

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 XIX - P. M.

Raleigh, North Carolina

December 6, 2024

2:16 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, continued after the lunch recess on the 6th day of December, 2024, at 2:16 p.m., before Audra Smith, RPR, CRR, FCRR.

I N D E X

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PAGE

MI NCHONG MAO

Cross-Exami nati on (Cont' d) by Mr. Fried man 2837

E X H I B I T S

RATE BUREAU EXHI BIT

NUMBER	DESCRIPTION	ID	REC
Exhi bi t 34			2888
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Exhi bi t 36			2888
Exhi bi t 37			2888
Exhi bi t 38			2888

1 PROCEEDINGS

2 MS. FUNDERBURK: Counsel, is there  
3 anything we need to address before we resume  
4 cross of Ms. Mao?

5 MR. FRIEDMAN: Briefly, Your Honor.

6 Given the time constraints, I would ask  
7 the Court to set next Monday as the latest  
8 date for all rebuttal exhibits to be turned  
9 over, including for Mr. Anderson and  
10 Dr. Zanjani. The reason is that -- this is  
11 unlike past hearings when there weren't  
12 week-long gaps in the midst of rebuttal  
13 testimony. Since --

14 MS. FUNDERBURK: If it's a scheduling  
15 testimony, let's address that after we  
16 complete Ms. Mao's testimony, because worse  
17 case, we can talk about over email next week,  
18 but we can't examine her over email next  
19 week.

20 MR. FRIEDMAN: Okay.

21 MS. FUNDERBURK: Was there anything  
22 related to the testimony today or the  
23 processes today? Because we're going to need  
24 to talk about scheduling just in general, but  
25 I want to make the most use of her time.

1 MR. FRIEDMAN: Sure. All right.

2 \* \* \* \* \*

3 MINCHONG MAO,  
4 having been previously duly sworn, examination and testimony  
5 continued as follows:

6 MINCHONG MAO,  
7 having been previously duly sworn, examination continued as  
8 follows:

9 CROSS-EXAMINATION (CONTINUED)

10 BY MR. FRIEDMAN:

11 Q Ms. Mao, have you -- since we were  
12 speaking this morning -- I learned how many national  
13 companies doing business in North Carolina --  
14 homeowners' carriers -- Aon represents?

15 MR. SPIVEY: I'm sorry. I assume this  
16 is what you and I were just talking about?

17 MR. FRIEDMAN: Yes.

18 MR. SPIVEY: My understanding was the  
19 question to Ms. Mao was, out of the 110  
20 companies, how many of those companies are  
21 Aon clients.

22 Was that your understanding of the  
23 question?

24 A Yes. My understanding is how many  
25 companies --

1 MS. FUNDERBURK: Let me just clarify.  
2 I'm sorry.

3 THE WITNESS: I'm sorry.

4 MS. FUNDERBURK: Let me just clarify  
5 with them.

6 I did note you were having some  
7 discussion prior to us going on the record.

8 Is that the planned question? Is that  
9 what we're --

10 MR. FRIEDMAN: I think we were looking  
11 at it from different sides of the same coin.  
12 I didn't say "Of the 110 how many," I'd said  
13 "How many are there in North Carolina..."

14 MS. FUNDERBURK: But this is what you  
15 talked about. Was there an agreement as  
16 to --

17 MR. SPIVEY: Well, during the  
18 cross-examination, my understanding was he  
19 had asked Ms. Mao how many companies were Aon  
20 clients. And Ms. Mao, with her colleagues at  
21 Aon, have checked into that, and I conveyed a  
22 number to Mr. Friedman just before we went on  
23 the record and told him he could ask that.  
24 But what he asked her was not my  
25 understanding of what she was asked to

1 obtain.

2 MS. FUNDERBURK: To obtain.

3 MR. FRIEDMAN: So the best I recall, I  
4 asked this morning, Ms. Mao had testified  
5 that she had reviewed an unidentified number  
6 of unidentified Aon clients who did business  
7 regionally including in North Carolina as to  
8 their details about their reinsurance costs.

9 First of all, if that's -- is that an  
10 accurate statement of what you understand I  
11 asked this morning?

12 MR. SPIVEY: Again, my understanding  
13 was --

14 MR. FRIEDMAN: Just generally.

15 MR. SPIVEY: -- you had a question  
16 about, "Out of 110 companies, how many are  
17 clients of Aon and please look for that."

18 So 110 companies, I was understanding  
19 was harkening back to testimony earlier in  
20 this case that there's roughly 110 companies  
21 writing business in North Carolina. They're  
22 certainly not all national carriers.

23 MR. FRIEDMAN: Okay. Now I understand  
24 the point you're making. I didn't understand  
25 that before. Okay.



1 MS. FUNDERBURK: Please resume.

2 BY MR. FRIEDMAN:

3 Q So, Ms. Mao, out of the approximately  
4 110 homeowners' carriers in -- that do business in  
5 North Carolina, how many of those does Aon  
6 represent?

7 A I have to answer that question in a  
8 slightly different way. It is based on our  
9 analysis, the data cut we use, we set the national  
10 carrier and the Southeast carrier but not  
11 Florida-only carrier. That's how we filter Aon's  
12 client to include in the region's analysis.

13 We included 46 of them in our analysis.  
14 Total 46 companies -- reinsurance -- purchasing  
15 information was used to develop these rate filings  
16 reinsurance curve.

17 Q How -- so is 46 -- not how many you  
18 used to develop the curve, but is 46 the number of  
19 Aon clients doing business in North Carolina?

20 A So 46 -- we assumed these 46 they're  
21 national. We assume they're writing business and  
22 they're Southeast, not Florida only, we assume  
23 them doing business in North Carolina, and these  
24 are the cohort we pull to develop the curve for  
25 these analyses.

1 Q So you say you assumed they were doing  
2 business in North Carolina. Do you know that they  
3 are?

4 A That, I didn't go through each one by  
5 one because I also have to tell you, even the data  
6 cut we receive, all the company name is masked  
7 because we have level -- layers of the security,  
8 and we are only allowed to see some data, but  
9 we're not allowed to see every company's name and  
10 what they do. So we are not even allowed to see  
11 that information. We only allowed to see the  
12 pricing information just enough for develop a  
13 pricing project.

14 Q So as I understand -- and please tell  
15 me if I'm wrong -- what you said is you used 46  
16 companies' information for the purposes of your  
17 net calculation?

18 A Correct.

19 Q And that was actual data from those 46  
20 companies?

21 A That's actual data, actual reinsurance  
22 purchasing data for those 46 companies.

23 Q And you can't say that all 46 of those  
24 are actually writing policies in North Carolina?

25 A I would say in general nationwide

1 companies, they write in the majority of the  
2 states. So those are --

3 (Stenographer requested clarification.)

4 A Majority of the nationwide companies  
5 they write business in North Carolina. And  
6 Southeast regional companies, they also write  
7 business in North Carolina.

8 MR. SPIVEY: Your Honor, I realize we  
9 explored some of this this morning, and I  
10 didn't object then. But, again, we're well  
11 beyond the scope of rebuttal testimony as he  
12 continues going into this area.

13 MR. FRIEDMAN: Your Honor, they didn't  
14 provide -- despite many requests -- any  
15 actual data about alleged -- actual data  
16 about the net until 8:30 and then at 10:30  
17 yesterday evening about actual numbers.

18 MR. SPIVEY: I apologize for  
19 interrupting. That's not an appropriate way  
20 to characterize what has transpired here.

21 MR. FRIEDMAN: Your Honor, my  
22 position -- again, he can go back to the  
23 transcripts over many days now, but my  
24 position is that at every turn on every issue  
25 of the net that I asked any of the witnesses

1 about, they testified that they provided the  
2 modeled numbers, and then Ms. Mao testified  
3 that she knew that the engineers and the  
4 other people who make the modules -- she  
5 assumed they must have included North  
6 Carolina data, but she couldn't say which  
7 ones, and what data.

8 So this day today is the first day that  
9 we've heard any specific testimony about net  
10 data from actual customers, and I'm just  
11 learning of it now. And I --

12 MS. FUNDERBURK: What was the --

13 MR. FRIEDMAN: The biggest point of  
14 this, Your Honor, is that the 2014 and -- the  
15 2014 Court of Appeals decision very clearly  
16 says that one of the reasons that --

17 MS. FUNDERBURK: Please speak into the  
18 microphone.

19 MR. FRIEDMAN: Yes, ma'am.

20 That one of the reasons -- the whole of  
21 their net data was not thrown out by any  
22 stretch, but was discredited in part and led  
23 to the Commissioner, under -- I mean, not  
24 accepting their net calculations at  
25 100 percent was because they didn't

1           provi de --

2                   MS. FUNDERBURK: I understand the 2014  
3 order there were allegations raised in the  
4 hearing and in the order regarding  
5 availability of data.

6                   MR. FRIEDMAN: Right.

7                   MS. FUNDERBURK: But back to this  
8 hearing, we're in rebuttal.

9                   MR. FRIEDMAN: Right.

10                  MS. FUNDERBURK: I understand you  
11 received some additional documentation in the  
12 past 24 hours; is that correct?

13                  MR. FRIEDMAN: (Nonverbal response.)

14                  MS. FUNDERBURK: What questions do you  
15 have that reference the testimony Ms. Mao has  
16 given today? If the -- we need to explore --  
17 you need to explore what she has testified as  
18 to today? Are you saying that what you're  
19 exploring now is something she testified  
20 about today?

21                  MR. FRIEDMAN: I have obviously not  
22 been able to review yesterday's transcripts  
23 from the --

24                  MS. FUNDERBURK: I shouldn't say just  
25 today, her rebuttal --

1 MR. FRIEDMAN: Nor have today.

2 I believe that her answers, Thursday  
3 and today, have implicated the questions that  
4 I'm asking or else Your Honor's questions of  
5 her. I can't point to a place where that is  
6 so, nor have they been able to point to a  
7 place in any of the past testimony that shows  
8 that they're actually responding to something  
9 that my witnesses said.

10 MR. SPIVEY: And we did do that.

11 MR. FRIEDMAN: You pointed to the  
12 written testimony. You didn't point to any  
13 specifics in the transcript which I  
14 understand was the past practice.

15 MR. SPIVEY: Yes.

16 MR. FRIEDMAN: So I'm going off of what  
17 my understanding was what she already  
18 testified to. I have not had the opportunity  
19 to -- since all of this is brand new -- sit  
20 down with my experts and understand the  
21 entirety of what she's already testified to  
22 today.

23 What I have been told is that even that  
24 first hour is going to require some days of  
25 unpacking and thinking about.

1 MR. SPIVEY: Your Honor, I don't think  
2 that any testimony Ms. Mao has given on  
3 rebuttal in this case implicates any of her  
4 testimony in terms of what data underlie the  
5 analysis that was presented in the filing and  
6 what actual data or modeled data there were.

7 The questions on rebuttal and her  
8 testimony on rebuttal have been pointedly  
9 directed at Ms. Cavanaugh's and  
10 Mr. Schwartz's testimony as presented in this  
11 hearing.

12 MR. FRIEDMAN: Can I clarify one matter  
13 too? This isn't just a matter of what data  
14 is included, real data is included in their  
15 modeled net or their modeled hurricane  
16 losses.

17 This is a question about us having  
18 asked for comparisons.

19 MS. FUNDERBURK: For today it is not.  
20 Today what we're dealing with is rebuttal,  
21 not the previous discovery issues. There was  
22 time to bring that up. There will be time to  
23 bring that up.

24 Right now what we're addressing is what  
25 she's testified as to in her rebuttal

1 testimony, which includes what she has stated  
2 regarding your witnesses' testimony.

3 Mr. Spivey questioned her about reinsurance  
4 data. I questioned her about reinsurance  
5 data. In particular I believe it was RB-13  
6 and 14.

7 For purposes of this examination,  
8 you're reviewing her -- you're crossing on  
9 her rebuttal testimony, and that's what I'm  
10 going to ask you to do and to continue with.  
11 I need you to continue your cross-examination  
12 as to the rebuttal testimony that she's  
13 provided regarding your expert witness'  
14 information that has been presented and then  
15 the additional questions that I asked as  
16 follow ups to the reinsurance information.

17 MR. FRIEDMAN: I understand, Your  
18 Honor. Just as I said, I can't fully  
19 appreciate what she's testified to until I  
20 see the transcripts, but I will try to keep  
21 within the exact things I heard come out of  
22 her mouth yesterday and today.

23 MS. FUNDERBURK: Please proceed.

24 BY MR. FRIEDMAN:

25 Q Regarding -- could you turn to RB-13,



1 ma' am?

2 MS. FUNDERBURK: And please be sure  
3 you're speaking into the microphone.

4 BY MR. FRIEDMAN:

5 Q RB-13.

6 A Yes.

7 Q Sorry. It takes me a few minutes to  
8 get there. My notebook has almost come apart.

9 All right.

10 MR. SPIVEY: I would observe these are  
11 apparently in response to questions Your  
12 Honor asked.

13 MS. FUNDERBURK: Yes. I would presume  
14 that they are with it being RB-13, and those  
15 were questions regarding some of the  
16 following up on the reinsurance questions  
17 that were asked by me as follow up to the  
18 questions you had asked.

19 Please proceed, Mr. Friedman.

20 BY MR. FRIEDMAN:

21 Q Are you aware, ma'am, of any North  
22 Carolina homeowner insurers that exhaust their  
23 reinsurance at the 100-year return period?

24 A I don't have that information readily  
25 available.

1 Q Okay. Are you aware of any that  
2 exhaust their reinsurance at a lower number than  
3 100?

4 A I don't have exact information, but I  
5 know in Aon's clients, there are "loss impact  
6 hit." That means their reinsurance programs are  
7 triggered. There are also "not loss impact hit."  
8 That means their reinsurance recovery is not  
9 triggered, so we have both. But I don't have the  
10 detail of the return period for each client.

11 Q Can you provide that information to us  
12 before next Thursday?

13 A No, I can't because it's our clients'  
14 confidential information.

15 Q If you could turn to RB-18, now.

16 MR. FRIEDMAN: And this, Your Honor,  
17 relates to RB-13, although Your Honor didn't  
18 refer specifically to RB-18.

19 MR. SPIVEY: I will note, this relates  
20 to the CAR analysis. I don't recall any  
21 questions related to the CAR analysis.

22 MR. FRIEDMAN: One second, Your Honor.  
23 Your Honor, this is on sheet 3 of -- or  
24 page 3.

25 MR. SPIVEY: Exhibit RB-18?

1 BY MR. FRIEDMAN:

2 Q Does RB-18 show the reinsurance  
3 structure for the Beach Plan?

4 A Yes.

5 Q Okay. And referring to RB-18, what are  
6 the implied attachment return periods and  
7 exhaustion return periods for the Beach Plan's  
8 reinsurance?

9 MR. SPIVEY: Objection. This has  
10 nothing to do with rebuttal. It really  
11 doesn't have anything to do with your  
12 questions, Your Honor.

13 MS. FUNDERBURK: How does this tie in,  
14 Mr. Friedman, to Ms. Mao's prior testimony  
15 where she was questioned as to -- I'm just  
16 looking back at my notes -- she discussed the  
17 AIR models. She discussed -- I'll summarize  
18 it as investments. She looked at some  
19 prefilled testimony. I discussed some  
20 attachment and exhaustion and return layers  
21 with her.

22 How does the Beach Plan information  
23 relate to her rebuttal testimony?

24 MR. FRIEDMAN: She testified that  
25 the -- and continues to testify --

1 MS. FUNDERBURK: Please use the  
2 microphone.

3 MR. FRIEDMAN: She's testified -- and  
4 continues to testify -- about what was on  
5 RB-13 and RB 14 being based on some unknown  
6 number of actual Aon clients. This and --  
7 they have included Beach Plan loss data. No  
8 Beach Plan expense data, and Beach Plan  
9 exposure, but, yes, loss exposures in their  
10 calculation, but they don't appear to have  
11 included it in the net.

12 Our position is that the Beach Plan's  
13 attachment points, since they can't identify  
14 any actual client in North Carolina  
15 attachment points or exhaustion points, the  
16 Beach Plan is actual reinsurance in North  
17 Carolina, and we ought to be able to see how  
18 those line up in comparison to what she says  
19 is real data on 13 and 14.

20 MR. SPIVEY: And, Your Honor, that may  
21 very well be very interesting information.  
22 It has nothing to do with our rebuttal  
23 evidence.

24 MR. FRIEDMAN: She had --

25 MR. SPIVEY: This would have been

1 appropriate weeks ago, and he's had access to  
2 the Beach Plan reinsurance program for a lot  
3 longer than that. His own witnesses have had  
4 that information. So this is not rebuttal.

5 MR. FRIEDMAN: She was asked about 13  
6 and 14 by Your Honor. It directly implicates  
7 this.

8 MS. FUNDERBURK: Mr. Friedman, this  
9 information was not addressed during her  
10 direct rebuttal testimony. The questions  
11 that I posed to her were limited to 13 or 14.  
12 I agree they would have been interesting  
13 information. Perhaps I should have asked  
14 questions about them. I did not. They were  
15 not the Beach Plan, and this exhibit were not  
16 addressed in her direct rebuttal.

17 I'm going to need to sustain the  
18 objection regarding the content of the  
19 cross-examination. Please move on to your  
20 next question.

21 BY MR. FRIEDMAN:

22 Q Ma'am, what exhaustion point was  
23 assumed by the bureau in the 2014 rate case?

24 MR. SPIVEY: Objection. Again, we're  
25 not talking about our rebuttal evidence. And

1 I understand Your Honor asked questions about  
2 RB-13 and RB-14 for general information  
3 purposes. Mr. Friedman is going far beyond  
4 that.

5 MR. FRIEDMAN: Your Honor, as I  
6 understand it, that was one of the very  
7 questions you asked her about was the -- how  
8 this compared to the 2014 assumptions; that  
9 is, how are current RB-13 and 14 compared to  
10 those.

11 MS. FUNDERBURK: What is your question,  
12 again, at this point?

13 MR. FRIEDMAN: My question is: What  
14 exhaustion point did the bureau assume in  
15 2014 expressed in the return period?

16 MS. FUNDERBURK: I don't have in my  
17 dictation regarding the 2014 order. I will  
18 sustain the objection and ask you to move on  
19 to your next question.

20 BY MR. FRIEDMAN:

21 Q Does the hypothetical one company need  
22 an AM Best rating?

23 A It is not part of our analysis. Our  
24 part of -- our analysis is just to look at the  
25 market data, what is there attaching an exhaustion

1 point. And the result is a mixture of all  
2 companies weighted average of how they are rated  
3 by different rating agencies.

4 Q But you have testified about the  
5 exhaustion points and return periods for the  
6 hypothetical ones; is that correct?

7 A My comment is the 270-year -- 279-year  
8 exhaustion point implied there's a big AM Best  
9 rated company. That's because that is aligned  
10 with AM Best requirement.

11 Q Then assuming that the hypothetical one  
12 needed to get an AM Best rating, at what level of  
13 reinsurance in terms of the exhaustion point  
14 return period would it need?

15 MR. SPIVEY: Objection. I mean, again,  
16 it's interesting information, but it's not  
17 related to the rebuttal case.

18 MS. FUNDERBURK: Ms. Mao did address a  
19 little bit of the ratings. It did come up  
20 during her testimony as to ratings based on  
21 some of these return levels. I'm going to  
22 allow the question.

23 Subject to your ability to answer, if  
24 you have the knowledge regarding the  
25 question.

1 Please proceed, Mr. Friedman.

2 A Okay. So to my best knowledge, to be  
3 AM Best rated, you have to satisfy two -- so to  
4 sustain two one-in-100-year hurricane events. So  
5 that means after the first event stress your  
6 capital, then it's -- you have to sustain the  
7 second event and still meet AM Best test, or you  
8 have to have one-in-250-year earthquake event.

9 So most of the Southeast companies,  
10 they go with a hurricane events stress test.

11 BY MR. FRIEDMAN:

12 Q Okay. Earlier today you testified that  
13 attachment points are related to an insurer's  
14 surplus.

15 Do you recall that?

16 A Yes.

17 Q What's a reasonable estimate as far as  
18 the surplus of the hypothetical one company?

19 A So can you repeat your question?

20 Q What would be a reasonable estimate  
21 about the available surplus for the attachment  
22 purposes of the attachment point of the  
23 hypothetical one?

24 A Again, I don't -- that's not my area of  
25 expertise, so we don't estimate the surplus. Here



1 we simply determine what is company's retention  
2 based on their available surplus and based on  
3 their risk appetite. How they want to protect  
4 their company. How they determine the retention.  
5 So it's related to surplus, but it's not  
6 one-on-one relationship.

7 Q Okay. So you couldn't make an estimate  
8 of -- even though you were considering issues such  
9 as surplus for the hypothetical one, you couldn't  
10 estimate as to how much would be necessary?

11 A That would be correct. I don't  
12 estimate surplus in this exercise. I estimate  
13 their retention, and their retention is influenced  
14 by their surplus position.

15 Q If you could turn to RB-14.

16 A Yes.

17 Q What years of data did you use to  
18 develop your pricing curve?

19 A Okay. Can you repeat your question?  
20 What years of data...

21 Q ...did you use to develop your pricing  
22 curve?

23 A Oh. We used the June 2023 data cut,  
24 June 1 renew 2023, so we use a year worth of the  
25 data, one-year worth of data because the different

1 companies, they may have different renew date. So  
2 we use the data as of June 2023.

3 Q Okay. And as I understand your pricing  
4 curve, that was the source for your rates' online  
5 calculations; is that correct?

6 A That would be correct.

7 Q On Exhibit 14, under the column that  
8 states Expected Ceded Losses --

9 A Yes.

10 Q -- do those expected ceded losses  
11 include losses from perils other than hurricanes?

12 A Yes.

13 Q What other losses -- what other perils  
14 does it include?

15 A Those perils include tornado, hail,  
16 fire following earthquake, and winter storm. The  
17 reason we include those perils are because  
18 companies' excess loss of catastrophe treaty cover  
19 those perils. They cover hurricane, tornado,  
20 hail, winter storm, and fire following earthquake.

21 Q So were the portion of that that  
22 represents perils, other than hurricane perils,  
23 was that also computed with the models or was it  
24 based on actual data, or did you add to that based  
25 on the model output?

1           A       Those perils are only included in our  
2       reinsurance analysis.

3           Q       Okay. So --

4           A       Only reinsurance, only in the net cost  
5       of reinsurance.

6           Q       So I'm just trying to figure out how  
7       are those perils determined and then added to the  
8       estimated expected ceded loss on RB-14?

9           A       So those are included in our exposure  
10       model, so those are determined by a model.  
11       Modeled loss, yes.

12          Q       So modeled as with a software model or  
13       with an equation? Because I understand there are  
14       some models that are essentially equations.

15          A       Those are catastrophe models generated,  
16       those losses.

17          Q       So Aon and AM Best generated the --  
18       whatever portion of the expected ceded losses  
19       attributable to losses perils other than  
20       hurricanes?

21          A       Yes. Those models are catastrophe  
22       models, they include many different perils that  
23       include those perils I just discussed.

24          Q       Did the Rate Bureau provide the  
25       Commissioner with any actual catastrophe data for

1       these perils other than hurricanes that the  
2       Commissioner could have used to validate these  
3       nonhurricane amounts?

4               MR. SPIVEY:  Objection.  Beyond the  
5       scope of rebuttal.

6               MR. FRIEDMAN:  Your Honor, she was  
7       asked specifically about -- Your Honor, about  
8       the -- she testified in response to Your  
9       Honor's questions specifically about each of  
10      the columns on RB-14, and I'm simply probing  
11      what's in the columns.

12              MS. FUNDERBURK:  I'll allow the  
13      question to the extent it's what has been  
14      provided to verify the data that is contained  
15      within the table that she was asked about  
16      during this period of testimony, without  
17      going beyond what she has testified to or  
18      testified to during the rebuttal period in my  
19      questioning.

20   BY MR. FRIEDMAN:

21              Q       Would you like me to rephrase --  
22      restate the question?

23              A       Yes.

24              Q       Okay.  So what actual data about  
25      hurricanes other than -- excuse me -- about perils

1 other than hurricanes has the Rate Bureau provided  
2 in this filing or in discovery responses?

3 A I don't understand what you mean  
4 "actual data"?

5 Q Data other than the modeled results.  
6 Something that the Commissioner could use to  
7 validate the nonhurricane catastrophe results that  
8 are included under the expected ceded loss?

9 MR. SPIVEY: Once again, Your Honor,  
10 we're well beyond rebuttal at this point.

11 MS. FUNDERBURK: Let me -- I'll phrase  
12 the question to you, Ms. Mao, what is  
13 allowable.

14 I think what you're looking for is  
15 support -- the data under- -- the underlying  
16 data that would support RB-13; is that  
17 correct?

18 MR. FRIEDMAN: Yes, ma'am.

19 MS. FUNDERBURK: The question needs to  
20 be limited to that: Ms. Mao, is there data  
21 contained in the filing or that has been  
22 previously provided to the Department of  
23 Insurance that would support the data  
24 contained within Rate Bureau 13?

25 THE WITNESS: Yes, Your Honor. In the

1           discovery request, we provided the  
2           reinsurance loss curve that includes those  
3           additional perils, and so the department has  
4           the data.

5                   MR. FRIEDMAN: Your Honor, I'm going to  
6           have to reserve -- I'm going to have to  
7           continue with that question unless I've had a  
8           chance to review her testimony because she  
9           testified very specifically in her regional  
10          thing about what was and wasn't included and  
11          what the Commissioner could and couldn't  
12          determine from exactly that curve.

13                   And, I mean, she's -- all she's said is  
14          that they included a curve, and I need to be  
15          certain about what she's already testified to  
16          about what's in that curve.

17                   Because she's now saying that that's  
18          enough for us to have to determine it -- or  
19          to test it.

20                   MR. SPIVEY: Your honor, Ms. Mao has  
21          testified to the extent other perils are  
22          reflected here, they're reflected through the  
23          model results. I'm not sure I understand  
24          what he's asking about, what actual data's  
25          been provided.

1           We're talking about a program that's  
2           been presented here. You asked questions  
3           about this program. Her testimony is that  
4           this material is generated through the models  
5           that they utilize in looking at the data that  
6           they look at.

7           So, again, I think Mr. Friedman is  
8           reaching back to a month ago talking about  
9           what actual data there is to validate the  
10          models. And, again, that's not here what  
11          we've been presenting rebuttal evidence on in  
12          the past two days.

13          MS. FUNDERBURK: Any comment,  
14          Mr. Friedman?

15          MR. FRIEDMAN: Your Honor, my  
16          contention is that I need the time --

17          MS. FUNDERBURK: Make sure you're  
18          speaking into the mic.

19          MR. FRIEDMAN: Yes. My contention is  
20          that she's -- okay. Well, I guess I've got  
21          some follow up on...

22 BY MR. FRIEDMAN:

23          Q       Do you recall what exact response you  
24          provided that curve with?

25          A       As I recall, we provided a code and

1 also the event loss table that include that --  
2 yeah. I have to go back, but I -- to my best  
3 knowledge, we provided the model output and  
4 correlated with how this is -- how this number is  
5 calculated.

6 And in our code, that indicated what  
7 peril is included, and also the underlying model  
8 result is also provided to allow department to  
9 recreate these numbers.

10 Q So could you next provide that -- point  
11 me to where that is and refresh your recall which  
12 you mentioned just now you can't -- you had just  
13 said you'd need to go back and look at it. Could  
14 you do that next Thursday?

15 MS. FUNDERBURK: Counsel, please  
16 approach.

17 (A bench conference was had.)

18 MS. FUNDERBURK: Thank you, Counsel.

19 Please resume.

20 BY MR. FRIEDMAN:

21 Q Just for my clarity then, ma'am, if for  
22 the hypothetical one, you didn't estimate the  
23 surplus that would be necessary, how did you make  
24 a determination of the amount of retention?

25 A That is we look at how company, that in



1       our data, what is average return period of their  
2       retention based on our curve. That is how -- we  
3       look at how -- average how company, what is  
4       company's attachment for their treaty, what the  
5       return period corresponding to that attachment.

6           Q       Ma'am, could you turn to RB-34, that's  
7       the Pielke article.

8           A       Yes.

9           Q       As I understand, Dr. Pielke's analysis  
10       is based on the total countrywide loss amounts for  
11       each and every hurricane that's reflected in this  
12       analysis?

13          A       Yes.

14          Q       Okay. Regarding the AIR and AM Best  
15       results regarding the hurricane losses, is it  
16       correct that the majority of the modeled Category  
17       4 and 5 hurricanes make landfall in states other  
18       than North Carolina?

19          A       It really depends on the time period,  
20       and so how you look at what is a time period and  
21       what is a settlement.

22          Q       Specifically the time period used in  
23       the modeled results?

24          A       The time period -- the model results  
25       use a whole simulation spectrum that include --

1       there is...

2               Q       Do any of the Categories 5, the modeled  
3 Categories 5 that made landfall in states other  
4 than North Carolina retain hurricane-force wind  
5 speeds when they enter North Carolina?

6               MR. SPIVEY:  Objection.  What does that  
7 have to do with Exhibit RB-34?

8               MS. FUNDERBURK:  Please be sure you're  
9 speaking in the microphone, Mr. Spivey.

10              But, Mr. Friedman, how does this relate  
11 to the discussion previously regarding RB-34  
12 and the contents of the document?

13              MR. FRIEDMAN:  Withdraw the question,  
14 Your Honor.

15 BY MR. FRIEDMAN:

16              Q       So if I recall yesterday you testified  
17 that you first saw the Pielke article some years  
18 ago?

19              A       Correct.

20              Q       Okay.  And then you were reminded after  
21 Ms. Cavanaugh's testimony?

22              A       Yes.  It actually just came to my mind  
23 Wednesday evening after I listened to  
24 Ms. Cavanaugh's testimony regarding how she  
25 selected model based on AIR, RMS.  Each model that

1 major hurricane's contribution to the total  
2 hurricane loss.

3 Q RB-35 -- first of all, is it my  
4 understanding you created RB-35, at least that  
5 part of it that is, I guess, the second half of  
6 your calculations?

7 A Yes. I created second part of the  
8 Table 1 on this exhibit based on the bottom table.

9 Q And when did you begin work on that?

10 A This was done -- started in the evening  
11 of Wednesday and completed in the evening of  
12 Wednesday.

13 Q Okay. Thank you.

14 If you could turn to page 30 of the  
15 Pielke paper.

16 Ma'am, if you could review yourself on  
17 -- I mean, I could read it in the record if you  
18 prefer, or you can review yourself. I'm talking  
19 about the paragraphs beginning on page 29 under  
20 Data, and then bleeding through page 30 into the  
21 second paragraph there. That would be ending at  
22 the word "Each storm."

23 Would you like me to read those in the  
24 record?

25 MR. FRIEDMAN: Would Your Honor like me

1 to read them into the record or can we all  
2 just review them?

3 MS. FUNDERBURK: Can you reference  
4 again where it starts on page 29?

5 MR. FRIEDMAN: Page 29 beginning --  
6 right under the heading Data beginning with  
7 "This study."

8 MS. FUNDERBURK: Okay.

9 MR. FRIEDMAN: And ending on page 30  
10 with, I guess, the first full paragraph, and  
11 those words are "Uninsured properties in each  
12 storm."

13 Would you like me to read them or  
14 should we all read them to ourselves?

15 MS. FUNDERBURK: I'll leave that to  
16 your preference, Mr. Friedman.

17 MR. FRIEDMAN: I'll read it into the  
18 record then:

19 "This study focuses on the total  
20 economic damage related to hurricane  
21 landfalls along the U.S. Gulf and Atlantic  
22 coasts from 1900 to 2005. Economic damage is  
23 defined as the direct losses associated with  
24 a hurricane's impact as determined in the  
25 weeks (and sometimes months) after the event

1 (Changnon 1996; Downton et al. 2005).  
2 Indirect damage and longer-term macroeconomic  
3 effects are not considered in this analysis.  
4 Different methods exist for calculating a  
5 disaster's impacts, which lead to  
6 correspondingly different loss estimates for  
7 the same event. Our focus is on utilizing a  
8 consistent approach over time that allows for  
9 a meaningful normalization methodology and  
10 results that compare 'apples to apples.'

11 "This paper builds upon work published  
12 originally by Pielke and Landsea in 1998  
13 which utilize historic economic damage  
14 compiled by Landsea 1991 from the monthly  
15 weather review annual hurricane summaries and  
16 more recently the storm summary data archived  
17 on the National Hurricane Center."

18 So I'm going to skip the rest of that  
19 paragraph on 30, Your Honor, and just go to  
20 the full paragraph -- first full paragraph on  
21 30.

22 "Although this study uses economic loss  
23 figures as opposed to insured losses,  
24 official estimates of economic damage have  
25 been in part dependent on insured figures

1 since about 1987. Edward Rappaport, Deputy  
2 Director of the National Hurricane Center  
3 said in an email that since he came to the  
4 NHC in 1987, the center has in many cases  
5 worked from a doubling of insured loss  
6 estimates to arrive at their estimate of  
7 economic damage (E. Rappaport, personal  
8 communication, November 8, 2005). Although  
9 this practice could have started earlier than  
10 1987, that year is the earliest reference we  
11 have for the practice. Our examination of  
12 the relationship of insured damages to  
13 official NHC totals since 1987 indicates that  
14 this practice is more of a guideline that is  
15 often modified on a storm-by-storm basis,  
16 rather than a formulaic application [See the  
17 comparison of insured total losses reported  
18 in Pielke, et al. (1999)]. It should be  
19 expected that the relationship of economic  
20 and insured damages would vary, depending on  
21 the extent of flooding (which is an excluded  
22 peril on many insurance policies) and damage  
23 to infrastructure and uninsured properties in  
24 each storm."

25 Do you recall Ms. Cavanaugh testifying

1 about these two paragraphs?

2 A I don't recall she testified about  
3 these two paragraphs.

4 Q In your understanding, do those  
5 paragraphs include caveats by Pielke to how his --  
6 the rest of his paper should be considered?

7 A Yes. It includes caveat about NA --  
8 like any model, any methodology, none of them is  
9 perfect. So it acknowledged the caveat; however,  
10 these -- the information is credible. It's better  
11 than just eyeballing the number and the pick one.  
12 This give you another view of a credible research  
13 when you look at the total loss.

14 So even with the caveat, I believe this  
15 paper and the information presented here is  
16 relevant and credible.

17 Q Okay. You said rather than eyeballing  
18 the number, what number is that?

19 A I'm referring to RB-35, the LJC table  
20 14, the four rows, and the looking at AIR Standard  
21 with demand surge it's 76 percent attribute to  
22 major hurricane.

23 And if you look at RMS it's 40 and 38.  
24 So just I've balling what is higher, what is lower  
25 and pick one.

1                   And here I'm just trying to produce  
2 another peer analysis that can be used to compare  
3 with the other information.

4           Q       Okay. Thank you. I appreciate that  
5 explanation.

6                   Mr. Spivey referred to Mr. Pielke as, I  
7 understand, a world-renowned expert in evaluating  
8 hurricane experience.

9                   Do you agree with that  
10 characterization?

11                   MR. SPIVEY: I'm quite confident I  
12 didn't use those precise words.

13                   MR. FRIEDMAN: Well, Your Honor, I  
14 don't have a photographic memory.

15 BY MR. FRIEDMAN:

16           Q       A well-known expert in evaluating  
17 hurricane experience. Do you agree with that?

18           A       I -- to me, Mr. Pielke is a well-known  
19 meteorologist who establish a credible methodology  
20 to normalize hurricane losses, to enable  
21 apple-to-apple comparison for hurricanes from  
22 different time period.

23 BY MR. FRIEDMAN:

24           Q       Okay. Would that equal an expert in  
25 evaluating hurricane experience in your



1 understanding, in your opinion, would that mean --  
2 what you just said would equal -- would qualify as  
3 an expert? Not as a legal matter, but would you  
4 consider him to be an expert on hurricane  
5 experience?

6 A Yes. I consider him as an expert. And  
7 as you read through this paragraph, there are  
8 other -- he has other publications in this field,  
9 and the other publication are also well known.

10 Q Okay. Are you familiar -- have you  
11 read those other publications?

12 A I probably have, but I don't recall one  
13 and which one.

14 Q Okay. And, in fact, in those  
15 paragraphs I read into the record, Mr. Pielke  
16 refers to a variety of different prior  
17 publications from which he's drawn the data in  
18 this publication; is that fair?

19 A That's fair.

20 Q Is there anything in RB-34 that you  
21 disagree with?

22 A Not at this -- I can't think of because  
23 I -- right now my focus on this paper is not to  
24 find what I disagree with. I was just trying to  
25 use some number to compare with the other witness

1       concl usi on.

2                   MR. FRIEDMAN:   So, Your Honor, I  
3       believe that's a fair question to ask Ms. Mao  
4       when she has time before when we -- well, if  
5       we don't conclude today, that would she  
6       review it and be able to say if there's  
7       anything else in there that answers the  
8       question because the entire article is now in  
9       the record?

10                  MR. SPIVEY:   I'm going to object.  
11       You're trying to give this witness a homework  
12       assignment; to read an article and tell him  
13       if there's anything in it she disagrees with.

14                  She just testified very plainly and  
15       clearly what she relied on from this paper  
16       and the purpose for which she used that  
17       information and she's shown what she relied  
18       on. I don't think it's appropriate to expect  
19       her to go through and tell this -- tell  
20       Mr. Friedman, you know, if there's something  
21       in here that she doesn't agree with.

22                  MR. FRIEDMAN:   The whole article is in,  
23       Your Honor, and I don't know what other  
24       information from this the Rate Bureau may  
25       argue in its draft order. And I don't know

1           whatever information you may find reliable in  
2           this article in your ultimate determination.

3                       So I'm simply asking for her to review  
4           it and say is there anything else in here,  
5           other than the concern that this may end up  
6           being used substantively by somebody for  
7           something else other than what she's  
8           testifying for.

9                       MR. SPIVEY: Let's all keep in mind,  
10          the point of this information is that when  
11          we're evaluating historical hurricane losses,  
12          particularly historical hurricanes from many  
13          years ago, it's a huge issue to understand  
14          how the losses at that time would compare to  
15          losses today.

16                      This paper presents a methodology for  
17          doing that. That's what Ms. Mao has  
18          described. It's what she's used. It's what  
19          she did and compared to the presentation that  
20          the department witness presented. It's  
21          certainly a very valid purpose there.

22                      Beyond that, trying to ask this witness  
23          to go through this paper line by line and  
24          tell him whether she agrees or disagrees with  
25          other pieces of it, I don't see how it's

1           terribly appropriate.

2                   MR. FRIEDMAN: Can I just say, Your  
3 Honor, they could have introduced the  
4 excerpts of this article rather than the full  
5 thing for the specific parts she's relying  
6 on.

7                   MS. FUNDERBURK: Mr. Spivey, is it your  
8 position this was introduced for the limited  
9 purpose of referencing the methodology --  
10 referencing methodologies employed?

11                  MR. SPIVEY: Yes, Your Honor.

12                  MS. FUNDERBURK: Then I will take it  
13 for that evidentiary -- well, for that  
14 purpose when drafting my own order or  
15 reviewing the orders of the parties, and if  
16 it's referenced for purposes beyond that, I  
17 would consider it unsupported because that is  
18 not what you had provided the exhibit for.

19                  MR. SPIVEY: I have no problem with  
20 that, Your Honor.

21                  MR. FRIEDMAN: Appreciate that  
22 clarification.

23                  MR. SPIVEY: I assume that applies to  
24 both sides.

25                  MS. FUNDERBURK: Correct.

1 BY MR. FRIEDMAN:

2 Q Did you perform an actuarial review of  
3 the data in the Pielke paper you relied on?

4 A Your Honor, no. I didn't have the  
5 underlying data, and I didn't perform actuarial  
6 review. And Mr. Pielke is not an actuary either.

7 Q I appreciate that.

8 Do you recall Mr. Spivey asked you a  
9 number of questions about the -- why you contend  
10 that, on the historical data, is not relevant to  
11 Ms. Cavanaugh's analysis of the cost of  
12 reinsurance?

13 A Yes, I recall.

14 Q Okay. Could you explain to me how the  
15 cat bond historical data or catastrophe bond  
16 historical data is relevant to the CAR but not to  
17 analyzing the net cost of reinsurance?

18 A Well, CAR is a very small portion of  
19 the North Carolina rate, and we treat CAR  
20 something similar to contingency provision; that  
21 is, company is not able to charge it in a way in  
22 the rate filing and/or when company has adverse  
23 development over the year, so if they need to  
24 be -- they need to be reflected in the contingency  
25 provision. So for that provision, it's more a

1 long-term view. So, therefore, we consider the  
2 CAR analysis based on the long-term period is  
3 appropriate.

4 Q So beginning with RB-36, ma'am --

5 A Yes.

6 Q -- in -- for the part of this exhibit  
7 that you created --

8 A Yes.

9 Q -- did you use any Excel file in  
10 preparing it?

11 A Yes.

12 Q Okay. And did you use any other  
13 computer file, such as our programs in doing that?

14 A I would say all the analysis on these  
15 two pages are based on the Excel.

16 Q How many Excel files did you use? One  
17 or create two?

18 A The one.

19 MR. FRIEDMAN: Your Honor, we went to  
20 utmost efforts to provide all of the  
21 background behind, for example, all the  
22 things that they were questioning about  
23 Mr. Schwartz's calculations, and I think that  
24 in order for us to evaluate what's in here,  
25 we should be entitled -- and we can do so

1 certainly if we get that Excel sheet soon --  
2 to evaluate that Excel sheet.

3 MS. FUNDERBURK: Mr. Spivey?

4 MR. SPIVEY: I guess I'm curious, Your  
5 Honor, is department counsel suggesting that  
6 the department and its experts don't  
7 understand what the various statistical  
8 analyses are that are described here and/or  
9 that they don't believe Ms. Mao has  
10 truthfully presented those results?

11 It's not clear to me. She's made clear  
12 what she did. Comparing it to the questions  
13 we had about the source documents for  
14 Mr. Schwartz's exhibits, for example, is an  
15 incredible stretch.

16 But I haven't seen the Excel file.  
17 If -- I don't know whether Ms. Mao has any  
18 problem providing it. But I don't understand  
19 the need to, again, extend this proceeding in  
20 that manner.

21 MR. FRIEDMAN: Your Honor, we were  
22 provided this yesterday. It has detailed  
23 calculations. Those calculations were not  
24 testified to during her cross. They were  
25 just presented as if these were the correct

1 formula; that the correct formulas were used.  
2 We don't know what those formulas were. We  
3 don't know -- I think that's clearly  
4 implicated by what has been handed to us less  
5 than a day -- well, a day -- a little bit  
6 more than a day ago, and we haven't had the  
7 chance to look behind the numbers, which she  
8 has presented as accurate.

9 MR. SPIVEY: If this is going to go  
10 far, I would like to take a momentary break  
11 to discuss the issues with Ms. Mao about what  
12 underlies this and what, if anything, is not  
13 apparent on the face of this exhibit.

14 I think everything on the face of this  
15 exhibit can be replicated by the department.  
16 Any number of folks at the department that  
17 have any experience in Excel.

18 MS. FUNDERBURK: Or can the  
19 calculations be described in a way that they  
20 can be repeated?

21 MR. SPIVEY: I agree. And I think,  
22 quite frankly, they were described in her  
23 testimony in a manner that explains what she  
24 did and what is displayed there. The  
25 formulas are right there.



1 MR. FRIEDMAN: Your Honor --  
2 Your Honor, I need to confer with my  
3 experts about -- I think it's a very simple  
4 request for something that was provided less  
5 than a day ago, and I believe was probably  
6 responsive to long outstanding discovery  
7 requests. I may have to go back and look at  
8 those.

9 And once more, I have very similar  
10 questions about a number of her remaining  
11 exhibits for the actual underlying  
12 calculations. We asked -- all of our  
13 discovery requests -- not all every one of  
14 them -- routinely ask for all of the  
15 underlying formulas --

16 MS. FUNDERBURK: I understand that you  
17 have concerns about the discovery responses.  
18 But we're at the rebuttal phase. I don't  
19 feel like we're making good progress, so  
20 we're not going to finish with Ms. Mao today.  
21 I think that's pretty obvious. I don't think  
22 we're going to make good progress.

23 So at this point I'm going to move this  
24 into discussing logistics and I'm going to  
25 recess us for today, so when we come back we

1 are focused on rebuttal, things that have  
2 been addressed in rebuttal with only  
3 appropriate objections to move the matter  
4 along.

5 MR. FRIEDMAN: Thank you.

6 MS. FUNDERBURK: What do we need to  
7 address to move forward in an organized and  
8 timely manner?

9 MR. FRIEDMAN: I think we do deserve to  
10 be provided the exhibits for Mr. Zanjani and  
11 Mr. Anderson by Monday.

12 MS. FUNDERBURK: Mr. Spivey?

13 MR. SPIVEY: Your Honor, we are working  
14 and have been working to put together the  
15 rebuttal case. As you well know, they just  
16 closed their case yesterday morning.

17 Have we settled on when we're resuming  
18 next week? Is Thursday the first day?

19 MS. FUNDERBURK: Thursday's the first  
20 day unless the parties can give me additional  
21 days next week.

22 MR. SPIVEY: To be perfectly honest  
23 with you, Your Honor, personally I was hoping  
24 to take a day off this weekend, and it might  
25 be the first one in a while. But I don't

1 know the status of the various exhibits  
2 there. And whether we can get them ready by  
3 Monday, I don't know as I sit here.

4 MS. FUNDERBURK: So we are currently  
5 scheduled to come back on Thursday, and I  
6 think I can make it fit into our regular  
7 lunch hour, but I have a commitment over  
8 lunch on the 12th. And we do not have  
9 anything scheduled on the 13th either.

10 My understanding is there are either  
11 conflicts with hearings taking place already  
12 or within this room or there were conflicts  
13 with the parties. I think the biggest part  
14 was conflicts with the parties.

15 We'll have to address the internal  
16 schedules to determine if we can resume on  
17 the 13th.

18 The week of the 16th, were the  
19 conflicts mainly amongst the parties,  
20 hearings in the courtroom? We have conflicts  
21 the 17th.

22 Do the parties have -- do you know what  
23 your availability is, or do you need to  
24 confer with your clients?

25 MR. SPIVEY: For which?

1 MS. FUNDERBURK: The availability to  
2 continue since the only day we have on the  
3 calendar next week is the 12th.

4 MR. SPIVEY: As we talked previously,  
5 Your Honor, I know that Ms. Mao has  
6 commitments in Chicago on the 12th. And so  
7 it seems to me the next order of business is  
8 to complete her cross-examine. I am going to  
9 need to talk with her to see what  
10 availability she has. Maybe we can take a  
11 break and discuss that. But I know we've  
12 already discussed among ourselves, she has a  
13 preference -- we have a preference to do it  
14 in person, but we're certainly willing to  
15 talk about what alternatives there may be.

16 MS. FUNDERBURK: And that would be my  
17 preference. But at this point, I'm not sure  
18 that that's going to be feasible.

19 If you have breaks on the 12th that you  
20 can be available and we can do it remotely,  
21 any preference would be to just get it done  
22 and to conduct it remotely so that we can  
23 actually finish. Talk to Ms. Mao about that.  
24 Also if you can check your clients' schedules  
25 for the week of the 16th.

1           Mr. Friedman, check your calendar for  
2           the week of the 16th so we can see what  
3           allowances we have. We do have a couple  
4           of -- we have a couple things that are pretty  
5           set in stone, but let me know your  
6           availability the week of the 16th so that we  
7           can potentially conclude the hearing.

8           We need to know that as soon as  
9           possible what the availability is because we  
10          have other hearings scheduled, including two  
11          that I'm the hearing officer for.

12          What else do we need to address?

13          MR. FRIEDMAN: We never -- whenever it  
14          turns out that Mr. Anderson, Dr. Zanjani will  
15          be re-called, if I could have -- I mean, at  
16          least a couple of days before that, get their  
17          exhibits on whatever period you think is  
18          appropriate. Not less than 12 -- in this  
19          case, an hour and a half before testimony  
20          started up again yesterday, I'd appreciate  
21          it.

22          MR. SPIVEY: Mr. Friedman, I assure  
23          you, we will try to get you exhibits well in  
24          advance of when they are coming in to  
25          testify.

1 MR. FRIEDMAN: Does that mean at least  
2 forty-eight hours?

3 MR. SPIVEY: If the first person -- if  
4 no one is coming before Thursday, yes, I will  
5 commit to get you that material 48 hours  
6 before that.

7 MS. FUNDERBURK: Forty-eight hours  
8 before Thursday. So Tuesday morning. Or  
9 some time on Tuesday.

10 MR. SPIVEY: Midday Tuesday, just to  
11 leave some leeway there.

12 MS. FUNDERBURK: I think given what  
13 everyone's been dealing with, I'm going to  
14 presume Tuesday is reasonable. I'm also  
15 presuming you're not going to give him an  
16 85-page document. There's some balancing.

17 But I'm presuming Tuesday is reasonable  
18 unless you show up with something  
19 substantial. Do you understand?

20 MR. SPIVEY: There won't be anything  
21 remotely like that, Your Honor.

22 MS. FUNDERBURK: Probably anticipate  
23 the same kind of documents that you produced  
24 with Ms. Mao for her rebuttal.

25 MR. SPIVEY: And probably less, but I

1 don't know for sure.

2 MS. FUNDERBURK: Thank you, Mr. Spivey.  
3 It sounds like you are more than willing to  
4 make reasonable efforts to get the  
5 information to Mr. Friedman in a timely  
6 manner with the goal of having those  
7 materials provided sometime on Tuesday. All  
8 right.

9 MR. FRIEDMAN: Your Honor, regardless  
10 of my witnesses' availability -- excuse me --  
11 my support availability, I can make myself  
12 available on the 13th.

13 MS. FUNDERBURK: Let's do that all at  
14 once. Send Ms. Pearce an email with your  
15 availability.

16 Mr. Spivey and Mr. -- did I get a  
17 sideeye?

18 MR. BEVERLY: No, not from me.

19 MS. PEARCE: We were just laughing  
20 because she's the hub of the wheel, Your  
21 Honor, we were acknowledging that.

22 MS. FUNDERBURK: Want to hold that up?

23 MS. PEARCE: My cup. Rules, we got  
24 rules, y'all.

25 MS. FUNDERBURK: So if you could let

1 Ms. Pearce know your availability, just do  
2 that by email. We'll get some days scheduled  
3 as soon as we possibly can. Again, my  
4 preference is to have people in person. But  
5 my preference is, stronger than that, is we  
6 get through testimony with this matter.  
7 You've seen how the Webex works and how that  
8 can be conducted.

9 All right. We've addressed scheduling.  
10 We've addressed exhibits.

11 Is there anything else we need to  
12 address before we recess?

13 MR. FRIEDMAN: No, ma'am, that I'm  
14 aware of.

15 MR. SPIVEY: I would make a note to  
16 ourselves, one of the things I want to be  
17 sure we do is we offer the exhibits into  
18 evidence that we presented through Ms. Mao,  
19 which include Exhibits RB-34, 35, 36, 37, and  
20 38.

21 MR. FRIEDMAN: Your Honor, by next  
22 Thursday I will have the ability to determine  
23 and file, if necessary, a motion to strike  
24 the discovery violations, so I object to  
25 those being entered right now.



1 MS. FUNDERBURK: Based on potential  
2 discovery violations?

3 MR. FRIEDMAN: Yes, ma'am.

4 MS. FUNDERBURK: All right. At this  
5 time, I'm going to admit Exhibit RB-34, 35,  
6 36, 37, 38.

7 Mr. Friedman, you're free of course to  
8 later pursue a motion to strike based on  
9 discovery violations that were some type of  
10 motion to compel pursuant to discovery  
11 violations that you allege.

12 But at this point the exhibits are  
13 admitted.

14 (RB Exhibit Numbers 34, 35, 36, 37, and  
15 38 were identified as of this date.)

16 MR. FRIEDMAN: Understood.

17 MR. SPIVEY: The other matter I would  
18 mention, Your Honor, is yesterday I was  
19 remiss in failing to note when we could go  
20 out of confidential session in that  
21 testimony, and I'd like, for everybody's  
22 benefit, to be okay with the court reporter  
23 to point out where we can move testimony back  
24 into the public transcript. We can work  
25 together to do that, if that suits Your

1 Honor.

2 MS. FUNDERBURK: We can do that.

3 And on the subject of transcripts,  
4 where are we with errata sheets?

5 MR. SPIVEY: Probably the same place we  
6 were a couple days ago, Your Honor. We  
7 realize we haven't completed what we need to  
8 do there and we're working on it.

9 MR. FRIEDMAN: I mean, I can certainly  
10 commit to having them in Ms. -- with the  
11 court reporter by next Wednesday, if you'd  
12 like. The sooner I can --

13 MS. FUNDERBURK: That's really up to  
14 the court reporters. My understanding is  
15 that they would like them as soon as  
16 possible. They've been charged with quite an  
17 enormous task to do the 24-hour turnaround  
18 and we're having some of the same court  
19 reporters come out. So I think the sooner  
20 the better.

21 MR. FRIEDMAN: I did provide the errata  
22 for four days.

23 MS. FUNDERBURK: Thank you.

24 MR. BEVERLY: Full disclosure, Your  
25 Honor, our witnesses are, in fact, done with

1           their errata sheets. It's on my desk.

2                   MR. SPIVEY: Our desk.

3                   MR. BEVERLY: I just haven't had a  
4 chance to review their changes. But they've  
5 done what I asked them to do. I need to do  
6 what I told them I would do.

7                   MS. FUNDERBURK: I appreciate the  
8 disclosure. I know everyone's been very  
9 busy. But if you could get those in, I think  
10 it would be helpful to the court reporters  
11 given the time turnaround that they are on.  
12 Perhaps that can be done when the information  
13 regarding confidentiality -- the  
14 confidentiality session is provided to them.

15                   MR. FRIEDMAN: I mean, about the  
16 confidential, I trust since it is their  
17 confidential data, I trust their judgment to  
18 determine for the court reporters when they  
19 see fit speaking about it. I don't know if  
20 that may happen real soon in which case.  
21 Obviously the errata sheets would be due  
22 sooner if they can determine that by Monday.

23                   MS. FUNDERBURK: Just let us know. One  
24 note on my end, was RB-43 admitted? That was  
25 a confidential document.

1 MS. PEARCE: Yes, ma'am.

2 MS. FUNDERBURK: It was admitted?

3 Thank you.

4 With there being nothing further, I  
5 will recess us for the day. We'll finalize  
6 the time that we return after we've had a  
7 chance to look at the schedules. I would  
8 anticipate starting at nine on Thursday, but  
9 we'll finalize that once the parties have had  
10 an opportunity to provide some scheduling  
11 information and subject to your availability,  
12 Ms. Mao.

13 All right. Thank you, everyone. We're  
14 in recess.

15 (The hearing adjourned at 3:43 p.m.)

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1 STATE OF NORTH CAROLINA )

2 COUNTY OF FORSYTH )

3 REPORTER'S CERTIFICATE

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

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

14 IN WITNESS WHEREOF, I have hereto set my hand this  
 15 6th day of December, 2024.

16   
 17 \_\_\_\_\_

18 Audra Smith, RPR, CRR, FCRR

19 Notary Number: 201329000033

20 Commission Expires: June 26, 2025

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