationship, but I know that
10 Workers' Comp is treated differently than
11 Property-Liability Trust and there may -- I
12 can't remember if there was a right of
13 indemnification or if Property-Liability Trust
14 assets were used in that manner which to my
15 knowledge they never were that there would be a
16 contractual obligation from the Workers' Comp
17 program to at some point reimburse them. I
18 just, I don't recall it sufficiently to, that's,
19 I remember that as there's a contractual
20 requirement somewhere. I'm sorry I don't
21 remember with specificity. I haven't reviewed
22 it before this testimony.

23 THE PRESIDING OFFICER: Go ahead,

1 Mr. Volinsky.

2 Q (By Mr. Volinsky) I think you said earlier there
3 is not an operating agreement for this LLC where
4 PLT and Workers' Comp are combined?

5 A There is not because there's not one required.

6 Q And I won't go into any more detail than you've
7 just remembered, but in terms of an
8 indemnification agreement, if there is one, that
9 comes into play after PLT's assets have been
10 used to pay Workers' Comp's liabilities, right?

11 A Again, I don't -- I honestly don't recall and so
12 I hesitate to answer that.

13 Q Okay. You're aware, are you not, that Workers'
14 Comp has a \$17.1 million liability to
15 HealthTrust, correct?

16 A I have been made aware of that. Yes.

17 Q That is a liability that Workers' Comp as a line
18 of coverage cannot currently pay, correct?

19 A Yes, I'm aware of that. Yes.

20 Q But that liability is against Workers' Comp as
21 it exists in a joint LLC with
22 Property-Liability, correct?

23 A Correct. It's a line of coverage.

1 Q And the assets, therefore, of the joint LLC
2 housing both Workers' Comp and
3 Property-Liability are available to reimburse on
4 that note for \$17 million, aren't they?

5 A I don't know. I haven't seen that note. I
6 don't know if that's the understanding. Again,
7 this is, you're talking about affiliated
8 entities recharacterizing or characterizing a
9 contribution as a loan. I haven't seen the
10 notes or the terms of the loan.

11 Q Do you do securities work?

12 A I don't do securities work as a transactional
13 lawyer. I encounter securities and seek the
14 advice of securities experts.

15 Q And your firm has an entire securities group,
16 does it not?

17 A It does.

18 Q Are any of those folks physically housed in
19 Concord?

20 A No.

21 Q But you can consult with your securities group
22 wherever they're located?

23 A Yes. It doesn't matter where people are

1 located. We have videoconferencing, we travel
2 with each other, we have effectively an
3 integrated office.

4 Q And your securities group works with federal
5 issues at times?

6 A Yes.

7 Q And it works with state issues at times?

8 A Yes, it does, and we also, during part of this
9 period David Howe was with us and he also was
10 familiar with state securities law.

11 Q David Howe is a lawyer that used to be at your
12 law firm?

13 A Yes.

14 Q And he was at least down --

15 A He was more well-versed in state securities law.
16 Yes.

17 Q Thank you. If I can have just a moment.

18 You had a number of comments to make on the
19 Primex agreement that was shown to you by
20 Mr. Quirk?

21 A Yes.

22 Q You weren't involved in negotiating that deal,
23 were you?

1 A No, I wasn't.

2 Q You know that Primex is out of the health care
3 business?

4 A I saw that in the affidavit, yes.

5 Q At Local Government Center, you used different
6 actuaries to develop capital structure for
7 HealthTrust as opposed to Workers' Comp?

8 A Because there are different types of expertise
9 that they use different actuaries, yes.

10 Q So the answer is yes?

11 A Yes.

12 Q You just need to speak up.

13 A Yes. Yes. I do believe it. I'm just trying to
14 think back. I know there's a separate actuary
15 for the Property-Liability, and I'm trying to
16 use my recollection. I believe they also
17 address Workers' Comp as opposed to Health, yes.

18 Q And from sitting at Board minutes at which
19 ratings work was done, you know that the
20 Workers' Comp series of actuaries calculate net
21 assets for Comp differently than Mr. Riemer
22 calculates net assets for HealthTrust?

23 A Yes.

1 Q Correct? So if one program happens at LGC and
2 Workers' Comp, for example, happens to hold net
3 assets at one level, it doesn't mean that
4 HealthTrust holds net assets at the same level,
5 right? Different programs, different needs,
6 right?

7 A Multiple lines of coverage within a single
8 pooled risk management program.

9 Q Do the different programs have different needs
10 for net assets, Mr. McCue?

11 A It's a single unified program with different
12 lines of coverage.

13 Q Are there net assets set aside for HealthTrust?

14 A There are net assets. There are reserves for
15 each line of coverage, yes.

16 Q And they are different?

17 A They're calculated differently. Yes.

18 Q Thank you. I'm not finished with Primex. Let
19 me give you Exhibit 64 in Book 2. Everybody
20 there? Let me turn you to Section 3.4. 3.4 is
21 one sentence. Contingent reserves shall be
22 based for each coverage line on risk-based
23 capital principals at a target level not to

1 exceed 3.0 as determined by Primex.

2 A Yes.

3 Q You see where I am?

4 A Yes.

5 Q Do you know whether that 3.0 relates to the
6 Workers' Comp program or some other program?

7 A In reading this agreement?

8 Q Yes.

9 A In reading this agreement, it appears that
10 contingent reserves apply for each coverage
11 line, and from reviewing Ty Gagne's affidavit
12 and from what I've heard him testify at the
13 legislature, I'm aware that they have Workers'
14 Compensation line of coverage as well as
15 Property-Liability. They did have health but no
16 longer.

17 Q Right. So Health is out of the picture because
18 they discontinued it, correct?

19 A Correct --

20 THE PRESIDING OFFICER: One at a time.

21 Mr. McCue, you know when the attorney stands up
22 with an objection, that's your signal to stop
23 talking. And Mr. Quirk, you have an objection?

1 MR. QUIRK: I keep hearing discontinued.
2 It's not discontinued yet. By terms of the
3 agreement, it will be discontinued later this
4 year. So for purposes of, my objection is it
5 mischaracterizes the state of the evidence.

6 THE PRESIDING OFFICER: Okay. Is it my
7 understanding from the evidence that this is
8 running out? That is to say, they're not
9 soliciting any new business?

10 MR. QUIRK: That's right, but they still,
11 they still have a Health program as it exists,
12 they're still paying claims and it's not until
13 later this year that it is discontinued.

14 THE PRESIDING OFFICER: Okay.

15 MR. VOLINSKY: Actually, I think we're 7
16 weeks away from the end.

17 THE PRESIDING OFFICER: Fine, gentlemen,
18 but you'll withdraw your question, and my
19 memory's been refreshed. Please continue.

20 MR. VOLINSKY: Thank you.

21 Q (By Mr. Volinsky) Turn to Section 1.15. Still
22 Exhibit 64. You told us in your testimony that
23 Primex and LGC have the same corporate form,

1 correct?

2 A I said in essence they were structured very
3 similarly, yes.

4 Q 1.15, does that not say that Primex does not
5 use, does not use a parent and subsidiary
6 corporate model?

7 A Yes, it does.

8 Q And that Primex instead is organized as a New
9 Hampshire Trust, correct?

10 A Right, and my prior testimony was referencing
11 the fact that it runs multiple lines of coverage
12 for varying membership using a single Board and
13 single set of bylaws as does LGC.

14 Q Do you know if the members in the lines at
15 Primex are in multiple lines? Do you know that
16 of your own knowledge?

17 A I don't know that of my own knowledge.

18 Q Were you here when I think it was Ms. Parker
19 testified that only 30 percent of the eligible
20 member communities participate in workers' comp
21 at LGC?

22 A I was not here.

23 Q Do you know that there are more than two times

1 as many member communities participating in
2 Health programs at LGC as participate in
3 Workers' Comp?

4 A I don't know that ratio.

5 Q Okay. You do understand that the agreement
6 marked 64 will result in the return of between
7 16 and \$21 million to Primex members, don't you?

8 THE PRESIDING OFFICER: Page reference,
9 please?

10 Q It's page 6, 3.51, 3.52 and 3.53.

11 A I see that reference, yes.

12 Q Thank you.

13 MR. VOLINSKY: May I have one more moment?
14 Let me see if I can expedite this. Do you have
15 objection to 41? Hinckley Allen communications?
16 I'd move to strike the identification on 41
17 which is where I was reading the email with Ms.
18 Hill.

19 MR. QUIRK: Let me ask a question. Are you
20 talking about the ones we covered?

21 MR. VOLINSKY: No. The entire package.

22 MR. QUIRK: I do -- with respect to 41,
23 Mr. Mitchell, we have no objection to the ones

1 that we have covered during live testimony. On
2 the other documents, we do object to their
3 admission.

4 MR. VOLINSKY: Okay. Last questions then.

5 THE PRESIDING OFFICER: Okay, Mr. Volinsky.

6 Q (By Mr. Volinsky) Do you have 41 in front of
7 you?

8 A I anticipated that you would go there and I have
9 it.

10 Q You do?

11 A Yes, I do.

12 Q Would you, just for your own edification, thumb
13 through 41 and tell me if that's not a
14 compilation of communications between your firm
15 and various individuals at the Local Government
16 Center about a number of matters on which
17 members of your firm were consulted?

18 A In reviewing this, Mr. Volinsky, I believe that
19 this is some of the materials or are the
20 materials we produced in response to the
21 discovery rulings in this administrative
22 hearing. I wouldn't characterize it as
23 necessarily matters we were consulted on. Some

1 of these look quickly to be informational but
2 these certainly were in our files electronic and
3 hard, and my goal was to make sure I produced
4 everything that at all was pertinent to the
5 subjects described in the order.

6 Q When you say your files, you mean the Hinckley
7 Allen files?

8 A Yes, the firm's files.

9 MR. VOLINSKY: I'd move to strike 41, your
10 Honor.

11 THE PRESIDING OFFICER: Mr. Quirk?

12 MR. QUIRK: Thank you. From a quick review
13 of 41, Mr. Mitchell, there are draft documents
14 in there, there are draft minutes, there are
15 emails in there that I'm not sure what the
16 relevance is to this proceeding. So for a
17 wholesale admission, we object. To be clear, we
18 do not object to the ones that we have had
19 testimony on and that have been relevant and
20 established at this hearing.

21 THE PRESIDING OFFICER: Mr. Volinsky,
22 you've faced this situation before. In your
23 experience, what would be the most expeditious

1 way in which you would proceed to meet the
2 objection?

3 MR. VOLINSKY: Let me see if I can ask an
4 overall question or two and try to avoid the one
5 by one.

6 THE PRESIDING OFFICER: In the essence of
7 time, could I ask counsel to come to the bench,
8 please?

9 (Counsel at the bench off the record)

10 THE PRESIDING OFFICER: After a brief
11 conversation with counsel, we're back on the
12 record, and I have asked Mr. Quirk as this is
13 his witness and these are documents that have
14 been available for some time to all counsel to
15 take a moment or whatever time he needs to
16 review this batch of documents and be specific
17 with his objection as to each document that he
18 objects to.

19 In keeping with my general or, I should
20 say, our general agreement, I apologize to those
21 for the late notice, but I anticipate that those
22 that do have personal or day care obligations
23 I'll give you three to 5 minutes while Mr. Quirk

1 is reviewing his materials, you can make your
2 phone calls.

3 Mr. Quirk, I'll allow you 3 to 5 minutes to
4 go through these documents and tell me which
5 documents you, oh, no, I said I would give you
6 as much time as you wanted. So take as much
7 time as you want. But those who of you are
8 going to leave the room to make phone calls,
9 I'll give you 3 to 5 minutes and then we'll
10 proceed. So we're off the record and Mr. Quirk,
11 you just give me a high sign.

12 MR. QUIRK: Mr. Mitchell?

13 THE PRESIDING OFFICER: Yes, sir.

14 MR. QUIRK: If I may, in light of the hour
15 and help expedite the proceeding, if I could be
16 heard on Exhibit 41.

17 THE PRESIDING OFFICER: Surely. Go right
18 ahead and share that podium, Mr. Volinsky, with
19 him if you would.

20 MR. QUIRK: I'm okay. With respect to the
21 86 pages at 41, there are a number of emails to
22 and from several individuals that Mr. McCue, I
23 don't believe, is on all of them. He may be

1 cc'd on some. There are several draft
2 documents. We would note for the record that
3 these are drafts, these are not final documents,
4 and with that one caveat, we will not oppose the
5 admission and speed this hearing along.

6 THE PRESIDING OFFICER: Is it my
7 understanding that from these documents when I
8 review them I will be able to detect which you
9 classify as drafts?

10 MR. QUIRK: Yes, sir.

11 THE PRESIDING OFFICER: And also so you
12 bring that to my attention with respect to
13 relevance and what weight I might afford to
14 them, and there was a second piece where you
15 said you weren't sure if that he was co-copied?

16 MR. QUIRK: I note that many of these
17 emails and letters are not authored by Mr. McCue
18 so they're trying to introduce them through this
19 witness, and I think it's important to note that
20 he didn't author many of them. Several of the
21 emails he is merely copied on with no reply. So
22 I'm just highlighting that to you so when you
23 consider what weight to be afforded, I ask you

1 to look at that.

2 THE PRESIDING OFFICER: Okay. And I will
3 do so. So I will grant your motion in part, and
4 I'll just take them for the fact that you had
5 knowledge of them. Would that be a fair
6 characterization, Mr. McCue?

7 A Yes, if I was copied, then I had knowledge of
8 them.

9 THE PRESIDING OFFICER: Thank you. And
10 thank you, Mr. Quirk, for being so innovative.
11 Mr. Volinsky?

12 MR. VOLINSKY: Just would move to strike
13 the ID and I have finished questioning this
14 witness.

15 THE PRESIDING OFFICER: Okay. So they are
16 admitted with the prior discussion we've just
17 had. I won't repeat it. Would you like to go
18 on redirect now, Mr. Quirk?

19 MR. QUIRK: Very briefly. Very briefly.
20 Thank you, Mr. Mitchell.

21 REDIRECT EXAMINATION

22 BY MR. QUIRK:

23 Q You were asked a question about the Primex

1 coverage lines and about some membership issues,
2 and I just want to approach, and I have the
3 affidavit of Ty Gagne which for the record is
4 Exhibit 454, and I'm showing you paragraph 7 and
5 you testified about this paragraph. It says,
6 membership in Primex's coverage lines are not
7 identical.

8 Did I read that correctly?

9 A Yes, you did.

10 Q Thank you. You were also asked a question about
11 the Primex agreement and some moneys that Primex
12 returned, do you recall that?

13 A Yes.

14 Q Do you know whether they were planning to return
15 any of these monies even before this agreement?

16 A I have not heard that they were planning to, and
17 I assume it was a voluntary act by their Board
18 of Directors.

19 Q Do you have any idea what their level of surplus
20 was prior to this return?

21 A No.

22 Q Thank you. That's all I have, Mr. Mitchell.

23 THE PRESIDING OFFICER: Thank you. Any

1 Redirect, Mr. Gordon?

2 MR. GORDON: No.

3 THE PRESIDING OFFICER: Mr. Howard?

4 MR. HOWARD: No. Thank you.

5 THE PRESIDING OFFICER: Mr. Volinsky,
6 anything further?

7 MR. VOLINSKY: No.

8 THE PRESIDING OFFICER: Mr. McCue, do I
9 understand that you have an obligation out of
10 state?

11 THE WITNESS: I do tomorrow but I will be
12 back in by midday Thursday.

13 THE PRESIDING OFFICER: Okay. Let me try a
14 couple and if it does generate something, we'll
15 see you again. If it doesn't --

16 THE WITNESS: Okay. That's fine.

17 THE PRESIDING OFFICER: -- Godspeed on your
18 trip.

19 THE WITNESS: Okay. Thank you.

20 EXAMINATION BY THE PRESIDING OFFICER:

21 Q Do I understand that when the, to use a term of
22 art, the handoff from Mr. Lloyd to you occurred?

23 A Yes.

1 Q With respect to the LGC client, that you
2 reviewed the prior years' minutes relating to
3 LGC and the HealthTrust?

4 A Yes. Well, from the time I started to, before
5 Attorney Lloyd did the handoff I had been
6 working with LGC for a year and a half so
7 through that work I became familiar. I became
8 particularly focused on understanding the
9 history, the notion, I like to do that to
10 understand when I represent businesses the
11 nature of their business so I did some extra
12 research, yes.

13 Q Very good, and I appreciate the more
14 comprehensive answer. Can I interpret that to
15 say that you did review the minutes?

16 A Minutes were part of my review. Yes.

17 Q Thank you. Do you recall your testimony when,
18 let me see if I can help you here. Still on
19 direct with Mr. Quirk asking questions of you,
20 when he used the term AGRiP?

21 A Yes.

22 Q In and around there and they started to ask you
23 about the RBC of .5 and such?

1 A Yes.

2 Q You made a reference to a Board member who asked
3 a question that drove you into the literature,
4 and do I understand by that the literature
5 related to RBC?

6 A No. It was literature related to industry
7 standards in risk pools.

8 Q Okay.

9 A Specifically, with respect to return of surplus.

10 Q Okay. Thank you. In your testimony on
11 cross-examination when we were doing the
12 corporate link to Delaware?

13 A Yes.

14 Q And, please, as I've told the others, don't read
15 any greater significance into what I'm saying.
16 I guess wrong about my own intent. Okay? I'm
17 simply going to ask you, in your testimony did
18 you say that you did or didn't, did not, all
19 right, that you did or did not know the
20 significance of the failed event in Delaware?

21 A In, I think you were asking, the focus was my
22 2006 meeting with Mr. Andrews?

23 Q That is correct.

1 A At that time I did not know of the various
2 defective steps and the attempt to go through
3 Delaware, no.

4 Q So I gather you appropriately compensated the
5 paralegal appropriately?

6 A We treat her very appropriately. Yes.

7 Q You treat her very appropriately. Yes. And the
8 last question, I understand from your testimony
9 that you have experience and I respect the
10 experience in dealing with health care entities.

11 A Yes.

12 Q And I think you mentioned Dartmouth-Hitchcock,
13 and you generally characterized that starting in
14 the '80s that the health care industry was
15 getting into integration and --

16 A Yes.

17 Q Such?

18 A Yes.

19 Q And is health care, the concerns about health
20 care industry getting into integrated models the
21 same as health, business entities that walk like
22 an insurance company, talk like an insurance
23 company, quack like an insurance company, health

1 insurance companies?

2 A Well, I don't want to complicate this, but
3 what's happening now is the Accountable Care
4 Organizations, ACOs, actually started before the
5 Affordable Care Act but embodied in the
6 Affordable Care Act and it's the various pieces
7 of the health care system. So hospitals like
8 Dartmouth-Hitchcock, Concord Hospital, doctors,
9 health insurers, Anthem, CIGNA, Harvard Pilgrim,
10 all getting together to figure out how they can
11 coordinate what they do so all of them are
12 focused on the wellness of the patient and so
13 people get rewarded and incented to keep the
14 patient well as opposed to do procedures and
15 treatment which are very costly and to prevent
16 things from being silent. So the notion of
17 integration started in the '80s, managed care.
18 HMOs didn't quite work and so now this ACO is
19 using different providers. Now you have health
20 plans, hospitals, doctors, regulators all
21 working together.

22 Q Okay. But I didn't hear you say health
23 insurance, and that's my question. Integration

1 among health care providers, I understand.

2 A And the insurers. Anthem, Harvard Pilgrim,
3 CIGNA. They are part --

4 Q They are integrating with subsidiaries?

5 A No. They are -- no. They are, they are
6 creating joint ventures, these Accountable Care
7 Organizations, in which the focus is managing
8 the health of the insured which was the focus of
9 LGC back in 2003.

10 Q And from your familiarity, both representing LGC
11 as outside legal counsel and your involvement in
12 these proceedings, do you subscribe to a
13 characterization that these pools are not
14 insurance companies, they're not regulated by
15 the Insurance Commission in New Hampshire?

16 A Correct.

17 Q But for all intents and purposes, relevant to
18 the issues here, they're comparable, they act
19 like insurance companies? Fair
20 characterization?

21 A They address the same risks in a different way.
22 It's a different model for covering risks and
23 paying for risk management.

1 Q Paying for. How does that differ? Private, the
2 public trusts that before us today?

3 A Risk management in terms of wellness and I guess
4 to some extent if it's a HMO product, yes,
5 insurers do that, but they don't, I don't know
6 many private commercial insurance companies that
7 will manage risk across Health, Workers' Comp,
8 Property-Liability. They're very much silent.

9 Q Excuse me. But because of the lines they offer
10 creates the silo?

11 A Because of the lines they offer because most of
12 them are maximizing profits because they're
13 using the experience of a large group and not
14 just the experience of municipalities and School
15 Districts which if you read the literature of
16 why these risk pooling arrangements were started
17 and not regulated was to have the focus be on
18 the experience just of these entities, not have
19 insurance regulation because they're
20 member-managed and they had incentive on their
21 own to keep costs down.

22 Q And I always say last twice because I'm an
23 attorney so my last question has to do with your

1 role as outside legal counsel during the time in
2 which you were providing in essence general
3 service --

4 A Yes.

5 Q -- to LGC. In reading, reviewing the minutes,
6 did you participate in a similar fashion as
7 Mr. Lloyd did? And by that I mean, attended
8 committee meetings, Finance Committee,
9 HealthTrust, LGC parent?

10 A I was there for all of them, yes. Yes, I was
11 there.

12 Q And so as discussions became robust or docile,
13 you participated and they didn't say well, let's
14 here from Attorney McCue? They recognized your
15 expertise, and if you felt you had to weigh in
16 you weighed in?

17 A Yes. Both things happened. I would weigh in
18 when I saw something that I felt needed some
19 legal advice, and the members sometimes would
20 ask me directly. For instance, there was a
21 question from Mr. Curro, one of the Defendants,
22 are we legal. So yes, they asked me very
23 pointed questions.

1 Q And was Mr. Curro the Board member that I asked
2 you about?

3 A No. About the surplus?

4 Q The one who drove you to look into the
5 literature?

6 A No. That was Tim Ruehr. He was an employee
7 representative, member of the Board. He was on
8 the Finance Committee, and it was in the context
9 of a Finance Committee meeting that he wanted --
10 he understood that Bob Lloyd had always advised
11 LGC that their method of returning surplus to
12 rate stabilization was appropriate. When I read
13 him the statute he saw that it was silent. He
14 wanted more comfort and actual written opinion.
15 So I agreed to do that and went through the
16 careful diligence on my own to confirm
17 Mr. Lloyd's prior advice, and you'll see as an
18 exhibit in April 2007 letter.

19 Q Okay. And at those meetings at which you were
20 present?

21 A Yes.

22 Q And prior to Ms. Carroll becoming interim
23 director or permanent director, Executive

1 Director, did the Board look to Ms. Carroll for
2 any legal counsel?

3 A No.

4 Q Did they look to any other attorney other than
5 yourself?

6 A No.

7 Q During your tenure.

8 A During my tenure although kind of as we went
9 into hiatus mode they, I shouldn't, they engaged
10 Attorney Frydman who went in-house but I'm
11 sorry. Can I clarify my answer?

12 Q Absolutely. Because we want to get you on your
13 way.

14 A They didn't ask others about the type of advice
15 I provided. They did use the firm Cleveland,
16 Waters & Bass for employment-related issues as
17 well as the certain health operational issues
18 they used David Lough because he was a partner
19 of Bob Lloyd, and it was a historic
20 relationship.

21 Q Health operational?

22 A Negotiating the contract with Anthem, complying
23 with HIPAA, those kind of things and he is now

1 in-house as well.

2 Q All right.

3 A And I'm trying to think of there was -- then
4 they engaged litigation counsel as well but for
5 the type of advice I gave, they relied on me.

6 Q Okay. And as part of that responsibility, do I
7 understand that you participated in Annual
8 Meetings and conducted or made presentations on
9 fiduciary responsibilities?

10 A Yes. It was really started by Mr. Andrews. It
11 was at his insistence became a little bit of a
12 joke. It would happen at the summer retreats,
13 at the Annual Meeting and summer retreats,
14 people would kind of joke, another Fiduciary
15 Responsibility Presentation, but we gave it
16 every year. I tried to give examples and spice
17 it up, yes, I gave it every single year. And I
18 also gave it to new Board members as part of
19 their training before they became members after
20 they were elected and before their first meeting
21 I would run through that same presentation with
22 them.

23 Q Okay. Did any in-house counsel to your

1 knowledge make representations with respect to
2 fiduciary duties?

3 A I was not present. It may have happened. I
4 don't know. Not to my knowledge.

5 Q But at least at these annual meetings once a
6 year it was your responsibility?

7 A It was my responsibility to get everyone focused
8 and reminded about their fiduciary duties, and
9 then, clearly, I would do that throughout the
10 whole year at meetings whenever it was
11 appropriate.

12 Q And did you use training materials when you did
13 that?

14 A I used Power Point presentation. Yes.

15 Q Did you distribute materials as well to the
16 Board members?

17 A Yes.

18 Q Do you recall any materials with any specificity
19 that you --

20 A I did provide them, the New Hampshire Director
21 of Charitable Trust Office has a very good
22 pamphlet on fiduciary duties of nonprofit
23 trustees, and we always held ourselves to that

1 high standard and so I would distribute that as
2 training materials.

3 Q Thank you very much.

4 THE PRESIDING OFFICER: Gentlemen, have I
5 stirred anything up? Mr. Quirk?

6 MR. QUIRK: I just have one point of
7 clarification so there's no confusion on an
8 issue, if I may.

9 THE PRESIDING OFFICER: Absolutely.

10 REDIRECT EXAMINATION

11 BY MR. QUIRK:

12 Q The mistake you learned of in 2006?

13 A Yes.

14 Q The one that was brought to your attention by
15 the paralegal. Was that the failed merger
16 through Delaware or was it something different?

17 A It was part of the failed merger through
18 Delaware. It was a filing requirement that
19 hadn't happened in the Delaware step at the
20 Delaware end. I had assumed all the other steps
21 were done properly so I just corrected that
22 small piece in Delaware.

23 Q When did you learn -- was it later that you

1 learned that the Delaware was not effective?

2 A Yes. It was part of the investigation and my
3 review thoroughly looking backwards that was
4 instigated by the request by the Board of
5 Directors once the interim study report had been
6 issued.

7 Q So the issue that you learned of in 2006 that
8 you corrected, did you assume that fixed the
9 entire issue with respect to the merger through
10 Delaware?

11 A It was the only issue I was aware of, and, yes,
12 I assume it had fixed it. It was a simple
13 filing. Our firm paid the late fees, and I
14 thought we were done.

15 Q And then, subsequently, you learned that the
16 merger was not effective?

17 A It never happened. Right.

18 Q Thank you. Thank you, Mr. Mitchell.

19 THE PRESIDING OFFICER: You're entirely
20 welcome. Mr. Gordon, did I stir anything up
21 with you?

22 MR. GORDON: I'm having a quick consult. I
23 don't believe I do. Let me ask Mr. Quirk a

1 question.

2 THE PRESIDING OFFICER: Mr. Volinsky, have
3 I stirred anything up with you?

4 MR. VOLINSKY: No, sir.

5 THE PRESIDING OFFICER: Very good.
6 Mr. Howard?

7 MR. HOWARD: I have what's going to be
8 about three questions, but I'm going to defer
9 first to Mr. Gordon for his decision.

10 THE PRESIDING OFFICER: Okay. Thank you.

11 MR. HOWARD: I like to keep things going in
12 order, as do you.

13 THE PRESIDING OFFICER: And I love being
14 forewarned, sir. You know it's not my intent.

15 MR. QUIRK: Mr. Mitchell, you asked some
16 questions about fiduciary duty presentations.

17 THE PRESIDING OFFICER: Yes.

18 MR. QUIRK: And I just want to highlight
19 for you that they are full exhibits, I believe
20 they're full, in the exhibits, fiduciary duty
21 presentations by Mr. McCue?

22 THE PRESIDING OFFICER: Yes.

23 MR. QUIRK: And they're Exhibits 375, 377,

1 378, I believe.

2 THE PRESIDING OFFICER: Yes. I had the
3 benefit over the weekend. Thank you.

4 Mr. Howard, did you hear my response to
5 Mr. Quirk that I'd had the benefit over the
6 weekend of reading these exhibits? Well,
7 actually, you know, a longer period of time
8 actually.

9 MR. HOWARD: Interesting what you consider
10 beneficial, but, yes, I understand that.

11 THE PRESIDING OFFICER: All right then.
12 Mr. Howard, you have questions?

13 CROSS-EXAMINATION

14 BY MR. HOWARD:

15 Q You mentioned my client, Peter Curro, and you
16 said that there was an instance where he asked
17 you a question of are we legal. Could you tell
18 us when that was and in what context he was
19 asking that question?

20 A It was in the context of the Bureau's
21 investigation so I explained as I've explained
22 here about the corporate structure compliance
23 with RSA 5-B.

1 Q And Attorney McCue, you had commented about the
2 fiduciary duty presentations, and you mentioned
3 the phrase that it sort of became kind of a joke
4 that is Mr. McCue giving us our presentation
5 again. In your experience with this Board, did
6 they take their fiduciary responsibility
7 seriously?

8 A I honestly mean this when I have never dealt
9 with a Board that has taken it any more
10 seriously than LGC so yes, they have taken
11 their, they understand and take them very
12 seriously at every meeting.

13 Q And you've testified to self instances where you
14 were asked to give legal advice to the Board.
15 Can you think of any instance in your experience
16 with the Board where they did not or refused to
17 follow your legal advice?

18 A No. That never occurred.

19 Q And in April of 2007 I believe it was Board
20 Member Ruehr who asked for an opinion letter on
21 5-B and return of surplus and related issues?

22 A Yes.

23 Q Is it your view that the Board relied upon the

1 advice given in that letter?

2 A Yes.

3 Q Thank you.

4 THE PRESIDING OFFICER: Anyone else now?
5 Very good. I think then, Attorney McCue, thank
6 you very much for your patience and your
7 contributions to my fact-finding mission here.

8 THE WITNESS: My pleasure. Thank you.

9 THE PRESIDING OFFICER: You're excused and
10 we are recessed for the evening. Commencing
11 tomorrow at 9 o'clock. Very good. Thank you
12 all.

13 (Whereupon, at 5:25 p.m.,
14 the proceedings were recessed,
15 to reconvene on Wednesday, May
16 9, 2012 at 9:00 a.m.)

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C E R T I F I C A T E

I, CYNTHIA FOSTER, Licensed Shorthand Reporter and Registered Professional 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 8th 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 by me;

I further certify that I am a disinterested person in the event or outcome of this case 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.

CYNTHIA FOSTER, LCR, RPR