NORTH CAROLINA DEPARTMENT OF INSURANCE

RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

COPY

IN THE MATTER OF:

BEFORE THE
COMMISSIONER OF INSURANCE

THE FILING DATED
JANUARY 3, 2024 BY
NORTH CAROLINA RATE BUREAU
FOR THE REVISION OF
HOMEOWNERS INSURANCE RATES

DOCKET NO. 2157

BEFORE: AMY FUNDERBURK, HEARING OFFICER

TRANSCRIPT

OF

HEARING

VOLUME X - P.M. SESSION

Raleigh, North Carolina

October 29, 2024

2:48 p.m.

Reported by: Audra Smith, RPR, CRR, FCRR

APPEARANCES OF COUNSEL

ON BEHALF OF NORTH CAROLINA RATE BUREAU:

NORTH CAROLINA RATE BUREAU

BY: MARVIN M. SPIVEY, JR., ESQ.

BY: BRIAN O. BEVERLY, ESQ.
BY: LISA LEEAPHORN, ESQ.
3101 Glenwood Avenue
Raleigh, NC 27622
919.782.6860
mickey.spivey@youngmoorelaw.com
brian.beverly@youngmoorelaw.com
lisa.leeaphorn@youngmoorelaw.com

ON BEHALF OF NORTH CAROLINA DEPARTMENT OF INSURANCE:

NORTH CAROLINA DEPARTMENT OF INSURANCE
BY: TERENCE D. FRIEDMAN, ESQ.
BY: SHANNON WHARRY, ESQ.
3200 Beechleaf Court
Raleigh, NC 27604
terence.friedman@ncdoi.gov
shannon.wharry@ncdoi.gov

Hearing in the matter of the filing dated January 3, 2024, by the North Carolina Rate Bureau for Revised Homeowners Insurance Rates, at the North Carolina Department of Insurance, 3200 Beechleaf Court, Raleigh, North Carolina, on the 29th day of October, 2024, at 2:48 p.m., before Audra Smith, RPR, CRR, FCRR and Notary Public.

I N D E X

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E X H I B I T S

P R O C E E D I N G S

MS. FUNDERBURK: Thank you, Counsel. We're back on the record at 2:48. My apologies for my tardiness.

When we broke for the long recess, Mr. Friedman, you were providing exhibits to the Rate Bureau. Have those been provided?

MR. FRIEDMAN: They have, Your Honor. And I explained to the Rate Bureau that, to our knowledge, that the only remaining exhibits we would be putting in -- however, obviously, I don't know what would come out on cross. So in the event there were a need for redirect and something unanticipated, that's the only event in which I can imagine right now that there's anything we haven't provided a copy to them of.

MS. FUNDERBURK: Mr. Spivey, are you satisfied you've had sufficient time to -- I understand you could have questions about them later, but have you had time to review?

MR. SPIVEY: Yes, Your Honor. We received this today --

MS. FUNDERBURK: Quite a bit.

MR. SPIVEY: I'm holding up the stack.

It's, you know, between two and three inches thick or whatever. And we appreciate it. And we understand. We're in trial. Things happen. We hope that we can both extend the courtesy of getting as much stuff ahead of time as possible so that he didn't have to make copies for us. We can make them ourselves in our own office, that sort of thing.

There are a number of things here that, as I'm understanding it, may be offered with different witnesses, that sort of thing, and we'll address them as they come up.

I would say that there are things here that I question whether they should have been in prefiled testimony as opposed to being now, and we can discuss that if and when they present them/offer them. There are things here that we may or may not have objections to, depending on the purpose for which they're offered. So we will have to address that at the time.

There are some things I'm not holding up, Your Honor, because they're very extensive electronic documents that we received, one last week and two yesterday, that are -- the one last week is over 700 pages. The ones yesterday are 400, one of them; and 569 pages for the other. So you can see what they are, but we have no idea what it is within those extensive documents that may be used. So nothing's pointed to.

MR. FRIEDMAN: And I'm sorry, I --

MR. SPIVEY: We'll deal with that if and when we need to, I guess.

MR. FRIEDMAN: I won't be referring to those electronic documents, so I'm sorry I didn't tell you that. But I won't be using them at all, so they won't be introduced.

MR. SPIVEY: Wait a minute. You didn't just say those 1300 pages --

MS. FUNDERBURK: Address the Court, please.

So, Mr. Friedman, you've provided exhibits to the Rate Bureau that will not be introduced as exhibits?

MR. FRIEDMAN: Yes.

MS. FUNDERBURK: Okay. And it would appear those were quite voluminous.

MR. FRIEDMAN: Yes, ma'am.

MS. FUNDERBURK: Which I would think it's reasonable to say that -- it would take a lot of time to review.

Can you identify what you have provided to them as potential exhibits that will not be utilized as exhibits? Mr. Spivey's been provided with a substantial amount of information, and I'd like to streamline and keep this as organized as possible, and I think it's only reasonable to let him know if something is not going to be utilized as an exhibit.

MR. FRIEDMAN: Let me get out my phone because I made a list for myself on my email, if I could, but I don't have it printed out. And...

MS. FUNDERBURK: Mr. Spivey, the electronic exhibits, when were you provided with those?

MR. SPIVEY: I'm sorry, Your Honor?

MS. FUNDERBURK: The electronic exhibits that may not be utilized, when were you provided with those?

MR. SPIVEY: One of them is DOI 31. It appears to be the annual statement of

Allstate Insurance Company, and that was sometime last week. I don't remember exactly which day.

MS. FUNDERBURK: Okay.

MR. SPIVEY: The documents marked DOI 39 and 40, which appear to be two -- well, the 2012 NAIC Profitability Report, and then the other is the 2022 NAIC Profitability Report, and we received those yesterday morning.

MS. FUNDERBURK: Are any of those not actually going to be referenced as exhibits?

MR. FRIEDMAN: 31 will not be.

I honestly did not realize 39 and 40 were provided. I now understand those were provided in electronic form. Those, I believe, are -- I mean, they are certainly records that, if need be in a draft, they're, I believe, authority that we can simply cite to. They are publicly available. But if the -- we will still be putting those in, but I can tell you what other ones we are not.

MS. FUNDERBURK: If you could briefly do that. If it's going to take a while, we'll deal with it after the close of testimony today.

MR. FRIEDMAN: Why don't we go ahead so we can get underway and deal with that after the close of testimony?

MS. FUNDERBURK: Okay. What we will do is put Mr. Schwartz back on the stand. I'm cognizant of the time. Part of it was to deal with the exhibit issue, but I also acknowledge part of it was for me to deal with a personal matter, and I appreciate the parties' indulgence on that and your flexibility, I truly do.

But in the order of moving things along, what we're going to do is we'll ask Mr. Schwartz to take the stand, again. After we conclude with testimony today, Mr. Friedman, I need you to identify what your exhibits are going to be and what your exhibits are not going to be and make that clear to them.

Can you do that by 7:00 p.m. tonight?

MR. FRIEDMAN: Absolutely.

MS. FUNDERBURK: Is that a reasonable time for you, Mr. Spivey, 7:00 p.m.?

MR. SPIVEY: That would be fine. Thank

you, Your Honor.

MS. FUNDERBURK: Thank you.

Are there any other matters we need to address before Mr. Schwartz returns to the stand?

MR. SPIVEY: No, Your Honor.

MR. FRIEDMAN: No.

MS. FUNDERBURK: Mr. Schwartz.

And, Mr. Friedman, earlier is better. If you can get that done at 6:00 o'clock, get that done at 6:00 o'clock.

MR. FRIEDMAN: I will straight up get on it.

MS. FUNDERBURK: Mr. Schwartz, I'll again remind you that you do continue to be under oath.

THE WITNESS: Yes. The red light is on.

MS. FUNDERBURK: The red light is on. Do you need any water or anything? Are you good?

THE WITNESS: I have water. Thank you.

MS. FUNDERBURK: Thank you.

Counsel, please proceed.

(Continued on following page.)

DIRECT EXAMINATION (CONTINUED)

BY MR. FRIEDMAN:

Q Mr. Schwartz, did you hear Mr. Ericksen's testimony dealing with Rate Bureau Exhibit 30, and that was a -- or did you read his testimony? Either one. That was dealing with his CTR calculations?

A Both. 30 used to be up on my screen. It's not here anymore, and I don't have a hard copy of it.

Q Do you have an extra copy?

A I have it now.

Q Okay. First of all, with regard to Exhibit 30, do you believe Mr. Ericksen's testimony regarding that exhibit was consistent with the Actuarial Standards of Practice?

A There were some places where I thought it was inconsistent with the Actuarial Standards of Practice.

Q Okay. Do you have a copy of exhibit notebook 3 up there?

A Yes. I have notebook 3.

Q Okay. If you could turn to Exhibit 12.

BY MR. FRIEDMAN:

Q And, first, you'll see that there are

Bates numbers in the lower right-hand corner.
A Yes.
Q If you could turn to page 32, which is where ASOP 23 begins.
In your opinion, was his testimony consistent with ASOP 23?
A Yeah, I would say it really wasn't completely consistent, you know, in regard to his reliance on others.
Q Well, let's start with that aspect of it. How, in your opinion, was it not consistent with his reliance on others?
A Well, my recollection was that on direct when that Exhibit 30 was being provided --
Actually, can I have Exhibit 30 up? Because I have a hard copy of the standard of practice, unless --
THE WITNESS: I don't know, Hearing Officer, if you wanted one or the other up?
A During his direct testimony, he never indicated that he wasn't the one who produced this. It was only when he was being cross-examined that it came out that this was actually put together by somebody at the Rate Bureau. So that's something that really should have been disclosed ahead of

time.

And then also, you know, in terms of the actual numbers on here, one of the things that should have been on this exhibit, I think, to make it more clear was the actual date of the rate change instead of just the year. Because we're going to talk later, there's like a mismatch which changes the conclusions you would reach from this.

And also that Mr. Ericksen couldn't actually vouch for these numbers; that somebody else put the numbers together and that Mr. Ericksen said he spot-checked some of them.

And I understand that some of these numbers you can get directly off the pages from the department website, but other numbers on these exhibits you would have to do various calculations off of the pages, off of the department website.

And it's not clear at all that those calculations were checked by Mr. Ericksen. In fact, it seems pretty clear that he didn't check many of them, if any at all.

BY MR. FRIEDMAN:

Q Then could you turn to ASOP 41, which is at page -- starts at page 68.

In your opinion, in what manner was his

testimony about RB-30 inconsistent with that ASOP?

A It was mostly about the same things. You know, there's actuarial communications, in terms about what you're supposed to have in actuarial report -- actuarial reports could be written or they could also be his Auto testimony.

And, again, you -- in particular -- let me find it. 3.4.4 talks about responsibility for assumptions and methods. And, again, either the actuary is responsible for the exhibit or he's not responsible for the exhibit and they disclaim responsibility for it.

And it was another one of those things where he seemed to say -- well, he definitely said someone else prepared it and that he didn't check it, but he seemed to be presenting it as a true and accurate calculation, even though he couldn't know that without having checked it on his own or taken responsibility for it.

And 3.2 talks about actuary reports. And it says in the actuary report the actuary should state the actuarial findings and identify the methods, procedures, assumptions, and data used by the actuary, with fair, sufficient clarity than another actuary qualified in the same practice area can make an objective appraisal of the reasonableness of the actuary's work, as presented in the actuary report.

And, again, the failure to document what the actual dates of the rate change were, again, could lead to erroneous conclusions being drawn from that exhibit. And I think that is the end result of it, is because the dates weren't really shown in completeness, that it gives a distorted picture of what happened.

Q Appreciate that.

Have you done anything to correct your concerns about the accuracy of RB-30?

A Well, yes. I did some alternate calculations.

Q Why don't I hand up and make sure we're all on the same page before, and I'll introduce these alternate calculations, if you could, sir.

A Sure, it's on DOI 44.

MR. FRIEDMAN: On DOI 44, Your Honor, I know opposing counsel has a copy of that. Does Your Honor and the clerk?

Okay. Perfect.

(DOI Exhibit Number 44 was identified as of this date.)

BY MR. FRIEDMAN:

Q So let me ask you, DOI 44, was this prepared by you?

A Yes.

Q Okay. And did you check the accuracy of all of the numbers or dates that are incorporated in some way into DOI 44?

A Yes.

Q Okay. So could you tell me what things in DOI 44 -- I think what would reflect how RB-30 is misrepresented?

A Sure. The first page is a graph. I'm going to come back to that a little later, you know, in terms of how the bar chart was actually presented.

But one of the things that came out, I think from a question from the hearing officer, was what the actual dates of the rate changes were. And they didn't occur at the beginning of the year on RB-30.

Actually, is there a hard copy of RB-30 I could look at?

MS. FUNDERBURK: You may approach.

A So we know from the Hearing Officer's question and the information from the Rate Bureau, although you can get it from other places, too, what the effective dates of these rate changes were. And so what I've tried to do is align the rate periods with the consent to rate so that you're covering the same time period.

And there are two different ways to do it. Either you could say for a period where the -- a certain reg level was in place, what was the average consent to rate during that period. Or you could do it and say for the period where there was a certain level consent to rate, what was the average rate level in place during that period of time. And I've done it both ways.

BY MR. FRIEDMAN:

Q Mr. -- could I interrupt you for a second? I have some more specific questions, I think, that I think hopefully will give some more form to your explanation, if that's okay.

A Sure.

Q You were just addressing how the higher -- can you explain how a higher rate level impacts policies after the effective date?

A Well, the higher rate level -- or I'll just say the different rate level. It could be a decrease -- excuse me -- or increases. There's different rate levels.

(Reporter requested clarification.)

A A different rate level, because it could be a lower rate level also, although in this case they're all higher rate levels. But whatever the rate change is, it's only going to affect policies written on or after the date of the rate change.

So the fact that a company may have known two or three months in advance that the rates were going to change, really shouldn't have any impact on what they were doing on those policies before the rate change because they were just not able to charge a different rate on those earlier policies.

So the issue of knowing ahead of time that three months from now there were going to be different rates still would only impact the policies after that point in time. Of course, the policy before that point in time, even if they were up for renewal, they had to be under the rates in effect at that point, not the new rates.

BY MR. FRIEDMAN:

Q All right. Do you recall Mr. Ericksen's testimony, that nonetheless companies, once they knew what the new rates would become, as I understood him, would simply begin making plans for future premiums they were going to quote? Or if I even am summarizing that correctly?

A Okay. So I'll give my understanding of what Mr. Ericksen said. I don't think the transcript is 100 percent clear in terms of -- or I don't think his testimony was 100 percent clear in terms of what he meant. But what I took from his testimony was as a -- I'll give one of these examples.

So the 2018 rate change took place on 10/1. And let's say companies knew what that rate change was going to be several months in advance, and actually we probably could find out when they knew because I think later on we're going to get the settlement decisions, orders, into the record, and you can see what the date is.

But let's say the date of the settlement was 7/1/2018. I think Mr. Ericksen was trying to imply that even though the new rates wouldn't go into effect on 10/1/18, that companies would start changing the consent to rate on policies with effective dates before 10/1/18.

And, to me, that doesn't make any

sense. If the idea is you're going to change the consent to rate you're doing because you're getting a higher rate, the fact that you know that that rate is going to be higher next month wouldn't give you any reason to change the consent to rates on the months before that because they're under the same rate that you're using the current consent to rate to.

So I think the idea is somehow because companies knew months before the effective date, that somehow that would change what they were doing for policies prior to that effective date, just doesn't make any actuarial sense.

Q So what else in RB-30 do you consider deceptive?

A Okay. Well, so we'll get to that, I guess we'll do that. We'll do the graph before we get to the calculation. Would it be all right? I mean, we've already talked about the fact that they don't have the rates -- the dates there, which I'll go over later what happens if you try and put everything in the same time periods.

But the thing to notice is whether -- or a thing to notice is on the Y axis, which is a vertical axis, whether there are any indications of where the bar chart starts and where they end. So I'm going to skip to page 4 of page -- of RB-30. And you can see there that they show along the vertical axis the lowest point is 0, and it goes up to 120,000.

If you go back to page 3, you see the same thing. You can tell when the vertical axis -- it goes from 0 to 25,000.

If you go to page 2, it doesn't actually have any numbers along the vertical axis, but you could actually kind of tell where things fall out. So if you go in the coastal region, you can see the number 219, which is for 2018, is a little above the second line; and for 2023, would show the value of 413, it's a little above the fourth line.

So by deduction, you could say each line represents about $100 and, therefore, you could tell that this graph starts at 0 along the vertical axis, even though there are no numbers written there.

And, now, you go to page 1, and it's totally different. There is no numbers along the vertical axis, and you could also deduce that the graph doesn't start at 0. If you look at, under the total, under 2016, it shows 46 percent, that's three lines up from the bottom. And if you go to 2019, which is 48.3 percent, that's four lines from the bottom. So it looks like each line is 2 percent.

You could go back and do the subtraction, and you find out that this graph has at the bottom of the vertical axis 40 percent. It doesn't start at 0. It starts at 40 percent. And that gives a totally wrong visual of what's going on here.

If you just look at this visually and you compare 2016 to 2023, the 2016 is the orange bar, it's in the total, but they're not the same. And 2023 is the gray bar all the way to the right. It looks like 2023 is twice as high as 2016, when in reality it's maybe about 20 percent higher. I don't even think it's 20 percent higher. I haven't calculated it. But I'll just give the exact number. It's like 17 percent higher.

So the way this is presented gives a totally distorted visual view of what was actually happening. And I think at one point Mr. Ericksen, either in oral or written testimony, talked about how 2023 exploded above the other years. And I admit it's higher, and if you look at it visually, it did look like it's exploded.

But I did agree -- which is the first page of DOI 44 -- which shows what things look like if you used a nondeceptive bar graph starting at 0. And certainly 2023 is bigger than the rest of the years, but it doesn't seem so astoundingly different.

And one way that bar graphs are used or could be used to give a distorted impression is by starting the vertical axis at a value different than zero. And that's a well-known way of giving people the wrong visual impression of what's going on. And I actually printed out -- or, well, I did print out from the internet one example of it in DOI 45, and so I might as well go to that.

(DOI Exhibit Number 45 was identified as of this date.)

A I would say it's not the whole -- DOI 45 is not the entire article that I got from the internet. It just so happens --

If you go to the second page of DOI 45, the very first way -- you just have to go up a little further -- of doing -- it's too far. Right. Stop there.

The very first way they say that, you

know, people could manipulate graphs is the idea of omitting the baseline in a bar graph. And you could see the one on the left is titled "Misleading," or has "misleading" on it. The "accurate" one is the one labeled "Accurate," starts at 0. And you could see what a huge difference in the visual impression these two graphs give.

And that's exactly what's going on with DOI -- not DOI -- RB-30 of giving a visual impression of what's happening, which is really misleading and distorting in terms of the actual percent change that occurred.

So the other issue we talked about was aligning the rate changes with the consent to rate, and that's on pages 2 and 3 of DOI 44.

So like I said, you could do one of two things. You could either say for a given rate level, what's the average consent to rate during that rate level period? Or you could say, During that period, well, you know what the consent to rate was, what was the average rate level? And that's on the next page I'll get to next.

But so on this page, the second page of DOI 44, you see I've given the dates of the rate change. I started with 1/1/2017 as sort of a baseline and given the rate changes after that. I give a cumulative rate level -- well, the second column from the left gives the individual rate changes. The next one gives cumulative rate changes. So, for instance, 4.4 percent and 4 percent come out to an 8.6 percent overall.

Then I looked, you know, how many months that rate level was effective in that particular year. So October 1, '18, it would have been effective in 2018 for October, November, December; three months. For the one that was effective on May 1, 2020, it would have been effective in eight months in 2020.

And then I also gave the total months that that rate level was in effect, which is just the period from that rate level change, the next one. So from 10/1/2018 to 5/1/2020 is 19 months.

And what I've done to the right -- on the right-hand side is show the consent-to-rate percentage in each calendar year, and I weighted them together by the months that each rate level was in effect to get the average.

So just to give you an example, walk through one of them, for 10/1/18, that rate level was in effect for three months of 2018, 12 months of

2019 -- the whole of 2019, and four months of 2020. So if you weight those three numbers together by those monthly percentages, it turns out to a weighted average of 47.6.

And so when you do that for each of these, you see that in each period of a given rate level, what the average consent to rate was during that rate level, and there's a general pattern upward. It's not a case where, when the rate went into effect, for the entire period that rate was in effect, what the consent to rate was.

So this is just showing that on a statistical basis, looking at what an average rate was in each period, that the consent to rate didn't show that up and down pattern.

And then now turn to the next page, page 3. And what this does, it shows for seven years, from 2017 to 2023, what the average rate level was in a given year. So for, like, 2018, we knew -- we know that the rate level change of 4.4 percent went into effect in October. So 1.1 percent would have been the impact in 2018, and that's why you see a value there of 1.011.

And so that's what all those numbers on that page is doing; it's saying if you look at how long the rate's in effect in a given year, what's the accumulated average rate level.

And then I looked at the written consent-to-rate percentages that they show from the department website. And then what I did is, I did a statistical comparison saying, what -- given an average rate level change and comparing it to the change in the consent to rate from one period to the next is -- there's absolutely no correlation.

In every calendar year, the rate level went up from one calendar year to the next because even though it was effective at a certain point of time, it carried over to other periods.

So from 2017 to 2023, the rate level -- average rate level each one of those years went up. And so then you see that the written consent-to-rate percent some years went up, some years went down, but it seems to be completely unrelated to the average premium level in the year.

So the conclusion is that, if you look at it based on the statistical data that's available, there is no relationship between changes in the rate level and changes in the percent of business written under consent to rate.

So I think Mr. Ericksen's conclusion

isn't supported by the data and graphs that he presented if they're evaluated in a proper manner.

Q You may have already testified to this, but I do want to get it clear in my mind. It's your recollection of Mr. Ericksen's testimony that as to the first four pages of RB-30, namely the graphs, those were prepared by bureau staff and then presented to him?

A That's my understanding, yes.

Q So regarding the additional testimony regarding CTR, CTR, as I understand it, is one way that policyholders are charged something different than the Rate Bureau manual rate. Are there other circumstances where policyholders are charged something different than the Rate Bureau manual rate?

A Yes.

Q And what are those?

A In the voluntary market, you have downward deviations. And then in the Beach Plan -- by statute, the Beach Plan charges higher rates than the manual rates for the Rate Bureau.

Q In Dr. -- excuse me -- Mr. Ericksen's testimony -- and I can refer you to it if need be. But do you recall seeing a whole paragraph dedicated

to talking about deviations, including, as I recall, stating that they should be a permissible expense, although he also stated that they had assigned a zero value to them in this filing?
A Yeah. I mean, I don't remember the exact wording of what he said, but I know the bureau put in a 0 percent for deviations, and there was some part of Mr. Ericksen's testimony dealing with deviations.
Q Could you -- do you have historical information in the filing on the deviations?
A There is a page in the Rate Bureau filing dealing with deviations. Actually, two different pages showing different aspects of it.
Q Okay. So if you could turn, please, to RB-1. Do you have up there notebook number 1?
A I just have book number 3.
MR. FRIEDMAN: Your Honor, may I approach?
MS. FUNDERBURK: You may.
Counsel, could you remind me which exhibit Mr. Schwartz is about to refer to?
MR. FRIEDMAN: We are about to go to RB-1 in Notebook 1, and the page will be -- actually, there are little subsections in

there. The page will be behind the 1(e) subsection, and it is page E-290.

Is everybody there?

MS. FUNDERBURK: Yes.

BY MR. FRIEDMAN:

Q So on page 290, what does that tell you about historical information of deviations?

A So, I mean, this shows the amount of written premium at manual rate level, which means that the bureau rate level for this standard --

MS. FUNDERBURK: If you could be sure to speak into the microphone.

A -- for standard business.

BY MR. FRIEDMAN:

Q Okay. What do columns 4 and 5 show?

A Sure, I'm going to get there.

Actually, we should go to column 3 first, which shows a dollar amount of the deviations. And then if you divide column 3 by column 1, it shows the percent deviation on standard business.

And then column 5 adjusted to show deviations in column 3 to total written premium of standard and nonstandard.

So, you know, it's interesting that,

you know, on RB-30, there seems to be a general upward pattern in consent to rate.

This exhibit, you know, during the latest five years that they provided this for, actually shows somewhat of an upward trend in the amount of deviations.

So insurance companies were charging certain people more money over time. They were charging different groups of people less money over time in terms of giving bigger deviations.

Q All right. And, again, still talking in the context of RB-30, could you tell me how the Beach Plan rate differs from the Rate Bureau rates?

A The Beach Plan rate is higher than the Rate Bureau rate by the percentages set forth in the statutory provisions.

Q Do you recall that the percentages are 5 percent of the manual rate for wind and hail coverage and a surcharge of 15 percent for homeowners insurance that includes wind and hail coverage?

A Yes.

Q Okay. Is there a calculation in the filing that shows the combined effect of CTR deviations and Beach Plan data?

A Yes.
Q Okay.
MR. FRIEDMAN: Your Honor, we're going to be still in RB-1, but we're going to be in the prior subsection (b), and particularly on page D-31.
Is everybody there?
MS. FUNDERBURK: It's page 67 of the PDF if that's helpful.
MR. SPIVEY: Thank you. I'm there.
BY MR. FRIEDMAN:
Q Could you explain to me what you're drawing from D-31 and how it bears on RB-30?
A Well, this shows that the average deviation taking into account the Beach Plan higher -- the Beach Plan higher statutory rates, consent to rate, and downward deviations. It all takes the balance out that the five-year average was 0.7 percent, and the bureau selected zero.
If you just wanted to focus on the voluntary market and not the Beach Plan and just say in the voluntary market what's happening, then I believe the average deviation works out to about 0.3 percent. What you just do by dividing the voluntary market columns directly one from the

other.

So what it would indicate is that the amount of upward consent to rates are pretty much balanced out by downward deviation. So on average, the rates charged in the voluntary market are about the -- about equal to the Rate Bureau manual rates indicating that there seems to be a balance where insurance companies think some people should be charged higher than the manual rate and some of the policyholders should be charged lower than the manual rate, but overall, it tends to balance out.

Q Speak into the microphone, sir.

So does that -- what does that suggest to you about any relationship between the -- an increase in the manual rate and the CTR?

A My understanding was that the bureau was taking the position that if you look at CTR, that indicates that companies don't believe that the manual rates are adequate because there's upward CTR. And what I'm saying is that when you look at, you know, upward CTR and downward deviations, they balance out on average.

So it seems like companies have disagreements -- or you might say companies appear to have disagreements with their Rate Bureau in terms of how to distribute the overall premium to policyholders but not what the overall manual premium is as a whole.

Q Okay. Is there anything else that you think is relevant between your exhibit -- or DOI Exhibit 44 and 45 and RB-30?

A I think I've explained everything I wanted to.

Q Okay. I appreciate that.

MR. FRIEDMAN: Your Honor, I know this is a bit piecemeal, but at this point, I would move to introduce DOI 44 and 45.

MS. FUNDERBURK: Any objections, Mr. Spivey?

MR. SPIVEY: No objection.

MS. FUNDERBURK: None?

I'll allow the introduction of DOI 44 and 45.

MR. FRIEDMAN: Thank you, ma'am.

(DOI Exhibit Numbers 44 and 45 were received into evidence.)

BY MR. FRIEDMAN:

Q Did you review Mr. Ericksen's testimony about policyholder dividends being treated as an expense?

A Yes. I mean, I heard his oral testimony on that, as well as his direct prefiled direct testimony, reading it.

Q So, first of all, in the filing itself one can discern that the -- that the bureau has treated dividends as expenses; is that correct? From just pure numbers looking at them, or can they?

A Right. In terms of the calculation, they essentially treated it as an expense item.

Q So you mentioned that he referred to it additionally in his prefiled testimony.

A Well, he first would have done it in his prefiled and then in his oral additionally.

Q Right. Did his oral testimony expand on his explanation of why this was allegedly justified, this treatment of dividends? Did it expand on what was in his prefiled testimony?

A Yeah. I think he gave additional emphasis to that issue.

Q Okay. Do you agree that policyholder dividends need to be treated as an expense and are associated with the transfer of risk and, therefore, must be included in the numeric rate calculation? I can break that up, if you'd like.

A Well, I would say they don't have to be treated as an expense. There's no requirement to treat those as an expense with a specific numerical value associated with it, and the position that you don't have to treat it as an additional expense with a specific numerical value, to my understanding, has been litigated and the courts have said that you don't need to treat it as an expense and you don't need to add in an additional value explicitly for dividends into the rate.

Q Okay. And is there an ASOP that you believe sheds light on whether dividends have to be treated as expenses?

A Yes.

MR. FRIEDMAN: Okay. Your Honor, I'm going to be turning back to notebook 3, Exhibit 12. And specifically I'm going to be looking at ASOP 29, and it begins at page 44. And I do want to note, Your Honor, that this is the version of the ASOP that applied particularly to Mr. Ericksen's testimony on the stand.

There is a prior version of it that, for the purposes we're going to address, I think is essentially interchangeable, though the language has changed. But I specifically want to talk about how -- whether his testimony on the stand was consistent with the version of ASOP 30 that's in effect as of July 1st.

BY MR. FRIEDMAN:

Q So knowing that, could you turn to specifically provision 2.7 of A-29, and that is on page 44.

How does that provision define a dividend?

A So it says "Nonguaranteed Returns of Premium or Distributions of Surplus."

Q Okay. Is it my understanding, then, that the very -- first of all, it's your understanding that the bureau has treated, when we say "treated dividends as expenses," those are specifically policyholder dividends?

A Yes.

Q Okay. And is it fair to say, then, that based on the ASOP -- the very definition that's applicable to actuaries is that a policyholder dividend is not guaranteed?

A Right. They're not guaranteed.

And it indicates they can either be a return of premium or distributions of surplus. And it's my understanding in North Carolina, by statute and by decisions of the orders of the commissioner, decisions of the court, that they're being treated -- the appropriate treatment in North Carolina is as a distribution of surplus.

Q And we'll get to the statute in a moment. But if you could also then turn to Section 3.7 on page 46. And without reading 3.7 into the record unless the Hearing Officer would prefer that I do so, what in 3.7 which it contains a method for providing for dividends do you think --

MS. FUNDERBURK: Mr. Friedman, sorry to interrupt, but you referenced there were different versions of the ASOP, so let's go ahead and read that into the record so we're abundantly clear what language you're referencing.

MR. FRIEDMAN: Yes, ma'am.

BY MR. FRIEDMAN:

Q So reading into the record the provision applicable as of July 1, 2024, Section 3.7 states that: If the actuary determines that policyholder dividends are reasonably anticipated, the actuary should consider including the anticipated amounts of policyholder dividends in the expense provisions. When developing an expense provision for policyholder dividends, the actuary should take into account the company's dividend payment history, its current dividend policy or practice, whether dividends are related to loss experience, investment results, the capital and surplus of the company, and other considerations affecting the payment of dividends.

And in what matter -- manner, Mr. Schwartz, do you think that Mr. Ericksen's testimony about dividends is inconsistent with that method in 3.7?

A Well, the second sentence talks about what you should consider when developing an expense provision for policyholder dividends. And it's my understanding that the Rate Bureau didn't consider any of those things in determining what they believed was an appropriate provision for policyholder dividends. So it doesn't seem to me like the Rate Bureau witnesses comply with that provision of the ASOP.

Q And let me go over a couple of those different things. First of all, do you recall testimony -- well, are you aware of the number of homeowners' writers that are members of the bureau in North Carolina over the five years of experience that are at issue in the filing? Do you remember whether there were ever any more than three companies writing policyholder -- or giving policyholder dividends?

A I don't believe they were in the five years, but I think I remember which page of the filing that would be, so I would just take a look at it.

Q If you could tell us, what page?

A It's on page E-291 of RB-20.

MR. FRIEDMAN: How many -- is everybody there at E-291?

MS. FUNDERBURK: Not yet.

A This shows out of the five years, in three of the years there were three companies that issued dividends, and for the last two years, there were two companies who issued dividends.

BY MR. FRIEDMAN:

Q Even taking into account the unique nature of the bureau as far as aggregated data and the fact that certainly there will be companies that don't have the same experience as others that may benefit from the experience of others, other companies, do you think it's actuarially appropriate to use a maximum of three companies' dividends to project what the dividend experience or the dividend expenses will be for all 110 homeowners' carriers in North Carolina?

A Well, I think this goes back to what's in the Actuarial Standard of Practice, where it says look at the dividend policy of the company. And so you could see that because so few of the individual companies in the aggregated experience issue dividends, to increase everybody's rate for that could be considered to result in unfairly discriminatory rates; that you're increasing the rate for everybody so that the policyholders in these few companies could get dividends.

Q From either Mr. Anderson or Mr. Ericksen, do you recall any testimony about what the dividend policies or practices were of these five -- or excuse me -- this -- these three insurance companies on E-291?

A I don't recall them saying anything about it and what -- the transcript will speak for itself. My recollection was that Mr. Anderson said something to the effect that because the filing is for an aggregate company, that that portion of the ASOP doesn't apply to them, which I would disagree with. Either you're going to rely on that ASOP or you're not. You can't say, I'm going to pick and choose which parts that I want to rely on, "I" being Mr. Anderson speaking in his testimony.

Q Is there anything else in 3.7, specifically the factors, that would lead an actuary to consider if he thought it appropriate -- dividends -- is there anything else in there that you heard any -- or reviewed any testimony in support of?

A I don't recall any of the Rate Bureau witnesses giving testimony with regard to those issues set forth in the ASOP.

Q Okay. And do you recall seeing any other support in any of those issues in the filing itself?

A No. I mean, the filing lists the companies and shows the dollar amount, but not really any textual explanation of how those facts were considered.

Q Okay. And then in the prefiled testimony, basically the same question: Did you see any specific consideration or data about those factors when deciding whether to include a dividend provision?

A No.

Q And then, finally, are you familiar with North Carolina General Statute 58-8-25?

A I don't remember the exact cite, but I know there's a statute dealing with -- discussing what dividends are paid out of.

Q Did you use a copy of the statute, or do you feel comfortable summarizing it?

A If I had a copy of the statute, it would be better than doing it from memory.

MR. FRIEDMAN: Your Honor, could I approach?

MS. FUNDERBURK: Please approach. Do you have something else -- do you have another exhibit?

MR. FRIEDMAN: This isn't an exhibit, it's just a reference to the law, and I had advised opposing counsel that we would be referring to that law earlier today, and they didn't have an objection to just merely referring to it.

MS. FUNDERBURK: Okay. You can approach or it may be easier to just put it on the screen, if that can be readily accessible. And there it is.

It was almost anticipatory.

MR. FRIEDMAN: Yeah.

BY MR. FRIEDMAN:

Q Could you read into the record, please, sir, the language that you are focusing on from that statute?

A Right. It's the first sentence. It says: Any participating or dividend-paying company, stock, or mutual or foreign or domestic, that writes other than life insurance or Workers' Compensation insurance and employers' liability insurance in connection therewith, may declare and pay a dividend to policyholders from its unassigned surplus, as reflected in the company's most recent annual or quarterly statement filed with the Commissioner under G.S. 58-2-165, which shall include only the surplus in excess of any required minimum surplus.

So this is the part of the statute which says a dividend paid from unassigned surplus, which is essentially the policy -- what's considered policyholder surplus in the financial statements.

Q And how does that relate to Mr. Ericksen's testimony in support of -- or his live testimony, specifically, in support of the dividend provision?

A Yes. Well, Mr. Ericksen was saying it has to be treated as an expense. And this is saying it's coming from surplus, which is consistent with the Actuarial Standard of Practice saying that policyholder dividends can be considered as being from surplus.

Q Okay. And surplus is not an expense, am I correct?

A That's correct.

Q What is surplus part of?

A Surplus is the excess of the company's assets, or admitted assets over its liabilities.

Q Okay. Thank you very much.

Now I'm going to move on to Mr. Anderson's testimony regarding the contingency provision.

MR. FRIEDMAN: Madam Hearing Officer, I know that you'd express some concerns about 4:00 o'clock. This is a very natural place to perhaps break now.

MS. FUNDERBURK: If you covered that section, about how much time would it take?

MR. FRIEDMAN: I can't -- well --

MS. FUNDERBURK: More or less than a half hour? More or less than a half hour?

MR. FRIEDMAN: Less. I was going to say about ten minutes.
MS. FUNDERBURK: About ten minutes. So, Counsel, I want to be mindful of people's family commitments, daycare arrangements, that type of thing. Are you good? Is there any concern if we go to about 4:15 p.m.?
MR. BEVERLY: None from us.
MS. FUNDERBURK: Mr. Friedman, please proceed.
BY MR. FRIEDMAN:
Q Did you review Mr. Anderson's testimony regarding the contingency provision in his -- well, when you testified two weeks ago?
A I listened to it live and also read it afterwards from the transcript.
Q And could you tell me, was his explanation of the contingency provision and his explanation of the -- I don't know what to call it -- the little collection of data or the pages that he created to support the contingency provision based on alleged regulatory delays, was the extent of his explanation of that live, greater than what was in his written report?
A Yes. He gave a further explanation of

it and expanded on it.

Q All right. So do you agree with Mr. Anderson that based -- well, on anything, if I recall Mr. Anderson testified -- and tell me if you recall otherwise -- that the 1 percent contingency was both borne out by his calculation of alleged regulatory delays, and that it was also borne out by other factors, such as changes in the law, what have you. Did you -- do you agree that based on any of the factors he said would support that, a 1 percent contingency provision is, in fact, supported?

A I don't believe any of the things Mr. Anderson presented supports the 1 percent contingency provision, in addition to, you know -- in addition to what was in his direct prefiled testimony. You know, on his redirect, I think he mentioned some court cases, which he claimed supported the 1 percent contingency provision which hadn't been in his prefiled direct.

But, again, I've reviewed those court decisions, information on it. And while I'm not a lawyer, I don't think those court cases support the contingency provision as well as an exhibit not supporting it.

Q Okay. So let's break that out a bit

between the -- his RB-21 which was his calculation of alleged regulatory delays, the court cases he mentioned, and then I guess sort of the general litany from, if I'm not mistaken, one of the ASOPs about other factors that would support a contingency provision.

We start with the last one, the other factors besides the court cases he mentioned and besides his calculations at RB-21.

A Sure. I mean, both him -- both Mr. Anderson and Mr. Ericksen pretty much said the same types of things. Let me see if I can find it in their prefiled direct.

Q Sir, that would be in exhibits -- let's see -- Mr. Anderson's is at Exhibit 19, RB-19, that is, in Book 1.

MR. SPIVEY: Can you give a page number?

MR. FRIEDMAN: One second. I'm actually waiting on Mr. Schwartz to tell me what he was thinking of.

A If you look at Mr. Anderson's testimony, RB-19, on page 12, there's a question -- there's a contingency provision included in the filing.

BY MR. FRIEDMAN:

Q Does that list those other factors besides the court cases he mentioned and his Exhibit RB-21?

A Well, he mentions a bunch of issues. Court cases and alleged regulatory delay are included in it. For some of these reasons -- well, in terms of his explanation contingency provision, he says -- it's the last full paragraph on the page -- two, three, four, five -- the sixth line from the bottom starts: Some of these reasons include adverse court decisions, extension of coverage for unseen or unintended exposures, regulatory delay or reduction in filed rate changes and unexpected large losses not sufficiently recognized in the normal ratemaking process.

So that's his general list of items. I believe Mr. Ericksen's list, if not exactly the same, is pretty much the same. And they're both pretty much the same as what was included in the Rate Bureau filing in 2014.

So this is their standard list of reasons -- this is the Rate Bureau's standard list of reasons for why they believe they should have a contingency provision, a list of reasons which I would just say that didn't convince the commissioner in the 2014 case that they should -- that he should --

(Reporter requested clarification.)

A This is the Rate Bureau's standard list of reasons for a contingency provision, and it's a list which did not convince the commissioner in the 2014 case that a contingency provision was supported.

BY MR. FRIEDMAN:

Q Particularly, I guess, with regard to extension of coverage for unforeseen or unintended exposures or reductions in filed rate changes or unexpected large losses, did you see any data in the filing in Mr. Anderson's prefiled testimony, or did you hear any data in his actual testimony live that supported those factors?

A So I don't know if you included regulatory --

Q I'm going to get to the regulatory delay, and I'm going to get to the court cases in a second with the other ones.

A So, you know, yeah. As far as those other items, I didn't hear -- or I don't recall anything in Mr. Anderson's testimony with regard to those other items.

Q Did you hear anything in Mr. Ericksen's testimony with regard to those items?

A No. And, again, we're talking about the unforeseen or unintended exposures, reduction in filed rate changes, and unexpected large losses, not sufficiently recognized in the normal ratemaking process.

Other than those verbal -- well, I should say written lines there, I don't recall anything else by Mr. Anderson or Mr. Ericksen in their prefiled direct or in their oral testimony dealing with those.

Q All right. Now could you turn, please, to RB-19.

A You mean 21?

Q Yes. Excuse me. RB-21.

Why do you think this does not support a 1 percent contingency provision?

A Well, if I understand what Mr. Anderson did, is that he said because the effective date of the rates was different than -- well, let me back up.

My understanding is Mr. Ericksen said the effective date of the rates that actually went into effect, either through an audit or a settlement, was later than the effective date that the bureau put in its filing and, therefore, you are underestimating what the rate change should be because the trend in losses relative to premiums tends to be upwards over time and, therefore, the later a rate goes into effect, the higher the rate needs to be.

And he said because there's a difference between what the Rate Bureau filed for the effective date and the actual implemented effective date, that the Rate Bureau was losing out on some portion of the rate.

Q Okay. Do you agree with that and does RB-21 give you any reason to disagree with that?

A Well, I disagree with what Mr. Anderson said. I'll just point out two things: Where he has -- he has in column 4, Selected Loss Trend, and in column 5, Selected Premium Trend, and his calculation depends on the values you put in there.

And the values shown there, my understanding, are the values selected by the Rate Bureau. So they're not necessarily the values that would determine to be correct or appropriate. So the underlying values for his column 6 haven't shown to be accurate values and, therefore, we don't know if column 6 is accurate or not.

But even if column 6 were accurate, the rates that implement it take that difference between the actual effective date and the assumed effective date into account.

So in the 2014 order of the commissioner, he specifically says, You need to adjust for the actual effective date.

And actually in my testimony in this case, I said I used the same effective date for my calculations that the bureau had in its filing, but that as a result of the hearing, there could be a different effective date and the rate calculations could be adjusted for it.

So there's an understanding that when you do a rate calculation you would use what you believe the actual effective date is, not the effective date assumed in the Rate Bureau filing. So whatever impact it has on the rate is taken into account in determining what appropriate rate to use.

So there is no understatement of the rate level because of the different effective date.

Now, for the rates that went into effect as a result of the settlement, there is no formal calculation of the rate that you could say -- could point to. But, again, the commissioner said you should adjust to that, I said you should adjust to that. So it's logical to believe that the settlement would adjust for that.

And if you look at the actual settlement offers, it's -- I may not get the exact wording right. But there's a statement in the settlement order that the commissioner finds the rates from the settlement to be not excessive, inadequate, or unfairly discriminatory and, therefore, part of it being the "not inadequate" means that whatever adjustment needs to be made for the effective date the commissioner believes that they were appropriately taken into account.

Q Would it help you to see whether that language was specifically included in the 2017, 2018, and 2020 Homeowners' settlements?

A I believe I've already looked at those --

Q Okay.

A -- and the languages in there. I don't remember the exact wording, but it's essentially saying that the rates meet the statutory standards. And I think it said "not excessive, inadequate, or unfairly discriminatory."

Q Now, regarding -- do you recall Mr. Anderson discussing, I believe, a couple of cases that he had recently learned about that he believed supported a 1 percent contingency provision, although the filing had been made by my count maybe nine months before he learned about those cases.

Do you recall that testimony?

A Yeah. I remember that when he was asked about it on cross-examination, he could not identify any cases, but that for his redirect he had two cases that he mentioned.

Q So did you -- well, let me ask, did you review -- is one of those cases, based on your review, Nung Ha vs. Nationwide General?

A With the understanding that we may be pronouncing it wrong --

Q Yes.

A -- or incorrectly, I believe that's one of the cases he mentioned.

Q Okay. And from your understanding, was the other case -- or at least, perhaps, I'm not really clear whether it was a class action or whether there were various related or different lawsuits. But was your understanding that at least one of those cases regarding roofers and whether they could be assigned policies was Piedmont Roofing Services v. Nationwide Mutual Insurance?

A I think Mr. Anderson might have only said "Piedmont case."

The transcript will speak for itself, but I don't need to have the full name of it. But when I looked for it, that was the case I found online. And actually it's not that the policy could be assigned; it's the issue of whether after there was an actual loss on the policy, whether the damages related to that loss could be assigned.

Q So okay. Let me first go back, then, to Ha v. Nationwide. Did you read the Supreme Court decision in that case?

A Yes.

Q And to clarify, that's the North Carolina Supreme Court?

A Yes.

Q And why do you think -- well, first of all, who did the Supreme Court find in favor of?

A They found in favor of the insurance company.

Q So that would have been the defendant

in the original case, Nationwide?
A Yes. Was that Nationwide -- I can't remember? Was that Nationwide also?
Q It was.
A Okay.
Q And why do you think finding in favor of the insurer in that case is not going to have any real effect on the contingency provision?
A Well, I mean the reason they say -- one of the reasons they give in the contingency provision is an adverse court decision, and that decision was not adverse to the insurance company. The insurance company prevailed in that case.
Q Okay. And so that, in your understanding, that case could not be used as justification for some sort of unanticipated expenses in support of a contingency provision?
A Yeah. What I'm saying is, that case, it was not an adverse court decision, right? I mean that the bureau was taking the position that you have these adverse court decisions, and, therefore, you need a contingency provision; that they pointed to this case which wasn't an adverse court decision.
Q And then as far as the Piedmont case, the Piedmont decision you read was from the U.S.

District Court of, I believe, the Eastern District of North Carolina; is that correct?

A That's my recollection.

Q And could you tell me what you read it said about the rule on whether policies could be assigned, particularly, I guess, homeowners policies covering property losses; what the rule -- that the court said was, I guess, the great weight of North Carolina authority?

A Right. So, first, I want to go back and say that the case doesn't deal with the assignment of the policy, right?

Q Please clarify that.

A You can't just assign the policy to somebody else. But my understanding of the court decision was that it's generally accepted that after a loss has occurred, that getting compensated for that loss under the insurance policy is something that could be assigned, and that it's common -- commonly understood that it could be done.

Q So because your reading of that was that that is, I guess I would say, a longstanding common understanding, that rule that -- regarding the assignment of the loss. Is that some, in your opinion, new adverse court decision that would

create a potential for an unforeseen increase in the
justifying a contingency provision?
A No. I mean my understanding of the bureau's position, or Mr. Anderson's position -- which he didn't really explain, he didn't seem to know a lot about the cases -- was that being able to assign the loss after the claim had occurred was something new and unexpected; that someone might be allowed to do that. And the court cases I read indicated that that wasn't new or unexpected, that that was a practice that had generally been accepted in the past.
MR. FRIEDMAN: Your Honor, that's all I have for Mr. Schwartz regarding the contingency fee -- or excuse me, contingency provision. So perhaps now would be a good time.
MS. FUNDERBURK: Now would be a good time to recess then?
Mr. Schwartz, I'll remind you when you retake the stand tomorrow, you will continue to be under oath, sir.
Are there any administrative matters we need to address before we recess for the day?
MR. SPIVEY: No, Your Honor.

MS. FUNDERBURK: Mr. Friedman?

MR. FRIEDMAN: No, Your Honor. But I will absolutely get the list to -- a writeup and start working and getting them the list promptly of those exhibits we gave copies of in advance so they would have them but that we've now decided we won't use.

MS. FUNDERBURK: Thank you. And the earlier the better, I'm sure, for their preparation and timelines. I'm sure everyone's been putting in a lot of nighttime hours on this one.

All right. Thank you, Counsel, for your time. We are in recess until 9:00 a.m. tomorrow morning. Thank you.

(The hearing adjourned at 4:21 p.m.)

STATE OF NORTH CAROLINA)
COUNTY OF FORSYTH)

REPORTER'S CERTIFICATE

I, Audra Smith, Registered Professional Reporter in and for the above county and state, do hereby certify that the hearing was taken before me at the time and place hereinbefore set forth; that the proceedings were transcribed and recorded by me by means of stenotype; which is reduced to written form under my direction and supervision, and that this is, to the best of my knowledge and belief, a true and correct transcript.

I further certify that I am neither of counsel to either party nor interested in the events of this case.

IN WITNESS WHEREOF, I have hereto set my hand this 29th day of October, 2024.

____

Audra Smith, RPR, CRR, FCRR
Notary Number: 201329000033
Commission Expires: June 26, 2025

E R R A T A   S H E E T

PAGE	LINE	CORRECTION

I, ____________________________, after having read the foregoing transcript of the hearing In the Matter of: The Filing Dated January 3, 2024, by North Carolina Rate Bureau for the Revision of Homeowners Insurance Rates wish to make the above corrections.

SIGNATURE________________________________

DATE_____________________________________

AS