STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

* * * * * * * * * *

IN THE MATTER OF:

LOCAL GOVERNMENT CENTER, INC., ET AL

No: C-2011-000036
Volume: III
Pages: 496-740

* * * * * * * * * *

PETITION TO OBTAIN PERMISSION TO ISSUE NEW AND RENEWAL COVERAGES, BINDERS AND SIMILAR CONTRACTUAL OBLIGATIONS

Hearing held at the State Archives Building, 71 South Fruit Street, Concord, New Hampshire on Friday, October 9, 2015 from 9:02 a.m. to 4:05 p.m.

Court Reporter:

Laurie A. Gelinas, LCR No. 35
(RSA 310-A:179)

c5b52c31-46a8-47d5-962d-4050e69be2ca

I N D E X

(There were no exhibits marked.)

c5b52c31-46a8-47d5-962d-4050e69be2ca

APPEARANCES:

For the Petitioner Property-Liability Trust, Inc.:

McLANE MIDDLETON, P.A.
By: Bruce W. Felmly, Esquire
Patrick Closson, Esquire
900 Elm Street
Manchester, NH 03101
603-625-6464
bruce.felmly@mclane.com
patrick.closson@mclane.com

For the Respondent New Hampshire Bureau of Securities Regulation:

BERNSTEIN, SHUR,
SAWYER & NELSON, P.A.
By: Andru H. Volinsky, Esquire
Roy W. Tilsley, Jr., Esquire
Christina A. Ferrari, Esquire
*Adrian S. Larochelle, Esquire
670 North Commercial Street
P.O. Box 1120
Manchester, NH 03105-1120
603-623-8700
avolinsky@bernsteinshur.com
rtilsley@bernsteinshur.com
cferrari@bernsteinshur.com
*adrian.larochelle@sos.nh.gov
*BSR In-House Counsel

Presiding Officer: Donald E. Mitchell, Esquire

PRESIDING OFFICER: Good morning, ladies and gentlemen. This is our third day of testimony in the petition of Property-Liability Trust. My name is Don Mitchell. I'm the Presiding Officer in these administrative proceedings. I will ask this morning as required by the statute if there are any members of the media here this morning. I see no indication that there are which absolves me, if you will, of the requirement under RSA 421 to go through a long explanation in lay terms of what is to go forward today, so we'll cut that out right now.

We're still in the case in chief of PLT and my understanding is that there are at least two more witnesses, and I'll recognize Mr. Felmly to call your first witness if there's no other announcements you need to inform me of.

MR. FELMLY: Thank you very much and good morning. I will call on behalf of PLT this morning Mr. Lynde. Mr. Lynde, would you come forward to be sworn?

HAROLD LYNDE

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

PRESIDING OFFICER: Please be seated, sir. If you would state your name and spell your last name for us, and your business address is sufficient if you so chose.

MR. LYNDE: My name is Harold Lynde. L-Y-N-D-E is the spelling of the last name.

PRESIDING OFFICER: Do you have an address for us, sir?

MR. LYNDE: I'm sorry. 114 Jeremy Hill Road in Pelham, New Hampshire. The zip is 03076.

PRESIDING OFFICER: Thank you very much.

EXAMINATION

BY MR. FELMLY:

Q. Good morning, Mr. Lynde. How long have you lived in the town of Pelham?

A. Almost 50 years. It will be 50 -- it will be 49 years this -- it's 49 years now.

Q. And in your tenure have you from time to time held various municipal positions as part of town government?

A. I have.

Q. And do you currently have a position in town

government in the Town of Pelham?
A. I do.
Q. And what is that position?
A. I am a selectman.
Q. And on the Board of Selectman approximately how many people do you have?
A. There's a five-man board. Let me correct that. Five-person board.
Q. And how long have you been a selectman in the Town of Pelham?
A. Well, I've had two stints. One was a ten-year stint starting in 1974 and I'm currently in my 18th year of the second stint, so I'm in my 28th year as a selectman in the Town of Pelham.
Q. Do you have any leadership position on the Board of Selectmen?
A. Yes, I am currently the Chairman.
Q. And what's the tenure or what's the tour of duty as Chairman?
A. Well, it's year to year.
Q. In addition to being on the Board of Selectmen have you had any other roles or involvement in the community activities or the government of

Pelham?

A. Are you ready for all this?

Q. Give me the short version, the high points.

A. Well, I've probably been in elected office almost every year since I've been in town. I've been elected to the Trust Fund and the Budget Committee as well as being a selectman. I, as is my wife, am involved in my community. I've coached soccer for twenty years. Two and a half years ago I founded a grouped called the Pelham Community Coalition which deals with substance abuse in our town. I'm a founding member of the Town Forestry and I've been a member of the Old Home Day Community for twenty years.

Q. This room is pretty large and the acoustics likely absorbs sound, so please keep your voice up.

A. I'll keep my voice up.

Q. In terms of municipal activities or statewide municipal organizations have you been active in your work in Pelham with any of the State municipal organizations that deal with towns or assist towns?

A. Yes.

Q. What has that included?

A. Well, I'm a member the Board of Directors of

c5b52c31-46a8-47d5-962d-4050e69be2ca

the National Regional Planning Commission and also the New Hampshire Municipal Association. By the way, I forgot to tell you something before. I've also been a State Rep for four terms in Pelham.

Q. In your private life apart from your government or Town service what has been your career or your endeavors?

A. Well, I spent three years active duty in the U.S. Army. Prior to that I spent a year and a half in the Marine Reserves and I worked for Raytheon for 37 years. I was an engineer on missile programs. I don't know if you want me to go further into what I was doing there.

Q. No, but in terms of just the kinds of responsibilities, nothing about the details or the secrets of the missiles, but in terms of your area of both education, training and the skills that you brought, just briefly so we can get an idea of your skill set, that would be valuable.

A. Okay. I'm a graduate of Northeastern. I have a bachelor of science and a master of science in electrical engineering. At Raytheon I rose from a design engineer up through project manager, program manager and engineering manager on the Spiral Missile Program at Raytheon.

Q. Now, going back to your service with the Town and your many, many years as a selectman for two stints, to what extent in that responsibility as a selectman have you become familiar with the Town of Pelham's risk pool coverage or the coverage that it obtains in order to protect itself from risks that it might incur through its community activities?

A. In several ways. One of the first things is way back when we had various insurance companies we dealt with and one of the issues that arose further on into my career was the fact that some insurance companies were no longer going to carry personal liability for selectmen like me and at some point we were able to get some coverage through AHA. And obviously every year that we look at budgets we look at cost, and insurance obviously is a cost factor in our budget and we evolved into PLT/HealthTrust. They turned out to be a better bang for the buck for us not only in cost but on a service level. Can I expand on that a little bit?

Q. Well, let me do it by questioning. Before we do that and so we can get a better idea of the timeframe, it sounds like for quite a long time Pelham has had its risk coverage through either PLT or its predecessor companies, is that right?

A. I think some of the stuff goes back maybe thirty years.

Q. And in terms of your role on the Board can you describe the extent to which you have been a participant or become knowledgeable in dealing with the more detailed aspects of the cost of that service and the nature of what's provided? Have you become somebody that on the Board has been very much involved in understanding and dealing with the issues of insurance?

A. Very recently because of the threat of losing that valuable resource.

Q. Okay.

A. And I'll answer your question, but I do know that we get services and the benefit -- maybe that's something you're going to ask about later. Should I talk about that?

Q. No. Why don't we just do this more as a narrative. From your perspective what are the types of services and products that you obtain from PLT and why are they important to the Town in your view?

A. Well, we have workers' comp, we have unemployment insurance and we have property-liability insurance. We also have health insurance but obviously not through PLT, through HealthTrust, so that's the basic -- that's the gamut of our insurance coverage.

Q. And in terms of that coverage and the products that are provided, leaving aside the issues with HealthTrust how would you describe the nature and quality of the products that your town is being provided?

A. All I know is that when we have an issue it gets resolved, and it's my Town Administrator who is relatively new to the position, about a year and a half now, we've had dealings with them quite a bit because we've had, especially this past winter with all the ice damage, we've had to use our liability insurance and the response has been fantastic. Then there's other things where we have -- it's used by police and fire departments extensively, specific trainings that they provide, in fact, just the day before yesterday. So the support system, one of the biggest concerns the Town has is getting hit with a liability suit and having to pay out a half million dollar payment. That's a killer for any town. So we want to be protected and PLT provides resources to help us diminish that potential for liability. During training -- going on in town we had a training, like a hostage training. They do defensive driving. They do sexual harassment. These trainings are important to keeping a professional fire department and police department in good shape and limiting the propensity to get into a situation that might make the Town liable, and that is invaluable to us.

Q. And if that was not available to you, in other words, if that did not happen, that training and that resource of assisting you in risk management issues, what would be your concern in terms of the impact on the Town and its budget?

A. It's an unknown. It's an unknown. I have no doubt that down the road it would cost us more. To me it just makes logical sense as an engineer that it would cost more.

Q. In terms of the quality and the speed of responsiveness in dealing with claims and related things, it sounds like you're very satisfied with what PLT has provided you.

A. I am, and I would hope that any other company would have the same. We just -- it's a great insurance thing for us and we rely heavily on it.

Q. And so as somebody extensively involved in this and as the Board of Selectman Chair for Pelham, if PLT is no longer involved in this marketplace through the runoff and they are out of the marketplace what concern does that pose for you in Pelham?

A. Well, the concern is we would have lost a valuable resource. Like I said, especially for our police and fire departments. The other thing is just trying to replicate what we've got. My understanding is we may be prone to only having limited competition in that market which would certainly mean higher rates, but again, the main concern is the services.

Q. Has Pelham looked at what the rate structure would be with Primex or potentially other commercial insurers for your products?

A. We've had preliminary discussions with them, but we don't have any plans.

Q. In terms of your current level of satisfaction with the rate structure and the costs of your insurance with PLT how would you describe where Pelham stands at the moment?

A. I'm not sure I understand the question.

Q. I'm really asking in terms of the financial rates that you're paying, what's your level of satisfaction or agreement with respect to the costs that are being passed on from PLT? Are they acceptable?

A. Oh, yeah.

Q. Now, let me just tell you as part of the pro formas that have been presented and the strategic plan that has been presented in testimony here, and I know you've been in the hearing for part of this, it is projected that there will include as PLT goes forward under this plan should it be permitted rate increases that may run 5 percent in some of the years in question here and the issue has come up as to whether or not those are excessive rates or will the market bear that. You don't speak for the market, but you're a portion of the market. In terms of the kind of impact with those kinds of rate increases can you tell us what you believe in Pelham would be either the impact or the reaction to that?

A. I guess having been exposed in prior years to other insurance rate hikes much higher than that, I'm sorry, I'm not concerned, and my basis is, first of all, I've looked at the last three years of how much we've paid in to PLT. In 2015 we paid to PLT for all three insurance lines $368,000. The average increase in those three years is 2.7 percent. If you said, I'm going to give you a 5 percent increase, we can do it. The impact to me is a penny on my tax rate. It's well worth it for me.

Q. So in terms of looking at whether or not Pelham as a member and a customer, if you will, of PLT, if the kind of rate increases that we're talking about were to be imposed, it sounds like you're saying those would not be seen as excessive or cause you to move your coverage.

A. Not at all.

Q. The other part of the plan, the strategic plan in this sort of five to seven-year period when confidence levels are projected to be rebuilt is that it is unlikely that PLT would be returning any surplus to its members during that period of time. The surplus would be going into the improvement of the financial position. How would that factor, the assumption that Pelham and the other members are unlikely to get surplus during that five to seven-year period, how important or how big of an issue would that be from your perspective as the Chair of Pelham's governmental board?

A. In the last three years the return to us has ranged between $600 and $6,000. The average is about $3,000 a year. Other than property taxes we get about four and a half million dollars in other revenue through motor vehicle fees, building permits, et cetera, et cetera, so the loss of $3,000 in a four and a half million dollar bucket, we're not going to miss it.

MR. FELMLY: Thank you very much. I have no further questions for Mr. Lynde.

PRESIDING OFFICER: Thank you. Cross-examination, Attorney Ferrari.

FURTHER EXAMINATION

BY MS. FERRARI:

Q. Good morning, Mr. Lynde.

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Hi, how you doin'?

Q. Good. How are you?

A. Very well. Thanks.

Q. There was a vote by the Town today to authorize you to testify here. Let me rephrase that.

Did the Town authorize you to testify here today?

A. No. Well, my Board of Selectmen is aware that I'm up here.

Q. But did they authorize you to testify today by vote?

A. No.

Q. The Town hasn't done an RFP process to solicit bids from other insurers, have they?

A. We have not done that yet. Is that what you're asking me?

Q. Yes, that is what I'm asking you. The Town has never done an RFP process to solicit bids for insurance, have they?

A. I can't say they've never done it, but I haven't been involved in the RFP process if that's what you're asking, but we have been with HealthTrust and with PLT for a number of years and I think that began before I got on the Board my second time around, so if there was something before that, I'm not aware of it.

Q. But you testified earlier this is your 28th year as a selectman.

A. I'm in my 28th year.

Q. In those 28 years the Town has never done an RFP to solicit bids from other insurers, has it?

A. No, I think we've gone out. I think typically what we do is we go out, we look and talk to people and get a quote. In the old days you didn't form RFPs. You just went out and tried to get that stuff.

Q. But in the current days most other towns do an RFP process to solicit bids.

A. I'm not aware what other towns do.

Q. You're not aware that the Town of Hanover recently did a process and it worked out quite well for them? They ended up getting lower rates from a private insurer.

A. Okay. I'm not aware of that though.

Q. So you testified that -- I just want to make sure I got this right. You testified that the rate increases that PLT is going to have over the next few years is well worth it because it works out to about a penny on your taxes.

A. Right.

Q. Now, shouldn't you have already had two years of 5 percent increases?

A. I'm sorry?

Q. Didn't you already experience two years of 5 percent increases?

A. No.

Q. You didn't?

A. No. Well, over the last three years the average rate is 2.7 percent, but when I look at the different lines there's some that actually dropped in cost and some that went up, but the average is 2.7 percent.

Q. My question is in the last two years your testimony here is that your rates were not increased by PLT by 5 percent?

A. They have not.

Q. Are you aware that there's been testimony in this case that in '13 and '14 the rates were increased 5 percent and also in '14 and '15?

A. Well, it depends on what you're talking about because if you look at the property line, the increase was 7.6 percent. If you look at the unemployment and the workers' comp line, the decrease was around 2 and a half percent, so the average is 2.7 percent.

Q. That's a little bit less than the testimony that we've heard today.

A. I'm sorry. I was talking about the aggregate costs.

Q. I understand. Are you aware that in the next five years there's going to be a 5 percent increase each year?

A. I am aware of that.

Q. And are you aware that that's compounded?

A. Yes.

Q. Okay. So your testimony is that it's well worth it despite the fact that there's actually going to be a 25 percent rate increase over the next five years?

A. Correct.

Q. That's much more than a penny on your taxes.

A. Yeah, it's about 6 cents on the tax rate.

Q. You've worked out the math?

A. I have.
Q. But your testimony is that's okay for all the taxpayers in your town?
A. For what we get and given my experience over the years with insurance rates and exchanges and stuff and fluctuations, it is of no concern.
Q. You testified earlier that you've gotten no rates or quotes from any other insurers though.
A. That's correct.
Q. And you've never priced out getting comparable services from other entities.
A. That's correct.
Q. Private insurers like Traveler's offer risk mitigation programs, do they not?
A. I have no idea. If they're smart they would just like PLT.
Q. But you have no idea because you haven't asked them to give you a bid.
A. That's true.
Q. Actually, Primex provides risk mitigation training, does it not?
A. I assume they would.
Q. But again, you haven't asked them to provide

you with that training.
A. I have not.
Q. You know that if PLT fails that the Town of Pelham and your taxpayers are going to be the ones that pay the claims that PLT could not, correct?
A. Yes. I'm sorry. Restate that.
Q. If PLT fails you know that the Town and the taxpayers are going to be the ones that pay the claims that PLT cannot, correct?
A. I don't know the answer to that.
Q. Well, if PLT can't pay the claims, the taxpayers in the town would.
A. Well, if I don't have insurance coverage, yes, I would have to pay it.
Q. If you're covered with PLT and in a year or two years PLT fails, your town and your taxpayers are going to be the ones that pay those claims out of their pockets.
A. Okay.
Q. You didn't consider that?
A. No.
Q. So you testified earlier that you're on the Board of Directors for the New Hampshire Municipal

c5b52c31-46a8-47d5-962d-4050e69be2ca

Association.
A. That's correct.
Q. You're also the Vice-Chair of the Legislative Policy Committee, correct?
A. Oh, yeah, yeah, yeah.
Q. And you've been on that for quite some time.
A. Well, I think two sessions, so it's every other year they look at what kind of legislation they want to support and so I've done that and I've been in a leadership position I think two of those times.
Q. Actually, they do it every year. They issue a legislative policy book every year.
A. I'm sorry. Can I tell you what I think? Let me tell you what it is.
Q. Well, no, I'm asking you. You're the Vice-Chair of the Legislative Policy Committee.
A. Yeah.
Q. And they issue a policy book every year that states the positions that the organization is taking with respect to various areas of legislation.
A. They establish positions on legislation every other year in anticipation of the new legislature coming in. I do not recall that they put a new one

out, so maybe we're talking two different things.

Q. So if there is a book from this organization, and I'm just going to refresh your memory with one, you can flip through it, I think you're actually listed on one of the few pages in the front. Under Legislative Policies I'll represent to you that on the web site for this organization there's one of those for every year, '13-'14, '15-'16.

A. This says it's for 2015-2016, so it's a two-year document, but it starts the first year of the new legislature.

Q. And Shaun Mulholland is a member of your committee as well?

A. Yes. He's not the Vice-Chair or Chair.

PRESIDING OFFICER: Excuse me again. We're trying to have a transcript made, so when you turn your back to the stenographer and state a name, could you spell the last name at least?

MS. FERRARI: Sure. And I'll reask my question. Sorry. It's S-H-A-U-N M-U-L-H-O-L-L-A-N-D.

Q. My question was he's just a member of your committee, correct?

A. Yes, he's one of the volunteers.

Q. Thank you. Did NHMA ask you to testify here today?

A. Excuse me?

Q. Did NHMA ask you to testify here today?

A. No.

Q. Did NHMA ask you to testify at the June 9, 2015 Senate Committee hearing?

A. No.

MS. FERRARI: I have no further questions. Thank you, sir.

PRESIDING OFFICER: Anything further, Mr. Felmly?

MR. FELMLY: Very briefly.

FURTHER EXAMINATION

BY MR. FELMLY:

Q. Ms. Ferrari's questioning in part was with respect to the extent to which you've looked at other rates for insurance and made efforts to try to investigate various things. In terms of that process would it be fair to say there's a high degree of loyalty with the administrators in Pelham to PLT?

A. Absolutely. And again, there's been

unsolicited comments that I've received from members of the police department and the fire department that I forgot to mention and that is that they rave about the resources we have, and so yes, there is and we've got a good product. We've got a good service. Why would we want to change it?

MR. FELMLY: Thank you. Nothing further.

PRESIDING OFFICER: Anything further? Any cross?

MS. FERRARI: Nothing further.

PRESIDING OFFICER: Thank you. One moment, sir. Thank you for your testimony. You are dismissed. Mr. Felmly.

MR. FELMLY: Thank you. I will call Shaun Mulholland to the stand, please.

SHAUN MULHOLLAND

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

PRESIDING OFFICER: Please take your seat, and can we have an address for you, sir?

MR. MULHOLLAND: 364 Charlotte Street, Manchester, New Hampshire 03103.

c5b52c31-46a8-47d5-962d-4050e69be2ca

PRESIDING OFFICER: Mr. Felmly.

EXAMINATION

BY MR. FELMLY:

Q. What is your occupation, Mr. Mulholland?

A. I am the Town Administrator for the Town of Allenstown.

Q. And how long have you held that position?

A. Three years now.

Q. In terms of your career in municipal government or matters relating to the administration of towns can you summarizes what the various steps have been in your path to Allenstown?

A. I've been in public service since the age of 17, so for the last 30 years I've been in the public sector.

Q. And what were some of the responsibilities that you held during those years since age 17?

A. My first public service was in the United States Military which I'm retired from and I've been a police officer and I was the Chief of Police in Allenstown until 2013 when I retired and I've been the Town Administrator since then.

Q. What's your educational background?

A. I have a bachelor of arts degree in political science from UNH as well a master's degree in public service from the University of New Hampshire.

Q. And in terms of your job as Town Administrator for Allenstown what are the leadership boards that you coordinate with in order to administer the operations of the Town?

A. Obviously all of the boards of the Town from the Trustee Fund to the Budget Committee, the Planning Board. I'm on separate boards myself. There's a litany of functions that I perform in my capacity as Town Administrator.

Q. And does the Town of Allenstown have as part of its operations risk coverage or insurance-type coverage to protect itself from claims and casualty losses?

A. Yes, it does.

Q. And who does it receive its coverage from at this time?

A. From New Hampshire PLT.

Q. And do you know how long the Town of Allenstown has had a relationship or a customer relationship with PLT?

A. It's just over twenty years. I believe it was 1993 or 1994 when we started with them.
Q. And what types of coverages does Allenstown purchase from PLT?
A. It's just property-liability, general liability insurance.
Q. Do you have workers' comp or unemployment compensation insurance or coverage as well?
A. Yes, we do.
Q. And where do you obtain or purchase that?
A. Both of those coverages are provided by Primex.
Q. So you're actually a customer of the two public entity risk pools that operate in New Hampshire?
A. Yes.
Q. Both PLT related to property-liability and Primex on your workers' comp and unemployment compensation coverage?
A. That is correct.
Q. And so as the Administrator for the Town of Allenstown is it part of your responsibility to coordinate with those entities and make sure that you

have the proper coverages in place?

A. Yes, it is.

Q. And so in terms of your work and your job in administrating the Town would you consider yourself generally familiar with the nature of the coverages and the cost of the coverages and the basic features of what you get from each of those carriers?

A. Yes, that is correct.

Q. What's been the Town of Allenstown's experience with respect to PLT and the coverages you get from them both in terms of your observations on the cost of that coverage as well as the quality of what's provided?

A. We feel that we get a high quality service provided to us in regards to PLT, our property-liability insurance.

Q. And what are the elements or the things that go into that statement? What factors or experience -- what qualities cause you to believe that you're getting that high quality service?

A. The price is obviously a factor in that. We get the best value for the price that we pay and the service that we receive is very good. We receive a lot of training opportunities from PLT which helps to reduce our risk and also improve the efficiency of our operations anywhere from driver training for fire trucks to highway trucks to police vehicles to general vehicles that they would be operating. We receive risk assessments from PLT. We just had one done very recently and we're in the process of implementing a corrective action plan. This is the third one that we've received from PLT.

Q. What is that process called?

A. It's a risk assessment. They come in and they analyze what the risks are for the physical security in our buildings, anything from the potential of spillage of oil at our highway facility to whether we have adequate training programs, adequate supervision, the appropriate policies to ensure that we're not running the risk of a lawsuit against us. And those are pretty broad programs and we just completed one very recently. We will receive the final report on the 26th of this month which I will bring to the Board of Selectmen which will have a corrective action plan to address all of those. This is the third one. The first one was in '04, the second one was in '08 and now this is the most recent one.

Q. And when PLT gives you those risk assessments and gives you the recommendations as far as where you can make changes or improvements how is that paid for? What is the cost structure for those risk assessment?

A. We don't have to pay PLT for the risk assessment. That's included as part of the dues that we pay. That's covered within that. There's no cost there. Obviously the corrective action plan is our responsibility except for the training component because they provide that training for us.

Q. So if they come in and they study the police department or the fire department and they prepare the report and they suggest that the firemen should be trained differently or perhaps they should get a different size or component of ladder or something that would relate to safety, that recommendation process does not cost you money?

A. Correct. Correct.

Q. If they say that you've got to go out and buy a new ladder, then that would cost you money.

A. That would be our responsibility.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. In terms of the quality or the helpfulness of that risk assessment process that the carrier, in this case PLT, provides, what's been your experience or how would you describe your experience in terms of the value of that risk assessment product?

A. Well, obviously for the last twenty years we've had a relationship with pretty much all of those folks that work there, the folks that work on the mitigation piece of that. We know them personally. I've worked with them for years. It's almost as if it's like another department of the town. That's one of the ways you could characterize it. I mean, it's not some private entity that's coming in from the outside. It's a public/private entity that works closely with us similar to our State agencies. That's how we have viewed PLT as well as Primex for that matter because we have a very similar relationship with them. It's different than our private consultants we have for other matters. These people are like part of our family, part of our team.

Q. Let me play off of that a little bit in light of opposing counsel's cross-examination. Have you looked at whether or not it would be more prudent if you put your product out to bid and perhaps could make some savings with Primex or one of the commercial carriers if you did not have that sort of closeness of relationship causing you to stay with them? Should you have considered or done something more to try and see if you can save some money for the Town and a comparable risk assessment?

A. We did. We would be irresponsible not to do so. We did it last year. We did it very recently as well.

Q. And who did you do it with with respect to your coverage provided by PLT? Who did you go out and essentially competitively price that coverage with? Who else?

A. We contacted Davis & Towle which is an insurance provider in Concord and they looked at three different companies. Two of them were not interested in providing public sector insurance in the state of New Hampshire. And Travelers was too. We were one of the first ones to get ahold of them as I suspect there's going to be a wait to do that and they spent quite a bit of time with us to determine what they thought our risks were and they gave us a budget price, not a guaranteed price, of what we would have to pay on July 1st of '16 when our coverage with PLT ostensibly would end.

Q. I'm not sure I understand what you mean, a budget price. Is this sort of a rough estimate or is this something that they would be bound by?

A. I insisted on a budget price because I had to prepare my budget by July 31st that takes effect on January 1st and goes before the voters in the spring, so I had to have a number for my budget, so I asked them for a budget price which they were kind of leery about which I understand because things are going to change between now and July of '16, so they gave me a rough number to use, but it's not guaranteed because we don't know what's going to happen. We don't know what our claims are going to be as we go into the next year and that will affect that price.

Q. So this was Traveler's?

A. Yes.

Q. And how did their rough number that they were not going to be bound by but their best good faith estimate, how did that compare to the comparable coverage you are getting?

A. It was $91,000 per year more for that first year.

Q. And $21,000 higher than what your PLT number was?

A. Correct, because that's $70,000.

Q. But with the assurance that it would not go higher?

A. Right. I mean, obviously it's an experimental factor. If we have more claims that come in between now and the time the insurance would take effect, that's going to change, but it's going to change for PLT, Primex or Travelers.

Q. Now, when you were talking about Travelers about that somewhat higher cost for coverage was there a discussion about what level of training or risk assessment or other services that you described as important to your town, whether they would be coming along with it on Travelers' part in the same way that PLT provides?

A. The way that it was explained to me is they provide programs, and a lot of them on are on-line by webinar, but they don't have the programs that our customers do because their primary business is in the private sector. Now, they do public sector business in other states, but they said the biggest thing would be the driver type training because that they do no matter whether you're a commercial entity or a public entity, but they don't have the same types of programs that we are accustomed to from Primex or PLT. They wanted to make sure we understood that. We asked about that because that's a major component of that because that's what reduces our risks and improves our efficiency.

Q. So I'm trying to understand or make clear, what are the types of more specialized governmental training and programs that you would be getting that Travelers doesn't really offer? What would be examples of those, Mr. Mulholland?

A. Some simple ones like how to deal with difficult people. There's a class on that for your front end people. Your administrative assistants deal with difficult folks and of course we have them in the public sector as well as driver training. How to do a personal evaluation properly, that's a course that has been very popular with our folks. There's a whole range of classes that they offer. There was one that I was in yesterday on financial, how to do say it, appropriate checks and balances on your financial accountability to make sure the taxpayers are not getting robbed and that we have the appropriate policies and steps in place. I had that class yesterday.

Q. What about programs that are focused on uniformed services like police and fire and dealing with hostages and stuff? Are those programs that are available through PLT?

A. Yeah. In July we had chain saw training that our highway and our fire departments participated in. We also have simunitions training. We've done that several years in a row with them. That's a very expensive training that requires all types of equipment to implement and to have the instructors that teach that. Our police department is not large enough to be able to provide instructors to do that alone, so we have simunitions training.

Q. You know, I'm not getting that. What is simunitions?

A. They use firearms that have blanks and they fire with an independent ball-type gun, that sort of thing that allows them to simulate domestic-type incidents and other high risk-type incidents. They go through those scenarios with the appropriate equipment so that nobody gets hurt and they make sure that they follow the appropriate procedures so we don't injure people we should not be injuring, that we don't injure officers and we don't get sued.

Q. The one that stuck out in my mind, and I'm sure other people in the room heard it, we need the information on the one dealing with difficult people. Maybe a lot of us could sign up for that.

A. Yes, it's a rather popular class.

MR. VOLINSKY: UNH offers it.

Q. The Primex company which is the other public entity risk pool in New Hampshire that you use for your workers' comp coverage, they do have a training component and a risk assessment program similar to what PLT has, is that true?

A. Yes.

Q. And I understand that you've looked at the commercial carrier Travelers, and we've heard your testimony on cost and the limitations of their training. What about Primex and the extent to which you've looked at them as perhaps a competitor or an alternative to the property and casualty coverage that you have purchased for many years from PLT? Have you looked at that?

A. Yeah, we did that last year and we're in the process of finalizing that this year and I should have a price in the next couple of weeks from them.

Q. And in the past have you found a differential between Primex and PLT in terms of what they offer in terms of a premium spread?

A. A significant difference.

Q. Higher?

A. Much higher.

Q. And it will remain to be seen what the current process generates?

A. Correct.

Q. You were in the court when I asked Mr. Lynde about whether there's a loyalty. Leaving aside the balancing of the bids and the exact services, is there a loyalty that comes from good service over a long period of time, responsive service, good training? What about Allenstown? What's your view with respect to Allenstown's relationship with PLT and the extent to which loyalty or good will or whatever you want to call that relationship, how significant is that in terms of your relationship with PLT?

A. I'm a bit more pragmatic and so is my Board. If I can get the same quality service at a better quality price, we're probably going to be going there. Obviously we've got a relationship with those folks, but if Primex says they can do it cheaper and better the chances are that's where we're going to be going. Obviously we've got a tax rate that we're concerned about and we've got to provide the best services for our citizens as possible and I may use these folks, you know, and the folks at Primex as well, but again, if we can do it cheaper and we can do it better or as equally and as effectively, then we're probably going to be leaving.

Q. In terms of PLT in the marketplace, if PLT as a consequence of these proceedings is in runoff and is leaving the marketplace, is that of any concern to you as the Town Administrator in Allenstown?

A. It is because obviously we're going to have to pay more which means I've got to find someplace else. I've been given a certain amount of money that

I'm going to be allowed to spend in 2016 from guidance from the Board of Selectman and I have to folow that. That means that the money has to come from some other department.

Q. So in terms of the situation you are in now you have the benefit of two risk pools in the marketplace providing some competitive interaction it sounds like.

A. Yes, there is competition at the present time and everybody is feeling the pressure of that right now.

Q. There are proposals that I believe you are aware of with respect to the plan that we've presented to the Hearing Officer with regard to the future of PLT that projects rate increases on an annual basis of 5 percent per year and the period of time involved is five to seven years. Do you believe that those types of rate increases are excessive or would be drivers in terms of causing you to no longer want to continue with PLT?

A. Well, certainly if those costs became higher than another entity that can provide the same level of service, if it's going to cost more to stay with PLT than to go with Primex or Travelers and everything else being equal as far as the level of service that's provided, then that would be a concern. However, I've developed several courses of action to project out what sort of risk we're going to be at.

Q. I'm not sure what you mean by that last part.

A. We've looked at prices for PLT with 5 percent and 10 percent increases and projected that over several years compared to what we know now in terms of prices we have from Primex and from Travelers, and obviously those rates are going to increase based upon experiential factors and you look at historical trends as well, so you would think that those costs are going to go up. We think we can absorb those sorts of increases that are being projected at the present time by PLT and still be cheaper than what the alternative is. A 5 percent increase on $70,000 is like $3,500 and a 10 percent increase would be $7,000, so it would be $77,000 compared to $91,000 or $104,000 in the case of Primex.

Q. And you're getting those numbers from your prior bids when you went to get them? Those are the numbers that Primex has given you when you looked at the market and asked what they would charge you?

A. Yes, the proposals because we were very careful not to do a bid process but a proposal process and I'm sure you understand the difference.

Q. And to date when you've done that for the property-liability line Primex has been quite a bit higher?

A. It has.

Q. And then the question becomes how will that happen in the future and will you be carefully looking at the comparisons, but you also are assuming that these rates that are being projected for PLT would go into that same equation and you're trying to project how that entire process might work out cost-wise?

A. Yes. I've got to explain that to the Selectmen, the Budget Committee and the citizens of Allenstown why we're doing what we're doing. They ask very detailed questions as they should.

Q. And in terms of the plan that PLT is proposing it's also estimated and expected that during the next five or seven years it is unlikely that PLT is going to be returning surplus monies to its members. Do you understand that?

A. I do.

Q. And that's because they're building surplus and part of this plan is to get to a higher confidence level. I know you were in court for some of that testimony on Wednesday. Is that a significant downside factor for Allenstown, that it's likely that there's going to be a period of time when surplus monies would not be returned from the pooled risk fund?

A. We don't anticipate that we're going to receive money back from these entities. Our budget anticipates that it's going to cost us a certain amount of money for coverage and we don't expect to get any money back. When we do, obviously that's a surplus amount, but we do not anticipate that and do not plan for it because you can't. Ostensibly when they set the rates the assumption is it's going to cost that much to provide that level of service and that we're not going to get anything back.

Q. So the issue that in part we're dealing with in this case is are these factors like rates going up, surplus not being returned, are they going to drive customer towns like Allenstown away from PLT so that it's going to impair this plan, that it will become nonviable. That's really where we're going.

PRESIDING OFFICER: Mr. Felmly, I'm going to ask you to rephrase that question. I know that you're coming to the end of your testimony or inquiry, but that went a little far.

Q. So what I'm really asking you, these factors that we're talking about, are they drivers in terms of whether or not Allenstown would continue to be strongly interested in having PLT in the marketplace?

A. They are with the caveats that I explained earlier.

Q. And in terms of the level of service and satisfaction you're receiving even at times of economic stress, on their balance sheet does the quality of service you're getting from PLT continue to be at a high level?

A. We believe that it is. It has not changed in that regard and there are several examples of that.

MR. FELMLY: Thank you very much. I appreciate that.

MS. FERRARI: I have no questions for this witness.

PRESIDING OFFICER: Ms. Ferrari has no questions on cross-examination. Would you bear with me for just a moment, Mr. Mulholland.

Allenstown, is this your last witness?

MR. FELMLY: Yes. That's what I was trying to determine. I don't mean to interrupt your questioning, but I've learned to talk to the client before we rest.

PRESIDING OFFICER: And I have eyes in the back of my head.

MR. FELMLY: Sorry if I was too disruptive.

PRESIDING OFFICER: In terms of being the last witness in what's being referred to as the case in chief of PLT, do you understand the concept of cleanup?

MR. MULHOLLAND: Yes, sir, I do.

PRESIDING OFFICER: Allenstown, do you have a lapsed fund account?

MR. MULHOLLAND: We have several that are allowed by statute. We have an unreserved fund balance if that's what you mean, sir.

PRESIDING OFFICER: And so did you receive any funds reimbursed to you earlier, as a result of earlier proceedings here having to do with HealthTrust and PLT?

MR. MULHOLLAND: Yes, I believe we did. I don't know what the amounts were. I didn't prepare for that today, but we did receive some money I believe. I know we did. I think it was two iterations of that that we received funds.

PRESIDING OFFICER: Did those funds go into a lapsed fund account?

MR. MULHOLLAND: No, they become unanticipated revenue.

PRESIDING OFFICER: And would that be the same for any return of excess surplus that you receive at the town from the insurance?

MR. MULHOLLAND: Yeah, that becomes the end reserve balance. We cannot retain that. We don't have the statutory authority to do that.

PRESIDING OFFICER: Does Allenstown put anything out to bid?

MR. MULHOLLAND: Yes, some things we do put out for bid and there are other things that we ask for proposals so we can negotiate. I asked the Board to allow me to negotiate this instead of going out to get specific bids. If we do a sealed bid we get the price and that's it. That doesn't allow me to negotiate.

PRESIDING OFFICER: I understand. Is there any rule, regulation or ordinance in Allenstown that compels you to take the lowest bid?

MR. MULHOLLAND: No. In fact, our personnel policy allows us to do other than that.

PRESIDING OFFICER: So could you obtain negotiation of a bid that came in as well as a proposal that came in?

MR. MULHOLLAND: That's what I'm doing right now.

PRESIDING OFFICER: My question is could you not negotiate bids that came in as well as proposals?

MR. MULHOLLAND: No. When they're a sealed bid, no. When a sealed bid comes in, whatever it is, we open those sealed bids at a selectmens' meeting and that's what it is.

PRESIDING OFFICER: That's what it is, but can it be negotiated?

MR. MULHOLLAND: I can ask questions for clarification because sometimes they're a little bit complicated to understand to make sure we get apples

c5b52c31-46a8-47d5-962d-4050e69be2ca

to apples, but no, I cannot go back and negotiate with people to ask for a different price. Our rules do not allow for that and there's good reason for that.

PRESIDING OFFICER: And so those are rules that you have in town?

MR. MULHOLLAND: They are, sir.

PRESIDING OFFICER: That was my original question and I may not have asked it clearly enough, but that was my point.

What did you do in the military for twenty years?

MR. MULHOLLAND: I was in the Infantry and I was a military policeman. I served in Iraq and Bosnia.

PRESIDING OFFICER: Thank you for your service. And you retired in 2013?

MR. MULHOLLAND: From the police force, yes. The military was in 2007.

PRESIDING OFFICER: You made reference in your testimony using the word dues, that this is part of what you get for your dues. Do you pay dues to Property-Liability Trust?

MR. MULHOLLAND: It's really a premium.

PRESIDING OFFICER: You spoke of talking with, I believe it was, Travelers Insurance asking them for a proposal. Do you recall that testimony?

MR. MULHOLLAND: Yes, sir.

PRESIDING OFFICER: About when was that?

MR. MULHOLLAND: I think it was in July or August when -- well, the conversation started right after we were notified that PLT was not going to be able to write insurance, so that was probably May I'm thinking, somewhere around that time. April or May.

PRESIDING OFFICER: Of which year?

MR. MULHOLLAND: Of this year.

PRESIDING OFFICER: 2015?

MR. MULHOLLAND: Yes, sir. And we started to look right away. Literally the next day I contacted Davis & Towle as well as Primex to get working on this.

PRESIDING OFFICER: And when you contacted Davis & Towle was that in their capacity as an independent broker, if you will?

MR. MULHOLLAND: Yes, sir. We have other insurance through them, short-term and long-term disability.

c5b52c31-46a8-47d5-962d-4050e69be2ca

PRESIDING OFFICER: That you obtain from them, but it comes from other underwriters?

MR. MULHOLLAND: Exactly. Yes.

PRESIDING OFFICER: All of the training that you mentioned that is provided by folks at PLT, is all that training free?

MR. MULHOLLAND: Yes. I think for the course I took yesterday there was an $80 fee for that course.

PRESIDING OFFICER: And are there other courses that you also pay a fee for?

MR. MULHOLLAND: I'm trying to think.

PRESIDING OFFICER: If you know.

MR. MULHOLLAND: Well, every once in awhile there is a fee that we do have to pay, but it's really low. Most of them are free.

PRESIDING OFFICER: Have you attended any Primex seminars?

MR. MULHOLLAND: Oh, yes.

PRESIDING OFFICER: And are those free or do you pay for them?

MR. MULHOLLAND: It's the same type of arrangement. Sometimes you have to pay. Most of them are free.

PRESIDING OFFICER: Thank you. Do you sit on any boards of PLT?

MR. MULHOLLAND: No.

PRESIDING OFFICER: Like the New Hampshire Municipal Association?

MR. MULHOLLAND: No. Well, I was on a committee, but I'm not a Board member. They've asked for volunteers to work.

PRESIDING OFFICER: What committees have you served on with NHMA?

MR. MULHOLLAND: With the New Hampshire Municipal Association I served on this most recent committee that looked at legislative policy decisions for NHMA.

PRESIDING OFFICER: Thank you very much. Have I started anything?

MR. FELMLY: Nothing further.

MS. FERRARI: Nothing.

PRESIDING OFFICER: There being nothing further from either counsel you are excused.

Mr. Felmly.

MR. FELMLY: As I indicated a couple minutes ago, Mr. Mulholland is our last witness and PLT rests in its direct case on its petition.

PRESIDING OFFICER: Thank you. Mr. Volinsky.

MR. VOLINSKY: We are prepared to proceed if I can have just a one minute break.

PRESIDING OFFICER: Absolutely. In fact, you can have three to five minutes.

(There was a short recess.)

PRESIDING OFFICER: Okay. Returning from our recess, then, Mr. Volinsky will start the BSR's direct case and has called his first witness.

MR. VOLINSKY: Mark Burgess.

MARK BURGESS

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

PRESIDING OFFICER: Please be seated. I'll ask you to keep in mind that we're making both an audio record and a stenographic record of your testimony and I would ask you to keep your voice up and your speed down.

MR. BURGESS: Okay.

MR. VOLINSKY: You will need BSR book 1 for this examination and three new exhibits, 19, 20 and

21.

EXAMINATION

BY MR. VOLINSKY:

Q. Let me refer everyone to Exhibit 8 which is at the back of BSR book 1. Are you there, Mr. Burgess?

A. Yes.

Q. Is Exhibit 8 an accurate curriculum vitae for you?

A. Yes, it is.

Q. And does it reflect your educational background and your work experience?

A. Yes, it does.

Q. Let me just ask you a few things about your work experience as it relates to the issues in this case.

A. Okay.

Q. I want to try and truncate the presentation of your work history. USF&G was your first post college employment, right?

A. Yes.

Q. Was USF&G acquired by Travelers eventually?

A. Eventually. They were acquired by the same companies in early '98 I believe and then the St. Paul companies were subsequently acquired by Travelers.

Q. What work did you do at USF&G that is relevant to the testimony you will give today?

A. Okay. My first couple of years were in pricing personal and auto, so I did pricing reports comparable to the Towers Watson report. It was for personal and auto, not for lines of coverage like PLT writes, but it was pricing, and then for the next five years roughly I was in the corporate actuarial department performing unpaid liability studies for workers' compensation, general liability, auto liability, environmental asbestos, those sorts of lines, so very comparable lines to what PLT writes.

Q. And the studies you did with respect to workers' comp while at USF&G, were they similar to the studies that you have heard the Towers Watson people testify about for PLT?

A. Yes, very similar.

Q. You became a fellow of the Casualty Actuarial Society in 1995. Were you still at USF&G at that time?

A. Correct.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. You moved eventually to Zurich. What work did you do at Zurich that is applicable or relevant to today's testimony?

A. That was also reserves work, so preparing unpaid liability reports for workers' compensation, general liability, auto liability, property physical damage, so most of the lines of coverage that are offered by PLT, and I was the reserving actuary for the small commercial unit.

Q. When you say unpaid liability reports, is that how an actuary helps determine how much a company needs to reserve?

A. Exactly. That's coming up with an estimate for a company or a risk pool or other type of insurance operation to come up with an estimate to include on their balance sheet under liabilities.

Q. Okay. The next position is Deloitte & Touche. What position did you hold there?

A. I was a manager managing actuarial analysts and performing rate level indications, pro formas, unpaid liability studies for various clients, some governmental clients, some private corporate clients, some insurance companies. It was a fairly broad risk,

c5b52c31-46a8-47d5-962d-4050e69be2ca

but still most of my work surrounded workers' compensation. There was some medical malpractice work in there and general types of liability lines.

Q. The governmental entities that you worked with at Deloitte, what level of government were they?

A. It varied. I did some work for the State of New York. There's an injured workers' insurance fund. I did a brief stint at IWIF in Maryland that's not exactly a risk pool. It's kind of a quasi insurance company that was set up in Maryland by the Legislature, so I did some consulting work for them around risk and their risk based capital.

Q. Okay. Were you here in court for the previous two days of testimony?

A. Yes.

Q. Did you hear Ms. Stazinski talk about feasibility studies?

A. Yes.

Q. When you were at Deloitte did you do any work with respect to feasibility studies?

A. Yes, I was involved on several teams determining the feasibility either of a new operation or about continuing operations. I did some work for

c5b52c31-46a8-47d5-962d-4050e69be2ca

the State of New York where there was an insurance company domiciled in New York that had gone bankrupt and they were trying to come out of bankruptcy and I managed a project where we did a second opinion on the reserves and opined to the State on whether or not they should be allowed to continue and what level of capitalization it required.

Q. Did you hear my questions of Ms. Stazinski about market surveys to determine appropriate pricing that would be acceptable?

A. Yes.

Q. Did any of the feasibility teams that you worked on include components that did market surveys of that nature?

A. Yes, either they did market surveys or that was subcontracted out with a brokerage house or something along those lines, but yes, definitely a marketability or feasibility study of rates was an important part of that type of analysis. If you don't know what rate to charge, you know, no program is feasible. No program is feasible without feasibility rates essentially.

Q. I know we're jumping ahead, but how about

c5b52c31-46a8-47d5-962d-4050e69be2ca

Casco? At Casco have you done feasibility studies?

A. Yes. For example, I have assisted with the creation of several risk retention groups or RRGs which are essentially small insurance companies that are member owned and member operated, so they are very comparable to a PLT type situation. For example, I assisted and provided underlying support for an RRG that was set up by physicians, so it was set up to cover their own medical malpractice professional liability and in the course of that I helped them come up with a five-year pro forma projection comparable to what we're talking about here and there was a member of the team that looked at what rates would be feasible in terms of being able to draw or attract members and retain them once you got them.

Q. And did that team member actually contact potential customers for this RRG and find out information about rates?

A. Yes. I mean, the RRG, there was a potential RRG at the beginning of my involvement which was for physicians in a specific part of the state, so there was a limited number of possible participants. There's not an unlimited number of positions in this

c5b52c31-46a8-47d5-962d-4050e69be2ca

given geographical area, so yes, they found contact lists for physicians and contacted -- they obviously didn't contact every physician in that region, but they tried to contact a statistical proportion, maybe like 10 percent or some large number to get an idea of the feasibility.

Q. And did that then become a report of some kind where the data was compiled?

A. Yeah, it was included I believe with -- in order to form an RRG you have to submit a report. It's not just an actuarial report. Some of my documents were included in that overall filing where they had to file with the State's Insurance Department what they planned on doing, what coverages they were going to offer, the limits, and then they had to include a section on why they thought they were going to be feasible.

Q. In our circumstance do you have a sense of the number of potential members, the size of the universe of towns and cities, counties and school districts that PLT can possibly sell to?

A. Yes. After discussions with you I tried to look into that. I forget the exact number. I believe there's about 221 towns and 13 cities and ten counties and then the number of school districts is roughly a little bit more than that number, so it's roughly five hundred I believe.

Q. So all of the potential customers is about five hundred?

A. That's what it looked like to me, yes.

Q. Okay. At Liberty Mutual did you do any work that's relevant to your opinion today?

A. Okay. At Liberty Mutual I was the company actuary or the chief actuary for a small subsidiary of Liberty Mutual. In that role it was kind of an internal consultant-type role. I was part of a senior management team, and I guess what's germane to PLT, my work here, is that I reviewed unpaid liability reports and rate level indication reports that other actuaries at Liberty Mutual had prepared for my company and provided critique on them and gave sort of a second opinion. Also in my role on the senior management team I used the information from those other reports to come up with budget forecasts and pro formas to basically come up with a financial plan for the company. And I should mention that company also wrote

workers' compensation, general liability, property,
auto, physical damage, all the basic
property-liability and casualty coverages.
     Q. In 2004 you moved to Casco. Tell us first,
what is Casco?
     A. Casco stands for Complete Actuarial Solutions
Company. It's a small company. It's currently a
nine-person firm. It was formed in 1996. It had a
brokerage company that no longer exists, Foster
Higgins. It only had one group of property casualty
actuaries in that group and they spun off to form
Casco. We provide actuarial consulting services to
predominantly self-insured entities, a lot of
nonprofits, some for profit corporations, a few
insurance companies, but we're more on sort of the
self-insured side and the insurance company side of
things.
     Q. And how does PLT compare to a self-insured
entity that you might consult for at Casco?
     A. It's very similar. I do have a handful of
other risk management pool clients that are very
comparable to PLT, but beyond that I do a lot of work
for nonprofits. Some of them have set up risk

retention groups. Again, they've set up a risk retention group that only covers their entity, so it's not like a commercial insurance company that's writing policies to anyone who wants them. It's really just covering their own risk. And the reason I mention that is because those RRGs then have a very similar focus as PLT in that they're focused on risk management and training and those sort of activities because they're obviously not interested in profit. They're just for the benefit of managing the risk of their own entity.

Q. Does the consulting work that you do at Casco include consulting with workers' comp carriers or workers' comp enterprises?

A. Yes, the two coverages that I do the most work with at Casco are med mal, professional liability and workers' compensation and then to a little lesser degree general liability, auto and other coverages.

Q. Maybe to give us an idea of the size of your clients in the workers' comp area, can you identify a couple of clients and tell us what their size is so we can understand the range of your consulting clients?

A. Oh, sure. In total just on the workers' comp side?

Q. Let's start there.

A. So for workers' compensation I have a dozen or more clients that I currently provide services to on an annual or more frequent basis sometimes. My largest client is the State of Illinois which I guess in terms of payroll is about $4.8 billion in payroll, so it covers all State employees in Illinois, their workers compensation, and I do an unpaid liability study for them. That's on the large side. On the small side I have many clients that are very small, much smaller than PLT, and the actuarial work involved there is essentially identical in terms of methods and everything. It's just that for a smaller client you have to factor in industry sources more, and there are other things you have to take into account, but the methods and the structure of the reports are identical.

Q. You mentioned the State of Illinois. Obviously that's a public sector client.

A. Yes.

Q. Do you have or have you recently had any other public sector clients?

A. Yes. I currently have a handful of a sector of risk pooled clients that are -- I think those are mainly for workers' compensation only, but those are very comparable, and in terms of prior public sector clients, for five or six years I had as a client or as two separate clients the Fairfax County Public Schools which is down in Virginia and Fairfax County Virginia, the County itself, and I mention that because the Fairfax County Public Schools did include the type of school coverages that PLT offers like school board liability. Their auto coverage obviously covers school buses and those sorts of risks, and I guess I should mention just because it's somewhat related that the Fairfax County schools account I actually did as a subcontract for the Siegel company. I worked with Howard Atkinson on that account who I think the Hearing Officer knows from the previous HealthTrust.

Q. Let me stop you for one second. Is Howard Atkinson how I was introduced to you?

A. Yes. As I understand it, Howard gave you a recommendation for me and for my firm because I've worked very closely with him on several accounts.

Q. Go ahead.

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. What I was going to say about Fairfax County, Virginia is that they offer coverages such as law enforcement and legal and public officials liability similar to what PLT does, and just to give you an idea, since Fairfax County Virginia doesn't ring a bell with anyone here, and there's no reason that it should, these are sizable clients. Fairfax County Public Schools is the 13th largest school district in the U.S. and Fairfax County, Virginia has over a million in population, so it's bigger than several states.

Q. Thank you. You heard Ms. Stazinski describe her actuarial experience in general as she testified.

A. Yes.

Q. How would you compare your own experience to hers?

A. I would say it sounds obvious that she has a lot of expertise with risk management pools, much more experience in that arena than I have. I would describe my experience as maybe more broad and that perhaps with a client like PLT I could bring a little different perspective because I've looked at things from different angles and different types of

c5b52c31-46a8-47d5-962d-4050e69be2ca

nonprofits.

Q. The actuarial knowledge and techniques that were described in testimony as applied to the pro forma by Towers Watson, are they different somehow than the actuarial techniques that you use in your daily practice at Casco?

A. No, not at all. The actuarial methods are not really differentiated by type of client. You wouldn't use a different method for a risk pool than you would use for an insurance company or a self-insured client. The methods are the same. As Ms. Stazinski commented on, some of the subjective factors that you have to factor in like the risk management programs and the training, you do need to factor those things into making judgmental selections, but the structure itself is very similar. And I might add, I've reviewed other Towers Watson reports that weren't for risk pools and they looked pretty much identical to the PLT report.

Q. Would you turn to Exhibit 7, please, in the same book. Is Exhibit 7 the report you completed with respect to this matter?

A. Yes.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. And did you complete it on or about September 14th of 2015 as it's dated?

A. Yes.

Q. You heard testimony that Ms. Stazinski had six or eight week's notice of this hearing testimony.

A. Yes.

Q. How long did you have the assignment that led to you preparing the report marked as number 7?

A. I guess probably a little less time. I think I first even really heard about the existence of the hearing in very late July. I think it was July 31st, and I wasn't engaged to do any work until the first week of August, so the 3rd or the 4th, so it's a little under six weeks, and the actual data didn't arrive until about a week later. They were very quick in providing it, but it was still about a week later.

Q. Would you describe the assignment you had?

A. Sure. I was assigned the assignment of mainly reviewing the Towers Watson report and also to some degree reviewing the petition itself submitted by PLT and the strategic plan, but I was really at the core of it focusing on the Towers Watson pro forma.

PRESIDING OFFICER: Excuse me for just a

moment. Can you tell me what date or dates the information Towers Watson information was provided to you?

MR. BURGESS: Yeah, it actually came through their counsel.

PRESIDING OFFICER: Sure. Do you recall the date?

MR. BURGESS: I want to say it was somewhere between August 8th and the 11th.

PRESIDING OFFICER: That's when you received it?

MR. BURGESS: Yeah, that's when I started reviewing it. There were a few things that we asked for later and received a little later, but the bulk of it came in I believe -- I'm looking at Paul because he sent it.

MR. VOLINSKY: Let me see if I can help a little bit.

PRESIDING OFFICER: Let me clarify my question a little bit. Not when you received it. What were the dates of the information that you examined?

MR. BURGESS: I'm sorry. Yes. I thought you were asking something else. I requested several year's worth of reports so that I could kind of see. I wasn't sure if every report would contain all the information and I wanted to be able to see sort of a progression, so I received reports using data as of December 2014, June 2014, January 10th, 2014 and August 2013 and I guess I also received December 2012. I think there were five sets of unpaid liability reports. As far as the rate level indication reports, I received the latest three fiscal years, so there was one for fiscal year '15-'16, '14-'15 and '13-'14.

PRESIDING OFFICER: I didn't mean to make it a memory test, but would those documents be referred to in your report?

MR. BURGESS: Yes. I don't believe I referred to all of them. I think I mainly referred to the most recent one which was December 2014. I know I do make mention of the December 2012 report also because that included some industry information.

PRESIDING OFFICER: Thank you. Mr. Volinsky.

Q. Just as an aside, keep your finger on Exhibit 7, but flip to the very beginning of book 1 for me.

A. Yes.

Q. Are the reports that you were provided Exhibits 2 through 6?

A. Yes, those are among them. I received a couple of older versions of these, but yes, those are examples.

Q. Okay. Go back to 7. And then you recently received two draft reports.

A. Yes.

Q. And they should be on your left.

A. Right.

Q. We're going to get into them later, but while we're on this topic, what are the dates of the report and just the subject and tell us which number goes with which.

A. Okay. Exhibit 20 is the draft unpaid liability report for workers' compensation that's using data as of June 30, 2015 and it's dated July 30, 2015, and then Exhibit 21.

Q. Slow down a little bit. Okay. Go to the next one.

A. Exhibit 21 is a similar report for the property and liability coverages. It's the unpaid liability report using data as of June 30th, 2015 and it's dated October 2nd, 2015.

Q. Thank you. We'll go back and explain it later, but based on all of the materials you reviewed regarding this matter do you have an opinion about the financial viability of PLT as it was described in paragraph 7 of the consent decree that we put up on the screen a couple times?

A. Right. The financial viability without subsidy?

Q. Yes.

A. Yes.

Q. What is your opinion?

A. I came to the conclusion that I don't believe PLT is currently financially viable. I don't believe they will be financially viable for the next several years definitely. The pro forma lays out one possible path that could possibly get to what could be considered financial viability by 2021, but I believe that path is very optimistic and very unlikely to be achievable especially given that we already have a couple of examples where they've fallen off of that already now only one year along.

Q. When projecting over a period of time Ms. Stazinski said it became more difficult as she went further out. Did you hear that testimony?

A. Yes.

Q. Do you agree with that?

A. Yes, definitely because all the uncertainty kind of compounds over time, so yes, that's one reason why I took issue with the plan because when you look at it, all or virtually all of the additions to the net position are projected to happen in 2018 to 2021. The plan is basically going to get a little worse for several years, then remain constant at barely solvent for a couple of years and then eventually once the rates become excessive compared to losses and expenses, eventually if everything goes right you pull yourself out of that ball of ink.

Q. And we'll get into that a little later, but you said they missed their plan in a couple ways already. What are you talking about?

A. Right. That's something that I took out of the first two days of testimony. I mean, from what I understood, it sounds as though for fiscal year '14-'15 they had a planned operating expense of

$3,047,000. That's the figure that's included in the final pro forma, the June 29, 2015 pro forma, and we heard that the actual operating expenses were $425,000 higher than that and we subsequently heard that it wasn't apples to apples. There was $100,000 or so of unemployment compensation, but still in the end it sounded as though they were $300,000 worse or higher than their planned expenses for the current year, and I think that's really important because this plan, the $3 million dollar expense budget plan, they came up with that midway through the fiscal year. They only had to project half of the fiscal year's expenses and then they had the opportunity several times during that six-month period to update it and it was still presented in the June 29th pro forma as a planned expense of $3,047,000 when it should have been obvious they were a couple hundred thousand dollars higher than that, so I really don't have much comfort in their ability to project expenses six years into the future when they can't project them six months into the future.

Q. So that was one factor.

A. Yeah. The other factor that came out at the very end of Ms. Parker's testimony was that she stated the member contributions for the current fiscal year, fiscal year '15-'16, were going to come in at $12 million dollars because if you refer to that June 29th pro forma the budgeted or planned member contributions were $13,470,000, so it sounds as though they're also going to miss contributions in the '15-'16 year by $1.47 million.

Q. And the significance of that is what?

A. Well, the significance is, first of all, I think it's stated in the strategic plan as one of the key assumptions which is that membership exposures would remain constant throughout this period, throughout 2021. We already know that '15-'16 is $1.47 million below the plan and that tells us that the contributions are roughly 10 or 11 percent below plan which I think we can extrapolate to say that exposures are probably 10 or 11 percent below plan, so even if you assume they don't have anymore loss of members or loss of exposure they're starting out now at a lower point, and really the problem with that is that the only way they get to add to that position is by charging excessive rates and they're now going to be charging excessive rates four, five, six years in the future on a lower base, so there's going to have to be even more excessive rates on that smaller base.

Q. Thank you. As I said, I jumped ahead a little bit. Help us understand the process you went through in some detail to come to the conclusions that you have been telling us.

A. The background?

Q. What did you look at? What did you do?

A. Okay. You know, one of the first things I looked at or the first thing I looked at after reading through the strategic plan was to review the pro formas, specifically the June 29 pro forma, in more detail to make sure that I understood how everything worked through it and what assumptions went into it. It became -- it's obvious that any pro forma relies very heavily on the initial projection of unpaid losses, so that kind of led me to review the unpaid liability report, and also the rate level indication reports which also factored heavily into the pro forma. Essentially those are the only two sources of true actuarial information that goes into the pro forma is the unpaid liabilities and the loss ratios or the rate of losses going forward.

PRESIDING OFFICER: And this is the June 29th, 2015 pro forma?

MR. BURGESS: Yes, the June 29, 2015 pro forma which relied on the unpaid liability report using data as of December 2014 and the most recent rate level indication reports.

Q. Also using the same data from the same timeframe?

A. I believe the rate level indication report come out a little earlier. I think they actually used June 2014 data because they do that once a year in the fall.

Q. So reviewing those reports and reviewing the pro forma what did you find based upon your review?

A. Well, at first look, the first thing I usually do when I look at an unpaid liability report is I start from the front to the back like anyone does, but in looking at the summary tables I tried to get a feeling for sort of how optimistic I think the numbers are, how reasonable they are so I can get an idea of how much I have to dig and what areas I have to dig into, and for the workers' compensation unpaid liability report a couple of red flags kind of popped up as soon as I started looking at those summary tables. The main one or the first one -- I want to skip ahead a little bit -- on page 9 of Exhibit 7, so the table on page 9 of Exhibit 7, I summarize the IBNR and the case reserves coming out of the Towers Watson report which were the most recent reports that I had at that point in time.

Q. What's IBNR and what are case reserves?

A. Okay. Good point. Case reserves are the liabilities set up by the claims examiners, the claims adjusters that work for PLT, so those are based on the specific details of the claims. They'll look at the age of the claimant, the nature of the injury, what their salary is, those sorts of things. The IBNR, and that stands for incurred but not reported, it actually in large part is not just for claims you don't know about that haven't been reported yet. It's also mainly what you might call case development reserves, so it's the portion that the Towers Watson actuarial or any actuarial would estimate, the adjusted claims by claims adjusters, and the IBNR is the actuarial release, and it's really meant to kind of statistically take into account how, and Ms. Stazinski went through a good explanation of how actuaries look at how claims develop over time, how you look at a set of claims year after year, so really what IBNR is meant to do is to account for the fact that in general, especially for a line like workers' compensation, the case reserves tend to not be sufficient to give you enough money to pay out the claim all the way to settlement. And that's not a dig at claims adjusters. It's just that new information comes in every year and generally speaking on average that information causes you to increase the value of a claim.

Q. And what was the red flag with respect to the case reserves and the IBNR?

A. Well, in general, and this is kind of a habit I got into when I was at Deloitte, generally speaking for a line of business like workers' compensation there are kind of benchmarks with regards to how much IBNR you would expect given a certain amount of case reserves, and that's really because of what I said earlier, that to a large degree IBNR is sort of the percentage increase or its effect on the percentage of increase of reserves over time, so in general I would expect IBNR to be roughly equal to case reserves, a little bit high but roughly equal to case reserves for workers' compensation. As an example, I included in here even though it doesn't really go forward, if you were to look at all the carried reserves for workers' compensation for insurance carriers which is available through their NAIC filings, you would see that in total for the whole country, for every insurance carrier in the country, their IBNR is 110 percent of their case reserves.

Q. Okay.

A. I guess to put it a little bit more specific to New Hampshire, if we look at the development factors put out by NCCI, the National Council on Compensation Insurance, if we look at their factors for the State of New Hampshire you can back into the implied level of IBNR of a case, and for New Hampshire it would actually be a little longer tailed than country-wide. It would be about 1.648 to about 1.65 for every dollar of case reserves just based on the case factors.

Q. What did you find with respect to PLT and

Towers Watson reserves?

A. So I first looked at the most recent reported data I had which was based on December 2014 data. And I guess I need to go on a little aside here. If you look at the table on page 9 you'll see asterisks besides case reserves and IBNR. It looks like in the June 2014 and December 2014 reports, and it happened again in the June 2015 draft reports, it looked as though there was an error in the case reserves in the summary table. It didn't cause any problem for PLT's booking. The total reserves were exactly right, so I'm not saying there are any problem there. It's just that the case reserves column included amounts in excess of their retention and it really came into play in one year, in 2012, so in one year there was one claim that was about $500,000 above their retention and all of that $500,000 above retention was included in the case reserves column and the IBNR column and it was obvious they had backed into the IBNR, so they took the correct total reserves minus case reserves that included amounts not retained by PLT and so they got an artificially low IBNR figure. The other reason I mention that is because in doing that process it resulted in a negative IBNR showing on the table for the 2012 year which that was really one of the red flags because for a line like workers' compensation and a year as immature as 2012 was, in the 2014 study you would really never expect to see a negative IBNR for workers' compensation for a year that immature.

Q. Why?

A. Like I just said, the IBNR is at least one times the case reserves, so if you have positive case reserves it would absolutely make no sense to have a negative IBNR. That would suggest that case reserves were going to develop downward significantly and it could happen, but it generally does not happen.

Q. So did you correct for this error of including above retention?

A. Yes. And I should mention that when you look at this table on page 9 in column 3, and right now I'm really talking about the bottom number, the point 703, in making this correction it actually raised that number. It made them look a little better. Before correcting for this number the case reserves were about $500,000 higher and the IBNR was about $500,000 lower, so it looked even more out of whack before

c5b52c31-46a8-47d5-962d-4050e69be2ca

doing this.

Q. So tell us the significance of the ratios in column 3 from 2013 through the 3-14 figures.

A. So that's the other thing. So when I looked at the 2014 IBNR to case ratio it looked as though the IBNR was lower than I would have expected because this IBNR to case ratio didn't seem that reasonable, so I looked at what it had been in the previously studies, and that's what I'm showing here, and so if you look at the IBNR selected as of August 2013 and June 2014 compared with the case reserves at that time they had an IBNR case ratio of 1.159 and 1.023. So back at that time if I reviewed just those reports I probably would have said, okay, it looks reasonable, but then for some reason that IBNR to case ratio seems to have drastically changed in June of 2014. It dropped from a factor of 1 to a factor of point 7, and I would mention, if you look at it in the draft June 2015 report it dropped even further, so this isn't something that happened and now it's been corrected or changed.

Q. So you saw this. What difference does any of this make?

A. Well, it makes a huge difference in that the liability estimates from the actuarial reports are used on the balance sheet. It's the main liability on the balance sheet. If you look at PLT's June balance sheet they have roughly $18 million of liability and almost $17 million of that is coming from these actuarial reports.

Q. So by using these lower ratios what happens to the actuarial projection of loss reserves? Do they go up or down?

A. Right. That's why I included columns 4 and 5. If you look at column 4 --

PRESIDING OFFICER: Excuse me. His question, could you give him a yes or no and then explain it?

A. I'm sorry. You asked what direction or what happens?

Q. So if there's an artificially low ratio used for the IBNR does that make the loss liability appear to go up or appear to go down?

A. Right. So if the IBNR is artificially low, that means the liability should be higher and that would in turn mean that the net position should be lower.

Q. And by artificially depressing it, what does that do?

A. It makes the company look better. By depressing it, it makes the liabilities look too low which makes the net position look too optimistic which would be too high.

Q. So if I'm picturing a balance sheet, the rough sections in my head, I'm thinking assets, liabilities, net position.

A. Yes, exactly.

Q. So wait. Let me ask the question. None of which you just described relates to assets. The assets are unaffected by this IBNR calculation.

A. Correct.

Q. The liabilities which is the minus part, when you depress the IBNR, does that make the liability smaller?

A. Yes, it makes the liability smaller and it's a direct dollar impact. If the liabilities are $1 million too low in the liability report, that means that on the balance sheet that liability is $1 million too low.

Q. And if I have constant assets and now I'm subtracting liabilities that are a million too low, does that make my net position appear to be a million too high?

A. Yes, exactly.

Q. Column 4 in the table on page 9 has a number of 1.777 at the bottom.

A. Yes.

Q. Tell us what that number means.

A. Right. So I thought it would be helpful to try to give a quantification for how much additional IBNR it would take to get back to this sort of country-wide benchmark of a case ratio of 1.1, and that's what's calculated in column 4, that you would need to increase the IBNR by $1.77 million in order to get to a one to one relationship between case reserves.

Q. So putting that in context, again we have the balance sheet assets, liabilities, net position. If you made this 1.777 adjustment increasing liabilities, what does that do to the net position?

A. It would decrease the net position by the exact same number, the 1.777, which would make it a negative in this case.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. So that net position, is that the starting point for the pro forma?

A. Yes. If you look at that June 29, 2015 pro forma it had a starting point of 1.349 and change.

Q. And making this correction of this actuarially determined IBNR figure what do you believe the starting net position for the pro forma should have been?

A. Well, I guess I should say I don't consider this to be an actuarially determined figure. I wouldn't say based on this quick analysis that I would recommend exactly 1.777. I looked at something else and it corresponded well with this figure, but yes, if we were going to adjust it up by -- I'm sorry. I lost track of the question.

Q. Tell us the starting point of the net position that Towers Watson used and what you think it should have been.

A. Okay. The starting point that Towers Watson used which was the starting point based on the actual financials as of June 30th, 2015 was $1,349,000 and change, so if an adjustment of the magnitude of $1.8 million is warranted, which I believe it is, that would mean the starting point should have been roughly a negative $500,000.

PRESIDING OFFICER: Excuse me. Could someone please turn off the Elmo?

Q. So in your opinion the starting point used for the June 29th pro forma was a positive $1.3 million and should have been a negative $500,000 give or take?

A. Give or take. That would be closer to -- I guess I should say the $1.3 million is based on the Towers Watson ACE estimate, so yes, I'm saying my ACE estimate would be closer to a negative $500,000.

Q. We'll talk about ACE estimates in a moment. Let me ask you, have you ever testified in a hearing before?

A. No, I haven't.

Q. In your report you described something as being two key pillars to your opinion.

A. Yes.

Q. And what page is that on?

A. It's page 1.

Q. Okay. So obviously I'm not going to ask you to read your report, but I want you to explain to us what the two key pillars are and why they are the basis of your disagreement with Towers Watson.

A. I thought it was useful or helpful for the purposes of my report to kind of break down the -- we're probably speaking two areas that I had issues with. Pillar one really has nothing to do with Towers Watson. It has to do with the PLT assumption that was given to Towers Watson that we talked about a lot here, that exposure levels would remain constant throughout 2021 despite the rate increases and despite the historical exposure decreases that PLT has seen, and it's not in the report here because I didn't know it at the time, but also despite the 10 to 11 percent exposure decrease that they saw in fiscal year '15-'16, if I had known that I would have highlighted that. So that's kind of pillar one. I think that assumption is the main assumption that goes into the strategic plan that I would take issue with. The second pillar is really just -- it goes back to the fact that the pro forma is just built off of the underlying unpaid liability report and rate indication report, and as I just said, I don't think the Towers Watson report is unreasonable, it's just that their range and my range overlap, but I think they're on the optimistic side.

Q. So let's start with pillar one. You've heard testimony about exposures and that being how you actually measure the size of a workers' comp carrier, for example.

A. Right.

Q. Do you essentially agree with that testimony?

A. Yes, definitely. The exposure is the means that not just actuaries but underwriters use. It's the generally accepted way of measuring. It's the size or the exposure to loss of an insurance organization.

Q. And what has happened to the workers' comp exposure level in PLT since 2010? And if you're going to refer to a table, tell us which one.

A. So in the same exhibit, Exhibit 7 on page 4 we included a table of change in exposures which I believe Ms. Stazinski said had been verified, so I think we can assume it is correct and everything. What we tried to do here was show the annualized change in exposures. The workers' compensation change is on the left-hand side of the table and then the

c5b52c31-46a8-47d5-962d-4050e69be2ca

middle to right-hand side is where we did all the PL lines and tried to come up with a weighted average change, so that second column there of percentages, it shows how much the workers' compensation exposures is and how much that has changed over the past five years or so.

Q. And in that time how much has PLT's workers' compensation shrunk?

A. Well, in the last four years they've been shrinking at roughly 12 percent on an annualized basis which means over four years they've lost roughly half their exposures.

Q. And are you able to share with us the most recent workers' compensation exposure number and whether it's increased or decreased?

A. Yes. This table just goes through the last fiscal year, the fiscal year '14-'15, which experienced a 25 percent decrease in exposure. Based on Ms. Parker's testimony it sounds as though the '15-'16 exposures decrease by another 10 to 11 percent which is in line with the average over the last four years.

Q. Did the Towers Watson report that you reviewed include exposure information for years prior to 2010?

A. Yes, it included years going back to the beginning of the program, so 2000.

Q. And were you able to draw any conclusions as to how exposures changed versus pricing?

A. Yes. I mean, we weren't privy to the exact pricing changes taking place over time, but through a combination of items that were included in the reports we were able to back into the effective rate changes and it really looked like the business was price sensitive. It looked like there were big decreases in workers' comp rates back in the mid two thousands, in the 2005-2006 timeframe, which is really when they grew their exposures like crazy, and as Ms. Parker said they've been seeing 8 to 9 percent increases for a lot of the last few years, the last five or six years, and over those five to six years you can see what happened to their exposure. As soon as they started taking the big rate increases they started losing the exposure.

Q. Let me ask you the same kind of questions on the PL side. What's happened to the level of exposures for the property-liability lines of coverage?

A. Well, as you can see, they've also dropped by roughly 12 percent a year over the last four years, so they've also lost roughly half their exposures in four years, and while I did not try to -- we did not back into the older rate changes. I believe Ms. Parker's testimony was that they had been taking some rather large increases in the last five to six years and it appears that during that time when they were taking the big increases they were also, just like workers' comp, losing a lot of PL business.

Q. Did you make any effort to find out what's what happened to workers' comp rates in New Hampshire year over year since '96?

A. Yes. That would be in Exhibit 7, page 6.

Q. Let's all get there.

A. Again, in New Hampshire NCCI publishes their premium rates or premium rate recommendations and with the caveat that, you know, this is not directly relevant for pools, it does give you an idea of what the commercial marketplace is doing in the state. I think we've heard that at least Travelers in the commercial marketplace is active in this marketplace and you can see a lot of negative numbers there in the premium rate change for the last twenty years since when we were talking about in terms of the future rate change plans. It was roughly a six or seven-year period. We also calculated the rolling rate change based on the data in this table and we noticed that over the last twenty years there hasn't been a six-year period that had a positive rate change in the state. It's been on a cumulative or average rolling basis over the last six years and it's been negative for all of the last twenty years.

Q. And the pro forma of June 29th that's been put forward in this case projects another five or six years in increases for workers' comp, correct?

A. Yes. We talked about it a lot, but if you flip back one page, still in Exhibit 7, just page 5 though, there's a table where we show for workers' compensation and PL coverages I think we summarized correctly there the annual rate changes that are included in the pro forma so for workers' compensation there's a couple of years of 5 percent increases and then 3 percent increases after that.

Q. Slow down.

A. And for the PL coverages there's basically 5 percent increases from here out. We included the change that I believe was taken in the current fiscal calendar year which was a 3 percent increase for workers' comp and an 8 percent for PL coverages.

Q. Let me stop you there. Why did you use 8 percent for property-liability? Everyone here has been talking about 5 percent.

A. Well, 5 percent are the prospective changes. Just looking at sort of the column headings from the pro forma it looked to us like 8 percent is what was taken and it would have taken quite a lot to become effective with the '15-'16-fiscal year rates.

Q. And I noticed that it's not a straight multiplication of rate changes times the number of years. This is a cumulative rate change.

A. Exactly. So we wanted to show in case it wasn't obvious what the cumulative rate change would be over this six-year period, so for the PL lines if you were being charged, say, a hundred dollars back in fiscal year '15, with this rate change plan your rates would go up almost 38 percent over a six-year period,

c5b52c31-46a8-47d5-962d-4050e69be2ca

so if you started at 100 you would end up at basically 138, and that compounding is really just because the subsequent rate changes are on a little bit higher base.

Q. Let me refer to you page 6 of your report. That's where you have the six-year rolling averages in the table and immediately below that there's an indented quote. Tell us first where that quote is from and why you put it in your report.

A. Okay. I mean, this quote is in I believe all of the pro formas that we received. We referenced an April version of the pro forma, but it's still in the June 29, 2015 version, but in this paragraph it's basically a disclaimer saying that Towers Watson is basically not opining on the feasibility or reasonability of the future rate changes and that that sort of market study is beyond the scope of their engagement.

Q. And could you tell who Towers Watson relied upon for these rate change assumptions?

A. Yes. In the first sentence in that paragraph they say they were -- actually, no. There was another paragraph in the pro forma that stated those rate change assumptions were provided by PLT management.

Q. You've used the term excessive rates on a couple of occasions. What does that term mean as you've used it in this context?

A. Right. I might be the first one to testify to say excessive, but I know when Michael Coutu was testifying he talked in terms of getting to a point where the rates are greater than the sum of losses plus expenses and that that kind of margin, that amount that rates are above losses plus expenses could serve to increase the net position, so that's what I'm talking about, that if you were to look at what an adequate rate would be, that would be the rate that would exactly be enough to cover the losses and the expenses with nothing left over with no change in net position, and the whole strategic plan hinges on getting to a point where those rates have an additional component, an excessive component that could be retained by PLT in order to increase the net position.

Q. So hypothetically if you had PLT in a plan where it has to charge the excessive rates to build up its net position, how would that compare to another risk pool or another carrier that can charge just adequate rates?

A. Right. I mean, every carrier will have a different idea or maybe a different expense structure, maybe a different underlying loss rate, but in general you would assume all things being equal that a competitor would just be charging what they need for losses plus expenses with no additional amount and there would really be no reason in this case to charge an additional amount. I would just be hanging onto it for a little bit and then returning it as a surplus return later whereas because of PLT's position that they're in now, they're kind of forced to charge an extra amount in order to get back to where they need to be.

Q. Thank you. There's a term that's been used as well called adverse selection.

A. Yes.

Q. Tell us what that means.

A. I think a couple people have defined it fairly well. It's not even an insurance specific term, but it's basically the idea that if you do something like raise rates or tighten underwriting, that that could really drive people away, that it's more likely you will drive the good risks away because they will be more likely to obtain cheaper coverages elsewhere, for example. That presumes that the competitors can tell who the better risks are, but it just logically tends to make sense.

Q. And has Towers Watson projected in their pro forma that there would be no adverse selection?

A. Well, yes, although the fact that they assume PLT's assumption about not losing exposure, that makes perfect sense because if you don't lose any exposure you can't have adverse selection, but yes, it is not included.

Q. And so if you recognize that PLT's assumption of no membership loss, no exposure loss is wrong, what does that do to the assumption that there is no adverse selection?

A. Well, it certainly adds another level of risk. For example, we already know that the '15-'16 exposures did decline. We don't know the quality of the risk that they lost, but there certainly is additional risk there to PLT in that there could be adverse selection. You know, I'm not saying that there is or that I can prove it today, but there's some evidence that there could be adverse selection and it definitely adds to the riskiness of the claim.

Q. Were you in the hearing room when Ms. Stazinski explained how she looked at data and arranged it in two big bar graphs and explained that because of those graphs and analyses there's no adverse selection going on? Were you in court for that?

A. Yes.

Q. Do you recall how old the data was that was used for that analysis?

A. Yes. That data was as of June 30, 2013, so at this point it's 27 months old.

Q. And to your knowledge is there more recent data available?

A. Yes. We received just recently draft reports using data as of June 30, 2015, so two additional years of data.

Q. And does that additional date help you form an opinion as to whether adverse selection may be occurring?

A. Yes, I think there's some evidence that it could be occurring. If you want to --

Q. Sure, if you like. Tell us which number you're referring to first.

A. If we go to Exhibit 20 which is the workers' compensation report --

Q. So in Exhibit 20 refer us, if you will, to where there's relevant data on this adverse selection issue.

A. Okay. On page 10 of Exhibit 20.

Q. So the numbers appear in the upper right corner?

A. Yes.

Q. What's relevant on page 10 to this question of whether there may well be adverse selection going on?

A. Again, I would not say this is proof. It's just one thing that could be evidence of adverse selection. If you look at the most recent year, and this is a table comparing the selected ultimate loss projections that Towers made as of December 2014 and then as of June 2015, if you look at the 2014-2015 year they had to increase their projection by $1.3 million based on the loss projections that came out in the last six months which was a 36 percent increase and if you will recall, that's the year they had a 25 percent decrease in exposures.

Q. So wait a minute. So walk us through that. A 25 percent decrease in --

A. In exposures, in payroll. So they lost a lot in payroll that year, and initially Towers Watson had an estimate of $3.7 million, and now that they have the benefit of another six months of data they're realizing that they need to increase their ultimate for that year by 36 percent, so obviously they were surprised at the level of losses, at how high the level of losses were for that year, and it could just be a coincidence that they lost so much payroll in that year and that it's looking like a bad year, but it would give me a reason to focus in on that year and do a little bit more work which they didn't have the time to do. This report is dated --

Q. Actually, when is this report dated?

A. Actually, this is the one dated July 30th.

PRESIDING OFFICER: Which year, please?

Q. Say the year.

A. July 30th, 2015.

Q. So this report is over two months old.

A. Yes.

Q. Is there anything else from this report that impacts on your opinion that there may very well be adverse selection going on?

A. Well, if it's not too technical, I promise I'll just look at one table of numbers and not put everyone to sleep, but if you go forward in the same report, the same Exhibit 20, if you flip forward about ten or twelve pages to the exhibit that in the upper right is labeled Exhibit 3, sheet 1, there's two reasons. The main thing I wanted to point out here, the two columns that are important are column 7 and column 2. Column 7 shows estimated pure premium. Actuaries often look at a concept known as pure premium or it can also be called loss costs, and it's essentially just the ratio of selected ultimate loss to the payroll or the exposure base, so it can be thought of in a sense as payroll, as in hundreds of dollars of payroll which it normally is. The ratios you're looking at there are basically dollars of workers' compensation loss per hundred dollars of payroll, so if you look at the very bottom of column 7 and you see the 87 cents number, that means the long-term average over the last fifteen years for PLT, for every hundred dollars of payroll they have covered they had to pay out 87 cents in workers' compensation losses, but the reason I refer you to this exhibit --

Q. Go ahead.

A. So the reason I refer you to this here is if you look at column 7 you'll notice there's a lot of variability, but if you look about two thirds of the way down, and it's a little hard to go across the column, but if you look at, say, the last five numbers in that column from point 61 to point 85 to point 81 to 1.01 to 1.28, you can see that those are generally increasing fairly quickly. You know, normally for workers' compensation you would assume a pure premium trend of roughly one and a half percent. I think that's what Towers & Watson uses is a one and a half percent trend. Obviously going from a point 61 to five years later being at 1.28, that's quite a bit more than a one and a half percent annual trend. That's more than doubling it in five years. And if you look at the payroll column for those same years, that's when PLT went from -- again, these are in the hundreds of dollars of payroll, so if you go with actual dollars of payroll you have to multiply them by a hundred and they went from $617 million of payroll down to $363 million in payroll, so at the same time when their payroll was basically cut in half their pure premium has doubled, and this isn't -- I wouldn't say it's adverse selection or anything like that, but it does look like at the same time they've been shrinking in payroll and exposure their loss experience has been getting markedly worse, and the other reason I would point this out is if you're looking at what losses to use in a pro forma going forward, certainly if you just look at the last few years of this, that is not a positive trend. It leads to optimism about what the '15-'16 or '16-'17 year is going to look like. I'm not saying you should follow that line because PLT is not anywhere near that level of credibility if you're looking at whether you think they are optimistic or pessimistic about where this is going, but this is another reason why we need to be a little bit pessimistic.

PRESIDING OFFICER: Before we move on, the answer that you just gave, I need you to try it again.

And try it again and know that I missed the application of the word credibility. You said something to the effect that PLT is not large enough.

MR. BURGESS: Oh, just the last sentence?

PRESIDING OFFICER: Yes.

MR. BURGESS: Yeah, what I was saying there is the concept of statistical credibility.

PRESIDING OFFICER: Thank you for the word.

MR. BURGESS: So if PLT were a pool writing country-wide coverage and they were a hundred times the size they are, you would expect less variability year to year and you'd be able to trust the sort of trend lines that you see based on their data. If you look at column 7 in total you'll see there was also a lot to balance year to year, so it's possible that what we're seeing in the last five years is just a run of bad luck instead of having loss reserves downward and having a very good year next year. That just hasn't happened the last five years. If anything, it looks like a bad trend.

Q. Is there anything from this data or the other data that you pointed out that would give you reason to believe that one should be optimistic about PLT's future in terms of whether their workers' comp clients are getting sicker and having more losses or getting healthier and having fewer losses?

A. I haven't really seen anything that would lead me to believe that, no. I mean...

Q. Lead you to believe what?

A. Lead me to optimism.

Q. There's one other thing I want to ask you about with respect to this report or this page of the report.

A. Okay.

Q. There was testimony by Ms. Stazinski that she relied on PLT's historical information and not industry data because she had such a long experience with PLT and Towers Watson had all their data.

A. Yes.

Q. Does this page of Exhibit 20, so Exhibit 3, sheet 1 of Exhibit 20, give you confidence that that's the appropriate thing to do or does it make you concerned that according to Ms. Stazinski's testimony she didn't really use industry data?

A. Right. So I guess I would direct everyone to look at column 2, the historical payroll figures. In coming up with a tail development factor for more mature periods the only years that you have history for those more mature periods are the oldest years, so those factors would come from the 2000 year, the 2001 year, and if you look at the payroll which as everyone seems to agree is a good proxy of the losses, payroll in the first couple years was less than maybe 10 percent of what the size of PLT became in their bigger years. You know, they only wrote -- I guess if you multiply by a hundred they start out with $1.8 million in payroll and that increased from $4 million to $5 million to $6 million, but in their heyday they were writing $684 million in payroll and they currently still have $364 million in payroll. So in those early five years you can see where the payroll was 181, 430, 543 and so on. It's really in my opinion not enough data from years with that little payroll to rely a hundred percent on PLT's data. If I could go on, I do agree with her that the client's data is the best data, so to the extent you can rely on it, you really should. I mean, I recommended giving 75 percent to PLT despite the fact that you can see they were pretty small in those first five years.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. Without going through as much depth let me ask you the same question based on the new draft report for PL. Can you comment on whether or not you believe adverse selection may be at play?

A. Sure. So we go to Exhibit 21 --

Q. Exhibit 21 is a report dated what?

A. It's data as of June 30, 2015 and it's dated October 2nd, 2015.

Q. So the data is as of June 30 and the report is dated October 2, 2015?

A. Yes.

Q. Go ahead.

A. If you go to page 10, and the page numbers are again in the upper right-hand corner, there's not a similar table for workers' comp, but once everyone is on page 10, if you look at the narrative below the graph assuming the chart above, most of the $1.111 million in adverse development occurred in the '14-'15 period.

Q. Stop right there. When someone writes that most of the $1.11 million in adverse development occurred in a certain policy year, does that mean adverse development was found?

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Well, there's two terms. Adverse selection is what we were talking about, and adverse development is what actuaries refer to when projections are updated, in this case every six months. If the projections overall go up, that's termed adverse development and if they go down it would be termed favorable development. It doesn't mean that it has to be from adverse selection. It could, but it doesn't mean that necessarily.

Q. So as in the workers' comp case where they are paying out now $1.28 cents per dollar of claims and it used to be 61 cents, what's happened with the PL lines?

A. Well, what that first sentence tells me is that the '14-'15 policy period which is the most recent period which, as you will recall, the PL lines lost 20 percent of their exposures during that period or for that period, that year developed adversely by $1.1 million dollars based on the data from the last six months, and they don't show the percentage increase, but you can calculate it based on a table on the previous page and it's roughly a 30 percent increase, so from the December study they had a estimate for that year, that most recent year, and based on the last six months of data they've had to increase that by 30 percent, so in total for the two lines combined they increased their ultimate for that most recent year, that experience, that huge amount of shrinkage in exposures, by roughly a third.

Q. In actuarial speak you used the term they increased their ultimate by a third.

A. Yes.

Q. Tell us what that means in English.

A. Actuaries look at what's called the case inferred losses, so it's the paid losses plus what the claims examiners have put on the claims and then they estimate the IBNR which I discussed earlier. The sum of those three pieces, the payments, the case reserves and the IBNR, makes up what we call ultimate losses because that's the actuary's estimate of the ultimate value of the claims for that year. So using data as of December '14 they came up with an estimation of ultimate losses and then given six months more of loss data they had to increase that estimate of ultimate losses by 30 percent which was somewhere close to a million.

PRESIDING OFFICER: Excuse me. Let me just go back. It strikes me that you were listing the paid loss plus what is the claims management loss. What was the third element?

MR. BURGESS: IBNR.

Q. So pillar one of your two pillars focus mostly on the assumptions that Towers Watson was asked to assume and whether you saw reason to believe those assumptions as being not credible, correct? Let's move to pillar two. What concerns did you raise as far as pillar two is concerned?

A. Okay. I guess my first concern, the first cause for concern I already talked about in terms of IBNR to case ratios, but that was more why I thought there might be a concern.

Q. Okay.

A. So I dug into things a little bit more, reviewed the unpaid liability report in more detail, and as I think I said earlier, the Towers Watson report looks very much like a report I would have put together. I agree with the method they used. I agree with the data they used. Most of the assumptions I agreed with.

PRESIDING OFFICER: You agree with the data they used or the type of data they used?

MR. BURGESS: The type of data. I didn't audit anything, so I'm not verifying that it's all correct, but yes, the type of data that they used.

Q. So you agreed with those three things, so why do we have a problem?

A. Well, there was really one key assumption in the workers' compensation that I didn't agree with and we talked about that earlier. It was the tail factor. Ms. Stazinski described how actuaries select development factors. Actuaries refer to those oldest maturity factors as a tail factor because it's kind of the tail. When you talk about workers' compensation being a long tailed line, that generally means that the tail factor is relatively large and that these claims are open a long time. So in reading through the report, and I think it came out in the cross-examination of Ms. Stazinski, I agreed with the narrative portion of the report where they commented that using industry sources could be important, and if you look at Exhibit 7, page 10 in my report, in the middle of the page under item B, as in boy, I include a quote and I quoted here from the unpaid liability report using December 2014 data, but it's in all of the unpaid liability reports that I looked at, and I think the Hearing Officer has seen this before, but they state that PLT's workers' compensation program is relatively immature given the long tailed nature of workers' compensation exposures, and I agree with that statement. I believe she referred to the relatively immature nature of it not because fifteen years is immature but because the oldest five years of PLT, as we saw, they were really small. Then she goes on or they go on, Towers goes on to say, for this reason we used information and data from New Hampshire workers' compensation industry sources to supplement this historical experience, particularly in the tail factors. And the folding and underlining is mine. It was not in the initial report. In reading that I definitely agreed with it, but then when I looked at the exhibit where they actually selected tail factors and the other factors in the December 2014 report there's no mention of an industry source. There's PLT's data. The factors calculated all the PLT data and then various averages and selections. So there's no mention of industry sources and a selected factor, and I kind of judgmentally picked a tail factor of 96 months which is eight years after the beginning of an accident year. The selected factor was less than one percent, so it was obvious -- it seemed obvious that if they put any weight on a number that wasn't on the page, it was minimal weight, so at that time I started looking back at the older Towers Watson data and I noticed that the unpaid liability report was using data as of December 2012, so a couple years older, and that same detailed Exhibit D includes a line, and I don't have the exact wording, but it was basically labeled TW or Towers Watson New Hampshire Industry Development Factors. So I could have tried to look at what the impact might have been based on my idea of industry tail factors, but I didn't want to impact or insert that source of maybe argument, so I just looked at their factors. They were two years old, but they were factors that Towers believed were relevant enough to include on the exhibit and presumably, you know, it is New Hampshire data. I trust that it is what it says it is and those factors too have shown a tail factor attaching at 96 months of

1.193, so basically 19 percent development where they were selecting less than one percent development.

Q. So give me an example of what that means in dollars, that difference.

A. What that means in dollars, the reason it ends up being a big impact on dollars is that whatever factor you select for that age ends up getting applied to every year that's less mature than that age, so an eight-year ultimate factor gets applied to a year that's one year or two or five years old, so there's seven or eight years that get that tail factor applied to it and it is essentially whatever you change that factor by. The main method that it looks like Towers used would go up by that percentage. So if you were to select a factor of 1.19 which is roughly 18 percent higher than what they did select, all the ultimate losses for those seven years would go up by 18 percent.

Q. So if you had an initial loss of a hundred what happens when you use that 1.19?

A. Well, if they selected a hundred and they used a factor of .009, so less than one percent, if you then changed it to use my factor, it would go up

c5b52c31-46a8-47d5-962d-4050e69be2ca

to 118 basically if you assume they already have a little bit of tail.

Q. What difference does any of this make?

A. Like we talked about earlier, when you estimate the unpaid liabilities, it goes directly on the balance sheet and it goes directly into the calculation of net position, so if your liabilities are off by a certain percentage or are too low by a certain percentage because you're picking a low or an optimistic tail factor, that means that your net position is too optimistic which means it's too high, and in this case we're talking about an organization that only has $1.3 million in net position to begin with. Actually, that was a year-old. They're now I believe under a minus once you factor in everything we've heard in the testimony.

Q. By their count it's under a million.

A. Yes. I guess I should explain that.

Q. Let me just keep you where you are.

A. Okay.

Q. The 18 percent difference between PLT and the Towers Watson New Hampshire industry data, if there's a statement in the pro formas or in the reports that says industry factors are used and subsequent to 2012 you found that they were or were not used --

A. Subsequent to 2012 industry factors weren't shown at all, so if they were used, it's not evident and the factor selected is so low that it really appears they weren't used.

Q. So the impact of not doing what they wrote, was that to decrease the amount of losses that needed to be booked in liability?

A. Yes.

Q. And by decreasing the amount of losses, did that make the net position appear more positive?

A. Yes.

Q. And so what did you do having discerned that issue?

A. Well, I wanted to try to quantify the issue, quantify how much I might recommend in an increase, so I looked at what impact there would be if I were to give PLT's data 75 percent weight versus what appears to be virtually a hundred percent weight given by Towers Watson, and so if I gave a 75 percent weight to PLT's data and 25 percent to the Towers Watson industry data, that would increase the tail to roughly five and a half percent, so 1.005 and that would have a $17.8 million dollar impact. It would increase the loss reserve by $1.8 million dollars, very similar to what you would have to increase the IBNR to to get to a one to one IBNR case ratio, so it's not like I had to work it out of there, but I kind of felt like I had -- it seemed reasonable for that reason, that I could get to the same number in two different ways.

Q. So coming at it from two totally different perspectives your ultimate conclusion on this point with respect to net position for the start of the pro forma period, what is it?

A. It's roughly negative $500,000.

Q. And that's the 1.8 difference between the starting point chosen by Towers Watson and your starting point?

A. Yes.

Q. I would like to direct you to the graph at page 20.

PRESIDING OFFICER: Exhibit number?

MR. VOLINSKY: Staying in Exhibit 7.

PRESIDING OFFICER: Thank you.

Q. I'm just putting up on the board a blow-up of the graph that appears on page 20 and it even has the page 20 on the bottom, so we're all on the same page so to speak.

A. Okay.

Q. I want you to walk us through this alternative pro forma projection, so walk us through this alternative pro forma projection.

PRESIDING OFFICER: I would just like to get it on the record that the chart you've put up is exactly the same as Exhibit 7, page 20 in our binders, is that correct?

MR. VOLINSKY: Yes, so whichever is easier for people to review, that's fine.

Q. So first I want you to explain the very top line which is in kind of a blue colored star, the $1,349,813 and in 2021 it end at $1,729,393, so what is that?

A. That's just a graphing of the results from the pro forma dated June 29, 2015 as included in the petition, so that's not -- those aren't my numbers at all. I thought it might be helpful to look at things graphically than look at the table of numbers we've been looking at.

Q. Are those Towers Watson's projections, the top line?

A. Yes.

Q. So Towers Watson, their number with no changes whatsoever starts at $1.3 million and ends at $3.7 million.

A. Correct.

Q. And in between it drops down to about $300,000 plus and change.

A. Exactly. It's roughly $300,000 at the end of fiscal year '16-'17 before the report is projected to rebound a little.

Q. The next line that's pink in color, it starts at the same place as Towers Watson projects, 1.3, and it ends in a negative $1.4 million. Tell us what that is.

A. Well, that's obviously starting with the Towers Watson figures. That's why it starts with the same $1.3 million, but that was our attempt at trying to be helpful in quantifying what adverse selection could mean in terms of the pro forma if it happens, and how we factored that in, we called it moderate adverse selection. We didn't feel that this was going

c5b52c31-46a8-47d5-962d-4050e69be2ca

out on a limb too far. We assumed that PL would lose 7 percent of exposures per year, so much less than the 12 percent average they've had over the last four years and less than the 10 or 11 percent they had in the current year, so we thought that that was being fair, and we kind of selected a strange number like that because over the entire period that would mean exposures to clients by roughly a third. I think it's 35 percent over the full period. And we thought given that they had shrunk by 50 percent over the last four years that shrinking by another third over the next six or seven years seemed reasonable and not too harsh. And that part is not adverse selection. That's just thinking that they might lose some exposures. Where the adverse selection comes in, we assumed those risks that they lost, so that 7 percent of exposure that they lost per year we assumed would be 10 percent better than average in terms of loss experience, so if they lose 10 percent better than average, that means the risk they retain will be a little bit worse that that, and it's really just two to three loss ratio points a year, so if Towers is projecting an 85 loss ratio for the year, we're saying that adverse selection might make it 87 and a half or 88. So we're not saying day and night that things might get worse by 30 percent or anything like that.

Q. 30 percent, so just like what just happened?

A. Just like what just happened.

Q. Go ahead.

A. And if you follow that line PLT ends up being slightly negative by the end of fiscal year '16 and by the end of 2021 they would have a negative surplus of negative $1.4 million.

Q. And Towers Watson assumes no adverse selection?

A. Right. They assume no adverse selection which, as I said earlier, because they assumed no loss of exposure it makes sense to assume no adverse selection.

Q. But if there is adverse selection just at a very moderate level you come in at the zero line?

A. Yes, assuming everything else goes according to plan. It assumes they meet their expense goals. It assumes loss ratios behave themselves other than losing this better than average business. It assumes reinsurance rates don't go up. It assumes that the

c5b52c31-46a8-47d5-962d-4050e69be2ca

second injury fund assessments don't go up. It basically assumes everything goes according to plan except they lose 7 percent of exposures per year and those exposures are 10 percent better than average.

PRESIDING OFFICER: The figure at the extreme right, the $1.4 million that was used, would you characterize that as a negative surplus?

MR. BURGESS: Well, yes.

PRESIDING OFFICER: Could you explain that?

MR. BURGESS: Right. So in this graph we labeled the values of surplus. It's the same exact idea as net position. I apologize. I'm probably using the two terms interchangeably.

PRESIDING OFFICER: Let me ask you this and I beleive it will help me. Net assets, profit, surplus, do accountants use those terms somewhat interchangeably?

MR. BURGESS: I believe so. I mean, I believe I've seen -- well, they don't use those exact terms interchangeably. I don't think they would say net assets. Well, it could be net assets after netting out losses, so yeah, I think it could, and I think I've seen surplus mentioned in some places in the documents leading up to this.

PRESIDING OFFICER: Thank you.

Q. While we're on this topic, I think I went over this with Ms. Stazinski. When you are at zero, that means you have a 50 percent chance of paying your claims?

A. Roughly. That means that there's no net position or surplus. And the net position or surplus is essentially a cushion. It cushions the loss reserves in case there's adverse development in the future, and since the loss reserves are generally at -- I think she said they're at the 50 or 55 confidence level, so yes, in general it's roughly at 50 percent confidence in having enough money to pay your claims.

Q. And when net position drops below zero does that mean you have a less than a 50 percent chance of paying your claims?

A. Yes, it means that you're more likely than not to not be able to pay your claims fully and timely pay your claims.

Q. And just changing this one assumption about adverse selection with respect to the Towers Watson pro forma, when does PLT drop below 50 or 55 percent akin to its ability to pay its claims?

A. Roughly fiscal year '16, so roughly at the end of the current fiscal year.

Q. The next line is red and this one was a different starting point of a negative net position, so first tell us why there is that starting point.

A. That's taking the $500,000 that we talked about before. That assumes that if you were to give 75 percent weight to the PLT tail and 25 percent weight to this Towers industry tail, that would cause you to increase your workers' comp reserves by roughly $1.8 million which would mean that your starting net position instead of being a positive 1.3 would be a negative $480,000 or roughly $500,000.

PRESIDING OFFICER: Could you pause at this time?

(There was a brief recess.)

PRESIDING OFFICER: We're returning from a brief recess. Mr. Volinsky, I believe you had asked your client a question and he answered the question which brought us to why we were getting to the 481 figure, so we don't have to go back over that.

Q. So understanding that we're at this negative

$500,000 position, what have you plotted forward on this red line which is the middle line of the graph?
A. Like the second line, it assumes that PLT will use 7 percent of exposures per year and that there will be adverse selection at the same level at 10 percent.
Q. And where does that leave PLT in 2021?
A. That would leave them with a deficit net position of a negative $4.6 million.
Q. So that's even worse than the pink line.
A. Yes, mainly because it starts out worse than the pink line.
Q. The next line is starting even further below zero at negative $2.4 million. Why did you chose that starting points?
A. Well, I wanted to try to give the Hearing Officer some kind of variability in what the net position could be, so rather than inserting my judgment I used the reasonable unpaid liabilities from the Towers Watson report, and if you look at their range of liabilities in the December 2014 report the difference between their ACE estimate and their high reasonable estimate for workers' compensation plus

what was outlined was roughly $3.47 million, so if you assume the high reasonable figure is the correct figure, that would increase your liabilities by $3.47 million which would reduce your net position by $3.47 million leaving you with a $2.4 million negative net position.

Q. To start?

A. To start. That would be as of June 2014. They could have already been as far as $2.4 million behind, but we won't really know that for many years.

Q. Why not?

A. Well, as we heard in testimony on Tuesday and Wednesday they are projecting workers' compensation claims to be open until, I think they indicated, either 2030 or 2031, so we still have at least another fifteen, sixteen years for all of those workers' compensation claims to close and until they close or get close to closing you won't know what you really should have had booked as a liability as of June 2014.

Q. And is that in part why actuaries provide ranges?

A. Yes.

Q. So this is what Towers computed the range to be?

A. Yes, and the Towers report, anything within that reasonable range is deemed reasonable for financial purposes, so if PLT had the money, they could have booked that liability, that 3.7, higher and presumably their auditors would have been fine with that.

Q. What happens with this fairly deep decline here?

A. Again, just using Towers' figures, going back a couple of rate level indications, they used to include a range of results in their rate level indication reports. They haven't in the last two reports, but two reports ago they included a range for both workers' comp and the PL lines of below reasonable and high reasonable, so we assumed that if you adjusted their loss ratios going forward to be at more of their high reasonable range and not assuming any loss of exposures and not assuming any adverse selection, essentially that blue line is what we think Towers could have come up with in an adverse scenario under their high reasonable.

Q. You used the term ACE. ACE means what?

A. Actuarial central estimate.

Q. So if we use the Towers Watson assumption that you disagree with about adverse development, that comes out to be a negative $13 million in 2021?

A. Exactly.

Q. And the final line is -- I won't try to characterize the color. The lowest line starts at a negative 2.4 and drops down.

A. Right. So that includes the same assumptions I just mentioned, Towers Watson's high reasonable starting point and high reasonable loss ratios going forward, but it also incorporates the moderate adverse selection that we described as 7 percent of exposures where it is better risk than average.

PRESIDING OFFICER: Excuse me. You're going to have to slow down. Give me that last one again.

MR. BURGESS: So the bottom line is the line immediately above it using Towers Watson's high reasonable range and high reasonable loss ratios assumptions, going forward it also incorporates the adverse selection scenario that I described earlier where they would lose 7 percent of exposures per year and the exposures they lose would be 7 percent better than average.

Q. So if I ask you of these five projections which you conclude to be the most reasonable projection for PLT's financial future based on the information before we started the hearing, which one would you select?

A. I would have selected the middle line which is really why it's labeled Casco Reasonable Reserves. That is, to the extent of high ACE with a starting point of roughly $1.8 million higher than the Towers case and assuming some moderate adverse selection.

Q. With the software actuarial background that you have and the data available to you to do these projections, was there anything specific and only available to you that would have prevented Towers Watson from giving us this range of scenarios?

A. No; no. I mean, they obviously wouldn't have known my judgment, but no, I mean, we just built it in Excel, but we basically tried to model the Towers Watson pro forma ourselves during that five or six weeks that we had. We basically had to build a sort of shadow version of the pro forma and then test it to make sure that it worked for their projections and then we made modifications. So yeah, there's no reason. I'm sure they could have done it also just as easily.

Q. Now, I asked you which was the most reasonable, but I gave you the caveat of limiting it to the information you knew before the hearing.

A. Yes.

Q. Have you gained information by listening to the witnesses during this hearing that affects this chart of pro forma scenarios?

A. Yes. Based on what I've heard, I really would have adjusted all of them. For this hearing I adjusted the top line, the Towers pro forma numbers. Those are the only ones that I did adjust yesterday when I had a little time and that's included in Exhibit 19.

Q. So if I can ask everyone to turn to Exhibit 19 which is separate and not in the book. So Exhibit 19 uses Towers Watson's starting point of $1.349 million.

A. Yes.

Q. And then what did you do based on what you learned from the hearing?

A. So actually, the top line on Exhibit 19 is identical to the top line from page 20. I should point that out. So at the hearing we heard that the contributions were going to be roughly $12 million instead of $13.447 million, so I did the adjustments in two parts. So that pink line in the middle is adjusting the blue line, adjusting the June 29, 2015 pro forma numbers just for the difference in contributions that we already know about. That's not a projection change. That's just updating for known information to date.

Q. And their contributions or premiums were 11 percent lower or thereabouts?

A. Yes, 10 or 11 percent, and that difference was in the '15-'16-year. That's why the pink line and the blue line, you can't even see the blue line for the first segment there. I would make no adjustment between 2014 and 2015. Really the adjustment comes in between '15 and '16 and going forward and I made the same assumption which I still find unreasonable, but I made the same assumption that they will lose no further exposures, that they will just lose 10 or 11 percent of exposures in fiscal year '15. This pink line assumes they'll stick at that level with no further losses.

Q. And then the third line?

A. And so the third line also updates for the contribution difference, but on top of that it also updates for the roughly $300,000 difference in exposures for fiscal year '15. And I didn't project any future expense increases. This assumes that the planned expenses in fiscal years '15-'16, '17-'18 and '18-'19 come in exactly according to plan. So I'm not compounding things. I just modified the starting point, modified that value as of the end of June 2015 to account for the fact that we know at this point they paid out $300,000 more than they expected in expenses.

Q. And what is the consequence of inputting the known information of the contribution shortfall from the plan and the expense overage from the plan?

A. Well, that would be following the bottom line there and what that would mean is that their net position would go negative sometime during the current fiscal year, that by June of '16 they would have a negative position of $170,087 and it would decrease further to be a negative $391,349 by the end of the next fiscal year at 2017, and then if they meet all of their assumptions it would rebound somewhat and end up at $1.4 million, so it would end up roughly a hundred thousand better than where they started.

Q. So if I suggested to you that the consent decree was signed last summer, last July, the date on here we have is June of last summer, could you compare the Towers Watson projections with all their assumptions just correcting these two known factors? Could you compare where they end up six years from now as to where they started when they signed the consent decree?

A. They're at essentially the same place. I mean, if they meet all of their subsequent planned assumptions, they would be able to end up at the same place they started roughly, a hundred thousand better off than when they started.

Q. And how likely do you think it is that they will hit all their planned assumptions going forward?

A. Well, like I commented before, even just in my first meeting I didn't think it was likely that they would meet their planned objectives, and now we know that in the first year they've already failed to meet their expense objectives and they've failed to meet their contribution expectations and furthermore, if you look at the draft liability reports, it looks like they're kind of failing to meet that. There is some adverse development. They're kind of failing to meet the losses option. So I'm not sure how they're doing on the other assumptions like reinsurance, but it looks like they're not starting off well, and this is in the first year where it's the easiest to project these things. We're not talking about an expense projection six years into the future or trying to project contributions six years into the future. We're talking about the very beginning of the plan and at their first step they're already off the path. So no, I don't think it's likely they will be able to meet the plan.

Q. And so have you now explained all the reasons why you don't believe PLT is currently financially viable or that they will be financially viable in 2021?

A. Yes, I believe so. I mean, yes.

MR. VOLINSKY: Thank you. I have nothing

further.

PRESIDING OFFICER: Very good. Thank you. It looks like a good time for a lunch break. We'll come back, and Mr. Felmly, you will be taking the witness on cross-examination, is that correct?

MR. FELMLY: I will.

PRESDING OFFICER: All right.

(The luncheon recess was held.)

PRESIDING OFFICER: We have now returned from our lunch recess and we have Mr. Burgess on the stand who is about to be addressed by Mr. Felmly on cross-examination. Mr. Felmly.

FURTHER EXAMINATION

BY MR. FELMLY:

Q. Good afternoon, Mr. Burgess. I'm Bruce Felmly. We met earlier today.

A. Yes.

Q. You are familiar with the Towers Watson firm and their reputation I presume.

A. Yes; yes.

Q. Would you agree that they are one of the largest and well-established firms in the consulting area and are well known for their actuarial services?

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Yes.

Q. And it sounded like from your listening to Ms. Stazinski's testimony that you recognize she's got a great deal of experience as an actuary particularly with regard to public entity pooled funds.

A. Yes.

Q. Pretty much that has been the core aspect of her career over twenty years.

A. Yes, that's how I understand it.

Q. And as you listened to her testimony and heard her explain actuarial principles and discuss the methodology she used, I took away from your testimony today that you believe she approached this in a competent way and used techniques and approaches that are common in actuarial science.

A. Yes.

Q. For example, there was a description provided, and it's actually in Exhibit 19 in our exhibits, that shows the way in which Towers Watson approaches loss calculations by their use of data from the client to develop what they call triangles and to use that information over time to gain more and more detail and confidence of the predictive process of what might occur in the future. You heard that testimony. You are familiar with that approach, is that correct?

A. Yes; yes. She was describing the basic approach that actuaries take.

Q. And should I assume that in your actuarial work even if you don't use the exact same software or the exact same triangle that you would use a similar methodology as you would be projecting losses based on years of client data?

A. Yes; yes.

Q. I'm assuming you have no reason to believe that Ms. Stazinski would come into the courtroom and intentionally misstate or misrepresent her opinions or her analysis, is that true?

A. Yes. I agree.

Q. So she's highly qualified, she works in a firm that has an excellent reputation, and as best as you can appreciate it from what she described she was using techniques and approaches that actuaries commonly use with respect to the kind of pro forma work and projective work that they do. Fair statement?

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Yes. If I could add that actuarial work is more than just the kind of structural things you described. There's also a lot of judgment involved.

Q. I understand. And that judgment you would expect to likely have been informed over the years for somebody who is at least as good at this by their experience. Fair statement?

A. Yes.

Q. So you would have expected and would have no reason to believe that after twenty years of doing work for public entity pooled funds that not only would Ms. Stazinski be familiar with the techniques and the various methodologies, but she would have had the hands-on experience with many pooled fund situations that would help give her a base of experience and judgment to bring to a project. Fair statement?

A. Just as I have also, yes.

Q. Well, plainly you have experience, but as you recognized, and I know that you have to know the RRGs and things that are member based systems, but you have no where near the public entity pooled fund experience that she has, true?

A. That's true, but that's not really relevant to actuaries. There's no even hint of a need to have expertise in a certain area of how your client is legally structured or set up.

Q. Well, the governmental or public area of risk does have some specializations to it as we've heard from some of the Town representatives and from Ms. Parker, doesn't it?

A. Not that would affect the actuarial projections. We heard things like there's more training. There might be different types of risk management that would impact impact the overall level of loss but not necessarily how they develop over time.

Q. Well, isn't it the case that with respect to some of the kinds of activities that could result in loss such as in police and fire and managing emergency services and the like that you may well have different types of risks being received or exposed to those types of employees or participants than might be the case in a commercial warehouse company or an accounting firm or my law firm?

A. Yes, but again for example, in workers' compensation if a person hurts their back, it's not going to matter how long it takes for them to get better whether they work for a school system or a law firm and it's not going to matter how those losses develop whether they are insured by PLT or Primex or Travelers. The claim is going to develop in the same way.

Q. So do you want to leave it that you don't think there's really any difference in sort of the nuances of experience for somebody who has worked with the precise types of risks that PLT deals with as contrasted with risks more generally? You don't think it makes a difference?

A. I think there's very little difference. There's a little difference in terms of some of those judgmental assumptions like trend factors, but virtually no difference in terms of selecting development factors, for instance, and absolutely no difference in what methods you use. Like I mentioned earlier, I've reviewed Towers Watson's reports on other pools and it looked exactly like what they did and those actuaries would also use ResQ software, the same methods and many of the same assumptions. So yes, I agree that it's not much of a difference.

Q. Well, don't say you agree because you don't agree.

A. Well, I agree with respect to that.

Q. You can certainly say, I'm standing on my notion, I don't mind that, because part of that ResQ software and the sort of tools of the trade you just told me don't exactly cover the entire aspect of the exercise because the actuarial's job, as you told me, is to bring to this process judgment, experience and understanding and apply it to some of those decisions.

A. Yes.

Q. I mean, I probably could be trained to go in and push the buttons on ResQ software, but I can assure you I would not be able to provide the judgment or the information that would be presumably gleaned from twenty some years of experience, and that's an important factor you told me.

A. Well, the twenty years of experience definitely, but the judgmental factors I was referring to are it varies client to client and definitely line of business to line of business, but I do not believe it varies -- with respect to the judgmental selection

c5b52c31-46a8-47d5-962d-4050e69be2ca

of developmental factors I don't believe it varies at all for a risk pool versus a non risk pool.

Q. Now, apart from risk pool knowledge and whatever level of specific experience or judgment factor you're going to give to that, and it sounds like you don't give too much to it as I was suggesting, in addition, it would be important to have knowledge about the particular client along the course of dealing with the particular client. That would be valuable information for an actuary, right?

A. Yes, that helps.

Q. When you're dealing with a very, very large client, and you described very, very large risks like the State of Illinois, you were probably more -- well, let me ask you, how many years have you represented them in an actuarial capacity?

A. It's actually been just a couple of years.

Q. Would you agree with me that you likely will have better incite and more knowledge about them in year twenty of your relationship should you be so fortunate to have that type of annuity relationship I think is what they call it because you will understand the way in which that risk and the business of the

State is managed? You will get to know patterns in various departments? It won't change everything, but that will be helpful information because all things being equal there's probably no substitute for knowing everything, and knowing more about this would be better, right?

A. That would help. I would add that these triangles that we discussed, because those contain information at numerous valuation points, this 15-year triangle contains data from five, ten, it could be up to fifteen valuation points, and just by closely reviewing those triangles you can get a lot of information. It's not as though you just see one snapshot of how PLT looks today. By looking at those triangles in great depth you can get a lot of detail. Now, granted not all of the detail, and that's part of why I reviewed five or six different sets of reports is to try to get that history. Now, I was getting it secondhand through how Towers Towers got their experience, so yes. I apologize.

Q. That's fine. You agree that having the information of the client specific data can be valuable. Can we agree on that?

A. Yes, it can be valuable up to a point.

Q. The other thing which Ms. Stazinski has and her colleagues working with PLT specifically for twenty odd years have said is that they have constant or very frequent access to the personnel who are managing the organization, so they would get to know them and would be able to ask questions, would be able to see how they approach various things, and that working relationship helps inform the actuary in that process of making judgments and assessing how particular matters are going to be reviewed or handled. Fair statement?

A. In a very minor way. Those types of soft information you get from management. If you don't see it in the data, you really as an actuary don't factor it in that much. For example, if management tells me that the claims adjusters are doing something differently, if I don't see it in the data, I don't trust that kind of soft stuff of are we doing things better or are we doing things faster. You look for the data. So to the extent that in reviewing multiple reports I can see the data, you get 99 percent of what you need.

Q. Well, isn't it the case in actuarial work particularly when you're trying to project sort of potential yet to be incurred claims experience that understanding how they handle claims and how they manage them and how they underwrite them, isn't that actually even in the ASOPs information that the actuaries are encouraged to look at in trying to formulate assessments and judgments about claims that may be confronting them?

A. Yes, that's true, but you can get that information by reviewing reports. Common practice is to have a second actuary give a second set of eyes. Auditors pretty much almost always have a second set of actuarial eyes who look at the actuarial reports for the larger companys' workings, so there's definitely a value to that.

Q. Is that a peer review process?

A. It's kind of beyond peer review. Peer review is within one's work and that provides a valuable service. Having that second opinion like an auditor or if someone else had completely been an actuary, you can get a fresh set of eyes and they can see some things sometimes that you become blinded to by, you know, twenty years of looking at the stuff over and over.

Q. I guess I'm really addressing a somewhat different issue though. I'm asking you within the actuarial standard isn't it recognized that the actuary in particular with respect to trying to project future claims is strongly encouraged to look at and gain access to and review data that relates to the operations of the entity in order to help formulate his or her view as to how that's occurring? Isn't that under Standard 43?

A. Yes, to review the data, and it's also true that the data should be in the report, so by reviewing actuaries' reports you should be able to review the data.

Q. But an actuary who is in close contact with management, who is able to ask questions, who is not coming in, and I'm not critical of your position, you were hired in the context of this proceeding to come in and review data and you were not invited down to PLT to have a chat with everybody although presumably you could have asked for access but didn't do it, but somebody who is in touch with and has the day-to-day interaction and knows whether or not there are problems with personnel, for example, in the claims management process or the loss of a key person or something or whether there's been a loss, that's the kind of information that the actuary would want to know about as they're dealing with the projections on top of the body of data and triangles and all of the other stuff.

A. Yes, and that should be documented in the report. If they find out that somebody has been sick and that there's been a change in the claims adjusting process, that should be documented in the report.

Q. And if they think things are good and solid and if they think that after twenty years of experience that this is a very well run organization and that the problems are not operational but rather that in excess of $20 million in cash has gone out the door and affected the balance sheet, they wouldn't be documenting it in the report that there's problems with the claims handling. They would say there's a problem with surplus in the report, wouldn't they?

A. Yes.

Q. Okay. So here's my point on this. In

addition to her qualifications and her training and her skill and her certifications and the quality of her firm, Ms. Stazinski has the opportunity of having had twenty years of experience with this client to learn the ins and outs, their information, their history, their personalities which would be a benefit that she would have doing her work that would not be available to you.

A. Yes, that would be a benefit that she would have. The flip side is that she might feel personal attachments and therefore subconsciously be more optimistic.

Q. Good point. People lose objectively through familiarity sometimes, right?

A. Right.

Q. And is that why in part in the actuarial trade and science that there is indeed peer review done where someone else in the organization who is independent of those relationships comes in with a fine tooth comb and goes through the materials to make sure that they are objectively sound? Is that the reason for it?

A. That's the reason.

Q. And companies like Towers Watson and indeed it's been commented on here, they rigorously apply that peer review and really nothing goes out with any importance without that peer review process just to be sure that that standard is met. That's the way they work, isn't it?

A. Yes.

Q. So in this case the reports that we've been talking about that Ms. Stazinski did and prepared and worked on and testified about, in addition to that there is somebody else who is by way of peer review equivalently trained or qualified to go through these in an objective fashion on behalf of the company and organization to make sure they meet their standards and that they are not influenced by either mistake or relationship or lack of objectivity. That's the whole purpose of that kind of due diligence and quality control, isn't it?

A. Yes, it's to make sure that the range that they come up with is reasonable, and I have agreed that my estimate is within their range. I'm not arguing that they made an unreasonable conclusion or that they did anything wrong.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. In terms of the assessments you made and the decisions that you have talked about in coming up with really a variety of different approaches that you would argue as alternative pro formas and making various decisions here and there, did you go through a peer review process with somebody independent to assess whether or not your judgments were correct?

A. Yes. I had someone else working with me on this project, yes.

Q. And is that the person who also signed the report?

A. Yes.

Q. And that person is also signing as a member of your team and is identified as part of the expert team in this case, is that true?

A. Yes, that's true.

Q. And they are not here today?

A. Correct.

Q. And what's that person's name?

A. Hua Li. H-U-A. L-I.

Q. And do I understand he quite recently became certified in the actuarial organization? Is that the case?

A. Yes, he's a relatively new FCAS member.

Q. I saw the announcement on your web site. I'm sure he's proud of it and I'm sure you're proud of him and I'm sure he's very good, but in terms of the peer review aspect he's been -- I don't know if certified is the right word, but recognized in that society for a period of time? Months?

A. I don't remember exactly when he got his fellowship. It's been a couple of years. I should clarify that he did most of the work, so I guess technically I did the peer review. We kind of worked on it together. We did have two sets of eyes checking each other along the way.

Q. Well, perhaps I'm -- did you really look at your colleague's work with you as sort of a team with you and him doing the work? Did you really look as that as sort of a independent objective peer review process that is at the core of the way actuarial firms use peer review or was it more of a team effort?

A. Well, let me first start by saying we didn't do an independent review of their work. We didn't come up with our own indications. We didn't come up with a full report similar to their, you know, report.

We basically did a second opinion of their work and of the pro forma, so a peer review process with something like that is a little different. There's not all the independent projection methods and exhibit pages to be peer reviewed that there is in an ongoing report.

Q. So in the context of the way the actuarial profession works, your work product and your reports would not be fairly described as having gone through a peer review process as that term is commonly used?

A. This was a roughly six-week project, and there was another person that was involved who hasn't been named that we also talked through our assumptions with on how we were proceeding that's not named in the report. She provided some peer review also on this project.

Q. Does she work for your company?

A. Yes.

Q. And what is her level of training and who is that person in terms of your organization? Is she an actuary?

A. Yeah, she's an actuary. She's one of the principal owners of the company.

Q. And she's not been identified as an expert in

c5b52c31-46a8-47d5-962d-4050e69be2ca

this case.

A. Correct.

Q. But that really wasn't my question. So I understand now there's a third person in the organization that helped. I'm asking the question different than my high school teacher saying, Mr. Felmly, did you check your work. I understand you check your work. I get that. What I'm really trying to find out is whether you are here essentially testifying that in the context of the way peer review is carefully applied to actuarial work, in the setting of that profession would you agree with me that this process of checking and double-checking and the care you provided would not be really seen as a peer review process as used in that context for actuarial science?

A. No, I would not agree. I would say we followed essentially our firm's peer review process in this case.

PRESIDING OFFICER: Can we move on, Mr. Felmly?

MR. FELMLY: Mm-hmm.

PRESIDING OFFICER: Thank you.

Q. In terms of the amount of shortfall, if I can use that term, between PLT's financial position under the pro forma that Towers Watson has prepared and an amount that would take them to a 90 percent confidence level, you heard testimony from Ms. Stazinski that she believed it was approximately $3.1 some million dollars that made that difference. Is that something that you agree with or don't agree with?

A. That $3.1 million is what is necessary to reach financial viability?

Q. If they had $3.1 million dollars in additional monies available that hadn't been paid out leaving aside the $17 million and the other amounts, that would in all probability take them into an area of a 90 percent confidence level under this plan.

A. I agree that it sounds as though that would get them to a 90 percent confidence level roughly if that's -- I was just saying if that's how you define financial viability, then yes, it sounds as if it would get them close to that.

Q. And you're aware of the history of the company in terms of payments that it's made and the impact that it's had on their finances.

A. Yes.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. There's no reference in the report really about that circumstance bearing on your opinions or your conclusions or this plan, is there? You don't really address that subject.

A. No, I don't. I don't see how that's relevant going forward. That's already happened. I haven't been told that that might be undone or anything, so I don't see the relevance.

Q. Well, let me try and see if I can make it more relevant. If you had an organization you were reviewing and in reviewing it, it appeared that adverse results were being obtained because of a poor business structure or an inadequate sales force or some other problem so that gross sales were going down and money is not coming in the door, that might cause you concern if you saw those things in the various data and indicators about the potential viability of a company, wouldn't it?

A. Yes, if I saw those things.

Q. But by contrast if you had a company in terms of the operations of PLT as a pooled risk fund and hearing the testimony of both Ms. Parker who testified about her perceptions on the strengths of the organization and also Ms. Stazinski, do you have information that PLT does have some structural or business deficiencies in terms of operation that is causing it to not be able to meet its goals and objectives?

A. Yes, I believe I do based on the testimony that I've heard. I heard -- let's see. Where to start. It caused me some concern that Ms. Parker either didn't realize her expenses were over plan for the last fiscal year or she realized it and didn't disclose it here. Similarly, it caused me concern that she didn't realize that having only $12 million in contributions versus the $13 and a half million that was planned, she either didn't realize that was going to be a problem or she realized it and simply didn't disclose it here. Also, during Mr. Coutu's testimony it became obvious that he was the author of the financial section of the strategic plan which tells me that maybe the management team didn't have that expertise without him, and he's no longer there, as I understand it, and he was the one that had to explain to them how to set up a runoff plan which tells me there's some financial acumen lacking. I did

c5b52c31-46a8-47d5-962d-4050e69be2ca

hear that there is great management in terms of, you know, knowing what the numbers mean, providing training, providing all the resources, but from what I heard there's a lack of financial acumen there that troubles me.

Q. Did it also trouble you that you heard Mr. Coutu testify that based on his intense knowledge of this work and his work on the plan that he felt that this was a very viable plan? Did that trouble you in light of the comparison to your opinions, that somebody that intimately involved in it who had been in a liaison role had concluded that it was a viable plan and he believed in it?

A. His one opinion given the fact that he helped come up with the plan did not sway my opinion that the plan is very optimistic and very difficult to achieve, if at all possible.

Q. In terms of the way in which expenses or contributions both of which you put in your revised chart for the one you did last night, I guess it is, Exhibit 19, and the way in which that affects the numbers, isn't it your understanding that this process of doing pro formas and planning for the future five or seven years ahead for the company is going to be a dynamic process where as new information is received and the actuaries and the accountants provide information and they work on it, that that will be a continual reassessment? Is that known or understood by you?

A. I would say yes with a "but." I think this kind of underscores that instead of just coming up with one pro forma where they show what happens if they meet all of the goals, they could have come up with multiple ones where they said, if we lose 10 percent of business, then we will take larger rate increases or then we will cut expenses. So they could have planned ahead for some of these foreseeable issues that they've already run into. You don't have to wait until you have the problem, especially when it's very foreseeable like missing an expense number or losing some members.

Q. Well, fair point. You could in advance say I'm going to chart out a series of fixed previously established pro formas and run them now and give a wide range of performance which had they done so presumably would have presented the Hearing Officer

with something that would have ranged from high success to oblivion much as this chart does, right?
A. They also could have factored in what they would have done if they were trending towards it. That's where I think they could have helped themselves and helped the Hearing Officer.
Q. So let's talk about that. Because the story is yet to be written with respect to what would be the adjustments that would be needed in order to either keep the plan on track or alter the track or improve the track, and you understand that even as we stand here there is work in draft form that will be moving into new pro formas. You understand that.
A. Yes, I understand that. I also understand that a decision has to be made based on what was presented and not just based on the trust that a new plan can be made up on the fly that will address everything.
Q. Well, I don't know that making things up over months of assessment is on the fly, but leaving that aside, you are here adding into your Exhibit 19 the loss costs. One is low contributions which are something in the $12 million dollar range plus or

c5b52c31-46a8-47d5-962d-4050e69be2ca

minus and also some additional expenses of what? About $400,000, right?

A. Yes.

Q. Now, in addition to those two factors, if I represent to you that as these numbers develop there are also expense judgment projections and issues on other subjects that are also being evaluated and would be built in there and that this is not the complete picture, would that surprise you?

A. Well, this is really just fixing errors in the previous plan because I would point out that on June 29th or soon thereafter management should have known the expenses were off. They would have known what the premiums were going to be soon after the May 15th date when people had to notify them that they were leaving, so I would think that by late May they would have known about the $12 million dollar figure and they could have made that adjustment prior to the June 29th issuance. So I mean, I'm really just trying to give you what could have been included in June 29th report. They also didn't factor in that the PLT draft report shows $1.1 million dollars of adverse development. That's not in there either. So I'm not

c5b52c31-46a8-47d5-962d-4050e69be2ca

trying to make new assumptions. I'm just really trying to show what could have been included in the petition.

Q. And I understand that. What I'm really saying is the nature of this process is those two loss costs that you talked about, loss contributions and additional expenses, it would not surprise you that there are other adjustments that come along as this process goes on that the next report would be dealing with or picking up with and if there are shortcomings in the plan there will be the opportunity to adjust that and make decisions as to layoffs or expenses or other actions to make sure that you attend to them.

A. Yes. These need to be living documents, but when you know there's a strict deadline like having a hearing officer make a decision on your fate, I would think you would build in or try to give him as much confidence as possible by showing multiple scenarios and how you could make things look better because in my opinion, the line that they included must have been the best pro forma they could come up with. Otherwise I don't know why they wouldn't have shown something better than that if they were just going to include

c5b52c31-46a8-47d5-962d-4050e69be2ca

one.

Q. So really applying the chart that's up here setting aside the version that you did last night --

PRESIDING OFFICER: I'm sorry. Setting aside what, please?

Q. The revision that you did last night, Exhibit 19, this is the earlier version, right?

A. Yes. That's the one that's Exhibit 20.

Q. The reality of these lines is that as this timeline goes forward not only would you expect there to be innumerable evaluations of whether you are on track or off track but highly likely with an organization proceeding to a viable and consistent operation you can make adjustments that will change to some degree these numbers.

A. Yes, there will be volatility.

Q. The suggestion that the starting point is here and we're going to end up here, that's only if the organization does nothing to respond to the data and all of the projections come in exactly as they have been forecasted. The chances of that happening in actuarial science would be what? Zero?

A. Pretty much zero. And if I might add, that's

c5b52c31-46a8-47d5-962d-4050e69be2ca

why you should run multiple scenarios. You don't have to just show one line. You could do a stochastic modeling and show the probabilities more accurately for that line or show multiple lines.

PRESIDING OFFICER: Mr. Felmly, am I going to have any additional exhibits from your side?

MR. FELMLY: No, no new exhibits. I'm going to reference various exhibits, but I'm not planning to mark anything new.

PRESIDING OFFICER: So I will be seeing these future changes that are in present exhibits before me?

MR. FELMLY: I didn't hear you.

PRESIDING OFFICER: For the last fifteen minutes or so we've been going over the organization, presumably PLT, that they could make changes in the future, and I'm wondering by these references if I'm going to see any evidence upon which I can make a decision that there are planned changes.

MR. FELMLY: Unless you instruct me differently I'm not planning to produce those or create those. They will be created, but I'm not planning to present them.

PRESIDING OFFICER: And I'm not instructing you to do so. Go ahead. Move to your next topic.

Q. So let me ask you to turn in the Petitioner's exhibits, binder 2 of 2 which should be in front of you, and go to Exhibit 7. So that's book 2, Exhibit 7. That is entitled Executive Summary Analysis of Unpaid Loss and LAE as of December 31, 2014. This would be one of the documents that you reviewed I assume as part of your work.

A. I believe this was in the petition.

Q. Yeah, it was. So what I want to talk with you about briefly and ask you some questions about deals with the term you were using in your testimony of using numbers that were described as the "high reasonable." As you use the term high reasonable in terms of calculating or speaking of unpaid loss, what do you mean by that? What does that term mean?

A. Well, I was using their high reasonable numbers, so I presume it really depends on what they meant by high reasonable, but to me it is, as the name implies, a reasonable number. It is for financial purposes anything between below low reasonable and high reasonable is reasonable.

Q. Well, in your chart and in Exhibit 19 that revises it, the last two, four and five use as a starting point TW high reasonable reserves, right?

A. Yes.

Q. Now, what actually is presented as the go-to page, let's go to page TW, as in Towers Watson, in this question. Let's go to page 7 of that exhibit. So that's Exhibit 7, page 7. There's a chart there called Unpaid Loss, LAE and WC Assessments as of December 31, 2014. Is that a chart that Towers Watson has put into this report that identifies three different levels of assessments with respect to the unpaid losses in the workers' comp area?

A. Yes, three different levels being low reasonable, ACE and high reasonable.

Q. And ACE is the actuarial central estimate, and that's what Towers & Watson actually used in their projection, am I right about that, in the pro forma?

A. Yes.

Q. So ACE is sort of the -- and I'm not using this in a technical sense -- it's designed to show the numbers that are seen to be in the middle of the range. If there's a range of reasonable, the goal of ACE is to hit the middle of the range, is that true?

A. The goal is for it to be your best estimate. It's not necessarily the middle of the range. Actually, in the most recent draft exhibit it kind of migrated to be a little bit toward the low reasonable, but I happen to feel it's closer to low reasonable than high reasonable.

Q. But it's designed to be the best estimate.

A. Yes, it is supposed to be your judgmental best estimate.

Q. And so when you reworked some of this and changed certain assumptions and ran new pro formas one of the things you did on several of your runs was to substitute the Towers & Watson perception of best estimate and to bring in the number they had put in at the high end of their reasonable range that was taking out the outpost on that range of reasonable and that's the high reasonable number, correct?

A. Correct.

Q. And when you do that, that has a dramatic adverse impact on the projection, does it not?

A. Yes.

Q. And that drives these numbers very far down into an area that would seem ominous in terms of the ability to meet that plan, but there's another number on there and that's called the low reasonable and that would be taking out the other side of the range of reasonable in the Towers & Watson report.

A. Correct.

Q. And by contrast, and not surprisingly in light of the way these numbers play out, it's obviously significantly lower than the ACE number and sets out another reasonable scenario but the one at the low end. Fair statement?

A. Yes. It's reasonable in Towers Watson's eyes, yes.

Q. And you didn't run that.

A. I did not show that for two reasons if I could share that. One, while I said earlier that I believe the ACE estimate of Towers is within my range, I'm not saying that their numbers are unreasonable. My range would move more from their ACE to something above their high reasonable. So that's one reason I didn't include it. The other reason is that in trying to be helpful for the hearing I think it's more important to give some warning about how bad things could be. You're right. Things could be better than this. It's possible that things could be better than this, but I think there's much less than a 50 percent chance that they would be better than this and that the Hearing Officer doesn't really need to worry about how much money PLT could make or could add to surplus. The risk is really on the downside, so that's why I focused on the downside.

Q. Well, you were telling me that it was really in your view somewhat inappropriate for Towers Watson not to have run multiple pro formas, that it was important to provide a range, that all of the numbers that we're talking about here are within a range of reasonable. Presumably there's something outside the range that we don't have to look at here, but we're in the range of reasonable.

A. Right.

Q. And I understand that you may not think that it is as likely in the range of reasonable as the other, but in terms of the impact on the presentation, if you decided that you wanted to be fair and show what the impact is at the other end within reasonable range, using the low reasonable range would dramatically change this chart and cause the numbers and the curves to go dramatically upwards, wouldn't it?

A. Yes. I could have added a couple of additional lines that would have looked much better than this. As I've already said, I believe the top line there is -- well, the starting point I believe is reasonable, the top line. The rest of that I've already said I don't really believe is reasonable because I don't think that they can meet the plan. Yes, I could have shown it, you're right. Just as they could have shown more than one I could have shown more than this.

Q. I'm not asking you to sign up for the low reasonable notion. I understand you're not signing up for that, but just so we're clear as to how this projection process works, had the low reasonable number been used as a projection it would have moved the starting point rather significantly.

A. Yes, it would have moved it up by a couple of million.

Q. And if we move this up by a couple million dollars and if that were to happen, having in mind we're in an area where it does not seem to be unreasonable, it's the low reasonable, that would cause a result which would literally be off our chart on the up end and result in a very, very strong plan, wouldn't it?

A. We could draw any line we want. If it's not likely to happen, I don't see how it adds to this. I don't see how it would be very helpful quite frankly if it's not likely to happen.

Q. When you say it's not likely to happen, the only way you would get as an actuary to a low reasonable number is if you used assumptions that were in a low reasonable range and did calculations based on the data that got you there. Now, you might say there's a 20 percent chance or a 10 percent chance. It's not a 70, but this is not in the area of never going to possibly happen, is it?

A. No, it's not, but as I said, in making the draft I didn't really find the low reasonable to be reasonable. It's not within my range, so I didn't really want to show it.

Q. Can we leave this and agree without me messing up the chart that if we move this up by a couple million dollars we're going to have projections that get to a 90 percent confidence level somewhat easier and probably more quicker?

A. It would. I would add that if PLT or Towers Watson thought that was likely, I assume they would have provided that draft.

Q. Well, in fairness they did not chose the low reasonable. They chose the one which was their best estimate. They didn't present a best estimate and then say, and by the way, we may even have a better one than that. They presented what they felt was the best numbers. They didn't present the low reasonable and they didn't present the high reasonable. They presented the ACE, didn't they?

A. They presented the ACE along with a set of very optimistic assumptions, yes.

Q. So let me talk with you about one of those assumptions that you were speaking of and I want to talk with you about your -- I think this is in what you call the second pillar which is the issue about the calculation of the IBNR in connection with workers' comp and the issue of whether industry knowledge should assist in informing the result or in calculating the result versus relying on PLT data.

You understand that issue and you testified a lot about it, right?

A. Yes.

Q. And the bottom line on that is that Towers Watson used the triangles and their calculations and their years of experience with PLT and they used PLT's data for workers' comp numbers in order to come up with their IBNR calculations, right?

A. Right.

Q. And you said, and I think that it's unconvincing to me, I think that we should rely, if I understand the split, on 75 percent PLT and let's then bring in 25 percent of general industry knowledge. NCCI I think it is data you said.

A. It was Towers' numbers.

Q. No, I'm talking about what you did.

A. When I reran it I used Towers' data.

Q. But in terms of the criticism of Towers you're saying they should have used industry knowledge, and you believe they should have used industry knowledge for what? A portion of it?

A. I agree with what they wrote in their narrative, that PLT is relatively immature for a long tailed line of business such as workers' compensation, and I'm paraphrasing now because I don't have it in front of me, but you know, they said they needed to use industry recognition particularly in the tail factors.

Q. In the what?

A. The tail factors.

Q. For workers' compensation?

A. Yes. I agree with what they did.

Q. But my question is when you critiqued it you felt that the industry piece should have been utilized to about a 25 percent level, is that right?

A. Yes.

Q. So can I ask you to go to Exhibit 18. It's in book 2, and it's a chart and it's a chart entitled PLT's WC Ultimate Losses Have Generally Developed Favorably. That's the title on this chart, and if I understand this, it reflects the ultimate loss in the workers' comp line charted or bar graphed by year with the colored bars representing the accident year involved in connection with the body of claims that were being assessed. Is that what you understand it to be?

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Yes.

Q. So there was a time you know when Towers & Watson, because of the more limited number of years they had on the workers' comp risk to evaluate, did use industry data in doing their analyses and work for PLT. You are aware of that.

A. Yes.

Q. Okay. And that changed and they went over to essentially drawing on PLT data in what? Was it 2013 or thereabouts?

A. Yes.

Q. So for the years, let's say, 2010 and 2011 and 2012 they were using industry data in their efforts to assess and profile or describe the losses in this line of coverage, true?

A. To a very limited extent, yes.

Q. Well, do you know what the extent of the limitation was, if at all, in their use in earlier times?

A. I know that as of December 2012 what they were selecting and what they were selecting was so much below the industry number that they couldn't have been factoring in the industry data very much at all.

c5b52c31-46a8-47d5-962d-4050e69be2ca

Q. In what year?

A. I was seeing valuations using data as of 2012.

Q. Okay.

A. That was the oldest valuation I saw.

Q. And you're saying it was a small amount of industry data?

A. Right, because the data was very small.

Q. But go back two years from that. Let's go back to 2010 on this chart. This is at a time when Towers & Watson was using industry data to some extent, and for the 2010 year you don't know what the magnitude of that was.

A. Right. I don't know about the 2010 or 2011 years. I haven't seen those two bars in that kind of peach and gray, but I trust that this is correct.

Q. Looking at the 2010 year and looking at the way in which the losses developed by accident year with respect to the assessment or the evaluation by Towers Watson, isn't it clear that as you project forward from the 2010 year with a very high number, and almost $7 million was set forth, that indeed what they found was that their experience by accident year declined and was significantly lower in each of the years, that that was also replicated in 2011, although I do see that the blue and the green are very close, and that indeed they found that as they moved into the accident years where they were projecting based on PLT data, they were getting numbers that were far less than what the numbers informed by industry data had lead them to at an earlier time?

A. I think you're entirely misinterpreting this. The factors that I was commenting on are the ones that were beyond eight years of development. You're only showing accident years seven years and younger. None of these, we don't know how these years are going to develop beyond eight years, so what you're seeing here, some of it is what you said. As they use less industry information they lowered their ultimates. That's because they chose a lower factor. It could be just because they chose a lower factor. Nothing in here says that they're going to have development beyond eight years. Because you don't have any years here that are older than eight years you can't make any judgment about the tail factor based on this.

Q. And I'm not suggesting this is the story of the entire life of PLT, but with respect to the information set out here and with respect to the years since 2008 and going up essentially to 2014, and there's less data for the later years, it is reassuring in terms of the indication that the claims as they are evaluated on PLT data seem far less than what was projected earlier and that the numbers earlier being carried using industry data were very high based on PLT data. Now, you could say, well, that may change, Mr. Felmly, we'll see what happens in 2016 or 2018, and I can't complain or challenge that, but there is not the evidence that they are completely out of whack in relation to using PLT data in actually measuring the costs they are incurring.

A. Well, what I would say is I haven't raised any issue with any development factor they chose between twelve months of age and 96 months of age. I'm saying what they chose in those maturities are perfectly reasonable. I'll give them that. That's what we're seeing here. We're seeing here that between twelve months of maturity and roughly -- maybe not 96 but maybe 84 months or so, they had a pretty good experience and I'm fine with them using a hundred percent PLT data for those maturities. I think it makes sense because with those mature years you have enough years that are aged that aren't the size of the 2000 through 2005 years. That's my only problem that I'm raising, is using a hundred percent of PLT data from the 2000 through 2004 or 2005 years. Nothing further back is shown here. This doesn't address my issue at all in any way. You would really have to show the older years which for some reason were cut off. I think there's another exhibit that shows the PL lines and it actually goes back to 2003, but for some reason on this exhibit you decided to cut it off at 2008 whereas this is an exhibit where I would have liked to have seen the older years.

Q. So as the years are older there's a smaller body of coverage. It grew very dramatically after the period of time that you were focused on.

A. Yes, it grew very dramatically in the mid two thousands.

Q. So you're saying you're really concerned about that 2000 to 2004 period right before the dramatic growth in volume for the workers' comp line?

A. Well, I'm concerned that that data is not

c5b52c31-46a8-47d5-962d-4050e69be2ca

large enough to provide a hundred percent credibility for the selection of development factors. I'm not saying those were bad years or anything. I'm just saying they're not large enough to tell me enough information to use for all the subsequent years.

Q. Let me turn to a couple different subjects here and try and move along. Do you in your professional activities participate in AGRIP or the NLC-RISC organizations and have involvement in them?

A. No, I do not.

Q. Do you agree those are the two most well-known organizations that deal with public entity risk pools?

A. I believe so.

Q. Anybody else in your firm very active in those organizations?

A. No, not particularly.

Q. And you know they do have seminars and various teaching things and provide an opportunity for those actuaries dealing with risk pools to share information and gain knowledge?

A. Yes. I believe it's more for the actuaries to share information with the risk pools versus the other way around. I seriously doubt they are teaching the actuaries how to be actuaries.

Q. What would you estimate to be -- you mentioned you did represent some risk pools -- I'm talking about public entity risk pools -- and I think you said a handful. What would you say is the percentage without identifying the number that Casco's consulting revenue stream comes from in doing work for public entity risk pools?

A. By revenue it's --

Q. One percent?

A. It's very small. It's probably 5 percent or less. It's small.

Q. I want to ask you what you mean by the use of the term excessive rates. If I understood your testimony this morning, you are concerned that the rate increases that are part of the pro forma presentation and part of the strategic plan may have the potential of driving companies or municipalities, rather, that are better risk candidates out of the organization leaving people who may not find the same flexibility in the market and that through this adverse selection process this would be the outcome of

c5b52c31-46a8-47d5-962d-4050e69be2ca

having the rates set too high for the market. Is that the concept?

A. Yes.

Q. So in terms of excessive rates I think I heard you say this morning that you would regard a rate to be excessive if its calculation was greater than that which would be necessary when applied across the board to cover the losses and the costs that are incurred by the organization in managing those. Did I get that right?

A. Yes. For an organization like PLT, yes. If this were a commercial insurer you could also add in a reasonable profit margin.

Q. And if you think about that definition of excessive rates, any time an organization that is a public risk pool establishes a plan that involves increasing surplus or using its rates to try to enhance or increase its surplus so that it's going to have money it is projecting to try to generate funds that will be more than the amount calculated for costs and losses, you would say that's an excessive rate situation?

A. There are degrees of excessive, yes.

Q. I mean, in light of the cash payment history of PLT in the last several years and in light of the impact that had on the financial statements and the surplus, to get to a confidence level that would be targeted at where the Board wanted it at at about 90 percent, there would have to be in all likelihood some increase in rates over and above simply a break even point of the operating costs added to the losses, right?

A. Yes, I agree that given the situation PLT is in this is probably the only way they can gain net position.

Q. Now, if you had said this is a rate in excess of a break even position, you know, no profit or no change in net position, I would understand it. Using the term excessive as you use it, is that a term that has got common acceptance in the actuarial sciences or trade profession or is that a term you're just giving us and using it as Mark Burgess' definition of excessive?

A. Well, I guess a little bit of both. I think I said that -- not to try to coin a phrase, but because I believe that the rate has an excess component aimed at adding to that position, I said there's kind of two answers. For some of my risk retention groups that I do the pricing for I know regulators will ask me to affirm that the rates are neither inadequate, excessive or unfairly discriminatory, so that accepted rate is something that is probably in my head. That's why I used it. I didn't mean to say not excessive.

Q. But there's not some definition out there or some standard that's generally accepted?

A. No.

Q. Well, let me finish that just so the record is clear.

A. I'm sorry.

Q. You're right, you know where I'm going, but let me go there. There's not a definition of excessive rates that's been established with respect to pooled funds or other risk management companies that's been created by some legislative enactment or rule or guideline of the profession or a standard that says excessive rates shall be anything X percent over a certain amount. There's no specificity to this term.

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. No, not that I know of, and I wasn't trying to make a judgment call that it was equal or anything. I was really just trying to point out that if PLT is in the position where they have to charge rates in excess of what it takes to cover their costs and the competition does not, that puts them in the situation where it is likely that their members will leave for a better rate.

Q. Well, you would agree with me that excessive has sort of a pejorative ring to it, doesn't it?

PRESIDING OFFICER: Not as he's defined it.

Q. The standard is going to be that it is excessive and from your point of view going to result in the likelihood of people leaving the organization. If it's any number above the sort of break even point of what the rate would come from, losses plus cost, there's not a lot of flexibility on the part of the company in that situation because they will never be able to rebuild their surplus using rates, right?

A. Correct.

Q. So that definition of excessive would mean that the plan would have to be seen as "dead on arrival" because they could not use rates at all as a

c5b52c31-46a8-47d5-962d-4050e69be2ca

part of that structure.

A. Yes, correct, because that's the only way they can get the money.

Q. So then we get to the question that I'm more interested in which is if any increase in rates is not going to be a fair measure of sort of a business paradigm here, we've got to look at how much the rate increase is and make some sort of assessment as to whether that's going to be enough of an influence on the customer or the municipality so that they will disrupt an existing relationship which presumably they may be very satisfied with and leave and go to somebody else, right?

A. Yes. I think just this morning we heard sort of two different views, one saying they weren't very price sensitive and that they would be more likely to be loyal and another saying that they were likely to leave if someone else was cheaper.

Q. So it's highly fact specific in terms of the relationship and the experience with the municipal organization and it has to be seen in the context of what other available competitive carriers are doing to find out whether or not this is going to turn from a higher rate to a departure from the exposure group, right?

A. Can you ask that again? I'm sorry.

Q. Yeah. You have to make some assessment as to whether the proposed rates are likely to influence companies or in this case municipalities to change coverage.

A. While that's true, even without the future rate increases PLT has been losing exposures for years, but yes.

Q. Well, you have not done any survey or analysis of the New Hampshire PLT market to find out where the sort of line of demarkation is between what municipalities would think would be an acceptable rate increase versus one that would be intolerable.

A. No, but it sounds like someone should have, yes.

Q. Well, you've gone so far as to actually project what you think the impact would be and come up with indications on your own projections on adverse selection. I mean, you have come up with numbers without doing an actual survey, haven't you?

A. Yes. I was trying to quantify what could happen because there were warnings in the Towers report without any numbers. I believe there was the phrase "materially misstated," and so I wanted to try to be helpful and trying to quantify what that could be. If you don't agree with the numbers I picked, I'm not representing those to be one hundred percent accurate. I'm open to other numbers, so yes.

Q. Well, it's not about making me happy or agreeable with it. What I'm trying to establish is I'm trying to find out if there's data or evidence or information or communications with municipalities or something you're basing this on as opposed to essentially coming up and saying, you know, I'm trying to find a fair number and here, chose one. It sounds like you did the latter. You tried to find a fair number in your mind and you chose one.

A. Yes, exactly, and I tried to quantify what I deemed to be a fair number and what impact that would have on PLT's plan. So I'm not saying that's going to happen or that's the correct number. If someone had done a market survey, maybe they could have come up with the exact right number.

Q. Well, other than sitting in this courtroom

c5b52c31-46a8-47d5-962d-4050e69be2ca

and hearing two Town officials testify, you have no personal data or information that runs to municipal feelings or decisions or impressions or what they are saying they would likely do. You don't have any base of information like that at all, do you?

A. Other than the last few days and reading the cancellation notices that were included, but you're right, I'm not an expert on the New Hampshire marketplace.

Q. So the adverse selection data really is a projection even beyond them leaving because the adverse selection data gets to the point not that we've lost a member but that we've lost a member who was a better loss risk in comparison to somebody who stayed, right?

A. Yes, we did include in the back of the report what the line would look like if there's no adverse selection if they just leave, so we did include that also for informational purposes.

Q. And Towers & Watson didn't make a projection that postulated that no member would ever leave, did they? What they did was they said, we're going to do this based on exposures and we're going to assume there will be members that leave and members that come in and we think that we're going to keep that constant for the period and assume no growth or decline.

A. Correct, but assuming no growth or decline seems unreasonable given that they have declined by 15 percent over four years and 10 percent in the last year.

Q. And in terms of those years, let's talk a little bit about those years. If we go to book 2, Exhibits 20 and 21 for a moment, our book, so if we go to PL membership over time and this projection or this graph showing the membership levels against the timeline, if you take the PL members and look at that line or look at that calculation, what you see is that in roughly 2011 or at some point in that year is when that decline begins. There are several spikes and dips in that period, but prior to 2011 the growth in the organizational membership level was a very steady and good projection, was it not?

A. In terms of membership which means virtually nothing for financial purposes, but yes.

Q. And then in 2011 do you understand that the years since 2011 would overlap with the years in which

PLT has had significant administrative proceedings in matters relating to its status?

A. Yes, just as I understand that the period when they had growth in membership is the period where they had subsidies that were demanded to be returned, so I believe that the rates were probably understated for that period and that's why they grew and when they had to take the increases they shrank.

Q. But if you have an organization that is known to have had to have paid $17.1 million and there are issues about being in runoff, those aren't favorable indicators for maintaining or improving membership levels until they get that behind them, are they?

A. That's correct, but in the future I doubt the reputation will change overnight and so to the extent members start to understand that the way PLT is going to get to a better financial position is through increasing rates and charging a rate above what they need to charge, I don't know why you would say that diminishing exposures would stop.

Q. And then if you look at the workers' comp line, there's a very sharp decline in roughly the '13-'14 period slope, but there had been a more gradual slope of decline between 2009 and 2013. Is that more gradual slope between 2009 and '13 more likely to be related to pricing issues do you think?

A. It could be in which case -- to me it seems to back up what you would expect with a slope downward in the future and also when you're increasing prices.

Q. So if you have a situation where PLT through this petition were to be in a position where it was writing new coverages and presenting the plan and the pro forma and going forward, wouldn't that be a more positive situation in terms of the likelihood of keeping and attracting members?

A. More positive than what? Than having runoff?

Q. Than being in runoff and being in a situation where you have to make multiple million dollar payments as a result of an order and leaving aside whether they were -- leaving aside the issues underlying the orders, just the payment consequences that had an impact on the organization in the eyes of its members, that would be adverse, wouldn't it?

A. I don't know where that reputation goes away suddenly after this hearing. I would think that members would know or potential members would know that PLT had been in runoff for a period of time and if they are allowed to come out of runoff I would think for several years there would still be an uncertainty over their financial position.

PRESIDING OFFICER: Aren't we getting a little bit far afield from this witnesses' expertise?

MR. BURGESS: Yeah, I was going to point that out.

MR. FELMLY: I'm moving away from it.

PRESIDING OFFICER: Thank you, Mr. Felmly.

Q. In terms of your experience, and I'm sure you heard Ms. Stazinski report that according to AGRIP data that 45 percent of risk pools have more than one line of coverage in them, is that consistent with your experience?

A. As I stated, I don't have nearly as many risk pools as she does. The risk pools that I do work for are only for workers' compensation, so no, it's not consistent with my experience.

Q. But you're not able to offer any challenge as to whether or not this is a common situation where public entity risk pools have more than one line of coverage?

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Exactly. No, I recognize my experience is extremely limited in that area.

Q. If you take my representation --

PRESIDING OFFICER: Which representation would that be, Mr. Felmly? Oh, now. Okay.

Q. So we have presented in evidence a large number of letters of support by PLT members to this tribunal strongly indicating their support and Ms. Parker testified on Tuesday, and you heard it, that a very large number of the members and certainly the Board are very strongly in favor of proceeding and keeping PLT operating and in significant measure underscored the refiling of the petition that was done in June, and the representation I'm therefore going to ask you to make is to assume that that good will and that body of strong membership support is there in a significant way and that that group is highly supportive of this plan going forward. Is that of any importance to you in assessing whether or not it is likely that there would be a dramatic increase in exposures going forward?

A. I don't know how much to factor that in. I did see, I believe it was, 75 letters of support. I don't think they were all from current members though, but be that as it may, given that there are roughly 291 members, even if I assume 75 are very committed and would never leave, that still leaves two hundred and something that could leave, and really I'm just projecting that I think maybe a third might leave over a six-year period. So I did look at that and I did think about it, but it didn't persuade me at all. If I had seen 290 or 291 letters, then obviously I would have said okay or even if it was two hundred something.

Q. I'm not going to represent to you how many of the members have a view comparable to that presented by Mr. Lynde when he testified this morning. Plainly some do. We purposely presented testimony that showed two approaches to that by Town administrators, but more importantly, to the extent you have Town officials and people in municipalities who believe in the quality of the PLT product, who believe that the pricing is fair, who value the service and the like, that is a significant factor in terms of what they are likely to experience and it will be based on how many people are out there like that as opposed to people

c5b52c31-46a8-47d5-962d-4050e69be2ca

that may take a different view.

PRESIDING OFFICER: Wait for a question.

Q. Fair statement?

A. It's a fair statement, but given that the plan is essentially that we'll have nearly one hundred percent support, in my experience and from working with some governmental clients I know that some of these members must be in a tight financial situation where even if they love PLT, if they can save money for their constituents by switching to Primex or a commercial insurer, I think they would have to do it. They would be negligent if they paid more money for PLT and had to raise property taxes or something to get the money back.

MR. FELMLY: Can I have a minute or so to just join my colleagues and go over my notes for a moment?

PRESIDING OFFICER: Certainly. It's always been my experience that that's helpful.

MR. FELMLY: Thank you. I have no further questions.

PRESIDING OFFICER: Thank you, Mr. Felmly. Mr. Volinsky, anything further with this witness?

MR. VOLINSKY: I just have one point of clarification I want to ask about.

FURTHER EXAMINATION

BY MR. VOLINSKY:

Q. Would you take out book 2 of the BSR, Exhibit 17?

A. Yes.

Q. Mr. Burgess, you mentioned something about seeing notices of cancellations based on price.

A. Yes.

Q. Are those notices the ones compiled in Exhibit 17 of the Bureau's exhibits?

A. Yes, and I noticed that they all say price was the reason.

MR. VOLINSKY: That's all. Nothing further.

MR. FELMLY: No follow-up.

PRESIDING OFFICER: Mr. Burgess, bear with me if you will. First, there was an abbreviation that was referenced during your testimony and actually before, but as we get closer to the end witnesses kind of get into that cleanup position.

MR. BURGESS: Right.

PRESIDING OFFICER: AGRIP I understand. I

c5b52c31-46a8-47d5-962d-4050e69be2ca

want to confirm NLC.

MR. BURGESS: I think that's -- I'm not sure if that was one brought up by Bruce.

PRESIDING OFFICER: You mentioned NLC and AGRIP as the two, if you will, that sponsor a lot of training. I think that was the context.

MR. BURGESS: I don't know.

PRESIDING OFFICER: That's fine. Mr. Burgess, you were here for the testimony the prior two days as well, correct?

MR. BURGESS: Correct.

PRESIDING OFFICER: You used the term back into.

MR. BURGESS: Yes.

PRESIDING OFFICER: Can you first tell me if that's an actuarial term and, if it is, how you use it?

MR. BURGESS: No, it's not a specific actuarial term. I was just using it as sort of a common phrase of starting with an answer that you want and then figuring out how you back into the steps or the assumptions to get there.

PRESIDING OFFICER: I believe on several

c5b52c31-46a8-47d5-962d-4050e69be2ca

occasions you referenced the net asset position that your examination found PLT in.

MR. BURGESS: Right. Or net position, yes.

PRESIDING OFFICER: Net position. Is there any significance in the net position in the data, the most recent data you've examined? Is there any significance actuarially to that amount of money in relation to the amount of business they write? The type of loss exposure they have?

MR. BURGESS: Do you mean in terms of sort of what net position the organization should have or...

PRESIDING OFFICER: I guess is there a standard. Do you have an opinion?

MR. BURGESS: Well...

PRESIDING OFFICER: First, is there a standard?

MR. BURGESS: Is there a standard? If this were an insurance company there are some standards or some kinds of benchmarks. For instance, you usually wouldn't write more than a three to one ratio of premium to surplus and sometimes you also look at similar ratios of surplus to loss.

PRESIDING OFFICER: Let me stop you there.

In terms of insurance companies was your reference.

MR. BURGESS: Right.

PRESIDING OFFICER: The workers' compensation line of insurance that PLT operates, is it your understanding that they are subject to Department of Labor standards?

MR. BURGESS: Yes. I mean, yes, the Department of Labor does have some regulatory authority over them.

PRESIDING OFFICER: What understanding do you have of the property-liability piece? Are there any standards established for that that you've read?

MR. BURGESS: Not that I've read. Especially for risk pools. I haven't seen anything specific to that.

PRESIDING OFFICER: So if I can direct your attention to the workers' compensation line, have you seen combined and nonconsolidated figures of asset position for workers' comp and for property-liability?

MR. BURGESS: You mean for PLT have I seen those?

PRESIDING OFFICER: Yes.

MR. BURGESS: Yes.

c5b52c31-46a8-47d5-962d-4050e69be2ca

PRESIDING OFFICER: I don't know what exhibit to direct your attention to, but if you have it in your binder, can you use the pro forma report of Towers Watson? It's my recollection without pausing right now that it may be in the Towers Watson pro forma report where the columns appeared separately.

MR. BURGESS: Right. It's Exhibit 8 and it's labeled sheet 1 and sheet 2.

PRESIDING OFFICER: Is there a net asset position reflected there?

MR. BURGESS: Yes, and I believe it's negative for the PL lines for roughly four years.

PRESIDING OFFICER: And for the workers' compensation line?

MR. BURGESS: That's also included and it's positive.

PRESIDING OFFICER: Do you recall how positive it was or the reference to it?

MR. BURGESS: No. I think I could probably find it pretty quick.

PRESIDING OFFICER: Would you do that for me, please? And if anyone has that exhibit number off the top of their head --

MR. BURGESS: Here it is. It's a Petitioner's exhibit and it's in binder 2 of 2, Exhibit 8 at the bottom right there, the page numbers that go up to page 10 of 10, and it's two pages beyond that.

PRESIDING OFFICER: Okay.

MR. BURGESS: It's labeled at the top right Workers' Comp PL Sheet 2 and midway down the page you'll see a net position that starts for workers' comp at $3.4 million for the '13-'14 year and a negative $2 million for PL. Those are the numbers I was referring to.

PRESIDING OFFICER: And the three to one ratio, that was your opinion?

MR. BURGESS: Oh, actually I mentioned that. That does relate to insurance in the sense that this is not strictly insurance and isn't regulated to have as strong a capital position because I believe under 5-B risk pools they are meant to be more thinly capitalized than insurance companies, so I probably shouldn't have referenced that. I don't think it's relevant here. I apologize for that.

PRESIDING OFFICER: We don't want to get

c5b52c31-46a8-47d5-962d-4050e69be2ca

confused at this late juncture.

MR. BURGESS: I'm sorry if I did that.

PRESIDING OFFICER: I'm going to ask a hypothetical of you and it would be this. Well, first I'll ask, is Casco the same type of company that Towers Watson is but significantly smaller?

MR. BURGESS: We're both consulting companies. Casco just does actuarial consulting. It's my understanding that Towers does a lot of different things and has a lot of different specialty areas. I'm not sure exactly how they're set up. Casco is set up as a corporation, not as a partnership, so I'm not sure legally, but it is similar in terms of the tasks we perform.

PRESIDING OFFICER: Do you perform audits?

MR. BURGESS: No, we do not do audits and I don't believe Towers & Watson does audits either. In my history the actuaries do the audit support work.

PRESIDING OFFICER: I believe it was Johnson & Lambert. Here comes the hypothetical. If PLT as you understand its present financial condition, its present organizational format, that is, running those three lines, if they were becoming an entity that

c5b52c31-46a8-47d5-962d-4050e69be2ca

would offer these three lines of insurance, so we're talking about a new business, and you were called upon to assist them, could you do that applying industry standards to your perceptions where there was no actual data? Because I'm in your company.

MR. BURGESS: Oh, so if you were trying to start a new risk pool?

PRESIDING OFFICER: Exactly.

MR. BURGESS: Yes, that could be done. Definitely. I mean, Casco couldn't do every part of it, but Casco could help with the development of rates, yes.

PRESIDING OFFICER: And did you understand Ms. Stazinski's testimony when she went down several elements or presumptions that were put up on the screen during her direct testimony with respect to the questions that Mr. Volinsky went through, those so-called bullets?

MR. BURGESS: Right.

PRESIDING OFFICER: I believe that her testimony was that with the exception of two, that Towers Watson relies completely on the client to provide that data which become presumptions, is that correct?

MR. BURGESS: That's my memory of what she said, yes.

PRESIDING OFFICER: Do you agree with that?

MR. BURGESS: With doing it that way?

PRESIDING OFFICER: Do you agree with doing it that way, yes.

MR. BURGESS: No, I do not. When I have had similar engagements I would certainly ask the client for input because they know a lot about their business, but then I would push back on the answers and when I produce a report I would say, these are the numbers I've blessed. I mean, even if they originated with the client I would feel that I needed to say, you know, this assumption is based on what the client told me, but this is my work, so I own this.

PRESIDING OFFICER: I believe that the record will show that there was a pro forma undertaken by Towers Watson for PLT and that pro forma was incorporated into their strategic plan. Do you remember that testimony from earlier in these proceedings?

MR. BURGESS: Yes.

c5b52c31-46a8-47d5-962d-4050e69be2ca

PRESIDING OFFICER: Do you recall, and I believe the record will reflect, that there were at least two reiterations?

MR. BURGESS: Yes.

PRESIDING OFFICER: Is it common for there to be multiple reiterations in the context of the testimony you heard?

MR. BURGESS: Yes, I believe that is common, that as a plan is being finalized there will be, yes, tweaks along the way.

PRESIDING OFFICER: And if you were asked to create a reiteration, to produce a reiteration, it would be on what basis? What forms the rationale for you to do a do-over?

MR. BURGESS: I guess it would be when new information is available.

PRESIDING OFFICER: And that new information comes from whom usually?

MR. BURGESS: Usually there's either updated information available from the client or I would say the client would request that reiteration to happen. They would say, we have new loss data or we have new expense data, let's see how the pro forma looks with this new, up-to-date information.

PRESIDING OFFICER: Thank you. Can you clarify credibility? When you used it, it was prefaced by the word statistical credibility, correct?

MR. BURGESS: Yes.

PRESIDING OFFICER: When you use the term financial viability in the context of these issues here, what do you mean by financial viability? I'll ask it in two parts. First, is that a term of art in the actuarial business?

MR. BURGESS: No.

PRESIDING OFFICER: Therefore, what definition do you ascribe to it when you use that term?

MR. BURGESS: I've thought about this a lot. I think that if you use the definition or if you define it as 90 percent confidence level, I think that's probably fair. I mean, to me financially viable means there's a very low chance of failure, and to the extent that there is a 10 percent chance of failure, if you're willing to risk a 10 percent chance of failure, I think it really depends on the stakes involved and sort of how bad things can be if the failure occurs.

PRESIDING OFFICER: And I always do this to myself, but now you've used the term that it can depend on the stakes involved. What do you mean?

MR. BURGESS: Well, I guess I meant if we're talking about there being a 10 percent chance of losing a dollar, that's different than a 10 percent chance of losing your life.

PRESIDING OFFICER: Understood. As part of the work that you've done in your career are you familiar with the exercise or task of stress testing?

MR. BURGESS: Yes.

PRESIDING OFFICER: And is that considered a separate task in the scope of services for an actuary or an accounting firm like Towers Watson or like yourself, Casco?

MR. BURGESS: I would say generally not. I think it's kind of part of the job. To some extent things like the range of reasonable results, that's kind of like stress testing. It's not exactly, but it gives you some idea of -- it kind of quantifies the possibilities of what could happen. When I say stress testing, I kind of mean like a sensitivity analysis, like sort of what if things go wrong, how bad would it be type of thing, so yes, I think giving results without any stress testing or any discussion of that is a lot less helpful.

PRESIDING OFFICER: Thank you. Did I start anything, gentlemen?

MR. FELMLY: If you did, I'm not going to follow up on it.

PRESIDING OFFICER: Thank you, Mr. Felmly. Mr. Volinsky?

MR. VOLINSKY: All set.

PRESIDING OFFICER: Thank you for your testimony today, sir, and you are excused. Please take your empties with you.

(There was a short recess.)

PRESIDING OFFICER: Okay. We're going on the record. We'll return to the BSR case and we have a new witness from the BSR and I recognize Mr. Tilsley who has stepped forward to conduct the examination

MR. TILSLEY: The BSR calls Roger Dieker to the stand.

ROGER DIEKER

having been duly sworn by the Presiding

Officer, was examined and testified as follows:

PRESIDING OFFICER: Would you state your name for the record and give us your address? It can be a business address. Just give us one of your addresses.

MR. DIEKER: Roger Dieker. D-I-E-K-E-R. 2 Wall Street, Manchester, New Hampshire.

EXAMINATION

BY MR. TILSLEY:

Q. Where do you work?

A. CB Richard Ellis.

Q. And what is that?

A. It's a commercial real estate firm.

Q. And what do you do at CB Richard Ellis?

A. I'm the managing broker for the Manchester office and we cover central and southern New Hampshire.

Q. And how long have you worked there, sir?

A. Ten years.

Q. Have you been the managing broker for the entire time?

A. Yes.

Q. What are your job responsibilities as the managing broker for CB Richard Ellis at the office in Manchester?

A. I oversee three brokers in the office and coordinate all the activities with the other CB Richard Ellis offices in Portsmouth, Boston and across the country.

Q. And what business is CB Richard Ellis in?

A. Commercial real estate focused primarily on office and industrial leasing and sales in the territory.

Q. Do you hold any licenses in your field, sir?

A. Yes, I am a licensed broker in New Hampshire and Massachusetts.

Q. You have in front of you, sir, Exhibit 12 which is your report. I'm actually going to refer you to Exhibit 13, the next tab in the book. We see a lovely picture of you there. Is that your professional profile, sir?

A. It is.

Q. And does that detail your achievements and affiliations and history with CB Richard Ellis and your history in the field?

A. Yes.

Q. It also details some of your sample clients and sample deals?
A. Yes.
Q. Are you familiar with the various office spaces in Concord?
A. Yes.
Q. What types of office space deals have you and your firm done in Concord?
A. In addition doing transactions we assess the market annually with repsect to vacancies and pricing information to provide to our clients, both landlord and tenant. The office deals that we've done in New Hampshire or in Concord run the gamut from the lower end kind of utilitarian space to high end Main Street new construction space, long-term leases.
Q. When you say that you survey the market, how do you survey the market?
A. So we have a database of every investment property above ten thousand square feet and annually we track those for occupancy to adjust those numbers.
Q. And are you familiar with those survey results as you compile them on a regular basis?
A. Yes.

Q. Have you developed knowledge regarding market rents in the Concord area?

A. Yes.

Q. With regard to office space?

A. Yes.

Q. As part of this task did you perform a market analysis?

A. Yes.

Q. What is a market analysis?

A. So we looked specifically at this address, this property, and assessed, you know, location, condition and comparable-type properties in the market that have existed, you know, in that timeframe.

Q. And is Exhibit 12 the market analysis that you performed in this case?

A. Yes.

Q. What property did you conduct a market analysis of?

A. 25 Triangle Park Drive.

Q. And you're familiar with the fact that the petitioner in this case, PLT, leases some space in that building, correct?

A. Yes.

Q. You also have in front of you Exhibit Number 5 in the Petitioner's binder 2 of 2, and I promise this is the last binder I'm going to refer to. Once everybody gets there I'll ask you a couple questions.
A. Yep.
Q. Do you recognize this document, Exhibit Number 5, sir?
A. Yes, this is the lease.
Q. Have you had an opportunity to review that lease before today?
A. Yes.
Q. And it's a lease between Center of Triangle Park, Inc. as landlord and Property-Liability Trust, Inc. as tenant?
A. Yes.
Q. How much space is involved in the lease?
A. The leased premises.
Q. There's an Exhibit A at the rear. Does that set forth the terms of the area that's leased?
A. It outlines the space that's leased, but it doesn't have the size.
Q. Let me ask you a different question, then. Go to page 3 of the lease agreement. Is there a

rental amount on the square footage basis for the premises?

A. Yes; $12 per square foot.

Q. And based on your review of the lease is that a gross amount or a net amount?

A. Gross.

Q. Can you explain what a gross amount means in the context of a commercial office lease?

A. The lease amounts, usually we quote the lease amounts on a triple net basis, so that would be net to the owner/investor of the property per square foot. Expenses on top of that that we don't carry in a triple net lease would include taxes, common area maintenance which would include snow plowing and repairs and then the utilities, so those are the three areas of expense that wouldn't be counted in a triple net lease.

Q. So if I enter into a triple net lease, I as the tenant have to pay for the taxes, the insurance, the common area maintenance?

A. And utilities. In a gross lease all of that is wrapped into the gross rent number.

Q. So whatever check I write to the landlord is

my entire obligation for the leased premises?
A. Correct.
Q. And the landlord in a gross lease would then pay the taxes, take care of the maintenance?
A. And utilities.
Q. And this is what kind of lease?
A. This is a gross lease.
Q. So $12 dollars per square foot is all that PLT has to pay under this particular lease?
A. Yes.
Q. Where is this property located?
A. This is in Concord, the Steeplegate Mall area, a mixed use area with retail and professional office space.
Q. Are you familiar with the property?
A. Yes.
Q. Have you had a chance to drive by and take a look at it?
A. Yeah, I've been through it. I went through the common areas. I haven't been in the specific space, but it's commensurate with other buildings in the area.
Q. And can you describe the property, what type

c5b52c31-46a8-47d5-962d-4050e69be2ca

of building it is, what the grounds look like, what it looks like inside?

A. It's wood construction which is probably a step down from your steel glass, concrete type of structure. It has well-maintained grounds. It's in an area that even though it's a mixed use area, it's got good privacy. It's grassy. It's a very professional area.

Q. If you were listing this space with your company would you give it a certain type of classification, sir?

A. We would call it class A. I mean, whether it's wood frame or steel and concrete, I think that type of building is a class A building.

Q. Now, in doing your market analysis which is Exhibit 12, what type of analysis did you go through, sir?

A. We wanted to compare it specifically to gross leases in that area and that's what we, you know, kind of developed for comps for something that would be a gross lease. There were other triple net leases where we could have chosen to add on all of those expenses to get to that gross number, but we looked at gross

c5b52c31-46a8-47d5-962d-4050e69be2ca

transactions.

Q. When you talk about comps, what are you referring to?

A. Comparable properties, comparable transactions that would get into the specifics of rent, size, term, you know, as a comparable to this lease.

Q. And where do you get information regarding these comps?

A. A lot of it is from databases that we keep on transactions. When we do our annual review we're talking to brokers, we're talking to owners, we're talking to tenants about, you know, the details of transactions to compile them as an informational database.

Q. And did you identify some comps and attach them to your report that is Exhibit 12?

A. Yes.

Q. Why don't we just briefly walk through the comps. The first one is 17 Chenell Drive in Concord, New Hampshire. Can you tell me why you felt this property was comparable to the 25 Triangle Park Drive property?

A. It's in kind of the Heights area. It's a wood framed structure, simple construction similar to 25 Triangle Park commensurate with the type of building and fit-up. You know, it was leased on a gross basis.

Q. What was the rent on a gross basis for that property?

A. $18 per square foot gross.

Q. And what was the commencement date on that lease?

A. That was the spring of 2015.

Q. And how would you classify that space?

A. Comparable. It's, you know, utility office space in a good location. 2,200 square feet is a smaller size for a building for the area, but that's a comparable transaction.

Q. It says here on page 2 that the property type is class A office. Is that the same property type as 25 Triangle Park?

A. Yes.

Q. If we turn to the next page we see 6 Loudon Road. Why did you feel that property was comparable to 25 Triangle Park Drive?

A. That was getting closer into downtown, but again it was a gross lease. That building would be, you know, considered a little more premium with the brick and the steel frame construction. It would be a quiet office environment, so we would expect that to get a little more of a premium than a wood frame construction.

Q. And what is the gross rental rate on this particular comparable?

A. That was $19 per square foot.

Q. And when did that lease commence?

A. That was May of 2015.

Q. And once again you typed it as class A office space?

A. Yes.

Q. Finally, the last page, the third comparable is 53 Regional Drive. Why did you feel that was comparable, sir?

A. Again, it was up in that area of Concord. This is a little bit more of an industrial airport type of space or type of location, but you know, it has a great finish with interior fit-up and is going to be comparable and would be a good comp for that on a gross basis.

Q. And what was the rent on a gross basis for that property?

A. $17.52.

Q. And when was that lease entered into?

A. That was December of '14.

Q. And what property type was this particular property?

A. That was class A office.

Q. I forgot to ask you one question on the underlying lease agreement, sir. What's the term of the current lease that PLT has at 25 Triangle Park Drive?

A. It's through 2017.

Q. And when was it entered into?

A. 2015, so a two-year lease.

Q. And does the two-year term play any factor into your analysis of what the market rent should be?

A. I think the market term would be three to five years which is kind of a short-term lease, so being shorter than what the owner would expect to have, so increased costs as far as marketing and vacancy and legal expenses to generate a lease for two years versus five and would be a little bit more expensive on the short-term.

Q. So the shorter the lease the higher the rent is likely to be?

A. Yes.

Q. Based on the comparables and your review of the lease did you reach an opinion as to what the market rent on a gross basis would be on the property at 25 Triangle Park Drive?

A. Yes.

Q. And what is that opinion?

A. That it would be a longer term lease. It would be in the 16 range. A shorter term would be 16 to 18.

Q. And that's on a gross basis?

A. Yes.

Q. When you say 16 to 18, that's dollars per square foot?

A. Yes.

Q. And that opinion is contained on the front page of Exhibit 12, correct?

A. Yes.

Q. If PLT is paying $12 dollars gross for this space are they paying at or above or below market?

A. Below market.

Q. In the Concord market based on your experience what kinds of office space could you get at the $12 dollars per square foot price?

A. I don't have the exact accounting of the ownership and the expenses on that, but roughly for that wood framed structure with multiple stories you would be in the $6 dollar expense range, so that would take that $12 dollars gross down to $6 dollars triple net which $6 dollars triple net, if you look at our market information, would be more the industrial type of product. Office buildings on average are in that $10 to $12 dollar triple net range, so you know, you're not going to find a comparable office product with that office location in that $6 dollar triple net range.

Q. When you talk about taking $6 dollars off the triple net, I think I hear you saying that $6 dollars per square foot is what one would pay for the property taxes, common area maintenance and utilities.

A. Correct.

Q. So if I pay $6 dollars triple net, I'm mostly going to pay $6 dollars a square foot for my utilities, my maintenance and my taxes?

A. Yes.

Q. So I'm going to pay a total of $12 dollars just like PLT?

A. That's correct.

Q. And basically you couldn't find office space in Concord at $12 dollars gross or $12 dollars per square foot triple net, $6 dollars per square foot triple net or $12 dollars gross?

A. Yes.

MR. TILSLEY: No further questions, sir.

FURTHER EXAMINATION

BY MR. FELMLY:

Q. Good afternoon. How are you?

A. Good.

Q. I'm Bruce Felmly. I represent PLT. With regard to the property involved here, you have been as I understand it in the common areas, but you haven't gone through the actual leased premises.

A. Correct.

Q. And have you looked at properties in the general neighborhood of this property to see what commercial properties there are going for?

A. Yes.

Q. There are properties available in the city of Concord for $12 dollars on a gross basis, aren't there?

A. Not office in that location. So I'm not looking at mill space. You know, I'm looking at class A office properties in office locations.

Q. I mean, in terms of location, something closer to downtown, something like the comparable you have on Loudon Road, that would be a much more desirable location than this, wouldn't it?

A. I wouldn't say much more, but you know, depending on what the nature of the business is, if it's Main Street central, if it's near the Capitol, it may being more desirable for that tenant.

Q. You indicated in your report, and I think you mentioned it in your testimony, that you've done some research on properties in the Concord market area, is that right?

A. Yes.

Q. Did I hear you say that you researched properties that have ten thousand square feet or greater?

A. Yes.

Q. So in your report where you have the reference with regard to the vacancy rate in the Concord office market at 14.4 percent, is that for properties ten thousand square feet or greater?

A. Yes.

Q. In terms of properties that are 2,200 square feet or 2,500 square feet, have you done research on that?

A. Well, that's the building. The total building is ten thousand square feet. Prices may be smaller, but the building, that's our threshold to measure.

Q. So what you're saying is there are buildings in Concord at about the 14.4 percentage that have some level of vacancy in them that have total square footage of twelve thousand square feet or greater?

A. So the total market size measures 2.4 million square feet and that list of 2.4 million square feet of office property is made up of buildings that are larger than ten thousand square feet.

Q. Now, were you in court or were you aware that

the liaison for the BSR examined the leased
circumstances, Mr. Coutu specifically, trying to find
out if this was a fair rent? Were you informed of
that? Do you know anything about that?
     A. No.
     Q. I wanted to show you two properties. You
graded the property at issue here as class A office
space, is that right?
     A. Yes.
     Q. And I gather that is in part influenced by
what the construction type is, whether it's wood or
whether it's masonry or brick.
     A. No, it's influenced more on the general
suitability of the space and the fit-up for its
function. You know, we really cannot dissect the
market from the Capitol Commons/Main Street type
quality rents to the suburban Heights area which are
wood framed structures which is certainly suitable for
all types of offices.
     Q. So I guess I'm not clear. What are the sort
of basket of components that make up class A versus
class B?
     A. Its suitability for use. So a class B office

would not be law firm or financial services suitable. It would be, you know, more for a call center, a mill space, something less private, you know, type of operation.

Q. What about financial services or insurance related products? What suitable level would they need?

A. If they had customers and customer contacts and meeting functions, that would be class A office.

Q. And just as a very experienced real estate professional in dealing with moving properties through this market do you find that it's not uncommon for a property to end up through negotiation being leased at a price less than it was listed for at the listing price on the market?

A. Very common.

Q. Like a lot of things in life people don't always pay the asking price?

A. That's right.

Q. So if we see properties listed for a particular location, even these comparables, if they haven't been yet leased and they're out there at an advertised amount of $12 dollars per square foot, you would expect as a professional that there may be an opportunity to get it for less for that?

A. Yes.

Q. And potentially a lot of terms could involve that consideration?

A. Yes.

Q. It might include the length of time, what amenities come with it, what utilities come with it like whether's there's parking?

A. Whether it's "as is" or whether the owner/landlord is expected to do certain improvements for the functionality for the tenant.

Q. I see. So in terms of looking at properties and seeing them listed, if you saw a property out there that's listed for $16 a square foot and it's class A space and if you were representing a party in that market looking to lease a very nice class A office product, you might well look at a $16 a square foot space and go to them and say, you know, let's see if we can come up with a package that would be less than $16 a square foot?

A. Yeah, depending on the term and what kind of work was needed there.

Q. So let me just show you a couple other properties that we identified and in particular this one. This is a property at the Stewart Nelson Plaza. I think this is off of your web site, isn't it?

A. Yep.

Q. So you know this property.

A. I do.

Q. It's located where? On North Main Street in Concord?

A. Yep.

Q. Pretty good location as locations go, right?

A. Yep.

Q. What is in there now?

A. That's a sublease, so TD Bank who is our client is on that second floor space that has access, so their rent on that space is about $20 dollars per square fot, so in an effort to reduce their expense and entice a tenant to take some subleased space they would offer it at $12 dollars a foot.

Q. And this is where the focus on this machine here comes into play because it's a little hard to read, but what would be the size of the available property? Is it 2,500 square feet?

A. A little larger than that. They would probably go as small as 2,500.

Q. So that would be class A office space that a commercial tenant could obtain for at least the asking price on that sublease at 12,000 square feet a year, but you're stressing the fact that it's a sublease?

A. Right.

Q. So tell me what the limitation on use or occupancy of that building would be if you were to get it at that price right on Main Street in a prime location.

A. So that would be a shared access with the TD Bank offices on the second floor. That would be for the duration of the term which is actually ending next spring, so that would be, you know, a detriment to some business that wanted to get in and function as a standalone secure unit, as a separate business, and to control that space for a period of time.

Q. You're talking about the shared entrance?

A. And the fact that you would be transient. TD Bank did not renew their lease and if you wanted to stay in that space, then you would be going to the landlord directly and probably paying the market rate of $20 dollars.

Q. Do you know when TD Bank is exiting that building?

A. We're in the process of negotiating a new lease to give that space back to the landlord and to remove that obligation from their premises.

Q. So the reality is it would be a very, very good property for a person or a company that was comfortable with having shared space for the period of the sublease?

A. Absolutely.

Q. And a good buy?

A. A good buy.

Q. Let me show you another property. It's actually fairly close to one of your comparables. It's 4 Chenell Drive. Are you familiar with that property?

A. Yes.

Q. Do you know that property?

A. Yep.

Q. So that's 2,362 square feet. It's office space property. It's in the neighborhood. I don't know exactly what its proximity is to 17 Chenell

Drive. Do you know in relation to this property, sir?
A. Yeah, I think it's in that area. I'm not sure where that space is or if that's a direct lease or a sublease or a second floor or a first floor.
Q. Well, let me bring it up a little bit and see if we can get some of the information about it on here. So I don't know if that's helpful to you. Is that a little better to see?
A. Yeah. I can't see if that's gross or if that's triple net.
Q. I don't see any description on it to that effect. When it says "lease type full service," is that an indicator that it's probably gross?
A. It could be.
Q. So for a business that's involved in providing insurance services and wants to be in a nice office location, this would appear to be a pretty good property, wouldn't it?
A. I would have to learn more about it. So when was this printed?
Q. We pulled it off the web on October 4th, 2015, so this would appear to be on the market and available at the listing price of $12 dollars which,

c5b52c31-46a8-47d5-962d-4050e69be2ca

as you and I talked about and you were representing the buyer, you would try to get it for less, wouldn't you?

A. I would have to see what the condition is, but yes.

Q. So I don't think that's definitive. I don't think that proves the point here. I do think it tells me, would you agree, that there are properties in comparable areas adjoining or neighboring your location that would appear to be good office space available at the $12 dollars per square foot listing price with the probability that you could probably get it for less?

A. Possibly.

Q. Well, it looks like we could do it this afternoon, right?

A. I don't know. You're saying it says it was listed four days ago?

Q. I don't know exactly when it was listed. I assume when it's on this service --

A. It says last updated four days ago and you printed that on the 4th?

Q. Yeah. It could have gone up this morning possibly, but what I'm suggesting is fairly recently this was available in the marketplace. I guess we could probably agree on that, right?

A. Yes.

Q. The other thing I noticed, and I don't know what this does to the property here, I had two questions about it. I noticed on your first comparable, the 17 Chenell Drive, the one that's over in the same neighborhood as this one, they list that it's offering three months free rent.

A. Right.

Q. Which I'm assuming, and I haven't figured it out with the size of the premises and everything, but to some degree that obviously has the effect of amortizing down some of the costs from the lease, doesn't it?

A. Correct.

Q. You would know. About how big of an impact would that have on a property of this size at the $18 dollars per square foot price?

A. That would be less than 10 percent, so $1.50.

Q. So this one really comes in closer to what, $16.50 or something like that?

A. Yep, $16.50.

Q. And with respect to that kind of provision in the marketplace, is that something that's added as a feature to move property that might not be moving too quickly?

A. Yes.

Q. So apart from the vacancy rate do you know how fast the turnaround is on property similar to 17 Chenell Drive or the one I showed you, 4 Chenell Drive?

A. I would say the smaller spaces like that if they're in good condition are probably three months.

Q. But when you saw that entry, if you were just looking through the book and you saw three months free rent, if that was still on the market, that would probably cause you to say this owner is getting anxious about how long it's been on the market?

A. So this isn't what's offered, this would be as the deal got done, so this is a completed transaction. They may have been asking $19 dollars gross and negotiated $18 dollars gross with three months free.

Q. So is it fair for me to take away from that

c5b52c31-46a8-47d5-962d-4050e69be2ca

term, though, that this suggests that there is not uncommonly room for negotiation in this particular market?

A. Yes.

Q. And an incentive like three months free rent, that would have the inevitable impact of reducing the stated square foot lease value that might be on the lease?

A. Correct.

Q. And it may be an indicator that something was on the market for awhile?

A. Or the landlord did not have to do a lot of work to it.

Q. And do you know, since this has your name on it, what happened with this property? How long was this on the market before this property commenced its lease in April?

A. I would say probably if that commenced in April, that was probably vacant at the end of the year and, you know, was in good condition or use for that tenant, so he threw in three months for not having to do some work.

Q. So this isn't actually a buyer's or seller's

c5b52c31-46a8-47d5-962d-4050e69be2ca

market, but good deals can be had if you have a good negotiator like you?

A. I think in general kind of the equilibrium for any vacancy is 10 percent for office or industrial, so 14 percent vacancy would probably tell you it's a little more favorable for the tenant.

Q. So on this sheet that I showed you with the Chenell Drive property they had a second sheet and on the second sheet on this web site they listed the asking price trends for Concord, New Hampshire office space for lease and then they have obviously the rent costs and then the timeframe. So I guess my first question to you -- and this is just on their web site -- this is not your web site I realize -- but is this a trend that you as an expert working in this marketplace keep track of or see?

A. No. I mean, I know the database that you're pulling that from. You know, that's why we do our own research to figure out if that's a gross number or a triple net number. That's an asking rent, so I assume that that database is tracking all of the properties that it has entered into its database, but for it to move that much in that short a timeframe, I think it probably had a large swing in input data.

Q. So you're talking about both the upward trend and then the downward trend? There's a lot of volatility in that last part of the chart?

A. Yeah.

MR. FELMLY: Thank you very much. I have nothing further.

MR. TILSLEY: I have a couple of brief questions.

FURTHER EXAMINATION

BY MR. TILSLEY:

Q. Roger, the comps that you provided in your report, are those based on actual leases or are those based on asking prices?

A. Those are actual leases.

Q. In the survey that your company performed of the rental market, is that a survey of actual leases or a survey of asking prices?

A. A survey of asking prices.

Q. So you looked at the asking rate survey, then you looked at the data on actual leases that you have the comparables and you reached your conclusion on this property?

c5b52c31-46a8-47d5-962d-4050e69be2ca

A. Yes.

MR. TILSLEY: Nothing further.

PRESIDING OFFICER: Mr. Felmly, anything further?

MR. FELMLY: Nothing further.

PRESIDING OFFICER: It appears as though you are excused. Thank you for testifying. Okay, gentlemen. Optional closings or supplemental memos, do you have any desire to do either?

MR. VOLINSKY: We rest.

PRESIDING OFFICER: There are no other witnesses. Thank you. The BSR has rested at this time. Does anyone feel the need for oral closings?

MR. FELMLY: Andy and I discussed that. We don't believe an oral closing is necessary. We do believe that it would assist the tribunal to have memoranda provided and we've discussed the timing and approach to that, and I can offer what I suggested and Andy is in agreement if you would like to hear what we have in mind, but you obviously will control that.

PRESIDING OFFICER: I understand and I'll hear what you've discussed.

MR. FELMLY: One, we think it would be

c5b52c31-46a8-47d5-962d-4050e69be2ca

helpful, particularly in light of the numerical nature of the testimony, to have the record available to be able to complete our memoranda and I understand from talking to the stenographer at the break that it is expected that it will be available next Friday and be essentially electronically available for transfer to us. So that's one factor that comes into play. That doesn't mean we won't start working on it, but we think it's important to have that. The other factor I guess as a matter of my schedule, as you know, I'm going out of the country Tuesday and I'll be coming back on Saturday, the 25th. That memo will be something that will be worked on very significantly by Mr. Closson and to some extent with some input from me from overseas. We have suggested that with both a review of the transcript and that schedule that we could provide memoranda on Monday, the 26th which would be roughly thirty some hours or so after I get back, but as I said, it won't be started at that point, it will just be the opportunity to have some consultation before we file it, and Mr. Volinsky has indicated to me that he doesn't object, that he agrees with that timing. So that's a long way of saying we propose memoranda and we propose that they be filed with you on Monday, October 26th.

PRESIDING OFFICER: I'll take that representation as being mutual and that is acceptable to both the tribunal and I am assuming it is acceptable to your clients, so assuming that it is acceptable to both of your clients, I will set October 26th for submission of memoranda. I guess I'll see those as supplemental memoranda because you've already filed your prehearing memoranda.

MR. FELMLY: That's true, although I think obviously the focus of these memoranda will be more commentary on the implications of the testimony rather than things we were thinking about before we started.

PRESIDING OFFICER: I'm afraid so, but enough said. Okay. That's fine. The 26th. All I can tell you is that the issue of the tribunal will issue its order in due course thereafter.

MR. FELMLY: We understand.

PRESIDING OFFICER: All right. The case is closed. Thank you all.

(Case submitted at 4:05 p.m.)

c5b52c31-46a8-47d5-962d-4050e69be2ca

C E R T I F I C A T E

I, Laurie A. Gelinas, RPR, a Certified Shorthand Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the Hearing in the Matter of Local Government Center, Inc., et al, taken at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this 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 REPORTER.

LAURIE A. GELINAS, CSCR, RPR

c5b52c31-46a8-47d5-962d-4050e69be2ca