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STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATIONS

No. C-2011000036

In the Matter of:

Local Government Center, Inc., et al.

BEFORE DONALD E. MITCHELL, ESQUIRE
PRESIDING OFFICER

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REPORT OF PROCEEDINGS

May 7, 2012

9:49 a.m.

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New Hampshire State Archives and Genealogical

Public Research Room

71 South Fruit Street

Concord, New Hampshire 03301

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I N D E X

THE PRESIDING OFFICER: Good morning, ladies and gentlemen. This is Day 6 in the matter of the Local Government Center, Inc., et al. My name is Don Mitchell, and I'm the hearing officer.

We have a couple housekeeping items this morning first. And reminding those that the Bureau of Securities Regulation rested their case in the prior testimonial day at its conclusion. And following that, several motions were made.

So first, we have a -- I'm going to recognize Attorney Tilsley from the Bureau of Securities Regulation for purposes of entering information into the record which was not done on Friday. Although the participating counsel did initially document, I would like a more formal record.

And I understand, Mr. Tilsley, you rise to represent what exhibits in total have -- the parties have agreed have been admitted as full exhibits during the course of the BSR case.

MR. TILSLEY: Correct.

THE PRESIDING OFFICER: Thank you. Would you please do so.

MR. TILSLEY: Sure. Based on the documents

09:51:44 that we submitted on Friday, the following BSR documents have been marked as full exhibits: 1 through 9, 12 through 16, 19 through 22, 24 and 25, 28 to 35, 39, 42, 43, 45, 46, 48 through 51, 53, 54, 56 through 67, 68A, 68B, 68C, 68E, and finally, 69 through 73.

09:52:40 The following documents have been marked -- again, pursuant to the list we prepared Friday -- as full exhibits on behalf of the respondents: Respondents Exhibits No. 1 through 233, 236 to 261, 273 to 331, 334, 344 to 365, 368 to 373, 375 to 383, 385 to 406, 409, 411 to 426, 431 to 437, 441 to 446, 450, 456 to 459, 460 and 461.

09:53:49 Thank you.

09:53:51 THE PRESIDING OFFICER: That completes the list, Mr. Tilsley?

09:53:53 MR. TILSLEY: It does, sir.

09:53:54 THE PRESIDING OFFICER: Okay. Mr. Tilsley, do you have your list of Friday handy that you initialed?

09:54:13 MR. TILSLEY: I don't have it.

09:54:13 THE PRESIDING OFFICER: Okay. You don't have an initialed copy?

09:54:13 MR. TILSLEY: I have a list, but not an initialed copy.

THE PRESIDING OFFICER: Okay. Directing your attention to Exhibit 460 --

MR. TILSLEY: Oh, let me -- I'm sorry. I was looking at that as I said it. Those have not been marked yet. I added them to my list this morning because we've agreed that they can be marked when LGC presents them later this morning. So 460 and 461 are not yet full exhibits.

THE PRESIDING OFFICER: Thank you.

MR. TILSLEY: I'm sorry.

THE PRESIDING OFFICER: On Friday, several motions of a dispositive nature were submitted by the several respondents at the close of the petitioner, Bureau of Securities Regulation.

My decision will be an oral decision. And I will state for counsel and for others' purposes that the standard generally recognized -- and has been acknowledged by at least two of the respondents' counsel -- would be to have the hearing officer apply what's referred to as a prima facie standard. And the prima facie standard is a standard that's applied against all the evidence to that point.

Here, it is the testimony represented by those transcripts which you see in front of me which was testimony offered last week and these exhibits that have been just read into the record. And again, I want to accentuate that for LGC, 460 and 461 are not yet in the record.

Then after reviewing that evidence, that I have to balance as to whether or not the moving party, which is the Bureau of Securities Regulation here, has presented evidence on the essential facts that are necessary to prove its case. This does not mean that this evidence necessarily has to be conclusive or that it cannot be rebutted by the respondents when they present their own cases.

I am aware that in limited situations, the court in New Hampshire has allowed a judge, when that judge is acting as both the impartial adjudicator and the trier of facts -- that is, when a jury is waived and only the judge is participating both -- in both those roles -- that New Hampshire courts have allowed the judge to make a determination on the basis other than the prima facie basis that I've just explained.

Instead, the court has allowed the judge to expedite the process of dismissing the nonmoving party's -- which would be the Bureau of Securities Regulation -- case using a higher standard. And that higher standard calls for a determination, were I to adopt that role, a higher standard against which to measure the evidence that was presented. And that would call on me to weigh that evidence as to whether or not it reaches a level of preponderance of the evidence.

That is to say, that the evidence presented by the Bureau is essentially more convincing than the evidence presented by the respondents in their respective cases regarding the several counts alleged and claims contained within.

The New Hampshire court, in allowing the judge acting as a trier of fact without a jury to conclude in such a fashion -- that is, to conclude that dismissal is warranted on the higher standard of preponderance -- would require that that decision be supported by findings of fact. These findings of fact would be findings that I would make from the evidence presented.

I am not adopting that higher standard. I have found no law that extends the New Hampshire findings, both in 1991 and 2011 -- that extends that to a hearing officer -- that is, a non-sworn constitutional judge. And I'm not prepared in this case to extend that although our roles are similar.

Therefore, I review the plaintiff's -- I'm sorry -- the petitioner's, Bureau of Securities Regulation, claims in that light.

Using that standard, I do find that the Bureau of Securities Regulation through the testimony and through such cross-examination that was conducted and through a review of the boxes of exhibits, that they have offered evidence on all essential points.

Obviously, some are stronger than others. But I must conclude, with the evidence that I have reviewed, that there is evidence that addresses the aspects that have to be proven by the Bureau of Securities Regulation.

Therefore, I deny each respondent's motions to dismiss at this time in the proceedings. I do so without prejudice to allow such motions later in these proceedings, at which time the level of examination that I would use for my determination would be the preponderance of the evidence.

Thank you. We'll take a brief five-minute recess and then begin with the -- would it be, Mr. Saturley, the LGC going first among the respondents?

MR. SATURLEY: Yes, Mr. Mitchell.

THE PRESIDING OFFICER: Thank you. Five minutes then, please. We're off the record.

(Recess at 10:03 a.m.,
resumed at 10:17 a.m.)

THE PRESIDING OFFICER: Good morning, Mr. Saturley. And it's my understanding that the respondents, the LGC entities, are prepared to go forward with their case-in-chief.

MR. SATURLEY: That's correct.

THE PRESIDING OFFICER: Please proceed, sir.

MR. SATURLEY: Our first witness is Thomas Enright. Would you like to swear him in or would you like me to do so, sir?

THE PRESIDING OFFICER: I'm sorry. Would you do so this morning.

MR. SATURLEY: Yes.

THOMAS ENRIGHT,

having been first duly sworn by Mr. Saturley,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SATURLEY:

Q. Would you please, for the record, state your full name.

A. Thomas Enright.

Q. And your address?

A. 35 Main Street, Hollis, New Hampshire.

Q. And what's your connection to the Local Government Center?

A. I'm currently the chairman of the Board of Directors.

Q. Have you been a member of the board for a number of years?

A. Eight years. July 2004 was my first time on the board.

Q. And have you been here through this proceeding, through all of last week's testimony?

A. Every single minute of it.

Q. Now that the LGC is starting its case, understanding that testimony is not necessarily a fun thing to do, but did you look for an opportunity to speak this morning?

A. Absolutely.

Q. And why is that?

A. Because as I heard this case and as I have read everything I could about this case, this case is about me and the Board of Directors and the decisions that we have made. I have participated in almost every decision that has been complained about. And if I have not participated in those decisions, I have stood behind those decisions because they were made just before my joining the board.

So I've had ample opportunity to consider all of the aspects of this case during my eight years on this board. I've had ample opportunity to complain. And rather, I am proud of the decisions. I can defend them. And I stand by them.

Q. Is there any personal experience of your own that you find particularly relevant to your service on the board of the Local Government Center?

A. I think there is. And -- of course, right now, I'm the introduction to the Board of Directors.

But there are 28 board members. And I think they all are similar to me -- have similar aspects to me in that they have a life of work experience. They take their job seriously. And so we all bring a little different perspective. But here's -- here's what -- what I think helps me bring some relevancy to my job here.

My first job out of -- after Dartmouth College was the U.S. Navy, four years. I'm very proud of that service. I was in a flight status. P-3s out of Brunswick, Maine. And in addition to your flight status, you are assigned to a ground job. Turned out that my ground job was safety officer. There were two safety officers. I was first a junior safety officer, then later the senior safety officer.

But in hindsight, what this was all about was risk management and how the Navy did it in a very dangerous occupation. I can't think of -- there are few jobs that I can think of more dangerous than flying a military aircraft. And the reason we did it so successfully was our whole program -- all of my training, all of my then operational experience -- was based on training and procedures.

And I had thick manuals. And I was taught that as long as I followed the procedures in those manuals, attended to handling things safely, that I wouldn't kill myself. And if I didn't, it's very likely I would.

So my first introduction to risk management had -- I was taught and later experienced -- had life-or-death consequences. So I took it seriously.

After the Navy, I went to law school, Boston College, and then joined my father, who was also an attorney, and others in a firm that he had in a 27-year practice of law. And during the course of that practice, I served on the Board of Directors of two banks at separate times. And in both of those instances, I was on the loan committee of those banks.

And I think that brings relevance because for almost 20 years of that career, I was involved in making risk decisions, looking at credit, looking at ability to pay back a loan, and then assessing whether loan loss reserves in a bank were sufficient to cover the situations that we were entering into. So again, a risk management opportunity for me. Different than what I'm doing today. Nevertheless, it helps me bring relevance to what I'm doing today.

The third piece that I would call attention to is down the road in my later years, I helped with my brother, who was also an attorney, to run a law practice. And I had on my shoulders there making payroll every two weeks. And unless you've had to make payroll for 30 or more people every two weeks, you don't understand the responsibility that that entails.

And in doing that, we decided that we needed three months of operating expenses on hand because of the ebb and flow of our business. So again, there I was -- it seems to me I had in my mind the notion that reserves are important.

And the last thing that I would call attention to in my experience is after I finished my law practice, I developed land. I was in the construction business with the land development end of it. And there, the standard for building roads and building drainage system is using the 100-year flood plan. So that when you build something like --

when you constructed a road, you needed a large margin of safety. You were looking at storms that might occur once in 100 years. And that taught me that you needed a horizon that was a long horizon. And I would certainly do no less in the industry that I'm in now where if I'm considering people's lives and their health safeties -- and their health and their safety.

So all of the trustees bring -- the Board of Directors bring some relevant experience to the job that we undertake here. And I think at least that is helpful in all of the things that I do at LGC.

Q. In addition to the things that you've done on your own behalf in terms of your own businesses, have you also served on voluntary boards in addition to LGC that have given you some perspective on how organizations run?

A. Absolutely. I -- It would probably be odd if I listed all of the boards that I've served on. But I've taken a great interest in public education. I've served on a school board for more than 20 years continuously. Prior to that, I was on the Budget Committee, our town Budget Committee.

And as part of my service on the School Board, I also was heavily involved with New Hampshire School Boards Association, was president of that organization in the past. I served on the Board of Directors of the New Hampshire Interscholastic Athletic Association, again, as part of my schooling experience.

I've served on the State of New Hampshire State Council on The Arts, which is a whole different piece of my background, my interest in the arts, but certainly relevant to my interest in public education. So other boards, but it -- and then Local Government Center.

Q. Just for the record, what is the political subdivision that you represent on whose behalf you serve on the board?

A. The Hollis-Brookline Cooperative School District.

Q. With regard to the LGC board itself, what particularly of its functions do you find particularly interesting, given your own particular experience?

A. I'm a person who views process as -- I see things through the lens of process. I can call myself a process geek. And I wouldn't have done that had I not sat down in this proceeding and figured out why I am that way. And so I just -- I want to explain why process is very important to me.

My first four years I was taught and I experienced life or death. I can do it right and I'm going to get through it. If I screw it up, there's a good chance that I'll kill myself. That was my Navy experience.

Then I went to law school. Three years I was educated on due process. From the first day to the last day there was due process every -- embedded in everything I learned in law school. And then I lived it for 27 years.

So it turns out that process is -- is the lens through which I tend to view things, or one of the lenses.

Q. How do you feel about process in general as it is applied at LGC?

A. I couldn't be happier with it. And it's one of the reasons that I stick with LGC. And I've been on a lot of boards. I have seen bad process. But I think that there -- there is -- I have experienced no better process than that at LGC. And if I could, I'd like to explain what I mean by that.

Q. Please do.

A. We have a board -- a very large board. And when I first came there, I shook my head and I said, How could this possibly work? 28 people, how are we going to get through a meeting? But they're very intelligent people, very committed people. And we listen to each other. So we have an excellent board.

Secondly, we have a committee structure. And everything starts out in our committee structure. So I've been a member of the Finance Committee since the beginning. All questions about finance come to that committee. We'll spend a morning on an issue, maybe two, but usually one issue. And we'll hear from our staff, we'll hear from our professionals.

And the process has always been that we don't speak until they give us the facts, the recommendations, all of the considerations. And when they've educated us in the subject matter, we then debate it. We push back. I've never been to a meeting that didn't include -- where our counsel wasn't there, where our subject matter experts weren't there, and our excellent staff wasn't there.

So by the time it's my job -- and my job and the board's job is to make the decisions on our products and our pricing and all of the important decisions really that make up LGC -- I'm fully prepared.

So we get a committee recommendation. Then we go to the full board. And the committee chair will introduce the subject, talk about the process that's been followed, talk about the -- the committee's recommendation. Then the subject matter experts will talk and answer questions.

Then the board gets into it. And the board will debate back and forth. And we have -- one of the things I like about the big board is we have people of all stripes. We have people who will fight you tooth and nail. And we have very lively debates. And I very much enjoy that.

But when we finish, I feel that every corner of the state has been represented. We only come together -- I've come to know these people. But they're not close friends. I only see them at board meetings. And by the time we've hashed -- gone through this process, whatever decision we make I feel is a solid decision. I feel we've really worked it over, allowed all opinions to be heard.

I'm not afraid of any opinion that's adverse in any way because if I offer an opinion -- and I've done this -- that was heading off in the wrong direction, I'm met by my colleagues by total silence. And I very quickly understand that. That's not the direction we're heading in.

And that's the way we -- that's why 28 of us can get through this process, make good decisions, and move on because we're intelligent, I think. We have the business backgrounds. We have good life experience. And we all eventually want to go home from the meeting. So we allow it to proceed to a conclusion.

So I couldn't be more pleased about process. And I can talk about bad process as well as good process. This is very good process.

Q. Does the board have a history of unanimous decisions on everything, or is there -- are there -- do the minutes reflect some disagreement among the board from time to time?

A. No. We frequently have disagreement. And I mean, I haven't looked, but I would say with frequency, our decisions are not unanimous.

But I think we -- you know, if the issue is this wide, I think we very closely [sic] get to conversation that's this wide. And so if I win a point -- if my -- if my position prevails, you know, we might be here. But if I don't prevail, we're only here. We're not out here.

So I think we all go home quite comfortable with -- with the process that we followed.

Q. You mentioned the staff briefly.

A. Yes.

Q. What's the board's interaction with the staff? And more importantly, what's your opinion of the staff with whom you're dealing?

A. I couldn't think more of the staff. Another reason why I just feel very comfortable. I am not a subject matter expert in this business. In fact, when I joined this business, I joined it because -- that is, when I joined this board -- I knew health insurance in particular was a big problem in my district, and I wanted to learn more about it, and I wanted to see if I could do something about it.

And so we -- we just have an excellent staff. The people you are going to hear from, I trust completely. Sandal Keeffe, she reminds me of the advertisement you see with the -- the person with the suitcase with $100,000 in it, and they -- I don't know if you know what I'm talking about -- but they give it to somebody to see if there's a -- if they -- if that person will safe-keep that suitcase. I'd give Sandal Keeffe a suitcase with $100,000 and tell her that I need to -- I'll be back in a month.

And what I would get back from her was not only the suitcase with the $100,000, but I'd get interest on it. She would figure out -- it would kill her to just hold on to that suitcase. She'd get a return on the investment.

Q. And what's her role at LGC?

A. She's the chief financial officer. And Wendy Parker --

Q. What's her role?

A. She's -- I -- I can't give you her exact title, but she's essentially the operations person.

She knows all of the nuts and bolts of every program that we have. She's got a life experience -- In fact, she's come up through the company, completely through the company. And she knows everything there is to know about risk pools. She'd give me back the $100,000, a suitcase, with pamphlets in it telling -- that told me how to better manage the money than keep it in a suitcase. So she's the person that keeps us -- that handles the training in LGC among many other things. Top-notch.

Q. Any other staff? What about your executive director?

A. I helped hire our executive director. So I -- I saw the pool. She's got all of the qualities that our board wanted for an executive director. She sees the big picture. She oversees more than 100 people. And that's a big -- that's a big deal. She oversees a board of almost 30. That's a big deal. She's an excellent people person. Her legal background, I think, helps her because there is a lot of legal stuff that occurs in our business.

So she has all of the qualities that I would want in an executive director. I'm absolutely satisfied with her.

Q. How does this process, as you see it playing out at LGC, how does that compare with some of the other boards or entities on which you've served?

A. It rises way above them. Let me use the example of my school district. My school district for 3,000 kids has -- my SAU -- not my school district -- has three different school boards managing elementary education in Brookline, elementary education -- a second managing elementary education in Hollis and a third handling secondary education in the combined schools.

And it's dysfunctional. We have one superintendent with 17 School Board member bosses and 17 Budget Committee bosses from three different districts, three different budget committees. We clearly should be unified. We all talk about it. We can't find the political will to get there.

So I've seen both sides of this. And the organization that we have at LGC, I totally endorse and stand behind.

Q. With regards to LGC's mission and purpose, how does that relate to you and how you envision your role in serving members of LGC?

A. It's almost at the top of the list with our statutory requirements. But our -- my fiduciary responsibilities are to the mission and to managing the assets. That's what my fiduciary responsibilities are.

So our mission, to provide services and products to -- that help our members carry out their mission, that's what it's all about. That is our focus. We talk about that. We stay with that. Mission is critical.

Q. Let's talk about how some of those things are carried out. Without yet talking about the risk pools themselves and the reserves, what are some of the other things that LGC does? How about training?

A. Enormous effort in training and enormously important. And I've always backed it for the reasons that I've already given you because it was so important in my background. But risk management is what we're about. The best way to manage risk is to train to understand it and to mitigate it.

It's pretty obvious in policemen and firemen that that would be a big deal. It may be less obvious in the healthcare industry, but it is a big deal there because our healthcare industry has -- we've typically bought insurance, let our doctors make the decision, and we don't -- after we pay the premiums, we don't take ownership of it.

Training is all about taking ownership, particularly in the health business, of what's going on in your health. Absolutely critical to know that your habits, the way you manage your body is going to extend your life. Absolutely critical. That's the way -- the best way we can contain costs in the healthcare industry. So I am a big believer in training, have been all my life.

Q. Is this part of -- is this one of the components of something that LGC calls a totally integrated approach?

A. Yes. Yes.

Q. And how do you feel about that program and that approach to LGC's offerings?

A. About being under one roof with all of our risk management programs?

Q. Yes.

A. I'm just a strong supporter of that. I think it's an excellent business model in terms of giving the best price. And it's the best way to manage all of the risks -- I guess the analogy that I would use is -- or the example I would use is I changed my house insurance not too long ago. And I was just going to change my house insurance.

But when I talked to the individual I was going to, he said, But if you bring me the rest -- So he gives me a price. You bring me your automobile, your boat, your excess coverage, your personal effects rider, if you bring me all of that, the combined pricing is going to be much better. I said, Show me. He did. It was much, much better.

Because we talked about earlier in this case the bigger -- the more people you have or the more -- the more risk you put under one umbrella, the better you contain it, the least -- you can control the cost better. There are just so many reasons why being under one -- one roof makes sense.

The example I gave you earlier about my school district having three silos and they have -- we all get -- have separate agendas. And when we come together, I don't know what the other guy has been working on. And we just work at cross-purposes.

So having a silo approach to risk management, I think is absolutely the wrong way to go. It should be under one roof where we consider the totality of it, manage the risk the best, and price it the best.

Q. Has that actually had some impact with regards to pricing that your own school has sought in the past?

A. Adverse impact, absolutely, yes. We talk about that all the time. We talk about -- I mean, we order fuel oil together. But papers and books and pencils and dealing with different vendors, we're fighting with each other all the time over that. We have one superintendent, one business manager, attempting to keep -- to manage all of us. And it just does not work.

So yes, we talk about it. We know we should be under one roof. We can't find the political will to get there. It's a very strange circumstance.

Q. Let's move to the board's consideration of reserves with regards to the risk pools themselves, which is a topic that you've heard discussed last week. What are some of the important considerations that you, as a board member, look at when considering an appropriate level of reserve, an appropriate level of capital adequacy for the pools?

A. One of the things that just totally disappointed me with the presentation last week was the lack of horizon in attempting to address the reserve issues. Talked about claims. We talked about incurred, but not reported claims. But we didn't talk about what is, to me, the most important piece, which is looking out at the horizon and making sure that we have a company that's protected.

So I -- that's -- that's where my focus is on the issue of reserves. And I can give you some of what goes on in my head.

Q. Well, that's why you're here, so . . .

A. Well, when -- when I deal with reserves, there's a whole -- there are a whole bunch of factors that weigh on me. I look out into the business world, and I see -- I've lived through two sessions where banks have failed in my life. Insurance companies have failed. Recently we've all seen auto company bailouts.

Last week I heard -- I watched a report on Michigan, practically every city in Michigan's in receivership.

And most importantly, bringing it home, the New Hampshire Retirement System, which isn't -- has been important to me as a School Board member. So everything was fine with the New Hampshire Retirement System. It was a $4 billion program. And I woke up one morning and was told it's $2.4 billion underfunded.

So why am I bringing all of this up? Undercapitalization, it seems to me, is one of the biggest problems that we have in this country. And so my perspective is that this company is not going to fail on my watch. That I am going to be conservative and that I should be conservative. When I'm protecting -- when the weight on my shoulders is to make sure that there's a reserve level that's adequate on a horizon for 70,000 people, I am going to be conservative. I'm not going to undercapitalize this company.

And let me -- let me continue on. Bringing it closer to the health insurance -- the health aspect of it. The flu season. Now, I've learned in my eight years that our end-of-the-year results can be highly affected just by the flu season. One year we had a particularly good year, and we asked Wendy Parker, you know, what went right for us. And one of the first things she said that I remember was, We had practically no flu season. And other years the flu season has gone poorly.

And these are million-dollar responses that we're getting, multimillion-dollar responses, just on the flu.

Q. Let me interrupt you just for a second. When you say you had a good flu season, what does that mean, specifically?

A. It means that there was no flu -- the incidence of flu was very low. And that brought -- meant millions of dollars to our bottom line. I was incredulous to find that out.

But let me continue with my thoughts on that a little bit. I read history. So on the flu piece, the biggest pandemic that we've ever had was at the end of World War I when the soldiers came back home and carried with them a mutated flu virus that killed 700,000 people in this country, 20 to 40 million people across the world. That's influenza.

Since then -- so that's the biggest pandemic that we've ever had: flu. Since then, in the '50s we had the Asian flu, killed a lot of people in this country. We had Hong Kong flu. And most recently we've had the swine flu.

So I think about these things. I think I'm supposed to think about these things. I think I'm supposed to see that there's a reserve level that will -- that will handle whatever comes our way.

Let me just give one more example. I can keep going on this one. But let me talk about this Seabrook Nuclear Power Plant. I just read an article. They're trying to get relicensed. They're -- the concrete in the Seabrook Nuclear Power Plant has lost 22 percent of its strength. And they just discovered this.

So if that goes from 22 to 35, am I -- does that relate to my health reserves? Well, I think it does. I've listened to what happened in Japan last year when everything went wrong. And there was an enormous nuclear disaster. So I think I have to consider -- not that I think the world's going to fall apart, but it's important that I look out on a distant horizon when we're talking about reserves.

And let me just make one last point. We lost money at LGC, lost money seven times in the data that I've seen. And we lost money three years in a row: '95 through -- '95, '6, and '7. And we made money in two years and lost money again in the year 2000.

So my point is that you can't plan on a catastrophe that comes in for a year, is gone, and you're done with it. You could -- you could have a business downturn. You could lose money several years in a row. And you have to be prepared to sustain that business -- again, not through the short term, which is what I kept hearing about last week: the short term this, the short term that. Over the long term.

I think my job is to make sure that the risk pool that I'm involved with is around for a long, long time. And on my watch, that's the only way I can fulfill my fiduciary responsibilities.

Q. In addition to your own thoughts on these matters, do you ever go to any conventions or anything where these topics come up?

A. I do. And -- I do. I've been to four national conventions. And they've been very important to me as a barometer. At these conventions are trustees from other risk pools and directors from other risk pools. And at every single one of those four conventions, the primary piece of conversation and -- was involved in every one of them was reserves. It's a common theme. So I can take the temperature of what's going on.

I've talked to people -- Now, I'm not a professional, but I've at least been able to take the temperature. I've talked to people from at least 20 states, probably more, about their reserves situation, what they think about it, how they deal with it. And it -- it helps me know that I'm doing the right thing because they're -- the conversation with them -- I show up in Denver and we're all talking about the same thing. I'm not out in left field.

Q. Were you here last week to observe

Mr. Atkinson's testimony?

A. I was.

Q. Did you hear him suggest that a 95 percent confidence level in an RBC along the lines of 2.1 would be a sufficient and adequate reserve level for LGC?

A. That's what I heard.

Q. And what's your reaction?

MR. VOLINSKY: Excuse me, your Honor.

THE PRESIDING OFFICER: Mr. Volinsky?

MR. VOLINSKY: I'd object if this is about to be an expert opinion because it's completely undisclosed.

THE PRESIDING OFFICER: Understood.

Mr. Saturley?

MR. SATURLEY: This is a member of the Board of Directors who's been accused of unethical, unscrupulous, and basically negligent behavior. I asked him for his reaction as a board member to some testimony and a suggested RBC level. I'm not asking him for an opinion of what is the appropriate. I'm asking him for his board member reaction. He's the one responsible for making that decision. I think he should be allowed to testify how he goes about thinking about that decision.

THE PRESIDING OFFICER: Your objection is denied, Mr. Volinsky. We'll let it run for a little bit longer, and I'll assign it appropriate weight.

MR. SATURLEY: Thank you.

Q. BY MR. SATURLEY: You can go ahead.

A. The best I can say is if Mr. Atkinson were an actuary and those were our policies, I do not think I could serve on that Board of Directors. I do not think I could fulfill my fiduciary responsibilities. They would be taken away from me. And if they're taken away from me, then I can't stand behind those policies and serve the 70,000 health members that I serve.

Q. What is the process that the board goes through when it determines the level that it believes is the -- when it selects a capital adequacy level on a yearly basis? What's the process that it goes through?

A. It's different. I mean, there have been years where we've -- where we've had retreats on that issue, centered around that issue. I have a long presentation on risk-based capital that I kept and looked at any number of times.

But we -- we look at a lot of things. We talk about some of the things that I've been talking about. We talk about obviously where we are. We talk about the surplus that we may or may not have and how to return that in the best interests of our members.

Of course, we listen to -- to Peter Riemer and our experts. And there's a thorough conversation on it.

Q. Who's Peter Riemer?

A. Peter Riemer's our actuary.

Q. Is it fair to say that this topic of capital adequacy is hashed out on a thoroughly -- on a thorough basis?

A. It's -- it's one of the more ongoing topics in my eight years. It's always there. Every meeting, our RBC level is reported. Sometimes we talk about it; sometimes we don't. I mean every meeting. But it's always in the front of our minds.

Q. You mentioned a statute at some point earlier in your testimony. Is the statute and your statutory obligations gone over with the board at any point?

A. Yes. RSA 5-B. Every year, our attorney, who has always been -- we now have David Frydman as our in-house counsel, but I've never been to a meeting without our legal counsel present. Annually our attorney goes over 5-B with us and reviews our fiduciary responsibilities. So that happens annually.

Q. Does he discuss with you the portions of 5-B that talk about returning surplus?

A. Yes.

Q. And so you are aware of those and the board is aware of those when it discusses the capital adequacy level that it seeks to determine?

A. Absolutely.

Q. Turning back to Peter Riemer for a minute, there has been some suggestion last week that some of the consultants at LGC may have been around too long.

Did you hear that?

A. I did.

Q. What's your reaction?

A. I think length of service is something I should consider, but it is certainly not determinative.

In the case of Peter Riemer, I've had a chance to evaluate him over eight years. For me, he's the North Star. And by that I mean he's always at the same place. So if I'm going to deviate from Peter Riemer, I know what I'm deviating from.

Why would I want to replace somebody who I've had a chance to evaluate on an annual basis? He gives us his recommendations, and then I get to see how they play out.

So if I thought Peter Riemer wasn't right on the dime and pointed me at north every single time -- and that's what I want from him. I want consistency.

As a matter of fact, I want -- Mr. Atkinson gave me exactly the recommendation that I would want to keep Peter Riemer. He's reasonable and he's conservative. I wouldn't change him.

Q. You've been on the board for eight years?

A. Yes, sir.

Q. Do you look forward to continuing service on the board?

A. Yes.

Q. And what's the principles that you'll be adhering to with regards to your continued service on the board?

A. Well, I'll be adhering to 5-B and my fiduciary responsibilities. I'll continue to -- to highly value process. I mean, moving forward, I would -- I would continue exactly what we've done in the past.

Now, I'm certainly -- I'm not trying to be strident. I wish that I could have conversations with the Bureau about what they think. And I wish they knew before today what I thought. Because we can talk about differences. And we can resolve differences. This is the first time that I've talked to anybody -- that anybody's cared about what I have to say on this issue. That's troubling to me.

Q. And continuing your service, will you continue to take the long horizon with regards to your service and your duties as a board member?

A. It's the only way that I can continue. And I think that -- I really believe that if we're -- reserves are our foundation. And that's -- I have to begin there.

If you take that 30 away from me and

11:04:05 I can't in my own head justify that my members are
11:04:09 protected, then I can't serve. I cannot serve. And
11:04:14 I will not.
11:04:15 MR. SATURLEY: Thank you, Mr. Enright.
11:04:17 Mr. Mitchell, I have no further
11:04:19 questions for this witness.
11:04:19 THE PRESIDING OFFICER: Thank you,
11:04:20 Mr. Saturley.
11:04:21 Mr. Volinsky, will it be you that
11:04:26 does the cross-examination?
11:04:26 MR. VOLINSKY: It will be me if the other
11:04:27 respondents . . .
11:04:27 THE PRESIDING OFFICER: Yes. You're right.
11:04:29 Let's go back. How have the -- we have discussed,
11:04:32 how have the respondents decided to put their
11:04:35 cases-in-chief in? Is this going to be integrated?
11:04:39 MR. SATURLEY: It will be an integrated
11:04:41 approach, right?
11:04:44 MR. GORDON: Yes.
11:04:45 MR. SATURLEY: By and large. Mr. Mitchell,
11:04:47 having said that, there will be one or two witnesses
11:04:49 where there may be different approaches and people
11:04:52 will want to say things. But by and large, we are

trying to speed the process along and we will try to keep the, you know, different questioning to a bare, bare minimum.

THE PRESIDING OFFICER: Thank you, Mr. Saturley.

Then Mr. Gordon, do you agree?

MR. GORDON: Yes.

THE PRESIDING OFFICER: And Mr. Howard?

MR. HOWARD: Yes.

THE PRESIDING OFFICER: All right. Thank you. Given that, who would be next to ask direct and then we can cross-examine at the end of it all?

MR. VOLINSKY: Do you have anything?

MR. HOWARD: It's you.

MR. VOLINSKY: It's me.

THE PRESIDING OFFICER: All right. Mr. Gordon and Mr. Howard are waiving direct testimony at this time?

MR. GORDON: Well, if it would be cross-examination then I have no cross-examination at this point in time.

THE PRESIDING OFFICER: Okay. So you're not calling Mr. Enright in your case?

MR. GORDON: I'm adopting his -- Yes.

THE PRESIDING OFFICER: I understand. Nor are you, Mr. Howard?

MR. HOWARD: Correct.

THE PRESIDING OFFICER: All right. Mr. Volinsky, we're back to you.

MR. VOLINSKY: Thank you, sir.

THE PRESIDING OFFICER: Around the horn.

CROSS-EXAMINATION

BY MR. VOLINSKY:

Q. Good morning, Mr. Enright.

A. Good morning.

Q. You've testified that you, in the last eight years, were either a party to every decision involved in this dispute or you support the decisions that were made slightly before you joined the board; is that right?

A. Yes, sir.

Q. So I take it then you have no dispute with the idea that your entity was registered in Delaware for some period of time; is that right?

A. That's -- No, I have no dispute. That's something that wasn't on my radar scope.

Q. So now I'm putting it on your radar scope. Do you agree with me that it violated 5-B, were your entities to be registered in Delaware?

MR. SATURLEY: Objection. It mischaracterizes actual facts and he's not been tendered as a legal expert.

THE PRESIDING OFFICER: All right. First basis, would you restate the first basis about --

MR. SATURLEY: There's been no testimony and I believe no legal conclusion that the characterization that Mr. Volinsky put on it is a legal conclusion that it somehow violated 5-B. I don't think that's been established. I don't believe that that's Mr. Enright's understanding. And . . .

THE PRESIDING OFFICER: Okay. And I understand the second ground.

Mr. Volinsky?

MR. VOLINSKY: I thought I was asking if he agreed that it was improper to be registered in Delaware.

THE PRESIDING OFFICER: Okay.

MR. SATURLEY: That's not how I heard the question.

THE PRESIDING OFFICER: Is that question permissible? Well, then I won't leave it with you any longer, Mr. Saturley. Your objection on your first ground is granted.

And Mr. Volinsky, would you phrase that question differently, please.

MR. VOLINSKY: Sure.

Q. BY MR. VOLINSKY: You understand that the predecessor entities to LGC were at one time registered in Delaware, correct?

A. I understand that now.

Q. And do you agree or disagree that it was improper for those entities under RSA 5-B to be registered in Delaware?

MR. SATURLEY: I don't agree that that's the state of the facts, so I must --

THE PRESIDING OFFICER: Well, we'll let the record speak, but I'm going to let you continue, Mr. Volinsky.

THE WITNESS: I can't offer an opinion on that. I'm not sitting here as an attorney and I -- the first thing I do if -- when asked that question is turn to my attorney and ask for an opinion, and then I perhaps could respond. But I can't respond as I sit here.

Q. BY MR. VOLINSKY: Do you understand that currently HealthTrust is organized in an LLC?

A. Yes.

Q. And as an LLC, do you understand that HealthTrust does not have a set of bylaws of its own?

A. Again, that's off my radar scope. And I honestly can't respond to it.

Q. That's fair. Perfectly appropriate for you to tell me you can't respond if that's your position.

As an LLC, do you understand that HealthTrust does not currently have its own Board of Directors?

A. I'm sorry. I'm not trying to be contentious, but I can't respond to that one either.

Q. That's fine.

THE PRESIDING OFFICER: I don't think "contentious" is the proper word, Mr. Enright. Just listen carefully to the question.

Q. BY MR. VOLINSKY: You say that when an issue comes up, you often turn to counsel and receive advice if it happens to be a legal issue at the LGC.

Is that right?

A. Absolutely.

Q. Do you depend on your counsel to give ethical advice?

A. In the past we have had counsel give ethical advice.

Q. Do you depend on your counsel to act ethically in giving advice?

A. Of course I do.

Q. And does that include having your counsel avoid conflicts of interest?

A. Of course.

Q. Are you aware -- Well, I guess you were in court the other day when Mr. Andrews testified -- actually, he testified on multiple days. Were you present for all of them?

A. Yes, sir. Every minute of it.

Q. And did you hear Mr. Andrews describe that when the Joint Competition Committee was formed, HealthTrust had its own set of issues which were different from Workers' Comp Trust, which were different from Property-Liability Trust? Did you hear that?

A. I did.

Q. And did you hear that each one of those entities with differing interests, each had the same lawyer: Robert Lloyd?

A. I -- I would have to say I wasn't paying close attention to that -- that piece.

Q. All right. I'll forego it.

All of the decisions that have been made during your time on the board are decisions that you support?

A. Yes, sir.

Q. So you support the lengthy multiple rounds of litigation against the firefighters?

A. I think that a good part of it was justified. I'm probably not -- I think a good part of it was justified.

Q. In this case, this enforcement proceeding, you've issued press releases; have you not?

A. Me?

Q. Quoting you?

A. Yes. Yes.

Q. Issued by the Local Government Center?

A. Yes. Yes, that's true.

Q. And in some of those quotes, you've asserted that the Local Government Center spent more than $1 million defending this case?
A. That by the time we reached the end of this, it's going to be a number in that range. Very disappointing.
Q. So it's not currently a million?
A. I don't know what it is currently. I mean, I don't know if you're saying through this hearing or up to the hearing. But I have seen all of the bills. They are approved by the Board of Directors. And they are substantial.
Q. How much money was spent on the two rounds of firefighter litigation?
A. I don't know the answer to that.
Q. Can you estimate it?
A. I cannot.
Q. A large number?
A. I have no knowledge of those numbers.
Q. No clue?
MR. GORDON: Objection, your Honor.
THE PRESIDING OFFICER: Mr. Gordon, please come forward to the microphone.

MR. GORDON: I'm not precisely sure what the relevance is of this questioning going forward. I think the questions have been asked/answered. And I think Mr. Volinsky should move on. So I object to the relevance.

THE PRESIDING OFFICER: I'm going to deny it on relevance, but I'm going to ask Mr. Volinsky not to be argumentative. And if you want to -- Okay, Mr. Volinsky?

MR. VOLINSKY: Yes.

THE PRESIDING OFFICER: So go ahead.

Q. BY MR. VOLINSKY: Did you believe that the fees spent in the firefighter litigation were prudently spent?

A. I'm -- I can't comment on that. I'm not aware of the total amount of . . .

Q. No. I'm accepting you can't remember the amount. Whatever the amount, did you think that expenditure was prudent?

A. Again, I don't know how I can answer a question as to prudence if I don't know what I'm talking about. I don't know the amount.

Q. Before the firefighters litigation, did you

know that Mr. Andrews himself had used the Right To Know Law against Primex?
A. I did not know that.
Q. When I mention an RBC of 4.2, do you know what I'm talking about?
A. Absolutely.
Q. The RBC of 4.2, who first suggested that as the appropriate number?
A. I heard that it was -- that it was Mr. Riemer. But quite honestly, my recollection of that would have been different.
Q. You're the witness, so let me ask your recollection. Who selected 4.2?
A. I don't --
MR. SATURLEY: Different question.
Q. BY MR. VOLINSKY: Who suggested 4.2, first suggested it?
A. I don't -- I don't know who first -- first suggested it. I know how we got to 4.2. So that I could speak to. I'm not even sure that I was there when the 4.2 first came to light. I don't think I was. July of 2004 was --
Q. When you started?

A. -- was my beginning.

Q. So as you sit here today, based on your recollection, you don't know who the first to suggest 4.2 was?

A. I don't. I don't believe I was involved in --

Q. That's fine.

A. I don't think I was at the organization then.

Q. You used an analogy of providing Ms. Keeffe with a suitcase of $100,000 in cash, and you described how she'd hold it, give it back to you with interest?

A. I did.

Q. In some ways, HealthTrust has allowed Workers' Comp to hold over $17 million in cash; has it not?

A. I don't view it that way.

Q. Do you agree with me that HealthTrust has subsidized Workers' Comp to the tune of over $17 million?

A. I wouldn't use the word "subsidized," but generally I agree with that.

Q. What word would you use?

A. You want a single word?

Q. Yes.

A. I'm sorry. I'm sorry, it's a conversation, which I'd be happy to have. But the Workers' Comp piece is a long conversation. And I'd be happy to give you my recollection of it if you wish.

Q. In June of 2011, your board adopted a resolution to record the money transferred from HealthTrust to Workers' Comp in a note --

A. Yes.

Q. -- did it not?

A. Yes.

Q. And that note was in the amount of $17.1 million?

A. Yes.

Q. And your board, at the time it adopted the note, intended Workers' Comp to repay the $17.1 million note, correct?

A. Over the long horizon, that was the intent.

Q. Is that still --

A. That is still the intent. Thank you. I was going to say it was and it is.

Q. And the long horizon, that note doesn't have a repayment schedule, does it?

A. No, it doesn't.
Q. It doesn't even have a date for the first payment to be made, does it?
A. No. You have to be viable in making money before you can make payments. And that was the conversation. That was understood. So that's why we didn't put a beginning and an ending on that note.
Q. And the note -- I think I said it, but in case I didn't -- that was adopted June of '11, right?
A. I'm trusting your representation. I haven't seen that note in a long time.
Q. We're now in May of '12. There haven't been any payments?
A. No.
Q. There are none specifically scheduled?
A. No.
Q. And that's because you have to wait for Workers' Comp to be financially viable to make the payments?
A. That is correct.
Q. And by saying that and by acknowledging that there aren't payments being made, wouldn't you agree with me that Workers' Comp is not currently

financially viable?

A. Yes.

Q. And you don't have a date in mind by which Workers' Comp will become financially viable, do you?

A. Not -- not entirely accurate. We -- we have had actuarial advice and presentation that shows us that we are getting closer and closer to viability and that viability is actually closer than we originally thought it would be. So -- so we've kept in touch with this issue. And we are getting closer to viability faster than we thought we would. So from my perspective, the signs have been positive.

Q. What's the projected date of financial viability for Workers' Comp?

A. That's a question that Wendy -- the first person I'd ask is Wendy Parker.

Q. Do you have even a year or a decade in mind when it will be --

A. I would ask --

Q. Well, let me just finish the question and then you can tell me --

A. I'm sorry.

Q. -- whoever you want me to ask.

As you sit here today, as chairman of the board -- chairman of the board -- do you have the ability to even suggest to me in which decade the Workers' Comp program will be financially viable? You personally?

A. I would if you followed the process that I always follow at LGC, which is I start with -- with the -- our advisors, go to our experts, then I speak. So I've been given that information. I can't -- I've been given the information that shows when we think we'll be viable. I haven't looked at it in quite some time. I can't recall it now.

Q. So your point is that you know the decade; you just can't remember which decade?

A. Again --

THE PRESIDING OFFICER: Mr. -- Excuse me. You don't have to answer that question.

Move on, Mr. Volinsky.

Q. BY MR. VOLINSKY: The $17 million that's not currently being paid against --

A. Um-hum.

Q. -- no interest charged, right?

A. We've already established that. Yes.

Q. It's a no-interest loan?

A. Yes.

Q. So unlike Ms. Keeffe, who would pay you interest for holding your suitcase --

THE PRESIDING OFFICER: Mr. Gordon.

MR. GORDON: I think it's been asked and answered. I think it's argumentative. And I object.

THE PRESIDING OFFICER: Going to grant that objection, Mr. Gordon.

Please continue, Mr. Volinsky. And that's two notices, if you will.

Q. BY MR. VOLINSKY: You said earlier that you were a process geek?

A. I did.

Q. Process requires, does it not, honesty and accuracy?

A. Absolutely.

Q. Without honesty and accuracy, process alone doesn't mean much, does it?

A. Honesty and accuracy are important to process.

Q. From time to time, the Local Government Center issues press statements; does it not?

A. Sure.

Q. And press statements have been issued about this case, correct?

A. Yes.

Q. And those press statements in some large measure have quoted you, correct?

A. You've asked me that and I've answered that I have been quoted.

Q. And in issuing press statements that quote you so that you're in the text of the press statement, do you make some effort to ensure that the press statements, particularly the ones that quote you about this case, are honest and accurate?

A. I think I read every -- I believe I've read the quotes that have been attributed to me.

Q. But I mean the entirety of the press statement in which you're quoted, do you read the entirety?

A. I believe I do.

Q. In a press statement in April, you recounted how the Local Government Center is spending more than $1 million in defending this case?

A. Yes.

Q. And in that same press statement, you told the readers of the press statement that the Local Government Center had liability insurance for that $1 million; did you not?

A. I would disagree that I said that we had liability insurance for that $1 million. I would suspect that I said that we had liability insurance.

Q. Is it relevant in some way other than for the $1 million? Do you need the press statement, first of all?

A. Well, that would certainly be helpful.

Q. That's why I asked. Let me give you Exhibit 28. It will be in Book 1. Just turn to the tab.

Tell me how to get rid of that menu. There we go. Exhibit 28. Are you with me?

A. Yes, sir. I'm a slow reader. I'm still looking at it.

Q. You just look up when you've read the page.

A. Sure. Okay. I'm ready.

Q. Fourth paragraph, that's where the press statement says, "The LGC, like all responsible nonprofit organizations, carries liability insurance."

Do you see where I am?

A. I am -- I do.

Q. Very next sentence, "In contrast, money spent on external lawyers, investigators, and such by the BSR and the Secretary of State . . . comes from the State's budget." So this is a reference to liability insurance as a contrast to the money coming directly from either the BSR or the Secretary for external lawyers, et cetera; isn't that right?

A. I'm not following you. I believe this to be accurate.

Q. As a matter of fact, at the time that this press statement was issued, you knew, did you not, that all of the relevant carriers had denied coverage to the Local Government Center regarding this dispute?

MR. SATURLEY: That's a misrepresentation and so, therefore, I object to the line of the questioning and I object to relevancy altogether.

THE PRESIDING OFFICER: Okay. What is the basis of your information, Mr. Volinsky?

MR. VOLINSKY: The Local Government Center has filed multiple lawsuits against its carriers, challenging the decisions not to provide coverage, and those lawsuits have been removed to Federal Court, so I've actually read the pleadings on the PACER system.

THE PRESIDING OFFICER: Mr. Saturley, on what basis do you allege that that's a misrepresentation?

MR. SATURLEY: His question is -- I believe his question was -- made reference to all sources of liability insurance. The LGC has more than one policy applicable to this and, indeed, has had one policy paid.

THE PRESIDING OFFICER: Then I'll grant your objection.

Mr. Volinsky, ask a different question --

MR. VOLINSKY: Okay.

THE PRESIDING OFFICER: -- or be more specific, please.

Q. BY MR. VOLINSKY: At the time that this was written, you agree that the LGC had sued more than one of its carriers, correct?

A. Yes. But I also knew what Mr. Saturley just said: that there had been monies coming from at least one carrier. I knew that.

Q. You sit on the Hollis-Brookline Cooperative School Board?
A. Yes, sir.
Q. And you've described their functioning as being dysfunctional?
A. I did.
Q. Do your constituents in Hollis-Brookline know you feel that way?
A. I certainly --
THE PRESIDING OFFICER: Mr. Gordon?
MR. GORDON: How does he know what all the constituents of his community know?
THE PRESIDING OFFICER: Well, why don't we give him an opportunity to tell us if he does. Denied.
Please proceed, Mr. Volinsky.
Q. BY MR. VOLINSKY: Have you shared that opinion with your constituents in Hollis-Brookline?
A. Through a formal announcement? No. I've lived in that town since 1975. I would certainly say I'm well-known. I was just reelected by a substantial margin. When you're in public office for more than 20 years, you have people that love you and people who don't like you at all. So when you talk about my

constituents, there's a wide range of opinion about Tom Enright. I like to think most of it, good.

Q. In the cooperative school district where you sit on the board, that school district holds trust funds that allow it to accumulate money year-to-year under RSA 198:20; does it not?

A. Yes. We've had an issue -- we've had a lot of conversation on that topic.

Q. And one of the things you do with that year-to-year holding of money is you support ball fields and the like?

A. Yes.

Q. You've used it for buildings from time to time?

A. Buildings?

Q. Carrying money year to year for the improvement of buildings?

A. You'd have to be more specific.

Q. We can -- I'll withdraw it.

You do use it for ball fields?

A. There are numerous funds and there are -- there are at least a portion of funds -- of a fund is used for ball fields. That would be correct. But the topic is much broader than ball fields and a fund.

Q. Understand. And that practice of using trust funds allows your cooperative school district to hold what are called non-lapsing funds, right?

A. Yes.

Q. That means that the account doesn't have to be zeroed out at the end of each --

A. True.

Q. -- year?

A. Yes, sir.

Q. And those funds are each approved by the local citizenry, correct?

A. That was -- that was what part of the conversation has been about. There's been a yearlong conversation on this topic.

Q. And you know that 198:20 -- the same statute -- also allows school districts to hold money year-to-year in non-lapsing funds to pay healthcare premiums, doesn't it?

A. I'm not familiar with that.

Q. Are you familiar with something in your school district called the BWG?

A. You haven't rung a bell yet.

Q. Last year did your school district adopt a benefits working group --
A. Oh.
Q. -- that's called in the minutes "BWG"?
A. That would have been helpful. Yes.
Q. And the purpose of the benefits working group is to help employees and retirees related to your school district to understand wellness programs in part?
A. In part.
Q. And to understand paths to lowering insurance -- health insurance costs in part?
A. That's the primary conversation.
Q. And that same benefits working group helps your employees become educated users of health insurance?
A. That's -- that's one of the notions that's been discussed.
Q. Those three functions -- wellness programs, identifying paths to lower costs, being better educated users -- those are all services that the LGC touts itself as providing to members, correct?
A. Absolutely.

Q. But in November of '11 -- I think is the date -- your cooperative formed its own group to do the same thing, right, in those three regards?

A. I wasn't aware that that group went off on its own. What I'd like you to understand about this is I have kept a significant distance from this group. I announced early on my position in LGC and my function in LGC and said that I did not want to have a conflict of interest on this area. So I'm probably not as knowledgeable about it as I might be because I have kept a significant distance from this group.

Q. Fair enough. But if the BWG activities are described in the board minutes for your --

A. I should.

Q. -- cooperative school district, you would know about it to that extent?

A. Yes, sir. Sorry for interrupting.

Q. That's okay. You do know you're here testifying on behalf of the LGC, not on behalf of your school district, correct?

A. I do.

Q. You do know your school district last month interviewed SchoolCare as a potential successor to Local Government HealthTrust insurance?

A. I do.

Q. You do know that last month your school district interviewed Aetna as a potential replacement for Local Government Center HealthTrust insurance?

A. I do.

Q. And you do know that your school district interviewed Harvard Pilgrim as a potential successor to LGC HealthTrust, correct?

A. Correct.

Q. And the idea is to interview these alternative carriers -- in one case, alternative risk pool -- with an idea of changing for the 2014 timeframe, right?

A. With an idea of gathering information to see if there's the possibility that our healthcare cost premiums can be lowered. That's what that group is attempting to do.

And what's been important to me is that more than a year ago, there was a representation by the party that's chairing that group that assuredly he would lower our costs -- our costs -- the district's costs by at least 10 percent.

What he found out after all of this process that you are talking to me about is that he could not get quotes from SchoolCare at that particular time and Primex, I believe, because of our poor experience.

So it's been a learning process. And I have followed that learning process, but stayed well clear of it.

Q. So just so I understand, are you saying you talked to the person who is involved, about SchoolCare or you read this in some minutes?

A. No. I've participated in nothing. The first thing I did was announce a conflict of interest and tell people what my association -- They already knew I was involved with LGC. But I explained my involvement and said that I wanted no part in --

Q. And so my --

THE PRESIDING OFFICER: Let him finish his answer.

MR. VOLINSKY: I'm sorry.

THE PRESIDING OFFICER: Go ahead and finish your answer.

THE WITNESS: That I wanted to play no farther -- because I was asked to join that group. And I said I didn't think -- well, I knew it wouldn't be appropriate.

Q. BY MR. VOLINSKY: So did you learn this information, which is what I was trying to ask you about, from talking to people on the group doing the interviewing or from minutes?

A. No. From hearing reports at School Board meetings. Reports from the individuals involved in this process.

Q. And when was your last School Board meeting?

A. We have monthly -- Where are we?

Q. You're early May.

A. April -- the third week in April, I believe, would have been our last one.

Q. And it's your testimony that you were told during the third week in April's board meeting that SchoolCare refused to quote?

A. No, no, no, no. That's not my testimony at all.

Q. Okay. That's what I'm trying to clarify.

A. Okay. No. I'm -- This BW -- whatever it is -- group.

Q. G.

A. -- has been around for more than a year. And so there's been a lot of conversation that I've listened to. I can't -- I would be unable to identify when I heard what.

Q. So let me back up. SchoolCare was at your school district in April. That's when they were there; isn't that right?

A. Sir, I don't know. I played no part in this.

Q. That's fine. I thought you'd already answered that. And if I'm mistaken, that's fine. You don't know when SchoolCare was there?

A. No, I don't. And I'm not sure that they haven't been there twice. You may -- you apparently know more about this than I do at this point. And so they may be going through a second round. I've kept my distance. I'm interested in their results. I'm not interested in influencing that situation at all.

Q. And so if SchoolCare were there a few weeks ago, you don't know if SchoolCare refused to quote or is in the process of developing a quote?

A. I know nothing about what might have

happened a few weeks ago.

Q. Same question with Aetna. You don't know if they've refused to quote or are in the process of developing a quote?

A. I have heard of no quotes at my School Board level.

Q. Thank you. You talked about swine flu and Hong Kong flu. Does fear of a swine flu outbreak motivate your decision-making on levels of net assets to be maintained by the Local Government Center?

A. Not that specifically. What I was -- what I was trying to do was give you -- and maybe not successfully -- but a world perspective of what I see and what I hear. And generally what I hear is that people make mistakes by not having enough money. I don't want to make that mistake for the people that I -- the members that I represent. That's . . .

Q. You testified about Seabrook and the Japanese nuclear disaster. Does fear of a nuclear disaster at Seabrook motivate your decision-making on how much to hold in LGC net assets?

A. Just as I gave you my business experience earlier that affects my ability to make decisions, yes, I take all of this into account in saying that there's danger in the world.

There's a possibility -- We had Katrina [sic] last year. Had that gone up, instead of the Connecticut River Valley, the Merrimack River Valley, New Hampshire would have been substantially involved in a significant hurricane. I take that into account. That's the good-faith ordinary prudence that I used in attempting to deliver my duty of care.

Q. Thank you. Have you heard of reinsurance?

A. Of course I have.

Q. Does the Local Government Center HealthTrust currently use reinsurance?

A. That's -- I would start with Wendy Parker on that.

Q. Do you know, as you sit here?

A. I -- I think I know, but I don't speculate. I -- the way I do my business is I start -- I ask LGC, all of the people -- all of the questions I need to ask. I go to my professionals. Then I enter the conversation. So the fact that I'm up here first today actually is out of sequence in terms of the way I deal with LGC. That has never happened before, will never happen again. I always listen to my professionals first, and then I form my opinion.

Q. Whether you know that LGC HealthTrust uses reinsurance currently or not, do you understand its purpose is to protect a risk pool or a health insurer against an unanticipated set of catastrophic claims?

A. Yes. I understand that.

Q. Have you heard of aggregate stop loss?

A. I'm familiar with stop loss.

Q. The aggregate kind. Do you know what that means?

A. I'm not going to opine on -- again, I -- I start by asking my people. They come to -- they deliver us all of the information we need to know. Then I go -- I go from there. I am not sitting here attempting to be in any way, shape, or form an expert on the goings-on of LGC. What I am doing is saying that the process that the Board of Directors goes through in delivering its duty of care is an excellent process. That is what I am convinced of.

Q. Do you, as a board member, participate in rate setting for HealthTrust?

A. Yes.

Q. Do you, as the board chair, lead the board's discussion about rate setting for HealthTrust?

A. As the board chair? Absolutely not.

Q. You participate?

A. Less -- less so as the board chair. I have -- but yes, do I participate in discussions? I do. But I don't lead off. I . . .

Q. That's fine. I didn't mean to cut you off. Finish if you're . . .

A. Yes, sir. I'm finished.

Q. Do you know, as a board member who participates in rate setting discussions, whether or not members in HealthTrust are charged a part of their premium to buy reinsurance?

A. When we had reinsurance, the rates would include the cost of reinsurance, if that's responsive.

Q. So you say "when we had." Does that indicate knowledge about whether you currently have it or do not have it?

A. We have had considerable discussion about lessening our dependence on reinsurance and taking on more of the risk ourselves. And what gives us the capability to do that is our asset base, our reserves.

And the information that is given to me is that over the long haul, that saves our members money. Because reinsurance is expensive. And when you pay for it, if it's not used, you get nothing back for it.

So the conversation that I've been involved in is that it makes more sense to lower the cost of reinsurance, use our asset base in one way -- not totally, but in one way to cover that reinsurance issue and still retain the value of that asset base.

Q. Let me suggest another term to you and ask you if you're familiar with it: intercompany claims pooling fee.

A. No.

MR. SATURLEY: If we're done with the topic of reinsurance, may I --

MR. VOLINSKY: No, this relates exactly to the topic of reinsurance. Thank you.

THE PRESIDING OFFICER: Please sit down, Mr. Saturley.

THE WITNESS: I'm not familiar with that term.

Q. BY MR. VOLINSKY: Do you know that reinsurance can be done externally by buying a policy in essence and can also be done internally by sharing money to pay on high claims levels? Are you aware of that concept?

A. I would say no.

Q. Do you know if part of the rates charged HealthTrust members include a factor for intercompany pooling fees?

A. I do not know that.

Q. Do you know if there's a risk factor that's part of the rate-setting process for HealthTrust?

A. Yes. I believe the answer is yes.

Q. And do you agree with me that at times, your board has specifically approved hiking the risk factor so that you could intentionally add to net assets for LGC?

A. That's a characterization that I wouldn't agree with.

Q. Let's break it down. Do you understand that normally the risk factor is 2 or 3 percent of premiums?

A. Yes.

Q. And do you understand that at times, the Local Government Center board has approved using 5 percent so that the extra 2 percent increment could be used to build member balance or net assets?

A. That's -- I don't believe that's current history. I think you're talking to -- if that happened, I don't recall it. I'm not saying it didn't happen. But I would say a number of years ago, if it happened. I don't recall the details of everything that goes on at LGC.

Q. Fair enough. When you go to these national conventions and you talk to other trustees or other board members, how many of them are subject to the RSA 5-B requirement to return earnings and surplus excess of operations? Do you know?

A. No. I certainly would not know that.

MR. VOLINSKY: If I can have just a moment.

THE PRESIDING OFFICER: Surely.

Q. BY MR. VOLINSKY: I understand -- I think you said you have 28 board members; is that right?

A. I believe that's the -- We're authorized for 31, and I believe the current count is 28. I may be off by one. But it's very close to that number.

Q. 28 plus or minus one. It's been at that level for a couple of years now, hasn't it?

A. The -- I can't give you the history of --

We go up and down -- Our board members come and go with some -- some frequency. So do I know the history? I really can't give you the history of what our level of board activity -- board membership has been. I think it's been pretty consistently in the high 20s is the best I can offer.

Q. When did you become board chair?

A. November of last year.

Q. So last year did you have 28 plus or minus one?

A. I would answer that as yes.

Q. Okay. Is there an effort to identify and recruit for the missing two or three slots?

A. Maura Carroll handles that issue. And so I don't know what her efforts are in that respect right now.

Q. Ms. Carroll is the current executive director?

A. Yes.

Q. And when you say she "handles that issue," it's Ms. Carroll as the executive director who identifies potential board members and recommends them up to the board; is that what you're saying?

A. No. There's a -- I think that's a function of the Personnel Committee. There's a committee that she works with that -- it's the Nomination Committee. So there's a group of board members that she works with, and that committee brings forward new board members. I've never served on that committee --

Q. Okay.

A. -- so I can't give you a lot on that one.

Q. Let me see if you can give me this much. I said that Ms. Carroll identified and suggested names to the board. She actually identifies and suggests names to this Nomination Committee; is that right?

A. I wouldn't go so far as to -- They have conversations; they have meetings. I have never been in attendance --

Q. Okay.

A. -- so Maura Carroll can better answer that process piece.

MR. VOLINSKY: Okay. Fair enough.

If I can have just one second, I think I'm almost done.

I have nothing further.

THE PRESIDING OFFICER: Thank you,

Mr. Volinsky.

Mr. Saturley, redirect?

MR. SATURLEY: Just a point of clarification, Mr. Mitchell.

REDIRECT EXAMINATION

BY MR. SATURLEY:

Q. You joined the board when? Say it one more time? 2004, is that right?

A. 2004, July is when -- my first recollection.

Q. There will be some testimony later today that the RBC methodology was first adopted by the board in 2002. Will you accept that representation? Were you around in 2002 to know who first suggested it?

A. I was not. And that is what I believe the discussion was last week.

MR. SATURLEY: No further questions.

THE PRESIDING OFFICER: Thank you, Mr. Saturley.

Mr. Gordon?

MR. GORDON: None.

THE PRESIDING OFFICER: Thank you.

Mr. Howard?

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

THE PRESIDING OFFICER: Okay. Mr. Saturley -- I'm sorry -- Mr. Volinsky?

MR. VOLINSKY: Done.

THE PRESIDING OFFICER: Thank you. All right. Mr. Saturley, you're done with this witness?

MR. SATURLEY: I am, sir.

THE PRESIDING OFFICER: Do you want to tell me if you'd like to begin with another witness or do we take the lunch break?

MR. SATURLEY: I -- In light of the time, my suggestion would be to take the lunch break.

THE PRESIDING OFFICER: Okay. Then we'll be breaking for lunch and we'll return at 1:15. Thank you.

MR. SATURLEY: Thank you.

THE PRESIDING OFFICER: Thank you, Mr. Enright.

THE WITNESS: Thank you.

(Witness excused.)

(Whereupon, at 11:55 a.m., the proceedings were recessed, to reconvene at 1:15 p.m. this same date.)

AFTERNOON SESSION

(1:14 p.m.)

THE PRESIDING OFFICER: We've returned this afternoon from our lunch recess. We are in the direct cases or cases-in-chief of the LGC and its entities, Ms. Carroll and Mr. Curro, as they are being presented in integrated mode at this time.

Is that correct, Mr. Saturley?

MR. SATURLEY: That is, sir.

THE PRESIDING: Mr. Gordon, is that correct?

MR. GORDON: Yes.

THE PRESIDING OFFICER: And Mr. Howard?

MR. HOWARD: Yes, Mr. Mitchell.

THE PRESIDING OFFICER: Thank you. And Mr. Saturley is about to call a witness.

You have called who, sir?

MR. SATURLEY: This is Peter Riemer, R-i-e-m-e-r.

THE PRESIDING OFFICER: Thank you very much.

Mr. Riemer, would you raise your right hand, please.

(The witness was duly sworn by the Presiding Officer.)

THE PRESIDING OFFICER: Mr. Riemer, can we have your name and provide a business address for us.

THE WITNESS: My business address is 479 Heights Road in Ridgewood, New Jersey.

THE COURT REPORTER: And your name? Sorry. He didn't say his name.

THE PRESIDING OFFICER: Oh, I'm sorry.

THE WITNESS: Peter Riemer.

THE PRESIDING OFFICER: Thank you. We're ready now, Mr. Saturley.

MR. SATURLEY: Thank you, Mr. Mitchell.

PETER RIEMER

having been first duly sworn by the Presiding Officer, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SATURLEY:

Q. Good afternoon, Mr. Riemer.

A. Good afternoon.

Q. What relation do you have to the Local Government Center?

A. I serve as their consulting actuary.

Q. And are you the actuary that is used by HealthTrust in accordance with its obligations under

RSA 5-B?

A. I am.

Q. Have you worked with HealthTrust for a number of years?

A. Yes, I've worked with HealthTrust since 1988.

Q. And have you developed opinions with regards to the matters that bring us together according to the Bureau's amended petition and certain reports generated by their experts?

A. I have.

Q. Could you summarize for us, please, those opinions.

A. Sure. Just briefly, my opinion is that the capital -- target capital levels held by LGC are reasonable, prudent, and necessary for the successful operation of the program. It's also my opinion that the suggested maximum capital or recommended maximum capital proposed by the Bureau is inadequate and would work against the interests of LGC trying to serve its members.

Q. Thank you very much. Could we talk a little bit more about your qualifications to render the opinions that you are rendering. Would you talk for a little bit about your professional employment history.

A. Yes. I began work as an actuarial trainee at the John Hancock Mutual Life Insurance Company in Boston in 1974. In 1979 I became a fellow of the Society of Actuaries and performed at various levels in various divisions within John Hancock until 1987, at which point I moved for career reasons to the consulting environment joining Watson Wyatt Worldwide, now Towers Watson, in 1987. While there I worked as a group insurance actuary consulting to a number of corporate plans, Taft-Hartley, that is labor union plans.

From 1996 to 2003, I served as the retiree medical actuary for General Motors Corporation and also in that same period, I was chair of Watson Wyatt's retiree medical work group.

Q. And is that work that you just described, is that within the health field?

A. It is.

Q. What are you doing at this time? What's your -- who's your current employer?

A. I'm self-employed. I left Watson Wyatt in

2003 to form my own firm, which I had been interested in doing for a number of years. And I serve about half a dozen clients ranging from HealthTrust -- LGC HealthTrust to a number of Taft-Hartley funds. I also work in this capacity for the American Mathematical Society.

Q. You mentioned Taft-Hartley funds. Could you explain in a little bit more detail what that means.

A. Yes. It's very common in some unionized workforces for the union workers to be covered by a health fund which is funded with hourly contribution rates paid by employers. And in those environments -- those health funds are called Taft-Hartley funds, stemming from the enabling legislation back in the earlier part of the Twentieth Century.

The way such a fund works is that through a collective bargaining agreement, labor and management mutually agree that a certain portion of the hourly package, X dollars and cents per hour will be paid into the fund, and the fund is managed by trustees, half labor, half management. And the arrangement is to use that income to fund a program of health benefits. And I assist -- for those that I work with, I assist them in financial management of such programs.

Q. Your educational background, briefly.

A. I graduated from Tufts University with a B.S. in mathematics in 1969. I received an M.S. in mathematics from Northeastern University in 1970.

Q. And professional designations, if you would.

A. Well, as I said, I'm a fellow of the Society of Actuaries. I'm also a fellow of the Conference of Consulting Actuaries. And I'm a member of the American Academy of Actuaries.

Q. And do those designations allow you to act as the actuary for HealthTrust in accordance with the requirements of RSA 5-B?

A. They do.

Q. You've heard that this hearing has been going on for a week now. And you've been here today?

A. Yes.

Q. Have you watched any of the testimony through any other method than being here present?

A. I have. I watched through a streaming Internet feed last week. So a good deal of last week's proceedings.

Q. And so did you watch the Bureau's experts with regards to the issues of reserve and capital adequacy?

A. I did.

Q. Would you please tell us about the Local Government Center's current level of capital adequacy, its purpose, and how they reached that particular level.

A. Okay. LGC uses a so-called risk-based capital concept as a tool in thinking about and deciding on an appropriate level of capital for the operation. And they arrived at that by studying the issue and looking at comparison groups of insurers and thinking about the particular characteristics of their operation and setting a level that they felt appropriate for the features of their program.

Q. Could you tell us a little bit more about the concept and the genesis by which LGC arrived at choosing that methodology.

A. Sure. Well, risk-based capital is a concept that is -- exists in the regulatory scheme for U.S. insurers. And it was first put forth by the National Association of Insurance Commissioners working with the American Academy of Actuaries back in 1994. That was the start of the process of developing the concept. I don't believe it actually took effect for health insurers until around 1998.

And throughout the period that I've worked with HealthTrust, the board has been keenly interested in the question of how much surplus, how much capital should this organization hold. What risks do we face. What's the right amount of capital for us to have.

And in response to particular inquiries along that line in 2002, I provided an education to the board on a risk-based capital concept. And I know you've heard from other persons testifying that described the concept. But it's basically a way to express the capital -- the amount of capital that an insurer holds in terms of risk premium, so rather than taking a percent of premium or a dollar amount, which makes it difficult to compare different programs, the RBC program is one that develops a ratio that allows one to assess capital in that way.

Q. And what is it measuring when it assesses the capital?

A. Well, it's measuring risk. It starts off with a fundamental calculation that involves -- it is developed out of a stochastic process between the NAIC and the American Academy of Actuaries that basically tries to distill the risk characteristics of an insurance operation into a single figure called the authorized control level.

And the way they do that is through a complex model that details a lot of the financial elements within the insurance operation: asset amounts, type of assets, risk, premiums, managed care arrangements, various other facets of the insurance operation. And it digests and distills all that data about the insurance operation into this single number called the authorized control level.

And what was promulgated by the NAIC was a rule that said, No insurer shall hold capital that is less than two times the authorized control level, the ACL, and that's the basis of the 2.0 that we've heard discussed a lot so far in this process.

Q. And you brought all this to the board's attention?

A. I did.

Q. In 2002?

A. (Nodding head.)

Q. Had you been working with the board for years prior to that?

A. I had.

Q. Was the -- and I take it they adopted that in 2002?

A. They adopted the concept. The ability to implement it and make it real had to await the purchase of the software to do it and -- but essentially the decision to move down that path was a 2002 decision.

Q. Was that 2002 decision to move to the RBC, was that a decision to -- was that a significant decision with regards to the board's approach to capital? In other words, was it a different way that they were moving with capital, or were they merely changing a metric?

A. I would describe it as something that allowed more rigor to be imposed on what they had always done, which is to consider what an appropriate level of capital for the organization should be.

And in fact, when they decided in 2002 to adopt the risk-based capital method, they did so initially divisionally by agreeing to establish a target level for capital that was commensurate with their long-standing target level that they had used prior to any RBC concept.

Q. And could you talk a little bit about what that long-standing view had been.

A. Yes. The long-standing standard for target capital for HealthTrust was 20 percent of claims. And that stemmed from the early years of the operation when, for protection, they purchased aggregate stop loss insurance, which as the name implies, applies when aggregate claims get big.

In particular, for a number of years, they purchased a so-called 20 percent aggregate stop loss, which was the kind of protection that reimbursed HealthTrust should its claims exceed 20 percent of expected claims.

And their policy in line with maintaining that stop loss coverage, that aggregate stop loss coverage, was to fill in the 20 percent corridor between expected claims and the obligation of the reinsurer, to fill that in with capital. In other words, 20 percent of claims. So that was their long-standing target method.

Q. So what you're talking about is a historical perspective on a 20 percent of claim gap or corridor that they were -- had always been their target to fill?

A. Yes.

Q. And could you relate that then to the new process and the new thinking with regards to RBC.

A. Sure. Let me start by saying that at the inception of the RBC process, I made it clear to the board in, first of all, talking specifically about that critical 2.0 measure, that that was in no way regarded in any quarter as adequate capital. That in fact, its whole genesis was as a regulatory alert to insurance departments. And so it had to be considered as just that. It's a level below which you don't want to be. It's a level at which you don't want to be because it invites regulatory attention and possibly intervention. It's not a good level of surplus to be at.

So what I did in presenting the concept to the board was, first of all, to point that out. And then look to some sort of comparison group to say, Well, if 2.0 is not an adequate level, what is. And found, as we've heard here and is still the case today, that there is no consensus on what an adequate level of capital is, what an appropriate level of target capital is. So to aid the discussion for the board, I presented survey information showing what other New England insurers were holding as capital expressed in the RBC ratio language.

Q. Just to make sure I -- just to clarify a point, the RBC regulatory level that you've talked about a couple of times is the 2.0.

A. Um-hum.

Q. And then we've talked about this 20 percent gap and their historical target. Are they the same number?

A. The 2.0 and the 20 percent gap are not. The 2.0 is probably something on the order of half of the 20 percent target; and another way I can relate it is to say that, again provisionally, in 2002 when the concept was introduced and I advised the board, as I said, that the 2.0 level was not considered adequate and presented comparison data on levels that other insurers were holding, which were generally higher -- much higher than 2.0 and certainly higher than the 4.20 that was provisionally adopted.

I made the observation to the board that their traditional 20 percent of claims target correlated dollar-wise to a 4.20. And I think in the initial retreat when I presented this, it was maybe 4.25. But that size number was the RBC equivalent of their long-term 20 percent target.

Q. So the target that they had always been shooting for happened to equate to a 4.2 RBC?

A. It did.

Q. And they were made aware of that in the initial retreat in 2002 when the topic of RBC and the topic of changing the metric came up?

A. They were.

Q. I'd like to just pause for a moment and have you talk a little bit about why capital -- why capital. You know, what are the factors that capital exists to protect against and that the board was introduced to the various factors.

A. Well, the primary need for capital in a health insurer is claims risk, the risk of adverse experience. Whether it be within what might -- one might call reasonable parameters: volatility, either due to the inherent morbidity within the group or external factors such as government cost shifting and other factors, hospital contracting.

Q. And I'm going to slow you down just a little bit.

A. Right.

Q. Can you expand on those just a little bit, in part for Ms. Smith's benefit, but in part for all the rest of us who are trying to follow because we're not actuaries and we don't work in your field. So could you break those down just a little bit more.

A. Sure. Let's talk about claims risk. That's the biggest risk for which health insurers need capital protection. And the claims risk is that claims will turn out to be higher than what was rated for.

In any setting of rates, there's an assumption about what claims will be and in the actual unfolding reality, claims are often different. And we've had a number of years where they've been a lot different in an adverse way, a lot higher than projected.

Q. Let's pause there. Isn't this what an actuary does, is really part of your focus, right?

A. Yes.

Q. Is to anticipate the claims that are coming?

A. It's to anticipate based on the best knowledge possible. And we found through experience that that anticipation is almost always wrong. It's right on average, but it's pretty much wrong in every single instance. And the inference is when it's wrong in an adverse direction is what capital is needed for.

Q. And so again, you would say that in any one particular year, is your prediction going to be dead on?

A. No.

Q. It could be higher; it could be lower?

A. Yes.

Q. But over time, you tend to see that your anticipated and predictions tend to average out and be correct?

A. Yes.

Q. And it's for the times when you are wrong, that's one of the reasons for capital?

A. Yes.

Q. What's another reason why the board should, and indeed does, set aside capital?

A. Well, there's another kind of claims risk. The kind of claims risk I just described might be considered ordinary, normal claims risk. It's the inherent volatility in a system as unpredictable as healthcare.

There's another kind of risk --

Q. Break that down for us. What does that mean? The amounts could be wrong but what are you then going on and saying now, that there's an inherent volatility? What does that mean?

A. Just a -- a natural phenomenon that in a population of people with -- we talk about the 70,000 lives that are covered by HealthTrust -- the costs that HealthTrust experiences in a year are subject to many things that can behave in a volatile manner. The morbidity levels in the population. The pricing decisions of providers. The care provisions of providers. The shifting of costs that may occur to a group like HealthTrust from government decisions such as a decision to impose limitations on, say, Medicaid or Medicare reimbursements that have the result of having providers having to shift those costs elsewhere.

So there are many variables, looking forward, that turn out to be variable and not predictable. And that's the kind of phenomenon that I'm talking about. The outcome of all those variables ends up being what is often seen as an adverse result relative to a projection.

Q. Any other factors that you would have brought to the board's attention as a good and sufficient reason to be setting aside capital?

A. There's another health claims risk factor outside of the kind of volatility that I just described. And that would be the much less common, but potentially more severe effects of things like pandemics or a terrorist attack. So that's another component of thinking about what a proper capital level should be.

And then besides claims risk, there's other kinds of business risk. There's risk with respect to the performance, and not only with regard to investment results, but preservation of capital in the investments held. There's business risk associated with whether customers/member groups pay their premiums.

Q. Sounds to me like you're moving into a new category.

A. Yes.

Q. You've talked a little bit about the inherent risk just in the health pricing and the volatility --

A. Yes.

Q. -- for the risks they are insuring. Then I take it that I hear you saying there's another kind of risk, which you called, I think, business risk?

A. Yes.

Q. And then I -- you said something about investments. And so could we repeat that?

A. Sure. What I'm getting at in listing these exposures to risk is -- basically stems back to the concept that within the enterprise, financial gains and losses occur from many different sources. It's not just the exposure that claims can be higher than projected. Anything that removes actual income from the operation or increases expense to the operation relative to what was assumed in the rating, any variance like that can increase loss and, therefore, represents a risk that needs to be capitalized.

Q. So when they're pricing going forward, is one of the factors that LGC or HealthTrust would consider is the anticipated return on their investments?

A. Yes.

Q. And they build that into their model for pricing?

A. Yes.

Q. And if the actual return on investment was less than anticipated, that has an effect on their results?

A. Yes.

Q. Is that one of the variables that goes into the equation when assessing capital adequacy?

A. It is.

Q. And what about the possibility that an investment could be lost altogether? Is that also something that is built into an assessment of capital adequacy?

A. It is.

Q. What about the growth or diminishment in membership size? Is that something that is considered in determining an appropriate level of capital adequacy?

A. It doesn't directly enter into the RBC formula. The RBC calculation is based on the premise that the organization size will be the same next year as it is this year. But then in the unfolding reality, growth or shrinkage in the size of the operation can affect capital levels and surplus levels.

So, for example, if membership were to grow by 10 percent next year, that would pretty much require 10 percent more capital.

Q. Could you explain that.

A. Sure. The -- the capital requirements, as I said, relate to risk, and the primary overwhelming risk in HealthTrust and any health insurer is the claims risk or the underwriting risk, and that is proportional to the size of the population that's being insured, the size of the population and the corresponding claims that they will generate.

And so if the population increases 10 percent, the projected claims, expected claims, would increase 10 percent, the whole balloon expands and therefore, the required capital, or if you prefer

01:37:49 to say, the risk associated with that enterprise is now 10 percent bigger and so there would need to be correspondingly larger capital requirements to support that risk.

Q. So if in one year HealthTrust has 70,000 insured lives and the next year it has 77,000 insured lives -- just to choose a hypothetical -- and the board has elected, We believe that the appropriate level is 4.2, what needs to happen to the dollar amount of the capital fund?

A. Well, the 4.2 wouldn't change. But the dollar amount that relates -- correlates to that would grow by 10 percent in your example.

Q. If the board wanted to maintain the level of capital adequacy of 4.2, all things being equal but for the membership numbers, they would need to grow the fund; is that correct?

A. They would need to grow the target capital, yes.

Q. And so when we look at historical dollar values of net assets or capital for LGC, one of the things we would need to know in terms of assessing why a number moved, it would be, for instance, just the membership size?

A. Yes.

Q. Are there other things that occur to you that are built into the determination of why one sets aside capital?

A. Well, there are other risks besides the claims risks that I focused on and other components of what I'll call rating risk, such as the business risk and the asset risk.

Then there could be other eventualities that befall an organization that might affect its risk and its cost. One of them would be litigation. There might be requirements to develop new products. There might be an interest in some capital expenditure for, say, a major computer system. Things that ordinarily wouldn't be expensed directly in one year's rate because their costs are disproportionally large relative to one year's operation. And one way to fund such efforts is through capital.

Q. 31, please. This is the minutes from the HealthTrust Board of Trustees from July 13, 2002. Would you look at page 2, please. Page 3, excuse me.

Is this the beginning of the member

balance policy discussion that went on?

A. Yes. It appears to be the discussion relative to the July meeting in 2002.

Q. And at the bottom of the page, is this when you started to identify certain of the types of risk that the board should take into account when it considered capital adequacy?

A. Yes.

Q. That's fine. Thank you very much.

Now, your recollection is that in July 2002, the board adopted 4.2 as an RBC target?

A. It is.

Q. Has the topic of capital adequacy and an appropriate level of capital adequacy for HealthTrust been an ongoing topic for the board?

A. It has. It's been a continuous item of interest since I've worked for HealthTrust.

Q. Since before -- preceding 2002?

A. Yes.

Q. Always it's been a topic?

A. Yes.

Q. RBC was just a change in terms of the way they measured it?

A. That's right.

Q. Indeed, have you from time to time made very thorough presentations with regards to board materials on this topic?

A. I have, particularly since the adoption of the RBC approaching 2002, there have been regular updates to the board.

Q. 177, please. Exhibit 177 is a collection of materials from your file with regards to various presentations to the board.

Do you recall that?

A. Yes.

Q. Page 22, please. I understand that this is a sideways slide, but I just want to call it up to identify that in 2005, was this a presentation that was being made to the board on the topic of "How much is enough?"

A. Yes.

Q. What prompted that?

A. Well, it was part of a periodic interest on the part of the board and me to -- for the board to stay abreast and keep thinking about this issue and not administratively think about it as a static standard that they just used. And also for the benefits of new board members, it was an educational step for them.

Q. And so next page, please. So is this just a series of PowerPoint slides? Does this exist in your file to demonstrate that you were going to the board in 2005 to cover this topic?

A. Yes.

Q. Page 20, please. In 2006, did you have a members' balance policy review for the board?

A. Yes.

Q. And what sort of presentation did you bring to them on the topic?

A. Well, the presentation would typically include a restatement of the background of RBC. It would include a report on current levels of members' balance. And it would usually include an update on the comparison group of insurers that we looked at so that HealthTrust could judge its position relative to other insurers.

And sometimes the comparison was made to New England health insurers and other times for other purposes was made with respect to a broader national group of insurers, including insurers with an asset size similar to HealthTrust.

Q. Page 17, please. Do you see that this is dated in the upper right-hand corner July 1, 2006?

Is this a series of screen shots of slides that you would have presented to the board in 2006 on the topic of "Capital as a measure of solvency and strength"?

A. It is.

Q. Page 7, please. Is this the first slide of many based on a 2008 policy review from July of 2008 on the topic of "Members' balance and risk-based capital"?

A. It is.

Q. Page 13, please. Included in that series of slides from 2008, is this the sort of information you would have brought to the board with regards to the RBC ratios --

A. It is.

Q. -- of companies and various asset sizes and various allocations?

A. It is.

Q. And again, what's the point of all that?

A. Context. So that they could understand where -- where the industry was with respect to this particular measure with respect to capital levels, and use that as a yardstick to consider in making their own judgment about capital level appropriate for HealthTrust.

Q. Did you do the same thing in 2010?

A. Yes.

Q. Thank you. You mentioned the regulatory minimum standard, the 2.0. That's called a solvency trigger; is it not?

A. Yes.

Q. And using that framework as a topic of discussion, is that used elsewhere for other purposes such as a target or as a maximum level of surplus, to your knowledge?

A. No.

Q. And could -- Why not?

A. Well, let me address it starting with discussion about the so-called 2.0 solvency trigger level. When that concept was established, it was put forth in the form of a model law published by the NAIC which has since been adopted by every or almost every state.

And in the model law language itself, including the law -- that version of the law as it was enacted in New Hampshire, the law itself states that 2.0 is a solvency -- well, they don't use the term "solvency trigger," but they express it as being a minimum acceptable level of capital and go on further to say that insurers would be expected to hold more than that level.

Q. Do you recall the language from the statute in New Hampshire specifically?

A. I've seen it but I don't recall it word for word.

Q. Would it refresh your recollection if I put it up on the screen --

A. Yes.

Q. -- as to what the statute specifically says?

Exhibit 396, please. Chapter 404-F is entitled "Risk-based capital for insurers."

Is this the statute that you're making reference to?

A. Yes.

Q. Turn to page 2, please. I would like to

look at Section Roman IV. Scroll down, please. I'd like you to read Roman IV, Mr. Riemer, and tell me whether or not that's the section you were just referring to in the statute.
A. Okay. The section reads, "An excess of capital over the amount produced by the risk-based capital requirement contained in this chapter and the formulas, schedules, and instructions referenced in this chapter is desirable in the business of insurance."
Q. "An excess of capital" is desirable; is that what that says?
A. Yes.
Q. Go on.
A. "Accordingly, insurers should seek to maintain capital above the RBC levels required by this chapter."
Q. They should seek to maintain capital above the RBC levels. That would be above the 2.0 and the other designations you were talking about?
A. Yes.
Q. Go on.
A. "Additional capital is used and useful in

the insurance business and helps to secure an insurer against the various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter."

Q. So that's part of the statutory law of the State of New Hampshire?

A. It is.

Q. Applicable to insurers?

A. Yes.

Q. Do you consider it relevant in your practice advising HealthTrust with regards to its levels of capital adequacy?

A. I do.

Q. Why? It's not an insurance company, right? That's what we keep hearing.

A. HealthTrust is not an insurance company. But as I reflect on my reading of the very extensive research that was published by the NAIC and the American Academy of Actuaries in developing the concept, I concluded that although HealthTrust is not an insurance company, the kinds of risks that it takes on are analogous to those taken on by commercial insurance companies. It's perhaps even more of what I call a closed-system risk operation than even an insurance company.

Q. Let's linger there for a minute because I'm not sure I know what you mean. Could you expound on that for a minute, please.

A. By "closed-system insurance operation," I mean that HealthTrust relies totally and entirely on its premium income and its assets to sustain itself. There's no outside source of capital.

Insurers can raise capital. There are various other forms of relief that, if an insurer needs it, can include such things as what's called a solvency or a state guaranty association, which commercial insurers contribute to and can access if they become severely impaired. HealthTrust has no such safety valve and so must operate entirely within its own pool of premium income and assets.

Q. Premium income, investment income, assets on hand?

A. Yes.

Q. Anything else that it can go to in order to pay its claims when it has a problem?

A. No.

Q. That's it?

A. That's it.

Q. So while this statutory exhortation -- statutory suggestion that insurers should maintain capital over 2.0 is not specifically and directly applicable to them, you might argue that it is more applicable --

A. Yes.

Q. -- to a closed-end system like HealthTrust?

A. I do. Conceptually and actuarially it is so.

Q. Has the NAIC addressed the topic of whether or not 2.0 is an appropriate level of capital adequacy?

A. Well, originally, no. In fact, aside from advice like this and other statements that they've made in other venues that 2.0 is not adequate, the NAIC itself has not promulgated what might be called adequate capital levels of surplus although they are working towards such a construct right now.

Q. Have they issued guidance though with regards to the misuse of RBC in rate-making?

A. They have.

Q. And have you seen that?

A. I have.

Q. Are you familiar with it?

A. I am.

Q. Is that -- Exhibit 357, please.

Is this the document to which you were just referring?

A. It is.

Q. And that -- were you familiar with that in terms of your approach and analysis of an appropriate RBC level for HealthTrust?

A. Yes.

Q. Could you summarize for us basically what the regulatory guidance suggests with regards to the use of RBC in rate-making.

A. The key takeaways for me in this document are first of all what it says simply is that in no way should 2.0 be considered an adequate target. And the other takeaway is what it says about beginning to think about what a target might be.

They specifically say that there should be a very low probability that whatever your target capital is, your actual capital level is, there should be a very low probability that an impairment event, an adverse experience, would put you down at the 2.0 solvency trigger level.

So first of all, they're saying you don't want to be anywhere near the trigger level. You don't want to be anywhere near a point where an adverse event puts you below the trigger. And in fact, you want to be high enough so that there's a very low probability that even a significantly adverse event will put you down at the solvency trigger. So my takeaway from this is you want to be well -- well above 2.0.

Q. And so the State of New Hampshire would encourage an insurance company to be well above 2.0?

A. Yes.

Q. The NAIC would encourage insurers to be well above 2.0?

A. Yes.

Q. And you would consider that relevant --

A. I would.

Q. -- to advising HealthTrust?

A. Yes.

Q. Perhaps even more relevant?

A. Yes.

Q. I want to go back to history for a minute. There's been a suggestion that in 2002, at the time that the board adopted the RBC level, that somehow it made a conscious and intentional decision to double its capital.

Have you heard that suggestion?

A. I have.

Q. Do you care to comment?

A. Yes. I don't see it that way at all. In 2002, HealthTrust was at what was a relative historic low for what its actual capital was. It was half of what its traditional target capital was. And it was at that level following many years at levels higher, closer to the traditional 20 percent target.

Q. Let me stop you there. What you're saying is if one goes back and looks behind 2002, earlier than 2002, before the adoption of the RBC level, they nevertheless had a capital target level, correct?

A. Yes.

Q. And that was 20 percent of claims?

A. That's correct.

Q. And you've examined that history and knew about that history prior to 2002 obviously -- is that --

A. Yes.

Q. And have they ever been at the 20 percent level?

A. They had been for several years at or about the 20 percent level.

Q. At or above it?

A. Yes.

Q. And had they ever been below it?

A. Yes.

Q. And so -- so the suggestion that in 2002 they all of a sudden, for the first time, decided to double their capital level, is that an accurate charge?

A. No. They established a target that was the same as the target they had already had. They weren't at that target at the time. But the target didn't change.

Q. Let's linger for a minute on the concept of target versus actual.

A. Yes.

Q. Could you explain that.

A. Well, the 4.2, which we've referenced, is the target level of capital. And given the vicissitudes of actual experience as they unfold, you'll never be at your target because of the kind of volatility and unpredictability that we've talked about.

Q. So when do you set the target?

A. The target is measured every year financially although we track it throughout the year, have a rough idea of where capital is relative to the target.

Q. So the board says, We need a certain amount in a bucket --

A. Yes.

Q. -- all right? We want to have a certain amount of capital. We're going to carry around this 5-gallon bucket and that's going to be our -- that's the capital we want. And we want it full, presumably?

A. Yes.

Q. What happens during the year as you're walking around with this 5-gallon bucket of capital? What happens?

A. Well, sometimes water spills out of it, if you want to continue the bucket analogy, and it's not full. Other times it overflows.

Q. How does water spill out of it?
A. Water spills out of it with -- well, if it's -- it's spilling out because results have been good and if we call the water capital, then the bucket overflows and there's more capital than we needed. Our bucket is our quantity of capital we want to have.
So in good years that bucket overflows and that means we've got more capital than the target level. And that's when we consider returning some of that capital. In other years, it may go the other way around. The bucket is drawn down because of adverse experience. And then there's less capital.
The point is that although the bucket is the target and it's a given size, actual experience will always unfold in a way that we're never able to constantly maintain that exact quantity of capital.
Q. It would be silly to suggest that you could do that?
A. Yes.
Q. So just the year, what happens during the year affects the amount of capital in the bucket?
A. Yes.

Q. You've heard that the Bureau has suggested a particular level of capital for LGC, for HealthTrust?

A. Yes.

Q. Do you find their suggested target good or bad?

A. I find it bad.

Q. Why?

A. In the sense that it's simply too low. In my opinion, it presents a risk to the operation that's too great, that's inconsistent with the promises that LGC HealthTrust makes to its members when it issues coverage at given premium rates. And that it could be easily breached and, in some circumstances, possibly exhausted. And that's simply not acceptable.

Q. Do states regulate as a matter of course the maximum amount of capital that an insurer could -- should keep?

A. Some do. It's rare, but a few states do. And the states that do, tend to set maximum capital targets, or maximum capital levels -- not in the sense of a target that I know of. But some states do enact laws regarding maximum capital levels. And in the few instances where that has happened, those maxima are multiples, many multiples of the 2.0 minimum which exists in all states.

Q. You say "multiples." Give us some range, some ideas of what you're --

A. For example, Michigan has a maximum capital limit expressed as an RBC ratio and that ratio is 10.0.

Q. 10.0?

A. 10.0, five times the minimum, yes.

Q. Any other suggested maximums or regulatory maximums of which you're aware of?

A. Yes. Pennsylvania also sets maxima that aren't as high as 10, but they're in the range of -- I would have to see a reference to tell for sure, but in the 5 to 7 RBC ratio range. And their program is a little bit more complex.

Rather than expressing a simple maximum RBC level, they express a range, kind of a maximum range as a way of dealing with capital limits. And the way it works in Pennsylvania is if an insurer is below the level -- the lower level of that range -- and just to be concrete about it, I'm not sure I've got the right number.

But say in Pennsylvania they specified this upper capital level range of a ratio of 5.0 to 7.0. The way they would operate that is they would say, If an insurer is operating with capital below the 5.0, they're free to do their pricing. If an insurer operated between 5 and 7 -- that is, an insurer that had capital corresponding to an RBC ratio of somewhere between 5 and 7, it would not be permitted to include this charge in its rates.

An insurer operating with a capital ratio above 7.0 would be responsible in some way for limiting that and bringing the capital level down to 7.0, either through rate credits or some other distribution method.

Q. Okay.

A. And to mention one other, Rhode Island also has enacted maximum capital rules for four specific insurers in the state. Those, unlike Michigan and Pennsylvania, are not expressed as RBC ratios but rather as, I believe it's percentage of premium.

Q. And you are aware that prior to 2009, risk pools in New Hampshire were unregulated in the sense of they determined their capital levels themselves?

A. Yes.

Q. And now we've moved to a regulated environment?

A. Yes.

Q. And are you aware of any minimum capital level that has been set in the State of New Hampshire for risk pools?

A. I am not.

Q. And the only one you're aware of regarding insurers is 2.0; is that right?

A. Yes.

Q. I take it that you think 4.2 is an appropriate place for HealthTrust?

A. I think it's appropriate. And as I always explained to the board when talking about this, is that they need to consider this issue continuously and evaluate that particular target continuously and think about the implications of their operation if they were to change the capital target in some way.

For example, some might be interested in lowering the capital target as a way perhaps to be more competitive. And there's a narrative that goes -- and a way of thinking that goes with that issue of, 02:03:44 is 4.20 the perfect number. Could we have something a little bit lower. Should it be a little bit higher. So they're constantly looking at that question. But I think, given their understanding of the whole issue of managing capital and also managing the rating structure, that 4.20 is appropriate.

Q. You've heard Mr. Atkinson, for instance, suggest that 2.1 was an appropriate level of capital for HealthTrust. You heard that testimony?

A. I have.

Q. And you've heard him suggest a 95 percent confidence level?

A. Yes.

Q. And you've heard him suggest that, Oh, you know, if you have a bad year, you just reprice?

A. Yes.

Q. Would you comment on that, please.

A. Sure. Why don't I start with the 95 percent confidence level. As he said in his deposition and in a couple of different ways in his reports that I've seen, it's basically expressing a 5 percent likelihood, the complement of 95 percent, that capital at that level would not be sufficient.

Q. I need to pause there and make sure I understand. If you're talking about a 95 percent confidence level, the remainder is 5 percent?

A. That's right.

Q. So what happens in the 5 percent that is the unconfident level, I guess?

A. Well, if you're saying that 5 percent of the time that the reserve is not sufficient, it means it's exhausted.

Q. It means it goes away?

A. It goes away. And that's an unacceptable probability of what might be called ruin, in the insurance industry.

Q. Is that a technical term: "ruin"?

A. It is, it's a technical term. So as I understand Mr. Atkinson's 95 percent representation, it's basically expressing a 5 percent probability of ruin over some time horizon.

Now, with respect to -- there were other parts to your question about the 2.1 --

Q. Right. If you're at 2.1, let's say that HealthTrust moved to a 2.1 level. While subsequent events might not be of such a magnitude as to completely ruin the system, but what level of adversity can a risk pool stand if it's at 2.1?

A. Well, in terms of adversity that would put it below the trigger, virtually none. It might be called noise. It's about a day and a half of claim payments.

Q. I need to follow you there.

A. Sure.

Q. The difference between 2.1 and the regulatory level would be what?

A. The difference between 2.1 and 2.0 would amount to about a day and a half of claim payments. It's scant. It's nil. It's virtually no difference at all.

Q. And so if -- you being the actuary -- had miscalculated something to some relatively small level, what would -- what could happen?

A. Well, it would fall below the trigger of 2.0.

Q. Relatively quickly?

A. Relatively quickly.

Q. In less than two days, that's the order of magnitude that you're talking about --

A. Yes.

Q. -- between the level that Mr. Atkinson suggested and the regulatory level that would trigger action by the Department of Insurance of some kind?

A. That's correct.

Q. Is there any basis in actuarial science for the approach that Mr. Coutu took with regards to his approach to setting a capital adequacy level?

A. Well, one of the parts of his testimony that I listened to with interest was a representation that he could arrive at an appropriate target capital by examining the assets and then by such an examination decide that some of the target capital wasn't needed. And I just totally disagree with that.

The fundamental determination, the input to target capital, the input to measuring risk, the inputs in the NAIC formula, have essentially nothing to do with assets. Marginally so, but fundamentally the risk exposure and what an organization might consider as an appropriate level of capital to manage that risk have nothing to do -- has nothing to do with the asset composition, the asset maturity.

There may be very good reasons for

thinking about the design of the portfolio. But the design of the portfolio has nothing to do with the level of target capital and the risk -- the underwriting risk the organization faces.

Q. So you would completely reject the idea that capital can or should be determined by the structure of the investment portfolio?

A. Yes.

THE PRESIDING OFFICER: Excuse me, Mr. Saturley.

MR. SATURLEY: Sure.

THE PRESIDING OFFICER: Could I have a point of clarification with the witness?

MR. SATURLEY: Of course.

THE PRESIDING OFFICER: Mr. Riemer, you just used the phrase "design the portfolio."

THE WITNESS: Yes.

THE PRESIDING OFFICER: And by "portfolio," do you mean something other than what someone may have in equities? The portfolio you're referring to is the spread of -- an explanation of what type of capital or where funds are within the organization?

THE WITNESS: I'm simply referring to the nature, the type, the duration, the categories of assets. So the design of the portfolio --

THE PRESIDING OFFICER: Okay.

THE WITNESS: -- okay?

THE PRESIDING OFFICER: I understand. Thank you.

MR. SATURLEY: Thank you.

Q. BY MR. SATURLEY: I missed a step with regards to Mr. Atkinson's testimony. I was going to ask you about the repricing idea.

A. Yes.

Q. Could you comment on that for a minute.

A. Well, if repricing is offered as a reason for feeling more secure about a lower level of capital, I think there are a couple of problems with that concept. Yes, the program is repriced every year. In fact, recognizing that there are two different pools, there are a couple of repricing cycles that occur within the year.

But the issue with respect to repricing or somehow the ability to reprice as a way to ameliorate the desired -- or the target level of capital, reduce that, doesn't hold a lot of water in my opinion.

First of all, because of the way that the pricing cycles work, you could be in the pricing cycle for next year before you fully comprehended that there has been an attack on surplus, that there have been substantial losses. And in that case, you're kind of too late to do it.

And in any event, even if you're aware that there's been capital erosion and there's a need to correct for that in the pricing, that presents marketplace issues in a couple ways.

One, it generates the need to build into the rates something to deal with that issue, which presents issues about renewal of existing customers or attraction for other potential customers, and in fact, may scare off your customer base if there's -- if there's a sense that you're losing money, now undercapitalized, and maybe at risk of significant impairment.

Q. All right. Let me -- let me catch up with you.

A. Sure.

Q. First thing you suggested was that the timing of repricing may be a problem to have it be an effective mechanism?

A. Yes.

Q. And I take it that that -- because when you get around to repricing, you may not even understand that there has been -- and I think you called it an attack on capital?

A. Yes. I could give an example.

Q. Please.

A. Okay. We, last October, priced the so-called July pool, which is 80 percent of HealthTrust's business. We issued renewal rates for the July 2012 pool in October of 2011. And that's the so-called guaranteed maximum rate issuance.

So we issued guaranteed rates to 80 percent of those 70,000 lives in October 2011 to take effect July 2012. We did that based on our understanding of experience in the performance at the time. If subsequently to October 2011 and before July 2012, the bottom fell out of something, healthcare trend, some sort of morbidity issue, some sort of asset performance issue, we're stuck with those rates that were guaranteed.

Q. Let me pause you there for a minute to make sure I follow. When you're repricing -- when you're pricing in October of 2011 for the July 2012 program, that's when the pricing will take effect?

A. Yes.

Q. Now I'm back here in October 2011. How much experience do I have with the existing pool that I'm right in now?

A. Virtually none.

Q. Virtually none?

A. Yes.

Q. So if there's a need to reprice, if there is an attack on capital, as you call it, do I know it's occurred?

A. I'm sorry?

Q. If there has been a reason to reprice because of some attack on capital, as you called it, in October of 2011, how much warning do I have of it?

A. Well, if it's begun to manifest by then, you try to assess it and deal with it; but if it hasn't manifested by then, then there's very little you can do and you do nothing.

Q. That was the first flaw, I guess I'd call it, in the repricing model that you identified as the timing. Then you went on to identify another flaw, and I think you called it the marketplace flaw or --

A. Right.

Q. -- something? Could you explain that in a little more detail.

A. Yes. The marketplace concern is that if you use pricing or the ability to reprice as a defense mechanism against loss of capital or poor results, then you're making your price uncompetitive.

Q. You're making your price uncompetitive?

A. Uncompetitive.

Q. How so?

A. Because you have to add extra layers of cost into the price to rebuild capital, to stem the losses that are unfolding. And so yes, pricing and re-rating would present an opportunity to do that, but there's a real issue about what that does in the marketplace. Will you lose business? Will you be unable to attract new business?

Q. So while it is an opportunity in the sense that it does exist, do you consider it a realistic defensive mechanism?

A. No.

Q. You mentioned the GMR, the guaranteed maximum rate. Would you talk a little bit more about the significance, the scope of the exposure and the risk that HealthTrust takes on whenever it issues a guaranteed maximum rate.

A. Yes. It's something I always look at every -- every year, and I advise the board about. And the best way I can express it is with the live example, the most recent issuance of guaranteed maximum rates in October 2011.

What I told the board and the computation I do is I say, Here we are in October 2011. We issued rates three months ago, or four months ago, where we began a rating four months ago for July 1st, 2011, which we're barely into, has nine months to run. We've just guaranteed rates for the year that begins the following July, July 2012, that will run into mid 2013.

Also at that point in time, October 2011, simultaneously with the issuance of the so-called GMR, we would have issued renewal rates for the January pool, which is 20 percent of the business, for January 2012.

So the calculation I do at October 2011 is to say, As of today with the issuance of the guaranteed rate for next July and the January rates for the coming January, what is the extent of the promises that HealthTrust has made as of that date?

And the measurement is they promised the July pool rates from that date through July 1 of 2012. They promised a full year of July rates from 2012 to 2013. They promised a full year of rates for the January 2012 pool. When you add up --

Q. And what are the lines that they're issuing these rates for?

A. Medical primarily and some dental.

Q. Okay.

A. When you add up the projected claims associated with all those promises, in October 2011, is $625 million.

Q. In October of 2011?

A. Yes.

Q. The Board of Directors of Local Government Center with regard to the HealthTrust pool were making a $625 million guarantee?

A. They are.

Q. So a $625 million bet on your numbers?

A. Yeah.

Q. How does that make you feel?

A. I lose sleep over it. I'm very conscious of the enormity of that number and of the responsibility that I have to advise the board and the responsibility they have to make that decision. And key to that decision is their capital structure, capital level.

Q. Tell me what happens with a bet that size, a guarantee that size. What happens if you're off by a little?

A. Well, you can just do some math on some possible variations. The key number that I look at that kind of embraces the worst possible event would be a value that might wipe out capital. That's unlikely.

But at more modest levels of adversity, for example, at the $625 million promise, something like 6-1/2 -- or a 6-1/2 percent deviation from projected trend would cost about $40 million, which is the amount that the Bureau has proposed as maximum capital for HealthTrust.

Q. Let me make sure I've got that. The Bureau has proposed a level of around 40 plus or minus?

A. Yes.

Q. That's the -- what they suggest is an appropriate amount of capital --

A. Yes.

Q. -- for the HealthTrust program?

A. Yes.

Q. HealthTrust Board of Directors made a $625 million guarantee in October of 2011 --

A. Yes.

Q. -- to pay all the claims of 70 or 75,000 dependent lives. And how much of a variance would wipe out that proposed level of net assets?

A. Somewhere between a 6 and 7 percent variance in the projected cost.

Q. Is that what you would call -- Where does that fit into this magnitude of a significant event like a pandemic? Is that what it would take to be a 6 or 6-1/2 percent variation?

A. No. No. 6 to 6-1/2 percent would be unusual, but not outside the range of adversity that HealthTrust has seen on occasion.

Q. HealthTrust has seen this level of adversity in the past?
A. Yes.
THE PRESIDING OFFICER: Excuse me, Mr. Saturley. Can you take your exhibit down. It makes it difficult from our perspective to see the witness, or more difficult, I should say.
MR. SATURLEY: I apologize.
THE PRESIDING OFFICER: Thank you.
(Discussion off the record.)
Q. BY MR. SATURLEY: Have you seen that magnitude of adversity in HealthTrust's experience?
A. Yes.
Q. In the past?
A. Yes.
Q. They've suffered that level of adversity in the past?
A. Yes.
Q. Just to play out the string, what would happen with a pandemic? That, I take it, would exceed that level?
A. Yes.
Q. There's been some suggestion that HealthTrust

somehow did a recalculation of its RBC or something in 2010. You've heard that --

A. Yes.

Q. -- testimony? Could you explain what actually happened in 2010.

A. Sure. That occurred in the context of the guaranteed maximum rate which we talked about. For a number of years, HealthTrust has dealt with issuing a guaranteed maximum rate, making a rate promise so far in advance by building into the rate itself a margin to protect against the risk that -- of losses inherent in making such a guarantee so far in advance. Insurers don't normally do this.

So the traditional practice for protecting against that exposure was, as I said, to build a layer of costs into the guaranteed maximum rate calculation. And then the following spring when the so-called revisit calculation is made and we're closer to a normal rating cycle and the rating for the imminent July 1, we no longer need that level of risk charge in the rate.

And of course, if in making the guarantee, the risk had materialized, then that charge would have been used and been appropriate. But if it hadn't materialized, then that layer would come out of the rate, and that resulted in the phenomenon of the revisit being lower than the GMR by the amount of that margin. And there may be other reasons that might tend to make the revisit lower than the GMR.

In any event, we heard a strong input from members -- members of the board and staff through members of the community served that they're unhappy with that. They did not like having a revisit rate in the spring that was lower than the GMR rate that was promulgated in the fall. And so we were asked to find a solution to that.

And the solution we came up with was basically to make a shift in thinking about protecting against the risk inherent in doing a GMR forecast so far in advance. The shift was to remove the risk protection from the rate itself and to provide the risk protection through the maintenance of additional capital. And we did that, in fact, for the first time with respect to the July 2012 GMR. And so that was the thinking that led to that.

Q. Instead of having such a big price protection in the GMR, you basically brought that pricing level down and shifted it into the analysis of capital?

A. We shifted it into capital. And the result was that without that component in there, revisit was and is more likely to come in closer to the guaranteed maximum rate, the result which the customers were demanding.

Q. As part of your report, did you prepare a diagram that would show some of the various RBC levels and where your recommendations would come in?

A. I did.

MR. SATURLEY: I'd like to call up 269, please. Page 10, please.

MR. VOLINSKY: Excuse me.

THE PRESIDING OFFICER: Mr. Volinsky.

MR. VOLINSKY: This is ID only. But since Mr. Riemer is testifying, we would agree to strike the ID.

THE PRESIDING OFFICER: Presuming there's no objection --

MR. SATURLEY: No.

THE PRESIDING OFFICER: -- we are striking the ID from LGC 269. It's now a full exhibit.

(LGC 269 admitted into evidence.)

THE WITNESS: Is there any way to get an intermediate size that is larger without cutting it all off?

THE PRESIDING OFFICER: Do you have a hard copy?

THE WITNESS: I do.

MR. SATURLEY: I can put the hard copy on this, and we can try it that way.

THE WITNESS: Okay.

MR. SATURLEY: Hang on to yours.

THE PRESIDING OFFICER: Mr. Riemer, if I might be so bold, having been here, if you remained at the witness table --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- and just looked at your hard copy --

THE WITNESS: Okay.

THE PRESIDING OFFICER: -- you have a good perspective of that. And everyone else who would want to see that can see it. Or the crucial people already have one in their --

THE WITNESS: All right.

MR. SATURLEY: Let's just work with what's in front of you.

THE WITNESS: Okay. This diagram is intended to be a comprehensive view of the significance of different RBC levels, whether of the NAIC structure, of other insurers, of the small number of states I mentioned that have enacted maxima for capital.

So it's intended in one diagram to bring together this world of RBC ratios and who does what with them, and it runs on a scale from 0 to 10. And a key focus -- I'll focus on the left side of the diagram first.

The key focus there initially is the bottom few rows, which show the NAIC trigger levels. So starting at 2.0, that's the first regulatory threshold, that if you fall below that level, it's the one that requires a correction plan be submitted to the Insurance Department.

And then of the variously greater interventions that occur at levels below that 2.0, going down to the most significant one, 0.70, basically mandating regulatory takeover for insurers at that level. So that sets the regulatory framework and makes it clear that it's a minimum level of capital managed through the State Insurance Departments.

The next levels going up all represent some key RBC ratio that means something significant. The first one above the regulatory threshold is at 3.0, it's the Blue Cross Blue Shield National Association so-called concern stage. This is one of a series of RBC levels that are particularly important to Blue Cross plans, such as Anthem here in New Hampshire. They are all licensed by Blue Cross Blue Shield National Association and have to follow the mandates of that licensing organization.

So I'll be mentioning a few of those. But the first one is the concern stage. This is when the national association is worried about an insurer.

Also, I forgot to mention at the 2.0 level, which is the general U.S. regulatory minimum, 2.0 level is the level also at which the Blue Cross Blue Shield Association would pull the trademarks from any local Blue Cross plan if it's at that low a capital level.

Now, going up the scale on the left, the next key level is 3.75. That's where a Blue Cross Blue Shield plan would be subject to intensified monitoring by the national association if they were at that level.

Moving up, again on the left, the next key point is 5.0. That is the monitoring threshold for a Blue Cross Blue Shield plan. That's a level where the national association would begin to focus on what's happening within the local Blue's plan.

The next level, I'll pair it with, if I can read, Pennsylvania; 5.50 is the so-called lower ceiling in Pennsylvania. And I can jump back up to stick with Pennsylvania to 9.50, that's the upper value of the ceiling in Pennsylvania.

This is just a way of saying that Pennsylvania law for the Blue Cross plan in Pennsylvania -- I don't believe it's all insurers -- Pennsylvania specifies a range of risk-based capital from 5.50 to 9.50 for the Pennsylvania Blues. So 9.50 would be considered the maximum. And as I mentioned before, 5.50 would be considered the level which would be permitted. Anything between 5.50 and

9.50. But the insurer would not be allowed to make a risk charge in rates if they were in that range.

The next key point is 7.0. Now, Massachusetts has also not enacted into law, but produced the recommendation out of a study provided by their healthcare finance agency within the state. They've also developed a range for maximum capital ranging from 7.0 to 9.0. I'll talk a little bit about that in a second. And finally, at 10.0, there's the Michigan maximum. And again, this only applies to the Michigan Blues plans of 10.0. So that's kind of, as I said, the universe of RBC ratios and who uses them and how they use them.

And on the right side for reference are some RBC ratios for actual companies or proposed or actual companies. At the top, I think that says 5.15. That's the average RBC ratio in 2008, I believe it is, that was reported in the Massachusetts study that was undertaken and resulted in the Massachusetts healthcare finance agency recommendation that if there's to be a ceiling on surplus, it be between 7.0 and 9.0.

And the insurers they looked at when

they did that study were at an average of 5.15. And I should also point out that most of those -- most of the health insurance in Massachusetts is through nonprofits. 4.57 shows there. And that's the average of New Hampshire health insurers other than the pools in 2009, I believe, 4.37.

Then you see the kind of gray smudged line at 4.20, that's the LGC HealthTrust target. And then finally down at the bottom at 2.07 is the value recommended by the Bureau for LGC HealthTrust.

Q. You mentioned the Massachusetts study.

A. Yes.

Q. Do you give that some weight in terms of your analysis in terms of the appropriateness of the 4.2?

A. I do. I give it a lot of weight. It's a study, a comprehensive exhaustive study published in a 220-page report that the was done by healthcare finance professionals using lots of data and resulted in the conclusion I talked about. So I give that a great deal of weight.

Q. Just call 356, please. Is this the cover letter -- excuse me -- the cover of the study that you are mentioning?

A. It is.

Q. To summarize, Mr. Riemer, your opinion of the board's proposed level with regards to the capital adequacy for HealthTrust?

A. I'm sorry. Which proposed level?

Q. The Bureau's?

A. The Bureau. Yes. My opinion is it's totally inadequate. And I could not recommend such a level to the board.

Q. To summarize your opinion with regards to the existing 4.2 HealthTrust level?

A. I think it's a reasonable, prudent target capital level.

MR. SATURLEY: I have no further questions for Mr. Riemer, Mr. Mitchell.

THE PRESIDING OFFICER: Thank you, Mr. Saturley.

Mr. Gordon, do you have any questions at this time?

MR. GORDON: No.

THE PRESIDING OFFICER: And Mr. Howard, sir?

MR. HOWARD: No thank you, sir.

THE PRESIDING OFFICER: Mr. Volinsky, on cross-examination.

CROSS-EXAMINATION

BY MR. VOLINSKY:

Q. In a general sense, Mr. Riemer, am I correct to say that if the Local Government Center board wants to increase its level of net assets, it does that by increasing the premium spend?

A. That's the intentional way to do it.

Q. That's what I mean. I'm just talking about the intentional way.

A. That's correct.

Q. So you have a -- you must have 10 or 12 factors that go into building the medical premium rates; is that about right?

A. Yes.

Q. And one of those factors is called risk?

A. Yes.

Q. And in order to intentionally -- now, I'm on the intentional side -- to intentionally build net assets, the board would enhance the risk percentage --

A. Yes.

Q. -- correct?

In the recent change of how the RBC is calculated, which I think is 2010, correct, is when the change was made?

A. Year end 2010, yes.

Q. Year end 2010. The board switched from using a particular factor to represent the inherent risk in predicting a GMR for a longer period of time, took that away --

A. Yes.

Q. -- and instead it enhanced the amount of net capital, correct?

A. Yes.

Q. And when it decided to enhance that net capital to cover for the GMR, it raised premiums a little bit to build that enhancement; fair statement?

A. No, not actually. I think the way it transpired is that there was at that time capital, excess capital, that would have been excess capital under a kind of a preenhancement --

Q. Okay.

A. -- mode of thinking. So some of that folded into supporting the new higher capital level rather than through a premium charge to do that.

Q. Got it. So the GMR enhanced risk premium, when that was in place, that was charged to those members who participated in the GMR program --

A. Yes.

Q. -- correct? It was in their premium?

A. It was in their GMR premium.

Q. Right. And those are what we would call the July pool?

A. Yes.

Q. And separate from the July pool, there's a January pool?

A. Yes.

Q. January pool never used this GMR modality?

A. That's correct.

Q. So the January pool was never charged the GMR enhanced risk premium?

A. That's correct.

Q. And what you've -- what LGC has done in 2010 is it stopped using the GMR enhanced risk premium --

A. Yes.

Q. -- and instead holds extra capital?

A. Yes.

Q. Some of that extra capital comes from those members who were on the January schedule and who never received GMR rates, correct?

A. No. It's not correct.

Q. Some of the net capital that was enhanced could have been returned to the January pool members, had it not been used to increase the overall pool of net assets to cover for the GMR enhanced risk rate, correct?

A. No, that's not correct.

Q. Okay. We agree, do we not, that with the GMR, that rate is issued in October of each year --

A. Yes.

Q. -- essentially?

A. Yes.

Q. And then trued up in the springtime of each year?

A. Yes.

Q. So it is, in essence, repriced in the springtime?

A. It is.

Q. Switching topics a little bit. You offered testimony about Mr. Atkinson's recommended stochastic model at 95 percent --

A. Yes.

Q. -- correct?

And did you listen or watch when Atkinson testified last week?

A. In part I did, yes.

Q. So did you hear his explanation of what is meant when a stochastic model using 95 percent misses during that 5 percent?

A. I heard it. I'm not sure I understood it.

Q. But your interpretation of that model is that if you miss during that 5 percent, it completely wipes out and exhausts the net assets, right?

A. That's what he said in his deposition -- his deposition and in one of his reports.

Q. And if he said, here under oath on the stand, that it could be a penny off up or down and still be part of that 5 percent, would you have heard that part?

A. I heard the part about the penny, but I don't understand what it means.

Q. All right. You have worked with the Local

Government Center HealthTrust either in its LGC form or its predecessor form since 1988; is that right?

A. Yes.

Q. You started out on the account when you were you a consultant for Watson Wyatt?

A. That's right.

Q. And then when you left Watson Wyatt in about '03, the account came with you?

A. Well, for two years it was still with Watson Wyatt, and I was subcontracting to Watson Wyatt. And then it came directly with me in 2005.

Q. And that two years corresponded to your noncompete?

A. That's correct.

Q. And you now manage the LGC actuarial consulting work out of your own company?

A. Yes.

Q. And you're a solo company?

A. Yes.

Q. You don't have any staff?

A. No.

Q. And as far as you know, your work has never been evaluated prior to the expert opinions in this case by an outside actuary, right?

A. I don't believe so.

Q. And as far as you know, the Local Government Center and its predecessors never went to an RFP or bidding process to see if there were other actuaries who could also provide consulting actuarial work instead of you?

A. Not as far as I know.

Q. Let's talk about what you do as an actuary for the Local Government Center. You help them reach decisions on premiums or rates, correct?

A. Yes.

Q. You serve as an expert in this proceeding?

A. Yes.

Q. You served as an expert in the firefighters proceeding, correct?

A. Yes.

Q. Submitted an affidavit in that proceeding?

A. I did.

Q. You've prepared testimony for the New Hampshire House of Representatives; have you not?

A. Yes.

Q. You've prepared testimony for the New

Hampshire Senate?
A. Yes.
Q. You've worked with PR professionals for the Local Government Center to help prepare testimony for others who testified before our Legislature?
A. Yes.
Q. You've never testified before any other Legislature in the country, have you?
A. No.
Q. You've never prepared testimony for any other Legislature, have you?
A. No.
Q. Never worked with another PR team in any other state, have you?
A. No.
Q. You have no experience with any risk pool other than the Local Government Center's risk pools, correct?
A. Correct.
Q. You have never made a study prior to your expert opinion in this case about the capital assets or reserving practices of other risk pools, have you?
A. That's correct.

Q. Prior to this case, you had no knowledge of an association called AGRiP, correct?
A. I did have knowledge of them, but I didn't have knowledge of specific practices of the organization.
Q. I'll accept that. Similarly, you had knowledge of the existence of the National League of Cities with respect to insurances and risk pooling, but didn't know any specifics?
A. Other than to see periodic surveys on tallies of risk pools around the country.
Q. Prior to helping the board understand RBCs, you had no knowledge of a single risk pool that used risk-based capital for the determination of its capital requirements, correct?
A. Prior to what?
Q. Prior to -- let's use '02.
A. No, I didn't.
Q. There is -- there is in this case the use of .5 RBC for certain administrative expenses by the Local Government Center. Are you aware of that?
A. I am.
Q. You have no idea where this .5 RBC came from,

do you?

A. I do.

Q. I'm sorry?

A. I do.

Q. Yes? Where did it come from?

A. As I recall -- and I haven't seen documents to pull this from -- but as I reflected on the proceedings in the various preparation that I've made, I think this relates to a retreat. Maybe it was the 2008 retreat where I had presented an update on risk-based capital.

As I recall, I came into that retreat with a sense that -- again, based on looking at, as I periodically do -- at comparisons of RBC levels, for example, of other New England insurers. I came into that retreat for the purpose of suggesting to the board that they revisit the level and consider raising the RBC target from 4.2 to 5.0.

And in the ensuing discussions within the day or days of the retreat, that didn't happen. And what I interpret did happen is as follows. The fundamental core capital target stayed at 4.2. And the .5 RBC layer came in -- and I knew that as coming in through -- in the context of the large capital systems project, a major system rewrite that at inception -- and it probably goes back several years before this period I'm talking about -- was something like an $8 million project. And it may have been recorded in the financials as a set aside for that project.

So my recollection where this .5 came from was that, Well, we're not going to increase the capital from 4.2 to 5, but we have a residual balance in the original systems account, expected originally to be an expenditure of $8 million. It's maybe down to some much smaller number now, maybe $500,000. I don't remember the number.

So I viewed this as something where they packaged it and said we've got the 4.2 underlying layer. And then we've got the residual budget for the capital systems project. We will put that in a .5 layer.

And so the .5 layer, although it might have been expressed as a target, I think the sense was that there would be a -- there was some sort of a vote that limited, despite the layer here being .5 RBC and whatever number of dollars that was -- it would have been several million -- but that the approved spending of dollars within that target was only this much smaller number like $500,000 or $1 million.

That's my best recollection of how that arose.

Q. Thank you. Who came up with the idea of using the .5 RBC as the means of calculating administrative reserve?

A. I just don't recall.

Q. You didn't?

A. No.

Q. As a matter of fact, you've never seen this concept of using RBC to calculate an administrative reserve expense amount, have you?

A. No. If I could explain --

Q. Sure.

A. -- my view of it.

Q. Yes. Go ahead.

A. Extraordinary administrative expense would be a perfectly appropriate use of capital. And so whether -- the view in this case is the fact, whereas such an expense might be funded out of a generalized capital budget or a target capital -- that in this instance what they did was they circumscribed the potential use of capital for administrative purposes and limited it in the way that's shown here.

Q. I think you told me at deposition that this .5 RBC was not an actuarial use of risk-based capital.

Is that a fair statement?

A. It is, but again, if I could explain. It's not actuarial in the sense that it doesn't compute from a risk probability kind of a model. That as I've said, both the NAIC model and general capital -- risk capital considerations make it perfectly appropriate for there to be capital for such uses, even though the purpose wouldn't be considered an actuarial purpose. That's what I meant with that response.

Q. Thank you. So let's stay on RBC for a moment. This particular amount of RBC, 4.2, did you tell me at deposition that you don't know how the 4.2 was chosen?

A. No, I don't. I speculate that it was kind of a natural jumping point, given that it was recognized as being equivalent to their long-standing older target.

Q. You didn't recommend 4.2 as this figure to use?

A. No. What I did was in a letter in November, I said -- We talked about RBC at the retreat. My recollection is there seemed to be some attraction to the board to the linkage I had pointed out between 4.2 and their traditional target. And I believe I told Wendy Parker in November, If we're going to do this for this year, we should proceed. Let's get the NAIC software, figure out what actual RBC computations show and for now, provisionally, let's say we're using 4.2.

Q. And this was in the summer of '02, correct?

A. It would have been -- the initial presentation on the concept and the recognition of the correlation between 4.2 and their older long-standing target, that occurred in July.

Q. Of '02?

A. Of '02.

Q. Thank you.

A. And then the letter to Wendy was in

November of '02.

Q. And in July of '02, the actual net assets on hand at the HealthTrust were half of the 20 percent corridor; were they not?

A. That's right. They were.

Q. And you said in the past they had been at 20 percent on hand?

A. Yes.

Q. In '01, were they at 20 percent?

A. They hadn't been at 20 percent for several years.

Q. How many is several, Mr. Riemer?

A. I would have to see documents to be certain, but probably from '96 or '97 through 2002.

Q. So going back at least to '96-97, they had been holding on hand about half their corridor?

A. No. They were at various levels intermediate between the target and the 10 that you mentioned.

Q. You would agree that if 20 percent equals 4.2 RBC, half -- 10 percent -- equals about 2.1?

A. Yes.

Q. And you actually calculated that they were at 2.1 in '02 when this process of enhancing -- I'm sorry -- of changing over to RBC started?

A. Yes.

Q. The RBC calculations that are done at times after RBC was adopted by the board, those aren't done by you, are they?

A. No.

Q. They're done by Ms. Keeffe?

A. They are.

Q. And as a matter of fact, this 4.2, I think you've described this as "nothing particularly special. It's just a way to back into a stated board goal"; fair statement?

A. Can you give me some context for that, please. When --

Q. Sure.

A. -- where?

Q. Sure. Here's your deposition. I'll give you a page reference. Hang on one sec.

A. Um-hum.

Q. Turn to page 106 for me. Since this is a condensed transcript, there are four --

A. Yes.

Q. -- on one page.

A. Yes.
Q. 106 is lower left. And why don't you just read for your own edification 105, 106, 107 so you can tell the context we're in here. And if you want to read more . . .
A. I'm sorry. You want me to read from what to what?
Q. Just for your own benefit, to yourself, look at 105. The questions I'm going to ask you about are on 106. And if you want to read into 107, for your own benefit, do that --
A. Sure.
Q. -- and just look up when you're done.
A. Okay.
Q. Okay? So you follow along with me. Page 106, line 9, I asked you, "So you said that the enterprise or the board doesn't fundamentally use RBC to set target capital?"
You answered, "That's correct."
I then asked you, "They choose the amount of target capital they think appropriate and the RBC is kind of a back-in way to get to that amount?"

Your answer, "That's correct."

A. Yes.

Q. And then I asked one more question, "So there's -- whether we choose 4.2 or we choose 4.8 or 6.8, there's really nothing special about that number. It just backs into a goal for the amount of net assets this enterprise decides it wants to hold?"

Answer, "That's correct."

Did I read that correctly?

A. Yes.

Q. Thank you.

A. If I could expand on that, please.

MR. VOLINSKY: Your Honor, there's not a question pending.

THE PRESIDING OFFICER: Wait for the -- Well, no, I'm going to let him expand, given the time --

MR. VOLINSKY: Okay. Given?

THE PRESIDING OFFICER: -- given the time that I have right here.

MR. VOLINSKY: I couldn't hear you.

THE PRESIDING OFFICER: No, that's fine.

You go right ahead, Mr. Riemer,

expand.

THE WITNESS: The expansion I wanted to offer is that at inception, the 4.2 was certainly a number that was driven by the old target. So the old target used the 4.2. It wasn't that the old target -- 20 percent, that is -- produced a 4.2 ratio, it wasn't that in isolation compared to anything else anyone identified 4.2 as a magic number.

But then in subsequent years -- I mean, it's really a semantics issue. Is the capital target driven by some sort of RBC period? No, it's really not. RBC is simply a yardstick that's convenient to use to think about the universe of other groups, particularly the comparison group of New England insurers.

So I -- I would advise the board -- and I think of it myself -- as guidance in this issue, it's more important to understand what other insurers are doing. And then say, Well, that happens to be an RBC at this level. That's kind of my thinking on the issue.

THE PRESIDING OFFICER: I'm sorry. I didn't hear the last phrase.

THE WITNESS: I said, that's my thinking on the issue.

THE PRESIDING OFFICER: I'm going to interject, just for clarification, would I be too far off the mark if I said that it's an index?

THE WITNESS: Yes. That's exactly what it is. Yes.

THE PRESIDING OFFICER: Thank you.

Please proceed, Mr. Volinsky.

MR. VOLINSKY: Thank you.

Q. BY MR. VOLINSKY: The term "member balance" is synonymous with "net assets"; is it not?

A. Um --

Q. As you understand it in the context of this case?

A. Yes.

Q. And "member balance" and "net assets" are also, in the context of this case, synonymous with the term "capital"?

A. Yes.

Q. And in the context of the Local Government Center, net assets legally belong to the members of the Local Government Center?

A. Yes.
Q. And those members are towns and cities and school districts?
A. Yes.
THE PRESIDING OFFICER: Don't forget the counties.
MR. VOLINSKY: And the counties. Sorry.
Q. BY MR. VOLINSKY: The counties?
A. And the counties, yes.
Q. You gave us the benefit of your thoughts on Blue Cross plans and their capital reserving, right?
A. Yes.
Q. At the time that there were ongoing discussions of what level RBC to choose, there was a consultant other than yourself involved, named Michael Bailit?
A. Yes.
Q. Am I saying his name right?
A. You are.
Q. And he's a healthcare consultant?
A. Yes.
Q. And Mr. Bailit advised you and the board that Blue Cross has different reasons for maintaining

capital than does a Local Government Center risk pool; did he not?

A. I don't recall that.

Q. Let me take you to Exhibit 66. It should be Book 4, I think. Book 3, I'm sorry. 66 at 203. Just so I don't have to go look for my own, we'll share. Let me send everyone to 198 first, which is the cover sheet for what this is. This is the July '02 retreat, correct?

A. Yes.

Q. And then if you skip forward to 03 -- Actually, let me just skip you forward to 01. You'll see there's a member balance policy discussion reflected in the minutes. That starts on 01, correct?

A. Yes.

Q. And there's a point where you're quoted as providing a certain explanation, correct?

A. Correct.

Q. And then your explanation and the discussion continues on 02?

A. Yes.

Q. Then when you get to the top of 03,

Dr. Weiss makes a comment --

He was the board chair then. Do you remember that?

A. Yes, I do.

Q. -- "This needs to be looked at from two perspectives. What we need to internalize and what our customers need to internalize"?

A. Yes.

Q. And then the very next sentence is what I'm bringing us to. "Michael Bailit noted that Anthem has different reasons for building up their reserves"?

A. Yes.

Q. And Anthem happened to be the name of the Blue Cross carrier for New Hampshire?

A. That's right.

Q. Thank you. When you looked at the insurance carriers in the Massachusetts study --

A. Yes.

Q. -- and when you read that study, did you then go on to determine whether those insurance carriers in Massachusetts have a requirement to return earnings and surplus excess of operations the way LGC does?

A. No, I didn't. And if I could expand, it seems to me that was the purpose of the study, was to deal with possible requirements for such a return.

Q. But those enterprises in Massachusetts did not have the requirement at the time that was under study?

A. I don't know one way or the other.

Q. And if they built up their reserves or their net assets not having a requirement, you wouldn't know whether that was the case or not?

A. That's correct.

Q. But you do know LGC has that requirement?

A. I do.

Q. And they've had that requirement for the entire time that you've been in place as the consulting actuary?

A. Yes.

Q. Are you familiar with the term "short tail line"?

A. I am.

Q. Is health insurance a short tail line?

A. It is.

Q. In working with a short tail line, do you find that you have a higher level of confidence predicting claims than you would with a long tail line of insurance?

A. Generally, yes.

Q. Thank you. Are you familiar with the term "reinsurance"?

A. I am.

Q. The Local Government Center does not currently purchase reinsurance externally for its health lines -- medical health line, correct?

A. Correct.

Q. It had in the past?

A. Yes.

Q. And when it purchased reinsurance externally in the past, that would be included in your rate calculations as one of the factors that went into compiling the premium?

A. Yes.

Q. And now HealthTrust, for medical, uses an intercompany pooling agreement, right?

A. Well, if I can speculate on the practice that they call it and say it's a pooling -- internal pooling arrangement. Intercompany, I think is --

Q. Intercompany pooling arrangement. Well, let me get you something and I'll show you exactly what I'm talking about. Why don't I send you to Exhibit 63, which should be Book 2. If you can get it open for us.

A. Okay.

Q. And when we're at 63, I want to turn us to page 32. You'll see in the middle bottom, each page has a number.

A. Yes.

Q. Use those numbers and go to 32.

A. Yes.

Q. Page 32 is your rating analysis for the January '12 medical pool?

A. Yes.

Q. And we talked before how you use approximately a dozen factors that go into the rating formula?

A. Yes.

Q. And on this page, are there displayed the factors you used for this particular cycle of rates?

A. Yes.

Q. If you turn to Factor No. 6, you'll see something called a claims pooling fee at 4.2 percent of incurred claims?

A. Yes.

Q. Do you see where I am?

A. I do.

Q. That pooling fee is contributed by the internal pools in the health program to deal with claims that come in above a certain set target, correct?

A. Yes.

Q. And so that used to be a matter against which LGC reinsured?

A. In part. In the particular example that you presented, the pooling is done with respect to individual claims in excess of $150,000. And in the days prior to this when there was commercially purchased reinsurance --

Q. Yes.

A. -- that was purchased -- Well, when it was most recently part of the program, it was purchased with a $1 million threshold as opposed to the 150. So there was kind of a two-layer internal and external reinsurance mechanism in the rates.

Q. Turn -- Keep one finger here and look at -- take the No. 6 factor in mind --

A. Yes.

Q. -- and turn to page 37. And you should get to the rating analysis sheet for the immediately preceding year. Is that what that is?

A. Yes.

Q. And if you look at Factor No. 6, that's stop loss, 4 percent of incurred claims?

A. Yes.

Q. And "stop loss" is another name for reinsurance --

A. That's right.

Q. -- external reinsurance?

A. Yes.

Q. And so in 2011, stop loss was at 4 percent of incurred claims?

A. Right.

Q. And at 2012, claims pooling was at 4.2 percent of incurred claims --

A. Yes.

Q. -- correct?

A. That's correct.

Q. And both of them, given the relative size of the premiums, were about -- one was 2.9 million and then '11 was at 2.6 million, thereabouts?

A. Yes.

Q. Thank you. You mentioned that part of the risk-based capital formula involves trying to plan for risks that may befall an insurance carrier as a result of changes in the law, right?

A. Yes.

Q. Like healthcare reform?

A. Exactly.

Q. And at times when you thought it relevant to do so, you recommended that the Local Government Center actually build in a factor that increased the rates to accommodate potential healthcare reform, correct?

A. Correct except for the word "potential." We were --

Q. Go ahead.

A. -- acting with respect to estimates that were developed for the law as enacted.

Q. Fair enough. But you built that into the rates?

A. Yes.

Q. So that was a risk that you were aware of, someone did a calculation of what the likely costs might be, and then you built it into increasing the rates to account for those changes?

A. Yes.

Q. You have also calculated the IBNR reserve for the Local Government Center; is that right?

A. Yes.

Q. "IBNR" stands for "incurred but not" --

What's the last --

A. "Reported."

Q. "Reported." And your practice with respect to IBNR is to calculate it and then add a 10 percent margin, right?

A. That's correct.

Q. And you'll agree with me that reasonable actuaries could add margins from zero to maybe 15 percent?

A. Yes.

Q. But adding of that margin is like creating a second reserve for IBNR?

A. At times.

Q. Health reform is one kind of risk included in the RBC calculations. Asset risk is another kind?

A. Yes.

Q. And asset risk is the volatility of the investment portfolio of, in this case, the Local Government Center?

A. Yes.

Q. And by buying less volatile investments, the Local Government Center can reduce its asset risk --

A. Yes.

Q. -- can it not?

A. Yes.

Q. Another risk that's part of RBC is business risk, correct?

A. Yes.

Q. And business risk for a private insurer is generally related to the idea that some of the companies that the insurer writes policies for fail, don't make payments, whatever reason, right?

A. Yes.

Q. All of the Local Government Center's members are municipal entities, aren't they?

A. Yes.

Q. Are you aware of any municipal entity in New Hampshire having failed since 1988 when you started working for the Local Government Center?

A. No.

MR. VOLINSKY: If I can have just one moment.

THE PRESIDING OFFICER: Absolutely.

Q. BY MR. VOLINSKY: So we've talked, Mr. Riemer, about 20 percent equates to 4.2; 10 percent equates to about 2.1 --

A. Yes.

Q. -- right?

You testified before the New Hampshire Legislature in April of 2010 about a bill that would have reduced the reserves to be held by the Local Government Center to 10 percent, correct?

A. Yes.

Q. Let me give you Exhibit 60, which is in Book 2. I'll get that for you.

A. Thank you.

Q. And let me say, I understand you don't agree with 10 percent or 2.1. And you've testified to that; have you not?

A. I have.

Q. Let me ask you to turn to page 25 of Exhibit 60. And you'll see the numbers are up in the top right corner.

A. Yes.

Q. There's a comment by a representative named Mr. Eaton, and then there's a quote by you. Did you not tell the Legislature, "Keep in mind that despite the objections I see to the 10 percent limit, I'm not saying having a 10 percent limit would be a grave situation. I would say it would be adverse for our members."

Did you say that?

A. I see that, yes.

MR. VOLINSKY: That's all I have.

THE PRESIDING OFFICER: Thank you, Mr. Volinsky.

Mr. Saturley?

MR. SATURLEY: Yes. Thank you, Mr. Mitchell.

MR. VOLINSKY: I'll just clear my stuff out of your way. Go ahead.

MR. SATURLEY: Thank you.

REDIRECT EXAMINATION

BY MR. SATURLEY:

Q. Mr. Riemer, do you still have that page in front of you?

A. The page from the legislative hearing?

Q. Yes.

A. Yes, I do.

Q. Would you read that whole paragraph.

A. Yes. I finished reading that paragraph.

Q. Would you go on to read the rest of -- I'm going to have you read the rest of your testimony, that particular section of testimony. I'd like to put in context the question and response that were elicited from you on cross.

A. Yes.

Q. Now, having read your whole response to the question from Representative Eaton, could you put in context the idea of how you really felt about a 10 percent limit.

A. Yes. As I read the remainder of the response, it's clear that the first assertion about a 10 percent limit not being a grave situation, the word "grave" there meant "grave" in its full meaning, such as imminent collapse.

Q. It means like "grave" with a tombstone over here?

A. Yes. Yes.

Q. And so what you were really trying to communicate to Representative Eaton is that at a 10 percent level, indeed you actually would be quite concerned?

A. That's right. The message was you wouldn't be in danger of imminent collapse, but you'd better get moving and you'd better get that capital up.

Q. Because 10 percent would not be a satisfactory level --

A. That's right.

Q. -- for HealthTrust?

A. That's right.

Q. Given all the challenges that it faced and the history that it had already?

A. Yes. Yes.

Q. Mr. Volinsky used the word in one of his questions that I didn't quite understand -- and I'm not sure you understood it. This was with regards to the pooling arrangement and the pooling charge -- he used the word "intercompany" --

A. Yes.

Q. -- "pooling arrangement."

Did you know what he meant by that?

A. Well, at first I didn't. But then when he showed me the exhibit, I knew he meant the pooling fee that's in the rate structure.

Q. The pooling fee that's in the rate structure?

A. Yes.

Q. Where is that pooling -- Who does that pertain to? Does it somehow pertain to some intercompany?

A. Not intercompany. Maybe inter-member.

Q. Inter-member?

A. Yes.

Q. What does that mean? Does that mean Bow and Hooksett and Portsmouth? Is that what that pooling arrangement pertains to?

A. It does.

Q. It has nothing to do with intercompany amongst HealthTrust?

A. Correct.

Q. And could you explain a little bit more about why HealthTrust might have decided between January of 2011 and January 2012, why in the one year there might have been some allocation of payment for stop loss insurance and they might have changed their mind the following year. Could you expand on that a little bit. And I guess that has to do with this pooling arrangement?

A. Yes. It's not really a change in policy. What drives it from year to year is the actual result with respect to large claims. And the entire mechanism exists as a way to soften the blow, given that most of the members are small groups of employees -- to soften the blow of a small community, or even a medium-sized community. There are no communities in New Hampshire in this pool that are that large. But to soften the blow in those communities of having significant excess claims.

Q. Now, let's make a real example.

A. Okay. A real example is you have a town with 150 members who participate in HealthTrust. And they experience an unfortunate catastrophic loss in their population. There might be premature twins or a severe head injury or transplant, a $1 million claim or two $500,000 claims that hit this small organization.

What we do through the pooling mechanism is assure that that kind of experience doesn't directly come through into the rates of that community. So what we do is when we do the rating, we go community by community, member by member, and we remove from their claims experience the claims in excess -- and in these two years it's different -- but it's either 100 or $150,000.

So if the small community is hit with a transplant cost of $1 million, we include $150,000 of that experience in their premium calculation. We take out the 850,000 so-called excess. We set it aside. And we do that for all the communities.

Q. Every member of the pool --
A. Every member of the pool.
Q. -- has this same protection above the $150,000?
A. That's right.
Q. And it's set aside?
A. That's right. Set aside.
Q. Go on.

A. And at the end of the rating process, we look at all the set-asides. We have to cover that cost. Large claims will occur every year. But they'll impact different communities in some years and not others.

So this entire pooling mechanism is a way to take all those set-asides so that we don't impose them individually on the small groups that experience them. And then we compute the total value of the set-asides as a percent of the whole pie. And in one of these cases it was 4 percent. So we then go back in and add that 4 percent cost into the rate.

Q. To the rate. So that everybody -- so that you've spread the cost of these massive losses?

A. That's correct.

Q. Isn't that kind of the essence of pooling?

A. It is.

Q. Isn't that protection for the members that might suffer a catastrophic loss?

A. It is.

Q. Isn't the effect of the charge, the pooling fee charge in any particular year that all the members participate in is totally a function of whether or not there have been massive losses in the past?

A. Yes.

MR. SATURLEY: I have no further questions for Mr. Riemer, Mr. Mitchell.

THE PRESIDING OFFICER: Thank you, Mr. Saturley.

Mr. Gordon?

MR. GORDON: No.

THE PRESIDING OFFICER: Thank you.

Mr. Howard?

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

THE PRESIDING OFFICER: Mr. Volinsky?

RECROSS-EXAMINATION

BY MR. VOLINSKY:

Q. Just following up on that last point, if I might, the effect of, in this instance, a 4 percent charge against the premiums was to take into account recent massive losses in the preceding plan year; is that right?

A. In the same year for which we do all the experience to do the rating, yes.

Q. So you're able to rebalance the premiums by adding this 4 percent charge to overcome what you describe as massive losses in a couple of places, maybe a number of places during the rating period?

A. Yes.

MR. VOLINSKY: Thank you.

THE PRESIDING OFFICER: Okay. Anything further, Mr. Saturley?

MR. SATURLEY: No, sir. Thank you.

THE PRESIDING OFFICER: Mr. Gordon?

MR. GORDON: No.

THE PRESIDING OFFICER: Mr. Howard?

MR. HOWARD: Nothing.

THE PRESIDING OFFICER: Mr. Riemer, I have a couple questions I'd like to ask of you.

THE WITNESS: Yes.

THE PRESIDING OFFICER: The good news for experts is you're an experienced expert in testimony in these type of proceedings. As you know, the good news is you got to watch everyone else. The bad news is you're kind of my cleanup batter, if you get my drift.

THE WITNESS: Okay. All right.

THE PRESIDING OFFICER: That is to say, I believe you're going to be the last expert on RBC and such --

THE WITNESS: Okay.

THE PRESIDING OFFICER: -- to present testimony.

I guess the first question that I have, you had testified about a 6.5 percent -- I have it as level of adversity, but I might not be able to read my own writing.

Do you remember when you talked --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- about that 6.5?

THE WITNESS: I do.

THE PRESIDING OFFICER: With respect to that 6.5, that's the insomnia margin for you, that's the one that doesn't let you sleep? Insomnia?

THE WITNESS: That's correct.

THE PRESIDING OFFICER: Okay.

THE WITNESS: I wouldn't sleep if 6-1/2 percent was something I had to worry about.

THE PRESIDING OFFICER: Understood. Now, prior and subsequent to that reference, the 6.5 --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- there was

testimony that was elicited from you, both on direct, I believe, and on cross-examination which spoke to margins. For instance, there was a little bit of a margin built in the IBNR.

THE WITNESS: Yes.

THE PRESIDING OFFICER: Do you remember that?

Is that margin in the 6.5 or is that on top of the 6.5 insomnia margin?

THE WITNESS: Okay. I view it as really separate because --

THE PRESIDING OFFICER: Well, I understand it's separate. But does it represent a different amount of capital?

THE WITNESS: It does in a sense. The capital that we're talking about predominantly here, I could best describe it by drawing a timeline. Think of us as being at December 31. The IBNR and any margin that I put in that is with respect to events that have already occurred.

THE PRESIDING OFFICER: Understood.

THE WITNESS: And that's separate in this universe of risk from the rating and the capital --

the target capital, my insomnia margin, the $625 million of claim exposure that we have when we issue the GMR --

THE PRESIDING OFFICER: Yes.

THE WITNESS: -- that's totally prospective. So the two things live in separate universes. And, in fact, I can report to you incidentally that the margin in the IBNR that was referenced, when we set the IBNR at December 31, 2012, put a 10 percent margin in there, and I've since been advised by Sandal Keeffe of two $1 million claims that came in that were part of that IBNR, and I talked to Anthem. It appears that the margin is essentially gone.

THE PRESIDING OFFICER: Um-hum.

THE WITNESS: So it proves that the margin in that case was appropriate. It turned out not to be conservative.

THE PRESIDING OFFICER: Yes. There were other margins that you referred to as well?

THE WITNESS: Yes.

THE PRESIDING OFFICER: Again, could you go through a similar analysis for me, but first answer my question.

THE WITNESS: Yes.

THE PRESIDING OFFICER: Is the -- name the margin, if you'd be so kind, or remind me of what the margin was, and tell me if it's in addition to the 6.5. And then, of course, you can explain other effects it may have.

THE WITNESS: Um-hum. Okay. Well, I talked about the 6.5. I don't think -- that was expressed not so much as a margin, but to say that if we experienced a 6.5 percent unexpected increase in cost over this period of the next couple years, it would exhaust assets at the level the Bureau is recommending, so . . .

THE PRESIDING OFFICER: And you would be off your bet, correct?

THE WITNESS: That's correct.

THE PRESIDING OFFICER: Thank you. Could you continue with my question.

THE WITNESS: The other margin I remember mentioning is the margin built into the GMR rate, which we don't do anymore. But it used to be an integral part of that rating process.

And that was -- that came about

because when the communities said they would like to have a fix on the rate well in advance of their budgeting cycle, we said, We could do that for you. We prefer to rate when we're closer to the renewal year, but we were wanting to be responsive to them. So we said, We can do that for you but the only way we can do that, recognizing we're making a long-term bet, is to put a margin in the estimate or in the guarantee that we give them.

THE PRESIDING OFFICER: Thank you. Another question, please. I have a note from your testimony, and I want to, if you will, validate it.

THE WITNESS: Sure.

THE PRESIDING OFFICER: That inputs -- and that would be inputs of the RBC --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- into the RBC, have nothing to do with the level of assets.

Is that a correct statement?

THE WITNESS: In a material sense, it is. If you were to look at all the ingredients from, say, the HealthTrust financials that go into this RBC calculation machine, certainly there would be asset values that go in there.

THE PRESIDING OFFICER: Yes. Right.

THE WITNESS: But they result only marginally in what the outcome is.

THE PRESIDING OFFICER: Thank you. When you were watching the live streaming of Mr. Atkinson --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- and Mr. Coutu --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- whomever, do you remember testimony that addressed the -- I'll call it the semi-term of art, the law of big, or large numbers?

THE WITNESS: Yes, I do.

THE PRESIDING OFFICER: How does the law of large numbers affect your testimony, if I can find it -- I'm sorry. When you were talking about the size of the population --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- going up --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- the risk -- does the risk factor go down or up?

THE WITNESS: It goes down. And that, in fact, is reflected in the RBC formulas from the NAIC.

THE PRESIDING OFFICER: All right. Thank you. And I believe -- well, two questions.

THE WITNESS: Okay.

THE PRESIDING OFFICER: One, does -- among the factors or elements that go into the computation of an RBC --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- and would the better word be "elements" or "factors," or does it make a difference?

THE WITNESS: Both work, I think.

THE PRESIDING OFFICER: Thank you. Among those elements, okay, does geographic location, is that a factor or an element of the pool? I'm sorry. Well, first, of the population, and then secondly, of the pool.

THE WITNESS: The NAIC formulas themselves do not have any geographic variance. But certainly within -- say within HealthTrust, we do observe geographic differences in costs across the state.

THE PRESIDING OFFICER: Sure. If I might

give you a hypothetical so that I understand it.

THE WITNESS: Sure.

THE PRESIDING OFFICER: Would it be reasonable to see that California, for instance -- no, let's make it -- I'm sorry -- Indiana; Gary, Indiana and the factory areas. Let's also pick on New Jersey.

THE WITNESS: Okay. It's often done.

THE PRESIDING OFFICER: They may have a less-healthy environment than --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- say, New Hampshire.

THE WITNESS: Yes.

THE PRESIDING OFFICER: And therefore, their RBC would or would not include that element?

THE WITNESS: It would indirectly in the sense that that unhealthy environment would presumably generate higher per capita costs and claims. And claims go into the RBC formula. So, yes.

THE PRESIDING OFFICER: Thank you. And now my last -- and this will reveal, if you will, my more -- I'm asking for more than idle curiosity.

THE WITNESS: Sure.

THE PRESIDING OFFICER: You testified and you were given LGC's Exhibit 357, which I don't think makes any difference to my question.

THE WITNESS: Right.

THE PRESIDING OFFICER: But what is -- what is well above 2.0 on the RBC scale? And if I might borrow your language --

THE WITNESS: Yes.

THE PRESIDING OFFICER: -- after you -- well, considering that, what is "well-well above 2.0"?

THE WITNESS: Okay.

THE PRESIDING OFFICER: In your opinion.

THE WITNESS: Yes. That's a subjective question, of course. But I, first of all, would take some of the answer to that from the NAIC bulletin that we looked at that basically provides two criteria for why it should be above 2.0.

Basically they say something like you want a very low probability that the level you're at is going to ever result in, with losses, you being down to the 2.0 level. And given -- in answering that kind of subjective criterion, I would respond by saying, the way I looked at the $625 million promises issued at the GMR and do some kind of stress testing, if you will, and say what if this happened that seems reasonably plausible, what would that result in relative to the 2.0 target. So obviously I'm saying here that "well-well above," in my view for HealthTrust, means where HealthTrust is, at 4.2.

THE PRESIDING OFFICER: Thank you very much. Bear with me, please.

THE WITNESS: Sure.

THE PRESIDING OFFICER: Thank you. And again, it's at my risk.

Mr. Saturley, any further questions?

MR. SATURLEY: No. But thank you for the opportunity, Mr. Mitchell.

THE PRESIDING OFFICER: Thank you very much.

Mr. Gordon?

MR. GORDON: None.

THE PRESIDING OFFICER: And Mr. Howard?

MR. HOWARD: No thank you.

THE PRESIDING OFFICER: Mr. Volinsky?

MR. VOLINSKY: None.

THE PRESIDING OFFICER: Very good. Thank you very much, Mr. Riemer. And let's take an afternoon brief break and get ready for the next witness or whatever you all decide.

(Witness excused.)

(Recess at 3:36 p.m., resumed at 3:47 p.m.)

MR. QUIRK: Mr. Mitchell, we would ask that our next witness be called at 9:00 a.m. tomorrow morning and that we adjourn for the day.

THE PRESIDING OFFICER: Okay. And do I understand that that representation is on behalf of all respondents' counsel?

MR. QUIRK: Yes. I've spoken with Attorney Volinsky and he concurs.

THE PRESIDING OFFICER: And all respondents?

MR. QUIRK: And all respondents too. Thank you.

THE PRESIDING OFFICER: Very good. And do you concur, Mr. Volinsky?

MR. VOLINSKY: I do as long as we're protective of a Friday end.

03:48:02 THE PRESIDING OFFICER: Understood. So we
03:48:03 are adjourned for the day, or in recess, until
03:48:10 tomorrow morning at 9:00.

03:48:13 MR. QUIRK: Thank you.

03:48:18 (Whereupon, at 3:48 p.m.,
03:48:25 the proceedings were recessed,
03:48:27 to reconvene on Tuesday, May 8,
03:48:42 2012, at 9:00 a.m.)

C E R T I F I C A T E

I, KIMBERLY A. SMITH, Certified Shorthand Reporter, Certified Realtime Reporter, and Registered Diplomate 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 7th day of May 2012, and that the foregoing is a true, complete, and accurate transcript of said proceedings as appears from my stenographic notes so taken to the best of my ability, and transcribed under my personal direction.

I further certify that I am a disinterested person in the event or outcome of this cause of action.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT REPORTER.

IN WITNESS WHEREOF, I subscribe my hand and affix my Certified Shorthand Reporter seal this 21st day of May, 2012.

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KIMBERLY A. SMITH, CSR, CRR, RDR