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Date: May 6, 2010
Time: 1:40 p.m.
Room: SH 103

The Senate Committee on Commerce, Labor and Consumer Protection held a hearing on the following:

HB 1393 (2nd New Title) relative to the treatment of New Hampshire investment trusts, and relative to pooled risk management programs.

Members of Committee present:

- Senator Hassan
- Senator DeVries
- Senator Reynolds
- Senator Cilley
- Senator Bragdon
- Senator Roberge

The Chair, Senator Margaret Wood Hassan, reopened the hearing on HB 1393.

Senator Margaret Wood Hassan, D. 23: I want to make a couple of comments just to remind folks of what I said at the end of the last hearing. We have a lot of people who want to testify, we have a considerable amount of time this afternoon to do this, but it is still always helpful if you can keep your testimony concise. If you have written testimony, it is helpful if you don't read aloud testimony that is more than a page. If you have long written testimony that you are going to submit, try to summarize it. I am not going to stop you from reading, but I can tell you as a practical matter the Committee often loses focus when people are reading out loud to them. It is actually much better to have some level of interactive testimony.

The other thing that I will point out is, if somebody has said precisely what you wanted to say, it is perfectly acceptable to come up to the witness table, tell us your name and where you live and say I agree completely with speaker x and sit back down. Up to you, but that is a way to register your position without spending a whole lot of time repeating exactly what somebody else said.

Lastly, there were some concerns raised at the end of the first portion of this hearing on Tuesday about the order of witnesses, and I would say this. There is a protocol in the New Hampshire Legislature about the order at which we take testimony. We start with the prime sponsor of a bill and then if there is an amendment proposed as there was in this case, we take the sponsor of that amendment, then we take members of the Executive Branch, and Representatives. That is what happened in this case on Tuesday and it was announced at the beginning. We had one hour to start the hearing with and we wanted to make sure that people had a chance to see the amendment and digest the amendment before being asked to testify about it as well. So, that is why the testimony happened in the order that it did and it is well known protocol the Legislature that that is how we do things.

So, with that, we had heard from the proponents of the underlying bill, 1393. We had heard from our Secretary of State, and one of our State Representatives, Representative Hikel. I note that Mr. Moquin was signed in from the Securities Bureau and I didn't know, Mr. Moquin, would you like to speak and where are you? Yes, come on up.

Attorney Kevin Moquin: Good afternoon. My name is Kevin Moquin and I am a staff attorney with the Bureau of Securities Regulation in the Secretary of State Department.

First of all, I would like to comment on the underlying bill because that was brought to our attention, and there is a securities aspect to that underlying bill. However, there is not a State Securities' aspect to it. The Bureau of Securities does not regulate the investment trust entities, they do not register with us because the investors are qualified investors under federal law and we are preempted by federal law. We don't even register the investment advisors because once again we are preempted from regulating investment advisors under federal law with more than \$25,000,000 in assets. So, I just wanted to make that clear before I went on.

On the amendment, the Bureau of Securities has been in the midst of an investigation of Local Government Center starting July 2009. So, as a result, while there are some areas that I can comment on, there are other areas that I cannot comment on. For instance, I can't talk about specifics in terms of the Local Government Center's use of reserves and how much surplus is appropriate to return to members. However, we do support the concept of providing a specific benchmark for reserves. It doesn't seem unreasonable to us that the Legislature should set a reserve level for a program the Legislature authorized, and it would give us further guidance as to what the Legislature considers a proper level of reserves.

In spite of statements made by Local Government Center, they are now willing to be regulated. One of my concerns is their actions have contradicted this.

Last June, the Legislature amended the statutes that govern pooled risk management programs such as those operated by Local Government Center. To give our Bureau, the Bureau of Securities, authority to make requests for additional information necessary, this is a quote from the statute by the way, "to make requests for additional information necessary to exercise regulatory or enforcement authority pursuant to, but not limited to the hearings procedure under RSA 421-B:26-a, over any pooled risk management program. 421-B:26-a is our hearings procedure within the Bureau of Securities.

So, currently there are three pooled risk management programs, Local Government Center's programs being one, Primex, and School Care. In July, the Bureau of Securities received a complaint regarding the Local Government Center and started an investigation. Secretary Gardner noted the Local Government Center pretty consistently sought to block our investigation.

I believe you all received a timeline on Tuesday that kind of goes over the process we went through in trying to obtain documents pursuant to Chapter 128 that was passed last year. We started in July making requests for documents. In August, we got a response asking for a copy of the complaint, something we normally don't make available during an investigation and we let the Local Government Center know that. The Local Government Center then wanted to discuss our authority, and generally when we are in an investigation, we don't discuss what the level of our authority is with the people that we are investigating.

So, we declined to meet with them, and by the end of August, the Local Government Center had refused to provide any of the documents we requested. So, we had to go through a process of initiating a hearing, an administrative hearing, in order to obtain a subpoena. As a result of that, the Local Government Center initiated a declaratory judgment action against the State on September 25th. In addition, they tried to stay the administrative proceeding, which was rejected by the hearing officer in this case.

Ultimately, on August, I'm sorry on October 8th 2009 the LGC sought to enjoin what we were attempting to do, to regulate, to carry out our investigation through the Merrimack Superior Court. Sought a preliminary injunction. We ultimately did make it to hearing, and the Local Government Center did not turn up for the hearing. So, as a result, they defaulted, and

an order was issued for a subpoena to produce the records that we requested. That process continued as a result of what was going on in court, and ultimately on December 11th, the Merrimack County Superior Court rejected the request for preliminary injunction, basically stating that it looked, at that point, like the Legislature was pretty clear on its intent in what it had passed last year.

Ultimately then, after that we requested the documents again and the Local Government Center provided them. But, you will see that essentially we went through a five-month period before we could get the documents we were looking for. Unfortunately, we might have had more to report to you on that if we hadn't gone through such a delay.

So, we do have an ongoing suit against us. We are engaged in an ongoing investigation, so there are areas that I won't comment on. But, we believe the intent of the legislation last year was pretty clear. It looks like, on the preliminary injunction stage, the Superior Court agreed with us and so far it appears to be pretty clear from the legislative intent from the Court's preliminary injunction decision, and to us that we have authority to conduct regulatory enforcement activities with regard to Local Government Center and to any pooled risk management program. But, our efforts are continuing to be challenged in court.

The regulatory and enforcement tools in the amendment would make our authority clear to the Local Government Center. It would make it clear that we have the authority to investigate. We have the authority to seek cease and desist order. We can get subpoenas without having to go through a cumbersome process to do it, and that is an added tool that would make it helpful for us. There are penalties, fines, recissions defined in the amendment that would make it clear again what the authority is, and I think it would send a message to Local Government Center and to all the pooled risk programs that they are not beyond regulation.

One of the things that we have heard is that we are not regulated. We beg to disagree. Since last July, we believe they are regulated, they are regulated by the Bureau of Securities for the Secretary of State's Office.

The LGC has said that it is okay at this point now to be regulated and they will be willing to be regulated, but by the Insurance Department. Again, I look, you look to the record, the timeline, 5 months of fighting regulation, it just strikes me as a little odd that now it is okay to be regulated. The plain fact is that the programs really are not now and were never meant to be regulated as insurance companies. From the beginning, they were excluded from insurance law and though they use the services programs, I'm sorry the

services of insurance companies like Anthem, Harvard Pilgrim, Signa, etc. they themselves are not insurance companies. They are beneficiaries of public money and the Insurance Department generally does not have a role in regulating entities that are, in essence, public entities.

So, really the key issue here for us monitoring the appropriate use of public funds. A matter of money in, money out. We have a saying in the Securities regulation field, follow the money. We are good at that, that is what we do, and that's what I think is the intent to make sure that the money is being used appropriately here. The Bureau of Securities has been a leader in oversight of public employee funds used for the deferred compensation program, and so we think it is appropriate that the Bureau and the Secretary of State's Office play an active role here in monitoring the inflow and outflow of public funds. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. Are there questions?
Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Thank you, Sir, for your testimony; I am curious about really two major parts to this amendment. One is increasing, or at least making clear, some regulatory issues, and one deals with the setting of reserves, and by statute. Ignoring that second piece and just focusing on the regulatory structure that is involved, if this amendment were to pass, I see that it allows you, it allows the Department to bring administrative actions to enforce provisions of the Chapter, investigating and imposing penalties for violations. I guess, how much authority does this give you and for example, since the big discussion point seems to be reserves, the statute seems to be that, for instance, it says in 5-B:5-c which these trusts, return all earnings and surplus in excess of any amounts required for claims, administration, reserves, and purchase of excess insurance to the participating political subdivisions. Would this, would these changes allow your Department to determine that the reserves should be?

Attorney Moquin: They, we would have to investigate that and we could order restitution of funds to the towns and cities.

Senator Peter E. Bragdon, D. 11: And, follow up on that, Madam Chair?

Senator Margaret Wood Hassan, D. 23: Yes, follow up.

Senator Peter E. Bragdon, D. 11: And then, how would you determine, absent anything in statute, how would you then determine what reserves would be, and in particular, if the trusts have actuaries who have determined

what the reserves should be, how would you make the determination that the actuaries are wrong?

Attorney Moquin: Well, part of that does involve our support for setting a reserve level that would give guidance. But, on the other hand, we do have our own access to people who would be able to assist us in making that determination, and in coming to a determination, and part of it is, maybe that's why the clarification is needed because part of this is really just a matter of simple law. What is appropriate under the law? And, that is really what we look at in terms of the inflow and outflow of money.

Senator Peter E. Bragdon, D. 11: And, final follow up.

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Peter E. Bragdon, D. 11: Final follow up. But if the law does not say what it should be, there really is no solid ground for you to stand on. It is your determination of what you think they should be versus what some other actuary might think they should be.

Attorney Moquin: And, I think there is some judgment, there is a judgment to be made and probably the standard would be what is reasonable.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Are there other questions for Mr. Moquin? Seeing none thank you very much for your testimony. Now, I noticed that, I'm just checking here, I have a total, I think, of 4 or 5 different people between the two days signed up on behalf of the Local Government Center and I am more than happy to have folks come up in any combination, but I have Peter Riemer, Wendy Parker, John Steiner, Mark Halloran and Mark McCue all signed up. Are you all here? That is the first question and I'm looking around. How would you all like to do this? You can come up in groups or one at a time, it is up to you, and you can pull more chairs up, although it doesn't look like there are a whole lot of chairs, are there. Let's, how about this? Could you just all start by identifying yourselves? I know some of you, I don't know others. So, just so I know who is who here.

Peter Riemer: I'm Peter Riemer, I'm actuary to Health Trust.

Senator Margaret Wood Hassan, D. 23: Thank you.

Mark McCue: And, I'm Mark McCue, counsel for Local Government Center.

Senator Margaret Wood Hassan, D. 23: Thanks.

Mark Halloran: I am Mark Halloran the Superintendent of Schools SAU 48 and the Chair of the local trust.

Senator Margaret Wood Hassan, D. 23: Okay, thanks. Okay, and...what's that?

Senator Betsi DeVries, D. 18: Madam Chair, and I would just note that if they are all speaking at the same time, for the transcription, it makes it difficult if they don't identify, their voices and tones are similar.

Senator Margaret Wood Hassan, D. 23: Yup, okay. Thank you, Mr. Steiner and you are...wow; you didn't get caught on the cord, okay. Gives new meaning to trying to trip people up but, okay, let's do this. Again, just for the record, we have three people sitting up here and I will start with our person in the center and why don't you just identify yourselves for the record.

Mr. Halloran: Madam Chair, I am Mark Halloran. I am the Superintendent of Schools in SAU 48 in Plymouth and I am also the Chairman of the Local Government Center.

Senator Margaret Wood Hassan, D. 23: Thank you.

Attorney McCue: I am Mark McCue and I am an attorney at Hinckley, Allen and Snyder. I am outside general corporal counsel for the Local Government Center.

Mr. Riemer: I am Peter Riemer and I serve as actuary to Local Government Center's Health Trust.

Senator Margaret Wood Hassan, D. 23: Thank you. Proceed.

Mr. Halloran: Madam Chair, I would like to speak briefly to reserves and quite frankly who we are on the Board at Local Government Center.

Senator Margaret Wood Hassan, D. 23: Sure.

Mr. Halloran: As Chairman of the Local Government Center board and Superintendent of a school district that is a member of the organization, I would like to share some important points with you.

The LGC Board of Directors is a 31-member board made up of local government officials and employees of towns, cities, and schools representing every corner of the State and every type and size of local government. We are member driven and our organization makes decision based on what we perceive is best for our members, the cities, towns and schools across the State.

As a board, we are the stewards of these assets and it is our fiduciary responsibility to ensure that these reserves are maintained at adequate levels to provide the services that we promised our members. We have already adopted stringent standards, many standards that would never be likely imposed on us because are accountable to our members.

If we are held to standards proposed in the amendment, we will be driven, quite frankly, to the brink of insolvency. Our reserves are based on standard actuarial formulas. The risk based capital, the RBC, is developed by the National Association of Insurance Commissioners and is a measure of financial solvency for both private health insurance companies and public pools. It is used nationwide, so it certainly makes sense for the LGC to use a nationally recognized standard in its operations.

We have set a target ratio in our formula that is lower than private industry and therefore requires less held in reserves. The RBC for Health Trust is roughly \$69,000,000, an RBC of 4.2, and is approximately 20% of the Health Trust's yearly contributions from all employers and employees of \$350,000,000. While the numbers are large taken out of context, the 5% cap in the amendment proposed means that the health trusts could legally hold only \$19.9 million. This amount is barely above the minimum necessary RBC and leaves little safety net to absorb excess claims and catastrophic costs that can occur in health insurance field, such as a pandemic, or other large scale public health emergency. If the reserves are maintained at this lower amount, just a 10% fluctuation in the volatile area of health claims would eliminate the health trust safety net to pay all the claims. Health trusts have seen this level of increase happen in the past and the current claims are already running above expectations.

On maintaining prudent reserves, public employers can be assured that they are providing contractually obligated and formal or chosen benefits to their employees in a responsible manner and at a low cost not achievable through other available means. Claims are to be paid when they occur. Speaking as a Superintendent of a SAU with more than 478 employees covered by the Health Trust, these changes proposed in this legislation have the potential to wage a significant impact upon our employees who rely on me to provide them with dependable coverage to protect their needs.

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And please let me assure you, when we talk about it, the 31 of us, there's selectmen, there's labor reps, they're county commission. When you talk about what is the appropriate RBC, it is a spirited discussion. Sometimes I think we make the actuarial nervous when we go too low and oftentimes we want to give back more money. But, that 4.2 has been a solid number for us and it has kept us solid and it has kept our reserves solid, and it is really our focus to try and moderate the rates of impact and the increases in medical insurance so that those rates have such a key component of setting the local tax rate that, if we can moderate there it really helps your selectmen and your school board members and city councilors to moderate that—the local tax rate.

So, we feel, as board members and we're lucky I mean I'm the Superintendent of the Schools and a former social studies teacher. It's important to me that the health care piece that we have, we have solid back up to take care of claims of people that work with us every day. Thank you, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Thank you very much. Did either Mr. McCue or Mr. Riemer want to offer preliminary testimony?

Attorney McCue: Yes, I would like to if possible. Thank you, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Did you...

Senator Jacalyn L. Cilley, D. 6: Before we go on to others, could we ask some questions while on the particular topic? It seems to me that...

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Jacalyn L. Cilley, D. 6: Okay. So, it's Mr. Halloran?

Mr. Halloran: Yes.

Senator Jacalyn L. Cilley, D. 6: And thank you for your testimony. You are on the board?

Mr. Halloran: Yes.

Senator Jacalyn L. Cilley, D. 6: And, so you oversee. How long have you been on the Board?

Mr. Halloran: About 6 years.

Senator Jacalyn L. Cilley, D. 6: Six years, and so in your capacity what, do you sit on any subcommittee on the board?

Mr. Halloran: No, I am the Chair and exofficio to any of the committees. In the past, I have sat on some of the subcommittees as a regular board member.

Senator Margaret Wood Hassan, D. 23: And, Senator Cilley, I am noting that you appear to have a line of questions, and I don't remember you asking permission to go through a line.

Senator Jacalyn L. Cilley, D. 6: I apologize, Madam Chair. May I?

Senator Margaret Wood Hassan, D. 23: Yes, and after a certain point I will...okay.

Senator Jacalyn L. Cilley, D. 6: So, in your capacity as making decisions, you know, on the board, are you called upon to make decisions on such things as salaries, for example, or expenditures by the LGC?

Mr. Halloran: Yes.

Senator Jacalyn L. Cilley, D. 6: You are, and so I note that, between 2008 and 2009, at a time when our cities and towns, and I'm sure you're fully aware of this, were suffering and experiencing significant problems due to the downturn in our economy, but the salaries at the LGC according to my calculations, rose approximately 19%. Did you and your board approve that?

Mr. Halloran: I am not aware of that number ma'am.

Senator Jacalyn L. Cilley, D. 6: You are not?

Mr. Halloran: No, I am not.

Senator Jacalyn L. Cilley, D. 6: Okay, it might be something you would like to take a look at then. Thank you.

Senator Margaret Wood Hassan, D. 23: Any other questions at this stage for Mr. Halloran?

Senator Betsi DeVries, D. 18: Madam Chair, do you wish to have the preliminary testimony and then have us engage?

Senator Margaret Wood Hassan, D. 23: Generally that's the procedure, but if there is a particular topic that somebody has just spoken about, sometimes getting the question out then is helpful. So, is there...

Senator Betsi DeVries, D. 18: There is a particular topic that I'd love...and I think Mr. Halloran might be the appropriate person because I have taken a look at some of the minutes that, though much of it has been redacted and not available for me to see. I wonder how much of the discussion on, because it appears that at least in the annual reports and in other portions of the minutes there is, there is a vibrant discussion about how the reserves of one trust, the Health Trust, might actually be used with other trusts.

Workmen's comp I think there was considerable discussion, at least in 2008, and how much of that discussion is actually carried back from you to the communities that might be looking for either a return of the excess balance or, as you noted, less expensive health insurance costs?

Mr. Halloran: Sure, sure, thank you, Senator. In terms of workers' comp, I think when the school boards sit and look at, every body is a voluntary member of these pools. So, in the past, at SAU 48, we had our workers' compensation in one pool and health insurance in another. But, when we talked about it at the Local Government Center, we really found that sometimes employees got caught between a claim and workers' comp and the workers' comp carrier may say, well, well that happened not as part of work, and the health insurance carrier may say well, that is really a workers' comp claim.

So, when we talk about workers' comp and health insurance, you know, at the Local Government Center, we see it almost hand and glove because we don't want the employees caught in the middle of a bureaucracy trying to figure out who is responsible for the claim. So, when we have conversations about workers' comp and health insurance, many of us, lay people are looking out for the interests of the employee, and also quite frankly, if some of these programs could go hand in hand, it is an overall cost savings to the community.

Senator Betsi DeVries, D. 18: Follow up question if I might? So, I guess my question is, how much of that information is actually shared back with the municipalities that are participating? Do they understand that the reserves of the Health Trust is actually being used to bolster up the other trusts?

Mr. Halloran: We don't have the specific conversation. What most boards want to know is are we getting the best price we can get for all of our

insurance programs, be they term life or whatever the insurance program we may be offering within collective bargaining agreements. What the boards want is a bottom line and, most importantly, they want stability in rates. That is what boards are looking for, they want stability in rates so that they can have stability in their tax rate.

Senator Betsi DeVries, D. 18: One final questions and then I will, I will allow you to move on. But, there was even discussion within your own minutes that that admitted that not every municipality is taking part in all of the products.

Mr. Halloran: That is true.

Senator Betsi DeVries, D. 18: So that if you are say, making the cost of health insurance more expensive for one and a community only participates in health insurance, they aren't seeing the benefit of workmen's comp by bolstering up that trust. So, I, I, that's why my question. How much of this information has been shared with the communities so that they know the reductions of what decisions have been made on the reserves?

Mr. Halloran: Well, I don't know with all communities, I know, I just know my interaction with the school boards and the towns in our SAU.

Senator Betsi DeVries, D. 18: Thank you.

Attorney McCue: May I supplement in the response for Senator DeVries?

Senator Margaret Wood Hassan, D. 23: Sure, just introduce yourself again for the record and then you start.

Attorney McCue: I am Mark McCue, general corporate counsel for LGC. In response to your question, in addition to board members, there's even more communication with towns and cities and school districts by the staff who go out and explain the programs and explain how Local Government Center works. And, they're here and can testify, but I suspect you will find that they have had these types of conversations.

We are also, in working through these programs, I can explain if you want, in detail about, the legal structure. But, essentially, they are structured separately, but they are operated by a single board and RSA 5-B would permit them to be a single entity with all of the coverages combined.

For legal purposes, we didn't structure it exactly that way, but we are allowed to do it under the combined things under the statute. The, the using

one trust's funds to support losses in another fund has been very limited and it was in response to members' requests that there be workers' comp coverage, and essentially that they have one-stop shopping. They can come to one pooled risk program, get health coverage, workers' comp coverage, property liability coverage all in one-stop shopping. They also get the advantage if they do that of having certain price reductions because they are purchasing all of the products together.

So, there is an advantage, and it also gets more complicated because the dollars are using types of programs that go to the benefit, services that benefit all the programs, like health management will benefit both Health Trust and workers' comp. So, it is not as simple as you taking one money from one trust and putting it into another. There really is a collective whole that is being served, and the staff is very good at explaining that to members.

Senator Margaret Wood Hassan, D. 23: Thank you, did you...?

Senator Betsi DeVries, D. 18: Madam Chair, and I realize you have a hearing you are trying to conduct, but I didn't feel that that really answered the question as to whether a community that only chose one product with you understood that their rates actually might be elevated to reduce the rates of other communities. Although it certainly was part of your discussion as a board, I could see some of that in the minutes, I didn't know how much of that you had actually shared and I don't think you really answered that for me.

Senator Margaret Wood Hassan, D. 23: I see a question from Senator Reynolds and then Senator Cilley along the same line. So, if you are comfortable, we will stay on the same topic.

Senator Jacalyn L. Cilley, D. 6: And Senator Bragdon had his...

Senator Margaret Wood Hassan, D. 23: Oh, and Senator Bragdon did?

Senator Peter E. Bragdon, D. 11: No, we won't worry about it.

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Betsi DeVries, D. 18: I'm sorry.

Senator Deborah R. Reynolds, D. 2: Good afternoon, Attorney McCue. Regarding yours statements, I guess a concern to me on behalf of many of the communities I represent and I talked to some of the selectmen. I gather you have some documentation that some of these things have been

communicated. I am wondering if you could produce that for us. For example, there are purchases of real estate in Concord, with the first parcel back in 1989, 2004 and 2006 of significant amounts of money were spent on the real estate. Did you offer an opinion of counsel to the board that they relied on that you felt that was within their corporate authority to do that, Sir? Do you have an opinion?

Attorney McCue: My firm represents, I wasn't personally involved at the time. My firm has represented Local Government Center, we are engaged in every corporate decision and attend every board meeting so yes we would have negotiated on behalf of Local Government Center that purchase and sale and the terms of it. We would have had an appraisal, ensured it was reasonable and obvious the purpose is we conduct quite a considerable pack of programs and activities and claims administration in house. So, we need a place to have those activities.

Senator Deborah R. Reynolds, D. 2: I guess my question, Sir, though is, can you provide us with documentation that you notified the municipalities who are participants, who are entitled under the statute to a share of surplus and earnings, that you notified them, do you have that documentation?

Attorney McCue: And, that is not required by the statute and that is not the nature of the organization, and is essentially a representative board that people have the ability to attend our meetings, to talk to their representatives. But, they pay into these trusts and commit their funds to these trusts, understanding that there is a 31-person representative board that are making these decisions on their behalf.

Senator Deborah R. Reynolds, D. 2: I don't want to be...

Attorney McCue: Similar to shareholders in a corporation.

Senator Deborah R. Reynolds, D. 2: Okay, but this is a non-profit using public funds, Sir. And, I guess my question is, wouldn't you think that the municipalities involved would want to know that on your legal advice, major assets were being purchased by this non-profit?

Attorney McCue: All of our meetings are public meetings, the agenda is published. They have an opportunity to attend. Every year, we make annual filings with the Secretary of State as you know. So, the financial information is certainly there and available to people, and to members and that, in essence, is the purpose of the Secretary of State filings.

Senator Deborah R. Reynolds, D. 2: I would just ask if you could produce some sort of written documentation that the towns and political subdivisions were given some notice of some of these decisions that would be great. Thank you.

Senator Margaret Wood Hassan, D. 23: Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and I would like to follow up on the issue of monies between the funds. It is my understanding that, and I was going to pursue this later on, but you raised it, and so it is my understanding that there are rather stringent federal laws that, that require separation of any employee money from workers' comp money, which is employer money, or property and liability. So, when you were talking about sort of using one to...you may have been talking about it loosely, I would like to give you an opportunity to clear that up.

Attorney McCue: Thank you. This is a very specific program adopted by the board with a lot of robust discussion at the board level. It is a very narrow program, it is 1% of the contributions to the programs. It does not come out of workers' comp. The bulk of it comes out of Health Trust, any...

Senator Jacalyn L. Cilley, D. 6: To do what precisely?

Attorney McCue: To, to provide services, for instance, wellness programs that benefit all the trusts, to provide marketing, to provide member outreach, to provide all the services that are common to all members and all participants in the pools. So, and again, part of the 1% carved out from that 1% are all employee contributions under the health program. It is very specifically identified in the board discussion that there was some concern that employees would not be comfortable having their dollars, their portion of the health contribution being used for any purpose other than their health plans. So, Local Government Center segregates those funds and uses them only for the purpose of paying health plans and related expenses.

Senator Jacalyn L. Cilley, D. 6: Okay, I just want to clarify one point.

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Jacalyn L. Cilley, D. 6: You mean employer dollars or employee dollars?

Attorney McCue: Employee dollars are segregated and not used for anything other than the payment of their health plans and related expenses.

Senator Jacalyn L. Cilley, D. 6: Could you explain how that is segregated?

Attorney McCue: It's, we have provided that information. It is a very complicated formula. There are several spreadsheets. We have provided it to the Secretary of State. We can provide it to this Committee if you are interested. It's an historical analysis of all of the members, all of the towns, the composition of their employees, the type of benefit programs that each town is offered and then there is a percentage determined, they do it every three years so that it is refreshed.

Senator Jacalyn L. Cilley, D. 6: I would like to see that.

Attorney McCue: It is very thoughtful analysis.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. I think what you just heard was a request for that information. Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. I have a question for the Superintendent, and pardon me but your name escapes me already but...

Mr. Halloran: Halloran.

Senator Peter E. Bragdon, D. 11: SAU number?

Mr. Halloran: 48.

Senator Peter E. Bragdon, D. 11: Which is?

Mr. Halloran: The greater Plymouth area.

Senator Peter E. Bragdon, D. 11: Plymouth area. Okay, thank you. And, I assume then that, since you are on the board of LGC, that the school board purchases products, I assume health, workers' comp and property liability?

Mr. Halloran: Some of the districts do, some districts have it with Primex.

Senator Peter E. Bragdon, D. 11: Okay. Well then that leads to my question, I guess are you forced to buy your insurance products from LGC or are there other options available for the school?

Mr. Halloran: There are other options, of health options, and Primex, and School Care, or private market, and the individual school boards will sit and look at one, the collective bargaining language they have in the contract. And then, two they will go into the market place and take bids on health care, or take bids on workers' comp, take bids on property and liability, and we just finished the bid on term life insurance, which is now the private sector. A private vender was the low bidder. So, we, if you know the boards in our area, they are very independent, so they will go out to bid and there is a robust discussion, not only there but also when we set rates at Local Government Center, and again it is pretty spirited.

Senator Peter E. Bragdon, D. 11: And, follow up on that?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Peter E. Bragdon, D. 11: So, I gather in your opinion, there is a very competitive marketplace out there for insurance products?

Mr. Halloran: Yes.

Senator Peter E. Bragdon, D. 11: For, towns and school districts?

Mr. Halloran: Very competitive.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. I need to follow up on that.

Senator Margaret Wood Hassan, D. 23: Sure.

Senator Jacalyn L. Cilley, D. 6: It's my understanding that the LGC has quite an interesting contract with Anthem Blue Cross Blue Shield. Is that the case or not?

Mr. Halloran: Well, I know that our administration is through Anthem, I'm not, quite frankly, I'm not aware of the contract, I know that they have the contract to administer clients.

Senator Jacalyn L. Cilley, D. 6: If I were a town administrator for the City of Concord, could I go as a member of the LGC, could I go, or for two years following could I go to Anthem and get a bid?

Mr. Halloran: I, I, I don't know that. I don't know that.

Senator Jacalyn L. Cilley, D. 6: Does anybody up here, right now, know this?

Attorney McCue: If you leave the Local Government Center, if you are a member or participant in the products and you leave it, you are prohibited for two years from coming back and so it, you would be prohibited from going directly to the provider of insurance for your own direct insurance. And, that obviously a necessary business protection that LGC has incorporated and as part of its, in the bilaws and the participation agreement within each member.

Senator Jacalyn L. Cilley, D. 6: I need to ask this again, and then we need to call because this is important. It is my understanding that the LGC has a permitable contract that some would call restraint of trade with Anthem Blue Cross Blue Shield that will not quote other Local Government Centers and I have heard that repeatedly. Does there, is there anybody in the room that knows that to be a fact or contrary? Then we will wait till we get to you and I will ask that question again. Excuse me.

Wendy Parker: We can, I can just answer that now if that is permissible?

Senator Margaret Wood Hassan, D. 23: Sure, and, and here is what we are going to do. I am going to...and you are?

Ms. Parker: Wendy Parker.

Senator Margaret Wood Hassan, D. 23: Wendy Parker, that is what I thought. Please come forward. Here is what we are going to do, we are going to get this answer. What I am concerned about is our very courteous witnesses, two of them have not yet had a chance to make their preliminary statements because we keep doing serial questions. So, we are going to have Miss Parker answer, then we are going to give our witnesses the opportunity to make the statements they wanted to do and then we are going to go from there. So, Ms. Parker, introduce yourself for the record please.

Ms. Parker: My name is Wendy Parker, and I'm with Local Government Center. In response to your question, you are absolutely correct that there is a non-compete with Anthem Blue Cross Blue Shield on any group that has over 50 employees. There is a state law that requires Anthem to be able to quote on groups under 50, so they are allowed to do that. But, our overall

contract does have an exclusive provision with LGC and Anthem within the public sector in New Hampshire.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you very much. Now, we are going to hold off on questions and let our witnesses say what they wanted to say to start with so we don't swallow that up. So, Mr. McCue.

Attorney McCue: Thank you, Madam Chair. Again, for the record, my name is Mark McCue, outside corporate counsel for Local Government Center. I have written testimony that I will submit, so I will summarize it in order to move things along.

I do want to respond to the picture that was painted by the Secretary of State on Tuesday and by Attorney Moquin because I think it needs so supplementation, and I would like to take the legislative history back to its beginning in 1987, just so there is the general understand of what pooled risk management programs are all about.

In the 1980s, 1970s and '80s, local municipalities were having difficulty acquiring insurance. It was either unaffordable, and in some cases, unavailable. So, the alternative to the local municipalities was to self-insure. The purpose of RSA 5-B, was to allow municipalities and local governments to pool their self-insurance programs so collectively they could pool the risk, therefore spreading lowering it, and also pool the administration of their programs so that it would therefore become more affordable.

RSA 5-B, the Legislature in 1987, adopted essential a national model, this is not something unique to New Hampshire, and these entities essentially are cooperatives from a legal perspective. They are governed and overseen by their members. Their members, in particularly in the case of Local Government Center, are all public officials. They are either representatives of municipalities, counties, school districts, or their employees—all 31 members. The oversight is directly by these public officials and the coverages and other services provided by these programs are limited to members, and so because of that scheme, that cooperative scheme, it was determined that, if you are public officials with public funds, overseeing them and having the accountability directly back to the Board of Selectmen, to the school boards to the town meetings, and ultimately the taxpayers that there was not a need for additional regulation by any state department, state authority.

There was a suggestion that, so that members could be fully informed, there would be an informational filing. That was originally suggested that it be

with the Insurance Department because essentially these are insurance programs. At the time, then Insurance Commissioner Bergeron filed an amendment with the Senate Committee on Insurance requesting that that filing be with the Secretary of State. His sole reason for that was that, because they were not regulated, and it was a structure that he endorsed, he did not want any one misled in thinking that, because the filings were made with his office, that he was somehow overseeing how these pools were operated because he was comfortable that they were being overseen by the public officials of the members that these programs served, and if you look back at the legislation in 1987, there was an express language that the Secretary of State had no regulatory authority, and only served as a repository.

So now we fast forward to two years ago, to 2009. In Tuesday's testimony, I understood the Secretary of State to say that the impetus for his request for an amendment seeking investigatory authority was a complaint that one or more pools weren't making annual filings. Because the subsequent enforcement action was against Local Government Center, there may be an implication that Local Government Center was one of, or the pool that didn't make annual filings. I just want to make it very clear, Local Government Center and its predecessor entities have always made their annual filings each and every year since 1988. So, we are not the impetus for the Secretary of State's request for investigatory authority.

What also is unusual about is coming from the Secretary of State in 2009 is that you need to understand the purpose of 5-B; 5-B permits the pooling of municipal self-insurance programs to be exempt from insurance regulation and taxation. It makes them affordable for that purpose. So, clearly, if there is an issue with an entity not following those requirements, the issue would be of most concern to the Insurance Commissioner. In fact, in his testimony in 1987, when this question was asked, well, who is going to look over these filing and what if something is askew, Commissioner Bergeron said I am sure the Secretary of State will notify me and we will take a look at it because it impacts us.

So, it's unusual that it would be the Department of State seeking authority, and what struck us as even more unusual was that the authority that it sought was to not be able to enforce its sole role, that of a repository, and ensuring that annual filings were made so that the members were clearly informed. Instead, it sought broader investigatory powers.

That brings us to the specific demand and then the subsequent lawsuit by Local Government Center. If you look at the timeline presented by the Secretary of State and you listen to him, it certainly makes Local

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Government Center seem hardly obstructionist—nothing could be farther from the truth. And, we have submitted a side-by-side timeline to show our version of what happened.

We were issued, within a few weeks of the amendment in 2009, a laundry list of about 12 items that went far beyond making sure that we had made our annual findings. We responded immediately, I responded because the senior leadership were at a conference out of state, indicating that I fully intended to gather the leadership, we wanted to be responsive. I asked for a copy of the private complaint that was eluded to, not so I could understand who did it, but alluded I could understand exactly what was being alleged. It was more of a due process; I wanted my client to be responsive. I wanted to know exactly to what they were responding. That request was refused.

Then, we pointed out our concern about the language apart from the unusual circumstances of the 2009 amendment. All it does is grant investigatory authority pursuant to, and then it references a Securities hearing process. That Securities hearing process statute does not confer any authority on the Secretary of State. More important, constitutionally, it doesn't provide any parameters for how it would exercise its authority. That is exactly the conversation we were seeking initially with the Secretary of State. We wanted to understand how it interpreted that vague amendment and exactly the nature of what it was investigating, what standards it was implying because we wanted to be as responsive as possible.

I also had a concern that the information was requested may not be fully responsive and give the full picture of what they were investigating. That, those requests were repeatedly rejected. There was one meeting Attorney Moquin and I had. I memorialized it in a letter. I received a follow up that investigations are not negotiated. Then the Head of the Securities Bureau Mark Connolly conducted a press conference saying trick or treat time is over.

So, it was clear that the Secretary of State felt that they had an investigation, that they had no obligation to inform us why they were looking for things and exactly what they were looking for. So, we filed an action in Merrimack County Superior Court seeking a judgment as to, a declaratory judgment, as to whether or not that amendment was constitutional. Seeking some clarification of what standards would be applied to us. If the Department of State found that we weren't meeting the standards in 5-B, what would be the penalty, what would be the enforcement action? And, all of this was missing completely from the statutory amendment in 2009.

We also were very concerned in presenting confidential information. Not only proprietary information about Local Government Center, but protecting health information, which we are precluded by federal law, by HIPPA, from disgorging. The subpoena that was issued clearly said we could not redact any information. Unlike other statutes which give investigatory authority to the Secretary of State such as RSA 293-A, the corporations statute, there was no express requirement that these investigatory materials be kept confidential. We didn't get any assurance from the Department because they again refused to negotiate or respond to our request.

So, that is why we filed the lawsuit. It wasn't to prevent having to file the information. It was to make sure the information was protected. It's accurate that the Court did deny a preliminary injunction, that was based strictly on motions that were filed without any fact finding. The underlying constitutional claims were scheduled for a trial and a full hearing in September. As soon as the Court ruled on the preliminary injunction, we did hand over all of the materials. The Court also granted a protective order, so it ensured that those materials were confidential.

The Secretary of State has made a subsequent follow up in April and we responded within 7 days. So, we weren't obstructionists, we were really just trying to protect our rights, understand what standards were being applied, ideally so we could be fully responsive and so we could make sure that the analysis was clear.

As far as the notion that we are form shopping and now are suddenly open to regulation, I describe it this way. We are still convinced that the Legislature, in 1987, had the right model, and that Local Government Center is carefully governed, it is carefully overseen, it engages actuaries, it engages insurance consultants, it engages accountants, it engages several lawyers, it follows national, National Association of Insurance Commissioners standards, it makes filings of public information. We are convinced that we are very, extremely well run, not necessarily in need of regulation. Given the current times, all that has happened, we understand that the Legislature may feel the need for regulation. We recognize that that may be a decision the Legislature wants to make if that's your decision, our point is that regulatory oversight should be placed with the regulatory agency that has the expertise to assess whether the 5-B standards are being met. That agency is the Insurance Department. The Department that reviewed the original statute, it is the Department that understands analysis of reserves and Mr. Riemer will go into a little more detail about how complex that is.

And, so our concern is that, and I think it was part of Mr. Gardner's testimony, and also attorney Moquin's that the Department of State doesn't

have the expertise to assess whether we are properly reserving, and essentially substituting the Board's business judgment for its judgment, and so we think, if there is some regulatory oversight, the nature of the oversight should be discussed because initially the concept of 5-B is that to make these affordable, there is a cooperative model, there is no regulation. So, with regulation comes cost, so we think there should be some mindful thought to regulation. And, if you listen to Mr. Riemer, you will understand why a simple formula for reserves just doesn't work for something as complex as any of the State's three pooled risks programs because they are multi-employer, multi line of coverage entities.

And, just finally, to conclude in response to what I have heard, you know, I object when I hear references to AIG and potential fraud and embezzlement. That to me is just fear based and I have been at every board meeting and every committee meeting, and I can assure you that every board member and every staff member of LGC works incredibly diligently with the highest professionalism and integrity, and I think the fact that the LGC is one of the largest pooled risk management programs in the country is a testament to how good it is and how it has earned the trust of its members. And again, this is a voluntary organization, members shop around, they are free to go get coverage elsewhere. They do not have to stay with LGC, and I think the fact that it has grown to the size it has is a testament to the fact that it does have affordable programs that are responsible to its members' needs.

Please see attachment #1 - written testimony submitted by Mark McCue, outside corporate counsel for the New Hampshire Local Government Center.

Senator Margaret Wood Hassan, D. 23: Thank you. Why don't we move to Mr. Riemer now and then we'll take questions at that point? Thank you very much for your patience.

Mr. Riemer: Thank you, Madam Chair. Madam Chair, members of the Committee, I have written testimony which I will leave at the table.

Senator Margaret Wood Hassan, D. 23: Thank you.

Please see attachment # 2 - written testimony submitted by Peter Riemer, consulting actuary to the New Hampshire Local Government Center.

Mr. Riemer: So, I will summarize that written testimony as succinctly as I can with the following remarks. You know, I'm led to start, not directly from my letter, but to follow up on remarks made by the first witness today who

talked about the issue being follow the money, and in the response to a question from Senator Bragdon said there is judgment about how to evaluate these programs, you know, implying evaluation of the reserve level, and saying finally, and I'm paraphrasing, that the answer boils down to what is reasonable, and I would say that, in those three worlds, words, there is a world of complexity. And, I want to share with you my view on that, and it really is the essence of what we are doing that is deciding what is reasonable.

So, let me address that issue in terms of the specifics of the amendment that's before this Committee. As, as we know, the portion of the amendment having to do with limitation on reserves is to limit the reserves of this organization and other public pools to no more than the amount needed to pay incurred but unpaid claims, a standard kind of obligation, and an insurance operation, plus 5% of expected premium. The element having to do with the reserve for incurred but unreported claims is perfectly reasonable. and I have no issue with that; however, in my opinion, the 5% limit is completely inadequate for the operation that Health Trust is engaged in, and I would suspect other public pools.

The, first of all, the value of 5% of annual claims is, when translated into measures that are used commonly within the industry and by regulators to measure insurance company strength far below the standards that have been established starting over 20 years ago to make these assessments. The, when I talked about complexity, it is no coincidence that the impetus for the creation of public pools back in the 1980s happened at the same time that there was an increase in insurance failures, life insurance failures, health insurance failures, and that was the impetus for the National Association of Insurance Commissioners to look at the issue. Out of concern with failures of insurance companies, how can we do a better job at assessing what is reasonable in their operations?

As a result of that desire, the National Association of Insurance Commissioners, the NAIC met, and this occurred over a period of years involving substantial collaboration between the NAIC, the American Academy of Actuaries, extensive research studies of actual insured data of hundreds of companies. They worked for years to develop something that, by now, we have all referred to as a risk based capital standard.

I have heard it suggested that well that is a commercial insurance company standard that really isn't applicable to a public pool environment. I maintain that it is because the essence of the risk taking and the risk exposure of health trusts and other public pools is precisely the same as that of a commercial insurance company, and that standards that were developed

really for the benefit of regulators, for the benefit of regulating that industry are highly appropriate to transfer over and use in our environment.

I am going to switch back and forth a little bit between some specific examples and illustrations of these concepts and then some general conceptual issues having to do with measuring risk and setting a reserve, and the LGC standard.

Right now, or strictly speaking, on March 31st, Health Trust was sitting, looking forward having made a promise of guaranteed premium rates totaling \$474,000,000 that run through June of 2011. We made those promises, we set those rates in full reliance on the protection afforded by our reserve levels. Had we been subject to a 5% standard or even a 10% standard, when we set the rates for that, for what is now a \$470,000,000 block of business, we would have set those rates at a far higher level because of protection that we would need against, again in my opinion, what a 5% level is just too small a figure. I can provide some specifics on that.

In the 5% reserve limit, if applied to Health Trust, would amount to about \$20,000,000. If that \$20,000,000 standard were imposed today, in other words, if the reserves that we hold in excess of \$20,000,000 were directed to be returned to our customers, that's what upon immediate implementation of the law, we would stand at a \$20,000,000 reserve level. We are now experiencing, on rates that we have written through June 30th of this year, we are experiencing losses and we expect those losses to continue in the months of April when we see those results, May and June. They could amount to 10 to \$12,000,000 at the level we expect them to run.

So, the scenario for compliance with immediate effect of this amendment would be our reserves get pushed down to \$20,000,000. We experience for the next several months, we won't know for sure until sometime in July, we experience losses of \$12,000,000, we are down to a level now of perhaps \$8,000,000. That represents about 2% of our claims exposure, and if reserves were at that level, I would have to recommend to the Board of Trustees that they consider withdrawing the rates issued for renewal for this July. I would think there would be a genuine threat of insolvency of the organization.

Now, two times in the past 25 years, in the financial history of the organization, we have lost more than 5%, once we have lost more than 10%, and when we look at two-year differences, and losses don't just occur nicely segmented into calendar years, they run over time, we have have experienced twice losses, when we look at consecutive years, that exceeded 10%. Four times we have exceeded losses that exceeded 5%. So, our experience, with respect to the volatility that can and does occur, is that capitalization at a

level as low as 5%, and even more so at a level that would be 5% initially, but then taken down by losses we expect in the next several months, would be absolutely untenable.

I want to go back, if I may, to have some more general discussion about the risk based capital standards. It was developed precisely because as some of the bankruptcies, the failures I alluded to, experienced by some insurance companies in the 1980s, State regulators questioned, well what can we do to understand what was going on so we could have avoided these things. The discussion involved examining the experience of the insurers that failed, the insurers that were troubled but didn't fail, and it turns out that every body recognized there is no simple measure for insurer strength. You can't say, well this insurer has 5% reserves or 10%, or any simple percentage figure and say that that is adequate for that insurer.

In recognition of that, the Society, the American Academy of Actuaries worked with the NAIC, they developed an immensely sophisticated complex process for measuring risk, and what they do is they compute through this process something called the authorized control level, I'll show you what that is later, but it is basically a number, a single number, a dollar figure that takes into account all the risk characteristics of a particular insurers. The products they issue; the in the case of health insurers, the provider arrangements they have; the reinsurance arrangements; as well as features of their assets. And, although the process, as I said, is immensely complex and sophisticated and involves a computer model that takes up many, many, many pages in a spreadsheet, it usual boils down to the fact, for a health insurer, that the authorized control level comes out to about 4% of claims. That can vary, as I say, because different carriers will have different reinsurance arrangements, they will have different pools of investments vested in different products, but that is a ballpark figure.

The risk based capital ratio is then obtained by taking this authorized control level, ACL, about 4% of claims and dividing it into the assets, or the products, we are using the reserves, that the insurer is holding. So, I will give you an example, Health Trust right now is holding, as of March 21st, I have some late figures, \$71.3 million in reserves. This is an amount in context here, outside of the reserves for our incurred but reported claims, is what we would call capital if we were a company. It is what we call member's balance, and it is what, I think in our deliberation here, we're calling the reserves. \$71.3 million, our authorized control level, this number that reflects our risk measure based on what our business is, \$16.5 million, and this is all in my letter.

So, our reserve of \$71.3 million, divided by our authorized control level of \$16.5 million, gives us this unit risk ratio, 4.3. That is our risk based capital ratio. By comparison, if we were subject to a 5% limit on reserves, our risk based capital ratio would turn out to be the following. Be limited to 5% of our expected claims. Our expected claims are \$397,000,000 for the year coming up, 5% of that is \$19.9 million. So, if our reserve was limited to \$19.9 million, we would divide that by our authorized control level of \$16.5 million, our risk based capital ratio would be 1.2.

Now, I want to look at these numbers in the context of how regulators use risk based capital ratios in fulfilling their obligation to oversee insurance companies. If a State Insurance Department received a filing from an insurance company and that company had a risk based capital level of less than 2, say just below 2, the Insurance Department orders the insurer to present the remediation claim to get the ratio back up above 2. If the ratio drops below 1.5, the insurer gets a little more intrusive, actually comes in and starts looking at the books and doing a deeper examination. Again, there has to be a plan to get the ratio up to 2. If the ratio drops to 1, or below 1, the regulator, the State Insurance Department, has the authorization, although it is not mandated, to take over the insurer. If the ratio drops to .7, the State Insurance Department is mandated to take over the insurer.

So, there is this whole range of regulator intervention that begins to occur when the ratio drops below 2, getting more intensive as the ratio gets lower. So, a 5% reserve for us, in the eyes of a regulator, would present us as an impaired company, and if we were a commercial insurer, they would want to come in and start correcting us because they would see that as a problem level of reserve.

Now, Health Trust, of course, is not regulated by the Insurance Department, you heard that discussion. However, as good stewards of the assets and the dollars paid by the member communities, on behalf of taxpayers and some funds from employees, the Board of Health Trust decided 8 years ago to begin to make risk based capital measures for our operation out of a sense of prudence even though we weren't regulated, we weren't required to submit such numbers to anybody.

I would further point out that the \$19.9 million figure which would represent the 5% reserve level if imposed on Health Trust, is just \$3.4 millions above that risk based capital level of 1 that would allow Health Trust to be taken over, again, if it were regulated. \$3.4 million is less than 1% of our claims. So, operating under a 5% limit, if that were to happen, we would be sitting with a reserve that was a fraction of 1% of our costs. A fraction of 1% of mandatory takeover of the Insurance Department if we were so governed.

And again, as I stated earlier, that to me, is completely untenable. In fact, at that level and especially considering the losses that we are experiencing now, that would bring an imposed low dollar reserve down even lower. That's why I say there is a genuine threat to solvency.

Now, on the other hand, we are not at the level yet. We have \$71,000,000 in reserves at a 4.2%. It is a level that Health Trust has maintained to assure that we can meet all of our obligation to the member communities and the employees, and employees' families that are covered by these plans. As an actuary, I can tell you that that is paramount in my mind that the program fulfill its obligation to provide health coverage for all of the employees who are covered by the claim.

Now, one aspect of our measurement and management of surplus and reserves is that, when we develop reserves through good experience that exceeds our target level, which is right around the \$71,000,000, we have an established practice for developing a process to return that excess back to the members. I can tell you that in the three rating cycles, 2007, '08 and '09, we provided credits within our rating formula totaling \$23.5 million. That amount has largely flowed back to the communities to be completely flowed back through June of this year.

And, I can further tell you that when we were setting the rates for this July, the July coming up, we did it, originally on a guaranteed basis, advanced notice basis back in the fall, and then we revisited that to take advantage of the opportunity to see if a lower rate could be offered. In both instances, the time we set the guaranteed maximum rate, the time we revisited it to try to shore up the rate and maybe it would be a lower cost, we knew we were losing money from the 2009 rating. When I say we were losing money, I mean over and above the intentional give back we built into the rates. We did not attempt at all to reflect that loss in any way when we set the rates for 2010. The reason we didn't is because we knew that, even though we continued to lose money, we were paying out even more than the give back we had intended when we set the rates. We knew that our adequate surplus would allow us to provide a normal rating in 2010 without any kind of worry for catch up to rebuild surplus. If we were operating on a 5% level or even a 10% level, that just would not have been possible. There would have been a material impact upwards on the rates that we have issued for July 2010.

And, I will close by pointing out that the NAIC thought it important to publish a letter, which I have attached, in 2008, they published a letter, expressing their concern that the interpretation of the risk based capital method, in particular, the threshold of 2, where regulatory intervention kicks in. There was a real concern that insurers, or members of the public would

be interpreting that level as a good level. Well, as long as you are above 2, as long as you're not subject to intervention you must be a good insurance company and have good reserves. NAIC has gone out of its way effectively to say that the good insurer will likely have reserves well in excess of the standards under by the risk based capital intervention regulation. And, that concludes my testimony, Madam Chair.

Senator Margaret Wood Hassan, D. 23: Thank you very much for that testimony. I see some questions. What I am going to suggest, just because we have staff members who have been at work since 12:30, is we are going to do about 10 minutes of questions, assuming there is that many, we are going to take a 5 minute break at that point, and we will continue. I just think everybody could use a stretch at that time. So, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Sounds wonderful to me. Madam Chair, I have 2 specific lines of questions, and one is for Mr. Riemer, one is for Mr. McCue. How would you like, like me to proceed?

Senator Margaret Wood Hassan, D. 23: Why don't you start with one and we will see how long it takes.

Senator Jacalyn L. Cilley, D. 6: Okay, very briefly...

Senator Margaret Wood Hassan, D. 23: You know, after a few questions, I will see if other people want some.

Senator Jacalyn L. Cilley, D. 6: I know, cut me off, you know how I am. Okay, Mr. Riemer, just to be very, very clear because we have, you know, House transcripts and in the, your testimony in the House, you said precisely this when you were talking about the risk based capital and the ALE... what is it?

Mr. Riemer: ACL.

Senator Jacalyn L. Cilley, D. 6: Yes, ACL. So, you said that at the rejection of the House, that the expected claims was actually quite close to the level, low enough level that it would possibly involve us in regulatory corrective action, which the House took quite seriously. Would you like to amend that?

Mr. Riemer: I thought I made it clear from that testimony that that was contingent, hypothetically, contingent on being a regulated entity, and as I have said in our testimony, our Board has determined that even though we are not regulated, it was prudent to use, what we would regard as the "Gold Standard" of measurement of insurers' strength risk based capital, ma'am.

Senator Jacalyn L. Cilley, D. 6: I didn't see it amended until the Chairwoman asked you to clarify, it was her understanding that you were not regulated...

Mr. Riemer: Right.

Senator Jacalyn L. Cilley, D. 6: So then you did, you did say at the time. I'd like to, Donna do you have one of these books, the briefing?

Donna Soucy: Yes.

Senator Jacalyn L. Cilley, D. 6: Okay. Could you open it to Section 14, page 21 and 22? There are questions that I want to ask specifically of Mr. Riemer.

Ms. Soucy: Certainly.

Senator Margaret Wood Hassan, D. 23: Maybe share it.

Senator Jacalyn L. Cilley, D. 6: These are, you might recognize these, you were involved, were you? In the, this is the auditors' report?

Mr. Riemer: Yes.

Senator Jacalyn L. Cilley, D. 6: Okay. So, there were several things that interested me. Earlier on in the history of the LGC there used to be monies that actually talked about members' equity, or members' balance, or members' surplus. If you look at Connecticut and other Municipal Associations around the country, it is very clear that they know that they are a member driven organization, they know what they own or what they hold, it is in the trust of members. Yet, in these filings, we talk about net assets. The language has changed over the years. So, could you clarify for me, under net assets, what is unrestricted?

Mr. Riemer: What page, Senator?

Senator Jacalyn L. Cilley, D. 6: 21. Under Liabilities and Net Assets

Mr. Riemer: Unrestricted and I...

Senator Betsi DeVries, D. 18: Back side of 21.

Senator Jacalyn L. Cilley, D. 6: Back side of 21. Sorry about that.

Mr. Riemer: Right back side of 21.

Senator Peter E. Bragdon, D. 11: It would be nice if all pages had numbers.

Mr. Riemer: That would be what I would characterize as the amount of assets in excess of what I would call the target surplus, and Health Trust maintains a target, target reserve or target members' balance for risk protection that equates to a risk based capital ratio of 4.2. So, the Board designated line there and the different amount that would be...

Senator Jacalyn L. Cilley, D. 6: That was going to be my next question. What is Board designated? So, much of this is sort of not very clear to the average person.

Mr. Riemer: Right, well I hope I can help with that.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Mr. Riemer: The Board designated is the amount that corresponds to the 4.2 risk capital ratio, so that I have recommended to the Board with my input they have, they have made a judgment that Health Trust wants to operate with reserves that at least meet the 4.2 standard. So, in order to manage that goal, we explicitly compute the dollar amount that corresponds to the 4.2, we call it Board designated, and then assets above that amount are called unrestricted.

Senator Jacalyn L. Cilley, D. 6: Would those be member surpluses?

Mr. Riemer: Yes.

Senator Betsi DeVries, D. 18: Can I ask for a clarification on that before you continue though because, on that same report, I am backing up to page 9, which shows that the, it is the same December 31st, 2008 report, Section 14, page 9 and it is showing that the 4.2 RBC was \$61,000,000 and further down, I want to say two lines from the end of that first paragraph, it is showing that the Board also established \$7,000,000; \$7.2 million as designated for future administrative needs. So, your comment that the Board designated as just 4.2 doesn't seem to be quite right.

Mr. Riemer: You're right.

Senator Betsi DeVries, D. 18: Because, at least in that one year, there is another \$7.2 million.

Mr. Riemer: You are right and that is actual, it is actually the designated in all corresponds to 4.7, and we designate, of the 4.7, we designate 4.2 as strictly identified for the calculated risk and the balance for kind of a margin on risk.

Senator Betsi DeVries, D. 18: And, I'm sure when you continue answering Senator Cilley's, you'll, maybe help us understand what future administrative needs might have been in that answer to her. But, it is her, she has the floor.

Senator Jacalyn L. Cilley, D. 6: Okay. I would like to move right along because, like I said, I have some other questions. But, up above you have a claims reserve. That's just about 20 days worth of claims based on your claims data isn't it?

Mr. Riemer: Which page, Senator?

Senator Jacalyn L. Cilley, D. 6: Same page.

Mr. Riemer: 21.

Senator Jacalyn L. Cilley, D. 6: Well, back of 21 we've established \$22,895,949.

Mr. Riemer: Yes, correct.

Senator Jacalyn L. Cilley, D. 6: Okay. So, that is approximately 20 days of your reserve, of your claims?

Mr. Riemer: That sounds about right.

Senator Jacalyn L. Cilley, D. 6: So, you know and I know, and maybe some other folks in the room know that there are different ways of getting to what an appropriate reserve is. We could argue all day about whether risk based capital is the appropriate one or not.

Mr. Riemer: Sure.

Senator Jacalyn L. Cilley, D. 6: But, when you start taking 61, \$68,000,000, and it says 68 on the back page of 21, so I don't want to quivel, but wouldn't that put your, the ratio, the number of days that you have put aside is in excess, with that \$68,000,000, of about 2 years. In fact, 2 years is

RP

about \$3,000,000 if I calculated that correctly, and are, is what you are saying is the fluctuation in your claims rate could climb to a billion dollars?

Mr. Riemer: I'm not saying that.

Senator Jacalyn L. Cilley, D. 6: Did I do my math right here?

Mr. Riemer: I don't think so, Senator.

Senator Jacalyn L. Cilley, D. 6: Okay, then well forgive me; I'm going to take another run at this. How many days out would you have if you were holding onto \$68,000,000?

Mr. Riemer: Well, I would question looking at it that way. The reserve that we hold for the \$22,000,000 up above is expressly for paying claims...

Senator Jacalyn L. Cilley, D. 6: It is run off claims isn't it?

Mr. Riemer: For services that have been provided where the claims that haven't come through yet. We could look at the \$68,000,000 and it might take two plus months of claims, but our view of the \$68,000,000, what we are holding as the reserved, is that it is protection against not a certain imminent period of days claims, it is protection against the experience that will ensue over the following year, and in fact beyond the following year.

Senator Jacalyn L. Cilley, D. 6: What is the general...

Senator Margaret Wood Hassan, D. 23: Wait, wait, wait. Excuse me, Senator, just hold on a second I'm not sure Mr. Riemer was finished.

Mr. Riemer: To finish that point. The \$68,000,000 that we are holding for fluctuations, adverse experiences that occur really at any point in the future, not just the next 22 days, the next 1 year, it could be a period longer than a year, and it's protection against adverse experience not just with respect to claims higher than expected, but with respect to asset performance. I think one of the points that I made when rates were being set by the Board last year, and I expect to make it again when we next make rates, is that the risk component within the RBC methodology that has to do with asset risk is really a different thing now than it was 25 years ago: Now, asset risk isn't what it used to be, we see again this turmoil in the European financial markets. So, there is more exposure on the asset side. Nearly, not nearly as much as there is on the claims side. So, that's how I view the \$68,000,000.

Senator Jacalyn L. Cilley, D. 6: Right. Two, two final questions for Mr. Riemer. One is what is the trend in fluctuation with claims for LGC?

Mr. Riemer: Right now, we are presuming that we are going to experience of trend rate of 10%. We have been off by as much as 5% in both directions, in what trend actually turns out to be versus what we estimated it will be. Again, I reflect back to my earlier remarks when it was said that, for the July pool, which was 80% of our business, we offered a guaranteed rate for them last October based on an assumed trend rate. We revisited that rate and were able to lower that rate this April.

But, in either case, we are projecting out a period well beyond a year and probably plus or minus 5% variance in what we estimate when we set rates.

Senator Jacalyn L. Cilley, D. 6: Okay. Final question.

Senator Margaret Wood Hassan, D. 23: Yes. Thank you.

Senator Jacalyn L. Cilley, D. 6: You've indicated that there is a danger in going too low in the reserves. Is there a danger in holding too much money in an entity like this?

Mr. Riemer: There is, and I think that the member governed nature of the organization has dealt with that issue, and the \$23.5 million that we returned over the 2007, '08, and '09 ratings to the point where those give backs, it's not give backs it is there money, those returns of funds, together with the unanticipated losses we have been experiencing in the 2009 rate year, now have our reserve balance down to the target risk based capital level.

Senator Jacalyn L. Cilley, D. 6: Do you want...I have a couple questions for Mr. McCue too, but if people want to pursue questions for Mr. Riemer...

Senator Margaret Wood Hassan, D. 23: Why don't we do this? The clock says that it is exactly 3 o'clock, so I would like to give the staff and everybody else a true 5 minute break to stretch. I am going to gavel down 5 minutes. We are in recess.

I hadn't been meaning to ignore Miss Parker or Mr. Steiner, and I didn't know how they wanted to handle their testimony, but I bet we've got some questions for this group. Miss Parker, were you planning, did you have prepared comments?

Ms. Parker: I do not.

RA

Senator Margaret Wood Hassan, D. 23: And, Mr. Steiner, did you have prepared comments?

John Steiner: I do not, ma'am.

Senator Margaret Wood Hassan, D. 23: You guys had signed up to speak.

Mr. Steiner: I do not, but I am happy to answer any questions when I come up.

Senator Margaret Wood Hassan, D. 23: Okay, alright. So, that is the capacity you guys would like to be here on, but you are listed as speaking for that purpose. Okay. While we are waiting...

Senator Betsi DeVries, D. 18: We don't have a Secretary.

Senator Margaret Wood Hassan, D. 23: Oh, no, no we have Richard.

Senator Betsi DeVries, D. 18: Oh, we have Richard, I'm sorry. I think we should let Senator Cilley know we are reconvening, but in the meantime, I think Senator Reynolds had a question that she was hoping Mr. Steiner could answer, who I now...oh, there he goes, sorry.

Senator Deborah R. Reynolds, D. 2: I'm sorry not Mr. Steiner.

Senator Margaret Wood Hassan, D. 23: Oh, not Mr. Steiner, Mr. Riemer. Okay, sorry she got confused. Okay, so folks, we are back in and Senator Reynolds has a question for Mr. Riemer.

Senator Deborah R. Reynolds, D. 2: I have a series and I'll try to do that quick.

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Deborah R. Reynolds, D. 2: Nice to meet you, welcome to New Hampshire; I understand that you live in the Garden State.

Mr. Riemer: I do Senator, thank you.

Senator Deborah R. Reynolds, D. 2: Okay, so just because we are on the record and we are trying to create some legislative record here, Mr. Riemer, you're not a practicing actuary in the State of New Hampshire, right?

Mr. Riemer: I think I am, Senator.

Senator Deborah R. Reynolds, D. 2: Well, I have a couple of other quick questions then. You are not a resident of the State of New Hampshire?

Mr. Riemer: I am not a resident. I do own a home in New Hampshire, pay taxes, but I am not a resident.

Senator Deborah R. Reynolds, D. 2: I'm sorry?

Mr. Riemer: I said I do own a home in New Hampshire, but I am not a resident.

Senator Deborah R. Reynolds, D. 2: Okay. And, you are not a voter here or anything like that?

Mr. Riemer: No, Senator.

Senator Deborah R. Reynolds, D. 2: And, in terms of the testimony that you offered about when LGC went to the RGC standard. It was about 8 years ago I think that's what you said.

Mr. Riemer: Yes.

Senator Deborah R. Reynolds, D. 2: Was that your decision? Did you make that recommendation?

Mr. Riemer: I did.

Senator Deborah R. Reynolds, D. 2: Okay, and in terms of that recommendation, is that, given that that is your recommendation, prior to that I gather that LGC did not use that standard. Is that fair to say?

Mr. Riemer: They used a different standard, Senator.

Senator Deborah R. Reynolds, D. 2: And, did you start serving as the actuary 8 years ago? Is that when you started?

Mr. Riemer: No, I've been serving Local Government Center for 22 years.

Senator Deborah R. Reynolds, D. 2: Okay, now with regard to that standard, as I understand it, reasonable people in, whether it is a nonprofit or a insurance company, reasonable people do disagree about whether that is the right standard. Is that fair to say?

Mr. Riemer: I would answer it this way, Senator. I would hazard a guess, with near if not total unanimity, the actuarial profession would agree that it is appropriate. The standard, as it is used by the regulators, that is, which begins its concern and intervention at the 2.0 level.

Senator Deborah R. Reynolds, D. 2: And, I understand that in the insurance industry that might be accurate, but I guess among national risk pools, isn't it fair to say that there is no universal standard used, some use it, some don't?

Mr. Riemer: That is right.

Senator Deborah R. Reynolds, D. 2: Is that fair to say? Thank you. I have no further questions for Mr. Riemer at this time, I don't know if Senator...

Senator Betsi DeVries, D. 18: Did you want to go first and then...

Senator Peter E. Bragdon, D. 11: Go ahead, I'm still formulating my question.

Senator Betsi DeVries, D. 18: Okay, and, and, and thank you Mr. Riemer, Riemer am I getting that correct?

Mr. Riemer: Riemer, yes, Senator.

Senator Betsi DeVries, D. 18: You've seen the statute obviously that drives the reserve funds, and my questions would be to the comingling of the funds, and if you could tell me when that decision was made that it was appropriate. Was it in 2004 appropriate that there be some comingling of those fund reserve dollars?

Mr. Riemer: I don't know, Senator, at what point that was done.

Senator Betsi DeVries, D. 18: Would that have been possibly under your watch?

Mr. Riemer: No.

Senator Betsi DeVries, D. 18: You don't have any recollection of...?

Mr. Riemer: No, Senator.

Senator Betsi DeVries, D. 18: So, the year that the workmen's, you weren't there when the workmen's comp trust was established?

Mr. Riemer: I may have been there, but it was not an issue which I provided advice to Health Trust.

Senator Betsi DeVries, D. 18: I see. So, you have never been asked to give an opinion on the statutes that drive the reserve funds and whether or not there is the availability for the fund dollars to be used for the different insurance needs, workmen's comp, and health, etc.?

Mr. Riemer: That is correct, Senator.

Senator Margaret Wood Hassan, D. 23: Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Thank you, Mr. Riemer. I have a few questions. One, before a certain point in time, whether it is was 2002 or before the switch the RBC was used, what was the standard used before that and what were some of the reasons that compelled you to recommend this?

Mr. Riemer: As, Health Trust, as you might know, started out at its inception as a small insurance pool, and at that time we purchased aggregate stop loss insurance which was a form of reinsurance that provided that when, should claims exceed 20% of the expected level, that the reinsurer would assume liability. So, in effect, there was a 20% corridor which this small health plan was liable for. And, at that time, the thinking was that the Board wanted to maintain assets for the full amount of the 20% risk that they were absorbing before the reinsurer would pick up liability. So, that was the origin of thinking about what was the right reserve level.

As Health Trust grew bigger, it eventually reached a point where there was no need financially, and actuarially, to purchase aggregate stop loss insurance so that Health Trust at some point, and I forget the date, began assuming risk for any kind of deviation beyond the expected level. In the early part of that period, they were using something, a target, at something like the 20%, and at some point, clearly by 2002, there may have been some discussion building up to that, the trustees in fact, the trustees were asking for guidance. What is the right number? We have this exposure, what should we be doing? It was the same kind of issue the insurance industry and the regulators faced back in the '80s. What should we be holding? What is a sensible, reasonable reserve? That's why I introduced and recommended that they use risk based capital measure as a tool for managing reserves.

Senator Peter E. Bragdon, D. 11: And, if I may follow up on that?

Senator Margaret Wood Hassan, D. 23: Sure.

Senator Peter E. Bragdon, D. 11: Do I understand you to say then that the Trust does not carry aggregate stop loss?

Mr. Riemer: It does not.

Senator Peter E. Bragdon, D. 11: And, follow up on that. I assume that position is based in part upon the ability of reserves to be adequate?

Mr. Riemer: It is.

Senator Peter E. Bragdon, D. 11: And, is aggregate stop loss insurance expensive for something that size?

Mr. Riemer: Senator, I don't even know if it is available in this particular situation with a \$400,000,000 pool. Health Trust or more specifically, Local Government Center, also retains the services of Towers Watson, an actuarial consulting firm that deals in the reinsurance market and evaluating reinsurance. If we were ever to consider aggregate reinsurance as a possible means for Health Trust, we would work with them to identify what is in the market and what it costs.

Senator Peter E. Bragdon, D. 11: Thank you. I have a few other questions. I am curious about your role as actuary and you mentioned a group called the American Academy of Actuaries and I am sure that is an exciting and fun-filled group. Is that a group that you are a member of?

Mr. Riemer: I am Senator. It is a lot of fun.

Senator Margaret Wood Hassan, D. 23: About as fun as being in the Senate.

Senator Peter E. Bragdon, D. 11: Nothing more fun than that. The, what qualifies one to be both an actuary and also be a member of this Academy of Actuaries?

Mr. Riemer: Well, there are various standards and qualifications. For example, pension actuaries have to be certified by the federal government under ERISA to practice pension actuarial services. I am a fellow of the Society of Actuaries. It is actually a process that involves taking a series of examinations and achieving that status, and that, the Society of Actuaries is

really the educational and training organization of the actuarial profession. The American Academy of Actuaries is kind of a public outreach and public service organization of actuaries. For example, members of the American Academy of Actuaries will routinely appear before Congressional Committees and were very active in advising Congress in the recent health care legislation.

Senator Peter E. Bragdon, D. 11: And, if I can follow up on that? How about in terms of education? For instance, does one have to be a CPA before being an auditor or what kind of education is required to become an actuary?

Mr. Riemer: Most actuaries were mathematics majors in college and some have a graduate math degree. That is a pretty typical path.

Senator Peter E. Bragdon, D. 11: Thank you. And, I thought I had another one, but I'll let it loop around.

Senator Margaret Wood Hassan, D. 23: Okay, and we will come to you. Senator Roberge are you...I know Senator Reynolds had a question.

Senator Betsi DeVries, D. 18: Just, if I could follow up on the questions I asked before just for a little bit of clarity and I'll be brief, just 'cause I don't know the individuals that were present at your different board meetings, or was it, actually it was possibly the Long Range Planning Committee meeting, I am not sure. But back in July 14th of 2004, there was a meeting at, and I know that you were on the agenda as staff present, but it was a Jenny Emery, and maybe somebody can help me understand as I am reading through this, who Jenny Emery was offering advice, as listed as a consultant?

Mr. Halloran: She, Jenny Emery is with Towers, Watson. She works for that firm.

Senator Betsi DeVries, D. 18: Bond counsel, or...

Mr. McCue: She helps broker and look for reinsurance products to the extent that we use those. She also represents a number of pools throughout the nation so she provides consulting services, in terms of helping organize benefit products and the administration programs generally.

Senator Betsi DeVries, D. 18: Okay.

Senator Margaret Wood Hassan, D. 23: And, that was an answer given by Mr. McCue just so we can keep straight, and before that Mr. Halloran.

RF

Senator Betsi DeVries, D. 18: And, thank you, and it appears it was at that July 14th 2004 meeting when the discussion, in fact it looked like it was a question of a Timothy (I'll butcher it) Rore, Board member...

Mr. McCue: That is correct.

Senator Betsi DeVries, D. 18: SAU member. Anyways, that asked the question, or one of many that asked the question about the pooling to help contain costs, pooling of the different reserves, I would assume to help contain the costs. Am I right in assuming that was the way that discussion kind of went that day?

Mr. Halloran: I'm not sure...

Senator Betsi DeVries, D. 18: You weren't part of it, I don't think.

Mr. Halloran: I'm not sure that I was there, but we have had that, there has been a discussion, sure.

Senator Betsi DeVries, D. 18: Okay, I just wanted to clarify though. It did seem to come from one of the consultant's recommendations, and I apologize I assumed it might have been yours. But, it was not; it was one of your other consultants.

Senator Margaret Wood Hassan, D. 23: Senator Bragdon and then Senator Reynolds.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Just following up now, I was reading through my notes and thinking what I was going to say I jotted something down, but I think you said, Mr. Riemer, and that is that this change would go into effect, and you said that you would have a genuine concern with respect to the insolvency of the fund.

Mr. Riemer: Yes.

Senator Peter E. Bragdon, D. 11: Is that is your opinion as a professional actuary and member of the Academy of Actuaries?

Mr. Riemer: It is.

Senator Peter E. Bragdon, D. 11: The way to mitigate the potential insolvency of the funds then I assume would be through drastic rate increases to those who pay in?

RF

Mr. Riemer: Well the concern I have, Senator, as I have said, is that we are now sitting on \$474,000,000 and the promised guaranteed rates that we have made. We wouldn't have the opportunity, if this were passed and implemented immediately to change those rates. A year from now, if we weather the storm of living with such a thin capitalization, certainly at that point, yeah, we'd have a, it would be a significant impact on rates to rebuild capital.

Senator Peter E. Bragdon, D. 11: And, I have another question.

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Peter E. Bragdon, D. 11: Somebody said, it may not have been you, Mr. Riemer, but one of the three up there said something about withdrawing the rates that have been proposed. Is that something that you are legally able to do, you set rates with people, you have the ability to say, wait a minute, things have changed, we withdraw the rates we had promised we were going to do and here are the higher rates?

Mr. McCue: I, I and this is Mark McCue again, and I think from the legal perspective, we don't guarantee renewal. So, even though, if we renew, we had established rates under a new set of circumstances, if the regulation, if this legislation were to pass, certainly there would be a change of circumstances, and we are not under an obligation to renew. So, I think we would be legally entitled to withdraw those rates.

And, just to follow up on your prior question to Mr. Riemer, I also represent New Hampshire Health Plan and Small Employer Reinsurance Group. Those were entities, quasi-governmental entities like LGC, but they're funded differently, they are funded by assessments on insurance carriers in the State. So, they have the statutory ability, if an unusual situation arises during a plan year, to make special assessments against those carriers. There is no such ability with Local Government Center.

Mr. Riemer: Senator, if I may follow up to the response. You asked about the impact on rates and I said rates are locked in for a year, but after that, we would have to have an upward adjustment to recapitalize. We have a history of a linkage between what we do with rates and where we are in reserve position.

In the past, when we established the risk based capital goal that we expressed is 4.2, we were far below it, we were around 2.2. So, we had a systematic effort to build that goal. We did it through what we call a risk charge which, for some considerable period until we built up to our target,

was 5%. So, there's an instance in which I would state that the low level of reserves, low levels of capitalization is directly correlated to a higher rate.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Deborah R. Reynolds, D. 2: I just had a couple of quick questions.

Senator Margaret Wood Hassan, D. 23: Yeah.

Senator Deborah R. Reynolds, D. 2: For Mr. Riemer, if I could. Mr. Riemer, I apologize. You have testified that you support your recommendation of this RBC standard and I think we all hear that. I think the issue for the Legislature is that, if you look at our statute, which is really what we have to be governed by in New Hampshire, you would agree with me that there is nothing in the statute that would require that standard to be used. Correct?

Mr. Riemer: I would.

Senator Deborah R. Reynolds, D. 2: Okay, and would you also agree with me with regard to what may be a perfectly good idea about taking excess reserves, whatever that number is, and using it to suppress increases in health insurance coverage, that the language of the law that we have, and the legislative intent is that LGC is to return all earnings and surplus in excess of any amounts required to the participating political subdivision. That is really what the law requires, right?

Mr. Riemer: Yes.

Senator Deborah R. Reynolds, D. 2: So, your decision internally to not restore those surpluses could be argued that it is contrary to law. Right?

Mr. Riemer: To not return surpluses...

Senator Deborah R. Reynolds, D. 2: Excessive amounts.

Mr. Riemer: Above our target?

Senator Deborah R. Reynolds, D. 2: Yes.

Mr. Riemer: I agree, Senator, there is room for interpretation of that issue.

Senator Deborah R. Reynolds, D. 2: Okay, thank you. Thank you, sir.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator Cilley I saw your hand up.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. Is it time to be able to move on to another speaker, or...

Senator Margaret Wood Hassan, D. 23: Well, did you...well, what we have confirmed is that, for the LGC, we have these three gentlemen.

Senator Jacalyn L. Cilley, D. 6: No, no I understand that. I just didn't know if everybody was done talking to Mr. Riemer.

Senator Margaret Wood Hassan, D. 23: I believe so.

Senator Jacalyn L. Cilley, D. 6: Okay. I have some questions for Mr. McCue if that is okay?

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Jacalyn L. Cilley, D. 6: Thank you. Mr. McCue, could you explain the situation of incorporating in Delaware?

Attorney McCue: Absolutely. Alright, in 2003, LGC was comprised of three different entities. New Hampshire Municipal Association, the Health Trust, and a Property Liability Trust. It was decided that it would be most prudent, efficient to governance to combine those entities under a system with a common parent company, Local Government Center. Because we had a common parent company, there was a desire to have one Board so that there would be unified decisions, one board for staff to work with.

The structure we came up with was to have each of the trusts and NHMA become LLCs, limited liability companies, because they could be member managed and effectively managed by a single holding company board, Local Government Center. In 2003, the New Hampshire limited liability statute did not permit or recognize the conversion of corporations into limited liability companies, so we employed a very common technique used in corporate law by using Delaware law.

The Delaware corporate statute is much more advanced and it's limited liability statute was enacted in more sophisticated, higher to New Hampshire, more sophisticated. So, the technique is to set up a mirror corporation, mirror entities in Delaware to have two sequential mergers. Have the New Hampshire entity merge into the Delaware entity which permits conversion from corporation to LLC, then have that Delaware LLC

immediately merge back into a mirror LLC in New Hampshire. So, essentially, you run through Delaware to convert your existing corporations in LLCs. It was a very common technique. Since the statute in New Hampshire has been modified so that that technique is no longer necessary to recognize the direct conversion of corporations to LLCs.

Senator Jacalyn L. Cilley, D. 6: So, just to follow up on that if I may. Could you explain to me why you felt it necessary to do that?

Attorney McCue: Because we wanted to avoid having a number of boards, both having, the fact that it wouldn't be unified in operating the trust, that there would be multiple boards for the staff to interact with. The desire was to have a single board, and the only way that we could have a single board in this structure was to take advantage of the LLC statute which allows member management, so that LLC is the sole member of these LLC subsidiaries to manage them on one board.

Senator Jacalyn L. Cilley, D. 6: And, when my husband and I were incorporating in 1992, we had an LLC statute on the books. It changed substantially enough post-2003 that you didn't feel it was adequate at the time?

Attorney McCue: I'm sorry Senator, I am not sure I understand the question, and because...

Senator Jacalyn L. Cilley, D. 6: Well, if the issue was going...

Senator Margaret Wood Hassan, D. 23: Please don't interrupt the witness.

Attorney McCue: Although there was an LLC statute obviously, at the time it did not contain a typical provision that was in the Delaware law of being able to convert within New Hampshire from a corporation to an LLC. It didn't recognize that, nor did the corporate statute, so we go through Delaware which did recognize that. And, since 2003, after we did this corporate maneuvering, New Hampshire law caught up with the standard done in Delaware, it is now permitted.

Senator Jacalyn L. Cilley, D. 6: Okay. Could you explain, did you ever pay taxes in Delaware?

Attorney McCue: There were filing fees that had to be paid, there may have been a minimum franchise tax paid, but it was very minimal costs paid and I'm guessing in the low hundreds of dollars to complete this maneuver.

RP

Senator Jacalyn L. Cilley, D. 6: Follow up. How many years did you pay that tax?

Attorney McCue: Just, just these entities existed, literally, for a split second. So, in order to be able to file and do the merger, we had to create them, pay the tax, file the filing fees to do the merger and then they were out. So, they ceased existence.

Senator Jacalyn L. Cilley, D. 6: So, would it surprise you that when I called the Secretary of State in Delaware yesterday, and I talked to their Department of Revenue Administration the last taxes were paid on September 12th of 2006 and there were taxes paid in 2003, 2004, 2005, 2006—late fees and penalties?

Attorney McCue: That would not surprise me. And; the answer to that is when the property liability trust and workers' compensation trust decided to merge for economic and other reasons in 2006 and '07, I went through the process of, and now, of course, New Hampshire recognizes that merger and there were two LLCs, it became known to me that, when we were doing the merger, our firm had neglected to complete the filing in Delaware to affect one of the entities, Property Liability, from being on record having completely passed through Delaware. So, under the Delaware process, we were required to reinstate that entity to pay back the back franchise fee payments in order to have it sign the merger document, post-2003, to complete the record that we had actually ended and completed the merger. We did the filing in New Hampshire. That one filing in New Hampshire was neglected, so we corrected our error in 2007.

Senator Jacalyn L. Cilley, D. 6: You're familiar, I take it with...

Senator Margaret Wood Hassan, D. 23: Follow up.

Senator Jacalyn L. Cilley, D. 6: Follow up, I apologize, I thought that we said there was a line.

Senator Margaret Wood Hassan, D. 23: No, we didn't, but...

Senator Jacalyn L. Cilley, D. 6: Okay. You are familiar I take it with RSA 5-B:5?

Attorney McCue: Yes.

Senator Jacalyn L. Cilley, D. 6: Okay. And, and that it says that any risk pool in New Hampshire shall be an existing New Hampshire company. So, is

there any latitude for 5 seconds, 5 hours, 24 hours to move what is taxpayer money out of this State or to control of taxpayer money out of this State?

Attorney McCue: Senator, I understand the question. It, it, at no time legally because both steps were taken simultaneously. In effect, the assets never left the State. These entities were converted through New Hampshire simultaneously and the assets stayed in New Hampshire. At any time during the course of that one day where we completed all the filing, were someone to have a claim against LGC, everything would be in New Hampshire. That would be the site, that is were the business was being conducted. This was a pure technicality with a very spontaneous trip of the legal title, the shell of the entity through Delaware.

Senator Jacalyn L. Cilley, D. 6: Final question. I guess I would ask you, as a member driven organization, with a clear statute on the books, and you set up an entity in Delaware. What do you think taxpayers would think of it? And, I'd ask you, are those entities still in good standing in the State of Delaware?

Attorney McCue: Those entities don't exist. They existed solely for the purpose of converting New Hampshire corporations into New Hampshire LLCs. They were shell corporations that were set up in Delaware, mirror, mirror LLCs to what existed in the corporate form of what was set up in New Hampshire. On the same day, things, there was two sequential, or concurrent mergers so that the Delaware entities went away, literally, instantly.

Senator Jacalyn L. Cilley, D. 6: No further questions for him.

Senator Margaret Wood Hassan, D. 23: Okay. Senator Reynolds.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Attorney McCue, I do have a couple of follow ups on that. I think the legal issue is not so much whether or not it might have been a good business practice to do what you did. I think the concern that I have is that the statute requires that the entity be organized under New Hampshire law. So, even if it was organized for a second under a different state's laws, isn't that a defective organization? And, based on that, how does the Health Trust even have authority to collect any money at all?

Attorney McCue: It, it was...

Senator Deborah R. Reynolds, D. 2: I guess that is my concern.

Attorney McCue: I understand...

Senator Deborah R. Reynolds, D. 2: And, you advised the Board, and you gave them advice, they relied on that that is clear. So...

Attorney McCue: Absolutely, and I understand your confusion.

Senator Deborah R. Reynolds, D. 2: Oh, it is not confusion, it's just what the statute says.

Attorney McCue: Or, I understand your point of view I guess, and from a legal perspective nothing, there were no assets and no operations ever in Delaware. There, at all times, there was an entity organized in New Hampshire, at one point there were two entities organized simultaneously, and legal title to the assets, simultaneously, went through Delaware to change the corporate form from a corporation to an LLC. At all times, the operations, the assets, everything remained in New Hampshire. There were no activities conducted in Delaware other than the filing of these simultaneous forms, and the forms bringing the corporations into Delaware and taking them out were all filed at the same time. So, this is kind of corporate law fiction technique, if you like, that was well-recognized, and there was no activity, there was no liability in Delaware at all.

Senator Deborah R. Reynolds, D. 2: Well, I don't think that really is the point, Attorney McCue. I think the point is the statute says that you have to be organized in New Hampshire, and in fact, the entity that you organized in Delaware is LGCPTLLC, which was an entirely different entity than was organized in New Hampshire. So, they were different, and I understand the rationale. I am just pointing out here that the Board who are good people, volunteers rely on your advice and there are concerns about how this whole entity was born.

I do have a couple of other quick questions. You have been providing legal advice to this organization for some time, have you not, sir?

Attorney McCue: I personally have been advising since 2005. My predecessor confirmed me as his successor.

Senator Deborah R. Reynolds, D. 2: Okay, and despite the fact, if I may?

Senator Margaret Wood Hassan, D. 23: Yeah.

Senator Deborah R. Reynolds, D. 2: I apologize, Senator. That there are any number of lawyers that work at the LGC, your fees for suing the

Secretary of State and being here today, for resolving litigating issues with the Professional Firefighters, that's all over and above any legal fees that the LGC pays for in-house counsel. Right?

Attorney McCue: The LGC doesn't pay for the in-house counsel, the legal staff at LGC is a service provided to municipalities and those lawyers give advice and training to municipalities, and they purposefully do not, for matters of conflict of interest, provide any legal services to LLC.

Senator Deborah R. Reynolds, D. 2: But, my point is that there are huge amounts of legal fees here that the citizens of the State of New Hampshire are paying through property taxes, not only for fighting with the Secretary of State, but also for you being here; I think at some point, Attorney McCue, it might be helpful if you would sit down with the Secretary of State's Office and try to resolve some of these issues so that we are not all paying all these legal fees. I would really appreciate that as a taxpayer.

I have a couple of other quick questions...

Attorney McCue: May I just...

Senator Deborah R. Reynolds, D. 2: Yupp.

Attorney McCue: Respond to that Senator?

Senator Deborah R. Reynolds, D. 2: Sure.

Attorney McCue: I completely concur, and in fact that is exactly what I tried to do in August of 2009. If you look at the correspondence attached to the time table, that is precisely what I tried to do. I hate litigation, it is wasteful, sometimes it is necessary to protect the organization's rights, the organization's future. It is an absolute last resort in my book and I think it is incredibly wasteful and I recognize that lawyers win in litigation and no one else does, but sometimes it is...

Senator Deborah R. Reynolds, D. 2: Just as a final follow up, because we have other people that are waiting patiently to testify.

Senator Margaret Wood Hassan, D. 23: We sure do, yup.

Senator Deborah R. Reynolds, D. 2: I would ask that you provide for us an accounting of all legal fees incurred to date relative to LGC's suit against the New Hampshire Secretary of State. I would like to have that in part of our record. Thank you.

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Senator Margaret Wood Hassan, D. 23: Are there other questions for the representative at the LGC?

Senator Peter E. Bragdon, D. 11: Actually, yes.

Senator Margaret Wood Hassan, D. 23: Okay, Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Follow up question to the one about Anthem with, somebody answered whose name I forget.

Senator Jacalyn L. Cilley, D. 6: Wendy Parker.

Senator Peter E. Bragdon, D. 11: The issue was this agreement with Anthem which initially seemed like was, if you were an LGC member and left, you could not join with Anthem, or get health insurance with Anthem for a period, two years. But, the answer I heard made it seem a little broader than that. That no town in New Hampshire who has never even been a member of LGC can purchase from Anthem. Is that correct?

Ms. Parker: Thank you, Senator. We, there are two pieces to that. LGC, as a member organization, does have a two-year out rule. So, if you're insured with us, it means that you cannot come back to the pool for a period of two years. During that two-year time period, you can also not go to Anthem and seek coverage. Aside from that, just in general membership, whether you are with us or not with us, we do have an agreement through Anthem that we are their preferred vehicle for the public sector. So, I think I mentioned, unless you are under 50 employees and there are two other exceptions, both the City of Nashua and the City of Manchester because they were existing clients when we made the contract that they can have coverage through them directly. Otherwise, all of the contracts with the public sector in New Hampshire for Anthem are through LGC.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: And, actually that, Ms. Parker, that raises one question in my mind, which is, am I correct that, if a member withdraws from LGC that, if the Board were to decide in its interpretation of complying with 5-B, to return excess money as it is directed to, and it does in terms of rate stabilization and decreases, the members who have withdrawn get no benefit from that?

Ms. Parker: That is correct. You have to be a current member in order to receive those rate credits.

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Senator Margaret Wood Hassan, D. 23: Okay. Thank you. Any other questions? And, Mr. McCue, you wanted to add something.

Attorney McCue: Yeah, I'm sorry. I just want to respond to actually maybe the first question from Senator Cilley to Mr. Halloran. And, you asked about the salary increases with the Board approval. Two points I would like to make is that all salary decisions are made annually, are run through both the personnel committee of the board and a finance committee of the board and then finally approved by the Board.

I think that the percentage that you are referencing is an aggregate compensation increase. It is not due to the increase in salary of existing personnel, it is the result of the need to add personnel because, at the time, workers' compensation programs grew to such, at such an accelerated rate and the third party administrator of those claims was not performing to our standards. So the Board decided to bring workers' comp claim administration in-house. So, there was a need both for technology changes, but also to add staff to administer those things.

Senator Jacalyn L. Cilley, D. 6: If I could just follow up, Madam Chair. The reason that I asked that question is because Mr. Halloran knows quite well, serving as a local official, and it is what troubles me as a local taxpayer in the State of New Hampshire, that we have an entity that, while all of their members are suffering, the State is suffering, the members are suffering, that I would think that a board comprised of local officials would be pushing that entity to be as lean and mean as it possibly can. We certainly hear from plenty of our constituents, you know, tighter your belts. We have to do it. And, I can give you one example of at least one individual, I can't break down today, all of the salary components that, you know, that I used that figure for had that I. Maybe it is more people, maybe it is higher salaries, but I can tell you that your just recently retired Executive Director went from \$185,000 in 2007, \$230,000 in 2008, and \$217,000 in 2009, which was a 10% increase and a 7% increase, and my question is, is the Board approving those salaries, plus a lifetime health care benefit to the best of my knowledge, plus a very generous retirement package is what I understand. So, is the Board approving those things knowing that when they go back home, their towns are laying off, having to reduce salaries, cutting back benefits?

Mr. Halloran: The Board approves the budget, Senator. And, I don't have those figures in front of me, but the Board is responsible for the budget.

Attorney McCue: In every single Board meeting, when budget issues are raised, there are several voices, loud voices, raising exactly the concerns you

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raise that we are hurting back home, we are having a hard time coming back home and authorizing the salary increases. One response is that we are not running a town, we are running a pooled risk management program which has to compete for talent with New Hampshire private insurance markets. So, there is a need to acknowledge and understand both the employment marketplace as well as specific responsibilities of these people. But, by and large, the employees at the LGC do not receive the types of raises, and the types of compensation that they would receive in the private insurance market, and there is constant pressure to be as lean and mean as possible.

Senator Jacalyn L. Cilley, D. 6: You have my word, this is the last question.

Senator Margaret Wood Hassan, D. 23: You know, I've said this before in Committee hearings, but a very wise Judge told me never to say, "last question, your honor."

Senator Jacalyn L. Cilley, D. 6: It is the last question and I can't just let it go. It is my understanding that the Supreme Court essentially deemed you, deemed the LGC a quasi-governmental agency, very similar in nature to a town, that the Legislature created an entity that's sole purpose was to allow communities to bring down their costs of insurance. So, when I see something that operates far more like a very lucrative corporation, and it is being subsidized by the taxpayers of this State, that troubles me.

Attorney McCue: I, I, I respectfully don't agree with your characterization. I understand that you are troubled and I just again assure you the Board looks carefully at this, its purpose, because it is member governed and responsive to members, is to be as lean and mean as possible. The Supreme Court recognized that we are a public entity under RSA 91-A purposes, but you have to recognize we are not a town, we cannot tax people, we are a voluntary organization that has to compete with the private commercial market. That makes us a little different than a town in the way we have to operate.

Senator Betsi DeVries, D. 18: A very wise man said...

Senator Margaret Wood Hassan, D. 23: Senator Bragdon, you've got your hand up.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Since I didn't hear a question in the last question, I thought I would ask my own. Is it possible, because I hate to have allegations made against people without all the facts available, having sat on a school board, I have seen situations where

you negotiate with your CEO and there is a whole contract of various things which include salaries, benefits, mileage, etc. Is it possible that, in determining a new contract for your CEO, you took into account that, okay we are not going to reimburse you for mileage anymore, we will put it on your salary? So, just looking at the salary amount, is it possible that looking at the salary amount does not reflect the entire compensation value?

Attorney McCue: That is very possible, and there is also, and I don't know the time period, but we also have to recognize that there was a change in the Executive Director, going from a longstanding Executive Director to the current Interim Executive Director.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Other questions? Okay, Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. And, I, I guess I would just end with a request kind of where I started in that it is not clear to me how much of the information that is considered among the Board members actually is brought back to the municipalities for full disclosure, for discussion, or feedback? And, I would truly like to see the mechanism beyond the newsletters and magazine that is sent out, which is an issue, policy oriented, I would love to see how it is that the different members, the selectmen, the aldermen, whatever, of your organization, that are participating, how they actually are notified, and if you could give me examples of how that is. I understand that you may go back to Plymouth, or maybe not all of the selectmen, but towns that don't have representation, there is only 31 Board members and they are not all public employees. There is many, many towns that don't have representation on that Board. How do they know that there is a decision made to fund, I think it was, recently, several million dollar new computer system, or you know, how do they know that there was a purchase between land and a new building construction of, you know, 9, 10 millions dollars plus, that their health insurance costs are supplementing?

Mr. Halloran: We have member services who work, who work for LGC, Mr. Steiner's group, and those of us who are in the different programs, almost on a weekly, bi-weekly basis people will come through and checking on things. And, Mr. Steiner's group will be at Selectmen's meeting, school board meetings, they are oftentimes when one of my school boards will say can we have a representative in from LGC? We are going to tour the building tonight, prior to the Fire Chief coming we would like the insurance company walk through with us so we can get a feel for the building.

So, we use member services. Ms. Parker's group comes through on the health side. In fact, in Plymouth, we have one of the staff members coming to talk about medical insurance options and there may be a school board representative that sits in on that, that presentation. So, it is through member services that not only the employees, but the elected officials, have the opportunity to participate and get information. But, it is, sincerely, it is up to us to get out into the field. I agree with you.

Senator Margaret Wood Hassan, D. 23: You had another question?

Senator Betsi DeVries, D. 18: We may be going down the same place because it would be my opinion, would you believe, that member services and the type of support that member services would give, would render to a member community is very different than sharing some of the strategic moves that you are making as a Board that are spending many millions of dollars that may or may not be prudent decisions. I am not trying to render that opinion, I am just, as I believe other members of this Committee, trying to find out when we are all tightening our belts in very difficult municipal budgets, why is there not better disclosure on each and every one of these additional items that has driven up the expenditures on the dollars held in the trust?

Mr. Halloran: I would just offer, we have an annual conference in November, in Manchester, for two and a half days, and that is very well attended by selectmen and town managers, and school board members, and there is an annual meeting at the convention.

Attorney McCue: Of the members.

Senator Margaret Wood Hassan, D. 23: And, Mr. Steiner.

John Steiner: I can answer that if you would like.

Senator Margaret Wood Hassan, D. 23: For the record, why don't you come on...

Mr. Steiner: John Steiner from LGC, Director of Member Relations. When I am not enjoying myself at hearings like this, I am on the road. I was in Franconia a few weeks ago with the Board of Selectmen. I do a lot of night meetings when the staff does not have meetings. They wanted to talk about salaries. I was in New Ipswich, they wanted to talk about legislation. We purposefully go out and talk about what is happening. We answer our fees. They ask, why are our workers' comp rates lower if we buy all three

programs? Well, there is reasons for that because we can better manage the claim, part of it is that a portion of the health dollars is going to workers' comp. You buy it with us, you may find it is a reduced price. If you buy it from our competitors at Primex, or if you buy it from the private market, you may also see a reduced price.

There are all kinds of information, we never know what we are going to talk about when we go to each town, because just like a hearing like this, we never know what questions are going to come up. But, I am at every Board meeting and I have this information. So these things get out to the members. The Managers' Association meets monthly in our building, so they are there. The School Boards Association is in our building. We have people in and out, local officials all the time. So, they are aware of what we are doing and what we are talking about.

Senator Betsi DeVries, D. 18: I will tell, but I have one follow up for you, and I being wise, will not say it is my final, but I do believe, I would love to know the last time, without it being a solicited question, that you offered the information to a community that only purchases health insurance from you that in fact their rate could be offsetting the costs of a community that purchases all three?

Mr. Steiner: I can't tell you when that happened. I know that we answer RFPs all the time; and so it might be for health, it might be for health property liability, and workers' comp or any combination of those three. So, when we go out to talk about those things that is part of the issue that I do know members know that it is not just the price that they are getting, it is the extra services, the fact that they can call up and ask someone come out and do training on chain saw safety. It is all of those extra things that we do, so it is all tied together.

Senator Betsi DeVries, D. 18: Let me ask this specific question. Has any community that only purchases one product from you ever asked you whether or not that product could be cheaper if the dollars weren't being spent to offset the costs of the workmen's comp or other trusts?

Mr. Steiner: I certainly can't tell you exactly where or when, but yes, I do know we have had that question before, and it's 1%.

Senator Margaret Wood Hassan, D. 23: And, I guess my question, and I think what all of these questions are getting at is, it is one thing to have an annual meeting to report on what has been happening; it is another thing faced in very difficult economic times or frankly, any economic times when you are dealing with the public's money, to have a process in place so that

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your members and taxpayers really understand the choices that they are being asked to make, and/or, that you are making on their behalf. And granted, people have different opinions, but one of the things that is concerning, at least to me, is the notion that a decision has been made by 31 members of a much larger membership that it is always better to protect rates 3, 4, 7, 10 years out than it is to have cash on hand understanding that you might have to have an assessment in a year or two if you have a really bad claims year. And, what doesn't seem to be part of the discussion, in an entity that is instructed by statute to return excess amounts, not to lower rates, but to return excess amounts to its members, there never seems to be a process for truly asking the taxpayers who fund all of you, what their preference is. Is there a process in place? Do they get to weigh in before you all make the decision?

Mr. Halloran: In the public forums that we have held at different times, many decision makers and maybe selectmen or school board members have recognized that medical insurance rates seem to continue to climb, and what those people have asked has been, can we use the reserves, or use a long-standing history so that we can stabilize as best we can those medical rates, so we can stabilize the tax rate. I mean, those are the honest to goodness conversations that we have at the school board meetings, and selectmen's meetings around our area, is rate stabilization, both tax rates and medical rates. And, those are the conversations. What they want to avoid is the ups and downs because it raises havoc with the tax rate and that, those are the conversations that we have had, that I have had.

Senator Margaret Wood Hassan, D. 23: Thank you. Mr. Riemer.

Mr. Riemer: Senator, you made reference to assessments to cover adverse results. My understanding is that Health Trust does not have the right to assess members above the premium that has been guaranteed to them if we have an adverse experience; that our sole ability to withstand adverse experience is with respect to our reserve.

Senator Margaret Wood Hassan, D. 23: Within the time period of the guarantee?

Mr. Riemer: That is correct.

Senator Margaret Wood Hassan, D. 23: But, not in future use.

Mr. Riemer: That is right.

Senator Margaret Wood Hassan, D. 23: And, the guarantee lasts so long, and you all have the right, I take it, there is a process for changing or updating your bylaws? I mean, the statute doesn't tell you that you have to make a guarantee.

Mr. Riemer: And, I would defer to legal counsel.

Attorney McCue: The guarantee is a Board policy, management policy as well, but it is a contractual matter. We offer coverage through a contract that has a period of time, usually year and then it is up for renewal. We separate, we offer those rates, and so I think what would happen is that, as we catch up to bad experience or a change in regulation, you will see the next rates are going to spike up to cover the reserves that we need, and that is exactly what we have heard from members is what they would like to avoid, and they prefer for us to hold the reserve, more of their money in reserve so that they can have more stable rates.

Senator Margaret Wood Hassan, D. 23: And, Mr. Halloran.

Mr. Halloran: Senator, we do the guarantee and we try and do it in October or November for those municipalities and school districts so they can set their budget. They know what their maximum rate can be. Sometimes it comes in lower than the maximum rate, but that is why we do it, so that that piece of their budget can be set.

Senator Margaret Wood Hassan, D. 23: Any other questions? For once and all we think we are done. I am going to try to get us done with this group of witnesses in 5 minutes because we've got a bunch of others and we've got some bills to exec, okay?

Senator Deborah R. Reynolds, D. 2: Just a couple of quick questions, and I think, Attorney McCue, if you don't mind taking just a few more questions?

Attorney McCue: Sure.

Senator Deborah R. Reynolds, D. 2: On the real estate that the LGC or its entities own, I am looking at three separate deeds. One in '89, one in 2003 and one in 2006, and roughly calculating transfer tax in 2003, the title to which was taken by the Local Government Center, Inc. It looks like this might have been the parking lot parcel, which you purchased, or LGC purchased for something like 1.2 million. Is that correct?

Attorney McCue: I apologize, this predates my personal involvement.

Senator Deborah R. Reynolds, D. 2: Okay, but your law firm?

Attorney McCue: Right. My law firm was involved.

Senator Deborah R. Reynolds, D. 2: And then, the 2006 parcel, again a rough calculation of transfer tax is roughly 9 million. Now, this is the building, correct?

Attorney McCue: I believe so.

Senator Deborah R. Reynolds, D. 2: Okay. So, I guess my question about all of this, Title II, the real estate is transferred to the Local Government, Inc., okay? Which, as I understand it from the filings of the Secretary of State's successor, in the internet the name change of the voluntary corporation under RSA 292 of the New Hampshire Municipal Association. Right?

Attorney McCue: Correct.

Senator Deborah R. Reynolds, D. 2: Okay, so my question is, where did the money come from to buy the real estate? Was it from the Health Trust?

Attorney McCue: Again, this, I would have to look into this. I don't want to speculate because this predates my involvement and I just haven't looked into that issue.

Senator Deborah R. Reynolds, D. 2: Would you provide that documentation to us?

Attorney McCue: Sure.

Senator Deborah R. Reynolds, D. 2: Because I think the issue for us, quite frankly, would be what is the authority for doing that, given that surplus has to go back to the political subdivisions. Sir?

Attorney McCue: Well, again, just conceptually, any purchase of real estate and the creation of facilities would be a component of administrative expense; that also is permitted by RSA 5-B, not just reserves, but the administrative expenses claims of handling claims, and you need to house these people obviously to handle these claims, you need a facility in which to house them. So, that's part of what we would call the administrative expense of conducting the operation, providing the services, and administering the claims.

Senator Deborah R. Reynolds, D. 2: But, you would agree with me, would you not, that if there is a dissolution, the asset has to go back to the members, right? It is their asset? So...

Attorney McCue: It is held cooperatively by this organization.

Senator Deborah R. Reynolds, D. 2: Right, so I guess my question is and we talked about this a couple of times in terms of transparency, communication to the communities, you know, do the communities know, were they informed ahead of time, that this very expensive real estate was purchased with taxpayers dollars, and I would like to know if the Health Trust paid for that?

My final question, I guess, is there does not seem to be a recorded mortgage on any of the real estate, and I guess my question is, if that's the case, why is it in your budget there is \$360,000 of rent being paid? There is no debt service; there is nothing.

Attorney McCue: I could look to our Chief Financial Officer. My expectation is that it's a bookkeeping entry and the facility is a service to the entities, so each of the entities is paying for the insurance to cover that, the maintenance, and the upkeep. I am not sure if property taxes are included, but I understand debt services is not part of it, but there is certainly other expenses involved in a facility which were allocated to the facilities.

Senator Deborah R. Reynolds, D. 2: But, if Health Trust lent Local Government Center, Inc., \$10,000,000, is there a promissory note? There doesn't appear to be one.

Attorney McCue: No, there wouldn't be a loan; it would be the use of funds available for administrative expenses including acquisition of real estate, the construction of a facility in which to do business. That would be part of the expense. There was no loan, there is no mortgage. The rent is, there is an entity, Local Government Center Real Estate, Inc., which is designed as a separate subsidiary to hold the title to the real estate so that it is protected from any liabilities of the other entities.

Senator Deborah R. Reynolds, D. 2: Okay, but...

Attorney McCue: Which is why, I'm sorry, which is why you'd see a lease.

Senator Deborah R. Reynolds, D. 2: As a further question though, it looks to me that, in 2003, Local Government Center, Inc. changed its name to Local Government Center Real Estate. So, this is the entity that exists.

Attorney McCue: That is the entity which holds title, New Hampshire Municipal Association changed its name to Local Government Center, Inc. which manages the operations, conducts the activities for which the facilities to do the activities would be leased and housed.

Senator Deborah R. Reynolds, D. 2: I think, and I could be wrong, but I think, Local Government Center, LLC was created separately to do those activities, would you believe that?

Attorney McCue: The Real Estate subsidiary, I believe, is a corporation and not a LLC.

Senator Deborah R. Reynolds, D. 2: Okay. And, I guess the final question about all of this is that, if there is a loan from one entity which is the Health Trust, to the non-profit, Local Government Center, Inc., title is transferred into the name of Local Government Center, Inc., shouldn't there be a note from one to the other?

Attorney McCue: Again, I think, let me not speculate, and I would be happy to follow up and outline exactly. I understand your issue.

Senator Deborah R. Reynolds, D. 2: That would be great.

Attorney McCue: And, I think there is a clear answer, but I am not able to provide it.

Senator Deborah R. Reynolds, D. 2: And, any legal opinion that you may have given in writing to the Board, would be helpful too. Thank you.

Senator Jacalyn L. Cilley, D. 6: Right in that same vein?

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Jacalyn L. Cilley, D. 6: And, just very quickly, while he is providing, while Mr. McCue is providing information on that. Senator Reynolds asked you about the rent that is being paid. It would be helpful to know which entities are paying rent and which aren't because it is my understanding that some aren't.

Attorney McCue: We will make that part of our response.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Other questions for this group of witnesses? Thank you very much, gentlemen. Again, a five minute finger stretch break for our staff and everybody else, but I will gavel at 6 minutes past the hour, okay?

And, the next people up are the representatives from Primex. Okay. Hi, Todd, good morning.

Todd Selig: Hi, Senator.

Senator Margaret Wood Hassan, D. 23: Hi, how are you?

Senator Deborah R. Reynolds, D. 2: Hi, Ty.

Senator Margaret Wood Hassan, D. 23: I just said good morning, good God, I'm an optimistic person, aren't I?

Senator Betsi DeVries, D. 18: Why?

Senator Margaret Wood Hassan, D. 23: And, are you Julie?

Julie Converse: Yes.

Senator Margaret Wood Hassan, D. 23: Okay, got it. So, I have Julie Converse, Ty Gagne, and Todd...

Attorney Mike Ricker: Mike Ricker.

Senator Margaret Wood Hassan, D. 23: Mark?

Attorney Ricker: Mike, I'm sorry.

Senator Margaret Wood Hassan, D. 23: 'Cause I also have signed up here, Todd Selig, as both Primex and Durham.

Ty Gagne: Oh, he is here.

Senator Margaret Wood Hassan, D. 23: Do you want to be part of the Primex testimony?

Todd Selig: Sure.

Senator Margaret Wood Hassan, D. 23: Why don't you come on up. Okay. Never take it personally when the full group isn't here. They will come back;

it is just the way of the world. Actually, please don't move the chair, we need the door open. Chris, can you just let people know that we are starting again and to keep their voices down? Thanks. Okay. Okay, we are back in hearing and I am recognizing in front of me Julie Converse, Ty Gagne, Todd Selig, and Mark. Mark, did you sign in?

Attorney Ricker: I'm Mike Ricker, I'm just here to assist Ty.

Senator Margaret Wood Hassan, D. 23: Okay, and Mr. Ricker is here to assist Ty Gagne as needed, and you are the general counsel?

Attorney Ricker: Yes.

Senator Margaret Wood Hassan, D. 23: Okay. With that, Mr. Gagne, please proceed.

Mr. Gagne: Good afternoon, Madam Chair, and members of the Committee. Thank you very much for the opportunity to speak with you today regarding the amendment. My name is Ty Gagne, I live in Holderness, and I am the Chief Executive Officer of the New Hampshire Public Risk Management Exchange, also known as Primex.

I want to just, right up front, speak in opposition of the proposed cap on surplus over health of 5%. There have been many concepts and principles that have been discussed this afternoon by other panel members, that I am more than happy to take questions on. In the interest of this Committee's time and the fact that a number of different people that come here to speak today, I will try to summarize my remarks.

I would like to just give you a brief overview of Primex; I think that is important to give you a context of our organization. We are a public entity risk pool, we provide workers' compensation, property, liability, unemployment comp, health coverage, and life and disability to school, municipal, and county government New Hampshire.

Taking all of the programs in total, Primex collects \$74,000,000 a year in premium. We cover property exposures totaling over \$3.3 billion. Our workers' compensation, unemployment compensation, and liability programs cover nearly 41,000 public employees and elected officials, with a total payroll exposure of over \$1.2 billion.

Our health program covers just under 5,000 public employees and I just would like to report to the Committee, our total reserves for all programs for the year wnd 2009 is \$40,000,000. Those reserves are siloed by program, I

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think that's just is important to put out there. Our unrestricted net assets total \$44.7 million. And I, one important point I want to make is that a portion of that follows the equity, the capital adequacy policy that was adopted by the Board in 2002. The capital adequacy policy follows similar principles to risk based capital.

\$26,000,000 of that \$44,000,000 is earmarked to cover various components of the capital adequacy policy, again, asset risk, business risk, legal risk, those kinds of things. The remaining \$18,000,000 has been designated by the Board of Trustees to be returned to members through rate stability over the course of a period of years, and I would be happy to answer more questions on that at the conclusion of my remarks.

I just want to say at the outset that, I really believe that this Committee or the sponsors of this amendment and Primex, want the same thing, and that is to provide relief to local governments at a time of great economic turbulence and uncertainty. I think that is where we have common ground. I do think where we may differ is in the method in that should happen. While I understand how members of the Committee are interpreting RSA 5-B, I will tell you that I, and members of the Board and staff interpret it in a way that, again, we continue to provide ongoing rate stability to our members. And, again, I think that is where we differ, but again, I do think there is some common ground in this issue.

I think this issue comes at a time when there is a great deal of scrutiny and controversy around activities on Wall Street, and I can see where there would be tremendous level of concern about the level of capital an institution might be holding because, you know, it is clear that the rug was pulled out for many people over the course of the financial crisis by institutions that were pursuing excess instead of what was in the best interests of their clients.

I want to ensure this Committee that Primex is not out to benefit from, or take advantage of the taxpayer. We are here to cover the cost of risk. We are here to cover losses, not create them. And, with that, I would really just rather open myself up to questions from the Committee. I know a lot has been discussed today, and so...

Senator Margaret Wood Hassan, D. 23: Okay, and let me just, and thank you for your testimony. Let me just ask. We've already heard from Mr. Ricker, who is the general counsel, but he is here to assist, but Miss Converse and Mr. Selig, if you could tell us your relationship to Primex, just so we know, understand what you do?

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Ms. Converse: I am the Director of Finance at Primex. I am also here to assist Ty.

Senator Margaret Wood Hassan, D. 23: Okay, and thank you.

Mr. Selig: And, I'm the, I'm the administrator for the Town of Durham, New Hampshire, and Durham purchases insurance products through both Primex and the Local Government Center. And from...for five years up through the beginning of 2009, I was on the Primex Board of Trustees serving as Vice-Chairman for two of those years, and as Chair of the Investment Committee for three.

Senator Margaret Wood Hassan, D. 23: Okay, thank you. That just helps us know where to direct questions as well. Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and could you tell me who the witnesses are, because I stepped in late? And, I apologize.

Mr. Gagne: Ty Gagne, CEO; Mike Ricker, in-house general counsel; Todd Selig, former Chair and current Town Administrator of Durham, also a Primex member; and Julie Converse, Director of Finance.

Senator Jacalyn L. Cilley, D. 6: Thank you very much. So, I have a short line of questions, and one statement. You mentioned that maybe this comes on the heels of Wall Street. How familiar are you with other municipal associations around the country?

Mr. Gagne: I'm just quite familiar with the interactions I have had with various pool executives.

Senator Jacalyn L. Cilley, D. 6: Okay. So, for example, the Kentucky situation?

Mr. Gagne: Yes.

Senator Jacalyn L. Cilley, D. 6: Alright, so, this happened this year where the Kentucky County, it is like a municipal association, sort of blew up. The audit suggested exuberant salaries, expenditures that were not transparent. That is part of my personal problem; I won't speak for my Committee members. When there is a lack of transparency, and there is a whole bunch of money, I think that is a concern. So, that's, you know, that's part of the questioning.

I want to come to the, once again, the issue of rate based. Do you do the same thing as the LGC that if a member leaves they leave the money on the table?

Mr. Gagne: Yes, Senator. And, if I could just explain about that.

Senator Jacalyn L. Cilley, D. 6: You said you wanted to I will...

Senator Margaret Wood Hassan, D. 23: Let him finish a sentence. Okay?

Senator Jacalyn L. Cilley, D. 6: Okay.

Mr. Gagne: Senator, under the trust agreement, a member that does leave the pool essentially does leave the money on the table, whether that is a positive or a negative balance. The important distinction I want to draw is that our workers' comp program and our liability program, in particular, are what we would call long-tail lines of coverage, which means that while a member may leave with a positive balance, there is nothing to say that at some point after departure, a workers' comp claim will come up, or a liability claim will be filed, and under our current base coverage, which is what we provide to members, what we are saying is, you are with Primex for year 2010. In 2016, if you are not in Primex and a claim is filed based on your behavior in 2010, the Primex coverage document would respond to that.

At the same time, in terms of a member that leaves with a negative balance, the trust agreement does allow for us to assess that member, but I can tell you, based on my knowledge and history with the organization, we have not done that, and would choose not to do that.

Senator Jacalyn L. Cilley, D. 6: Okay, can I follow up?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Jacalyn L. Cilley, D. 6: I heard from one of the people on your Board who is a town manager in my district, that he was very concerned that if we set the reserves in the Health Trust, which he didn't have as many concerns about, he, his explanation was that your reserves had to be lower, as a percentage of your base, than some of your counterparts. He was very concerned about what that would do to your other lines, you have a multi-line pool, and I, I cannot figure this out to save my soul because it is my understanding that you cannot use health care dollars, which are employee dollars presumably, or I understand there is some portion that is employer, to cover even the reserves in something like workers' comp. There are federal laws about that. So, I don't know if Mr. Ricker would like to address that, but...?

Mr. Gagne: Senator, if I could just respond to the initial question. Employee dollars are not being utilized to fund workers' compensation. Our health program is quite small and still in a growing stage. It has not reached the size where there would be any lack of clarity as to whether health funds were funding another program, and I can respond, if you have additional questions; otherwise, I will turn it, turn it over to Mike.

Attorney Ricker: Thank you. Good afternoon, Senator. First of all, we let me take a step back to answer your question if I might just to talk to our structure. We are a trust. All of our programs, we have multiple lines of coverage; they are not separate pools, they are coverage lines within a pool. It is overseen by a Board of Trustees, or a simple trust organization. Under RSA 5-B, there is no prohibition that one coverage line can't support another when collection, contributions weren't enough to fund claims. It is the same mentality and dynamic that exists within the coverage line. If you are within one coverage line and you are a member, and your contribution for that year wasn't enough to cover your claims, very common for small members, small communities who pay a low contribution. Charter schools pay a very low contribution, but they may get an expensive employment discrimination lawsuit that is ten times what their contribution was in one year. So that the other members that paid into that program for that coverage line, through pooling, now we are talking in essence about what pooling is, their funds will cover that.

So, pooling is a combination of members who perform better than what their contribution would have anticipated, and members who didn't perform as good as what their contribution would have anticipated. That same mentality, my fear is that, where thought things are headed is, are we going to draw the line at the coverage line and just say that the pooling concepts, the essence of pooling, stop at the coverage line? Well, that is not the way that Primex is set up. Primex is set up so that if one coverage line doesn't perform the way it was predicted to in one year, that the communities that didn't put enough into that coverage line, if there is a shortfall, the other coverage line that might be doing better can pick up that difference for the year. And, what happens is, it is not a subsidy, it is not a giveaway, Senator, it's, what happens is that coverage, or that member, or strike that, that coverage line carries a negative balance on financial documentation until it is able to generate funds to bring it back up to a positive position.

So, there is always accountability. If one coverage line helps another, there is financial accountability there. It is the same, it is the essence of pooling. 5-B doesn't prohibit that, and in fact, if you look at what 5-B:1 says in terms of purpose and then you look down at definitions and you scroll through, it is

not a lengthy statute, but you are going to get to the pooled risk management authorized and affirmed. And, under III, it tells you all the lines that you can have, Senator. It is comprehensive, and it is essentially all lines, and then above that in I, it says, in very general language, but very clear language, that the risk management pool, the risk management pool members, they come together, they form to distribute, share, and pool risk.

So, they are, you are allowed to have the multiple lines within the pool, and there can be this sharing and this covering, and without that, if you take this back to its roots, you would essentially be a mono-line pool, you would have every member paying only, it would be pay as you go. We would simply be administering individual self-insurance accounts for one line. That would be, that's where we would be headed, and that is not pooling Senator. So...

Senator Margaret Wood Hassan, D. 23: Follow up.

Senator Jacalyn L. Cilley, D. 6: Two more questions for Mr....

Mr. Gagne: Gagne.

Senator Jacalyn L. Cilley, D. 6: Gagne. But, I just wanted to quickly say that this was federal labor law, this wasn't 5-B, so I haven't had a chance to follow up on that. Could you tell us, Mr. Gagne, who owns your building and who pays for it?

Mr. Gagne: Essentially the Primex members own the building and it has been paid for by the members. Is that...?

Senator Jacalyn L. Cilley, D. 6: Is there, is there, you heard Senator Reynolds referring to certain deeds with LGC property. Is there a deed for the Primex property?

Mr. Gagne: To the best of my knowledge, there is a deed, yes.

Senator Jacalyn L. Cilley, D. 6: So, that's a member asset?

Mr. Gagne: Yes.

Senator Jacalyn L. Cilley, D. 6: On the books as such?

Mr. Gagne: Yes it is.

Attorney Ricker: Senator, can I jump in there. My understanding is that there is debt service as to that asset, and per our trust agreement, that asset

belongs to the membership. If Primex dissolves, there will be liquidation that will satisfy, the liabilities of Primex will be satisfied, and all remaining assets will be distributed to the membership. Primex is not an entity in and to itself that gets to keep all of that. That all goes back to the membership.

Senator Jacalyn L. Cilley, D. 6: Thank you. That is it for now.

Senator Margaret Wood Hassan, D. 23: Questions? I had a couple. First of all, when a member withdraws from Primex, from health coverage, is it also true that they are barred for a certain amount of time from reentering or seeking insurance from your third party administrator group?

Mr. Gagne: Go ahead.

Attorney Ricker: Senator, our agreement, our network is through Harvard Pilgrim and our contractual arrangement is such that Harvard Pilgrim can compete. We have an arrangement to access their network.

Senator Margaret Wood Hassan, D. 23: Right.

Attorney Ricker: And, they administer our claims in the first instance, and then we reimburse them for payment.

Senator Margaret Wood Hassan, D. 23: Right.

Attorney Ricker: But that, Harvard Pilgrim can write our members in competition with us.

Senator Margaret Wood Hassan, D. 23: Okay.

Attorney Ricker: Furthermore, if the agreement with Harvard Pilgrim severs, we decide to cancel that contract, Harvard Pilgrim and Primex are in open competition. We could go to another carrier's network, but Harvard Pilgrim can instantly try to keep our membership base, if it so chose. The reason we thought that through, and I am thinking in the contractual process is that we want members actually to be able to have that freedom with their health plans that they are going to be able to stay with Primex, whatever Primex's vendor, or network might be that they may choose to go directly with Harvard, Harvard direct, and not have to have Primex as an intermediary. Or, if things fall apart between Harvard and Primex, that they can go with either. So, there is freedom of movement.

Our participation agreement with our membership, I don't have it in front of me, but I have a recollection that in there there may be some language that

says okay member, if you jump out of your contract with us, or you don't terminate the proper way, you terminate early, they may not be able to come right back to Primex itself within a year. So, there may be something else in there that says if you leave the pool and leave the other members with your claims, you are going to have a period of waiting to come back. But, in terms of whether there is freedom of movement between who we are doing business with and other health carriers, there is that, there is that.

Senator Margaret Wood Hassan, D. 23: Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. I assume that you folks, when you set your reserves, don't just sit down with an excel spreadsheet and figure out what it is going to be. I assume you must hire actuaries to do this kind of work.

Mr. Gagne: Yes, Senator, we utilize Liscord, Ward and Roy out of Manchester.

Senator Peter E. Bragdon, D. 11: And, I think that you testified that you use a pretty similar philosophy to the risk based capital approach in setting the reserves.

Mr. Gagne: It is a similar philosophy to risk based capital, yes. The capital adequacy policy is out there by the Board.

Senator Peter E. Bragdon, D. 11: I have one more question.

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Peter E. Bragdon, D. 11: Would you describe the market for your products as competitive i.e., if the allegations that some have made are true and this risk based capital approach results in just huge excess surpluses kicking around and people being charged for their insurance, I assume, if the market were competitive, that would be very tough to be overcharging. Do you believe to find this a competitive market for your products?

Mr. Gagne: I find it to be a highly competitive market, Senator.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Any other questions? Seeing none...oh...

Senator Jacalyn L. Cilley, D. 6: One quick one.

Senator Margaret Wood Hassan, D. 23: Yup.

Senator Jacalyn L. Cilley, D. 6: And, I am going to forget that term again, it is that number for the, what is it called, when you use risk based capital, there is a, what is the figure, the 4.2, the 4.3, it is the ACL. What is yours?

Mr. Gagne: We do not utilize the ratio, Senator. Within the capital adequacy policy that was adopted by the Board, we use similar formulas to cover the asset risk and the business risk basis, and the equities risk, but we have not identified a targeted ratio.

Senator Jacalyn L. Cilley, D. 6: That begs the question, why?

Mr. Gagne: Well, Senator, we are, I would not say we have adopted risk based capital which would bring that ratio to the realm. I think the Board, again, has spirited discussion about what those appropriate capital levels should be, and we have done, again, we have had actuaries look at that, under our capital adequacy policy, but we have not moved to a full risk based capital model. It is something that we are looking at, we are having actuarial study done, but we do not have that yet. I, at the conclusion of that study, were the Board to adopt risk based capital, I would be more than willing to share that with you.

Senator Jacalyn L. Cilley, D. 6: Okay.

Senator Margaret Wood Hassan, D. 23: Thank you. Any questions from anyone else here? Yes, sir.

Todd Selig: Can I just make a few comments?

Senator Margaret Wood Hassan, D. 23: Sure. And, this is, for the record this is Mr. Selig.

Mr. Selig: Todd Selig, Durham, New Hampshire. I have submitted some testimony to you.

Please see attachment # 3 - written testimony submitted by Todd Selig, Town of Durham.

Rather than reading that, I would like to highlight some points.

Senator Margaret Wood Hassan, D. 23: Yes, thank you.