

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 XI - P.M. SESSION

Raleigh, North Carolina

October 30, 2024

1:50 p.m.

Reported by: Audra Smith, RPR, CRR, FCRR

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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 30th day of October, 2024, at 1:50 p.m., before Audra Smith, RPR, CRR, FCRR and Notary Public.

I N D E X

PAGE

ALLAN SCHWARTZ

Cross Exami nati on by Mr. Spi vey 1776

E X H I B I T S

NUMBER	DESCR I P T I O N	Exhi bi t 43	ID	REC
	Exhi bi t 43A			1776
	Exhi bi t 43B			1776
				1776

1 P R O C E E D I N G S

2 MS. FUNDERBURK: Counsel, I think we
3 have everyone returned. Are there any
4 matters that we need to address before we
5 resume Mr. Schwartz's cross-examination?

6 MR. FRIEDMAN: Yes, ma'am. One issue.
7 And that is with regard to Exhibits 43, 43A,
8 and 43B. As it turned out, the only
9 correction was to what is technically labeled
10 43, and that would be the first page. And we
11 have sent around an electronic copy of the
12 corrected version of that based on
13 Mr. Schwartz's testimony, and I have now a
14 hard copy of that 43. Not of all 43A, 43B.
15 But if you would like to have a hard copy,
16 I've got copies to hand out.

17 MS. FUNDERBURK: Yes. Please approach
18 and hand those out.

19 MR. FRIEDMAN: Additionally, I know e
20 us also perhaps premature to introduce it
21 because we have informed the bureau of the
22 source in their discovery responses that
23 accounts for, basically, everything in black
24 in 43, 43A, and 43B. But I certainly haven't
25 had the chance to cross-check that as the

1 accurate file pulled from their discovery
2 responses.

3 MS. FUNDERBURK: What are we
4 referencing and are you looking to have
5 admitted? New 43, which is two pages, or old
6 43, inclusive of A and B, that is five pages?

7 MR. FRIEDMAN: So new 43, which is two
8 pages -- or is it. Two pages. Eventually --
9 and then 43A and then 43B old. But at -- I
10 think during the hearing, or perhaps
11 afterwards, Rate Bureau's counsel asked me --
12 Mr. Schwartz has testified that basically all
13 of the numbers that are in black on all of
14 the pages of 43, 43A, and 43B were drawn from
15 materials given to us by the Rate Bureau.

16 MS. FUNDERBURK: Right. I understand
17 that. There was a question about where the
18 numbers had been pulled from and a need for
19 clarification on that. It sounds like that
20 clarification has been provided.

21 There was an error in Exhibit 43.
22 There was something that had to be deleted.

23 MR. FRIEDMAN: Yes.

24 MS. FUNDERBURK: I asked to get a
25 corrected copy. What is your exhibit right

1 now? Is it --

2 MR. FRIEDMAN: New 43 and then old 43A
3 and then old 43B.

4 MS. FUNDERBURK: So, in essence, what
5 you're asking is, rip off the first page of
6 what you gave me before lunch and add two
7 pages to it?

8 MR. FRIEDMAN: Yes. Yes, ma'am. That
9 is what we're looking for.

10 MS. FUNDERBURK: I'm going to ask that
11 you check with everyone that the exhibits are
12 correct and the same.

13 MR. FRIEDMAN: Sure.

14 MS. FUNDERBURK: You may approach.

15 MR. FRIEDMAN: Yes, ma'am. I confirmed
16 that everybody's copy, the hard copy, has now
17 been corrected --

18 MS. FUNDERBURK: Everybody's hard copy
19 is correct?

20 MR. FRIEDMAN: Yes, ma'am.

21 MS. FUNDERBURK: Okay. And previously
22 43 was one page. The black writing was on
23 one side; the red writing was on another
24 side. It's now two pages. The red carries
25 over to the second page.

1 Is there any change to what's written
2 in it aside from deleting that top line with
3 "Ratio: STD/," is there any other changes?

4 MR. FRIEDMAN: No, ma'am. It was
5 simply deleting those pages and whatever
6 function of the printer caused it to overrun
7 onto second pages with the printer.

8 MS. FUNDERBURK: Okay. Please proceed.

9 MR. SPIVEY: Your Honor, I'll just
10 offer -- you just summarized what I
11 understand to be the change there. We also
12 learned in discussions with counsel where it
13 came from. We confirmed that's something
14 that we provided. We have no objection to
15 this exhibit being admitted.

16 MS. FUNDERBURK: Thank you.

17 MR. FRIEDMAN: So I would move for the
18 amended 43 and the original 43A and original
19 43B to be admitted.

20 MS. FUNDERBURK: And your nonobjection
21 was 43A and B inclusive, correct?

22 MR. SPIVEY: That's correct.

23 MS. FUNDERBURK: Okay. DOI 43, 43A,
24 and 43B are admitted to the record. Thank
25 you.

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ALLAN SCHWARTZ,
having been first duly sworn, was examined and testified as follows:

(DOI Exhibit Numbers 43, 43A, and 43B were received into evidence.)

MS. FUNDERBURK: Are there any other matters we need to address?

MR. FRIEDMAN: Not from our end, Your Honor.

MS. FUNDERBURK: Okay. Mr. Schwartz, please return to the stand. And, again, you do remain under oath. Thank you, sir.

Mr. Spivey, please continue your cross.

MR. SPIVEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SPIVEY:

Q Mr. Schwartz, when we broke for lunch, I think I had asked you how many times you had performed a rate level study for an insurance company that resulted in a rate filing, and I believe your response was approximately 10 -- between 10 and 20 times.

Is that a fair summary?

A (Inaudible response.)

Q For what lines of business were

1 those rate level studies --

2 THE COURT REPORTER: Excuse me. Excuse
3 me. I'm so sorry. I did not hear your
4 answer.

5 BY MR. SPIVEY:

6 Q Can you repeat your answer?

7 A So the transcript would show what I
8 said before. I don't remember if I said 10 to 20,
9 or 15 to 20, it was a while back. But that's
10 generally the range.

11 Q And my next question was: For what
12 lines of business were those rate level studies that
13 resulted in rate filings made?

14 A Private passenger auto and homeowners.

15 Q In what states were those filings made?

16 A New Jersey.

17 Q And when was the last time you
18 performed the rate level study for an insurance
19 company, specifically for the homeowners line of
20 business?

21 A It was maybe about ten years ago.

22 Q I'm sorry?

23 A I said maybe around 10 years ago. It's
24 been a while. I don't remember the exact date.

25 Q Do you remember what company?

1 A It was definitely for Proformance
2 Insurance Company. I don't recall if there was
3 another one; another company, that is.

4 Q Page 8 of your CV, you -- on page 8 you
5 set out a list of insurance rate proceedings that
6 then continues for several pages, do you not?

7 A Yes.

8 Q Those are insurance rate proceedings in
9 which you provided expert testimony, correct?

10 A Yes.

11 Q You note there in parentheses that it's
12 a partial list, right?

13 A Yes.

14 Q Can you describe generally what you
15 mean by "partial"? Is it cut off at a certain point
16 in time? Does it include everything from a certain
17 point in time to now, that sort of thing?

18 A Yes. So I started keeping, what I
19 would say, contemporaneous records of it probably
20 starting about 15 years ago. The ones before that,
21 I recalled from memory, but it might not have been a
22 complete list, the ones I was trying to recall from
23 memory or looking through files. So certainly the
24 last 10 to 15 years are complete. Before that, you
25 know, there may be ones that I participated in,

1 which I just don't remember or found a record of.

2 Q So the list in your CV begins on
3 page 8, continues over to the top of page 13,
4 correct?

5 A Yes.

6 Q And the oldest one shown there at the
7 end of the list on page 13 is June of 1999, right?

8 A Yes.

9 Q That's roughly 25 years ago. Is it
10 your testimony there may be some proceedings that
11 you testified in since June of '99 that are not on
12 this list?

13 A It's possible, but they would have
14 been, like I said, not recent, but something more
15 than 10 to 15 years ago.

16 Q Is it correct that in every one of the
17 insurance rate proceedings listed in your CV on
18 those pages 8 through 13 where you appeared as an
19 expert witness, is it correct that you appeared in
20 opposition to the rate change that was being
21 requested in that matter?

22 A I'd like to say I was testifying on
23 behalf of supporting what I thought was an
24 appropriate rate change, if what I thought was an
25 appropriate rate change, you know, matched up to

1 what the company thought would be a hearing. So in
2 every case when I testified, I would have been
3 testifying to a different rate than the insurance
4 company.

5 Q You weren't testifying on behalf of the
6 company requesting the rate change in any of those
7 cases, were you?

8 A No.

9 Q And there were matters in which you
10 provided expert testimony. So they were some type
11 of adversarial proceeding, correct?

12 A I guess you could refer to it as
13 adversarial proceeding.

14 Q You testified earlier that you formed
15 your consulting firm in 1984, and that you did
16 provide expert testimony in insurance rate
17 proceedings, at least here in North Carolina, in the
18 1980s. Am I summarizing that correct?

19 A I testified in 1980 in North Carolina.
20 Not in 1980. In the 1980s. Not every year but some
21 years.

22 Q Is it also correct that you provided
23 expert testimony in insurance rate proceedings in
24 the 1990s prior to 1999?

25 A Yes.

1 Q And is it correct, then, in every one
2 of those proceedings -- "those" being those prior to
3 what you listed here from 1990 to June of 1999 --
4 that your testimony was provided, again, in
5 opposition to the rate change that was requested?

6 A I testified to a different number than
7 the rate change in the filing.

8 Q Have you ever appeared as an expert
9 witness in an insurance rate proceeding where you
10 provided testimony in support of a requested rate
11 change?

12 A I haven't been asked by an insurance
13 company to do that, and so it's -- haven't been
14 clients of mine, so I haven't testified in a rate
15 proceeding on behalf of an insurance company. The
16 rate filings that I prepared for insurance companies
17 were approved by the insurance department without
18 the need for a rate hearing.

19 Q You didn't provide expert testimony in
20 a proceeding in those filings, did you?

21 A No, I provided a report and
22 calculations which were provided to the insurance
23 department, and the insurance department didn't need
24 my testimony because they approved the filing as it
25 was submitted.

1 Q In any of the insurance rate
2 proceedings in which you've been retained as an
3 expert witness, have you ever recommended a rate
4 change that was higher than what had been requested?

5 A I don't believe that if I was coming up
6 with a higher number than what the insurance company
7 requested -- which happens sometimes -- there likely
8 would not have been a rate hearing.

9 Q Looking back to page 8 of your CV, is
10 it correct that you show there on that page 14
11 insurance rate proceedings since 2014 North Carolina
12 Homeowners case?

13 A Do you want me to count them? I'll
14 count them. Hold on.

15 That's correct.

16 Q Of those 14 insurance rate proceedings,
17 is it correct that 11 of them related to Workers'
18 Compensation insurance, two related to company
19 rating practices, and one was a homeowners insurance
20 rate case in California?

21 A Yes. Did you want to know about all
22 the homeowners' filings I've reviewed since then,
23 2014, that didn't go to a rate hearing?

24 Q I'm sorry?

25 A I'm saying there were a number of

1 homeowners insurance rate filings which I reviewed
2 and commented on since 2014 which didn't go to a
3 hearing. So I don't know if you wanted to talk
4 about those.

5 Q It was your testimony earlier today
6 that you've been involved in hundreds of rate
7 filings, correct?

8 A Over my career, yes.

9 Q They're not all listed on your CV, are
10 they?

11 A No. The ones that are on my CV are the
12 ones in which there was a rate proceeding.

13 Q On pages 6 and 7 of your CV, you list
14 there, again, a partial list of court proceedings in
15 which you have provided expert testimony, correct?

16 A Yes.

17 Q The vast majority of those proceedings
18 involve claims made against insurance companies, do
19 they not?

20 A Yes.

21 Q The few that are not against insurance
22 companies directly involve claims against financial
23 institutions such as Bank of America or Wells Fargo
24 Bank, correct?

25 A There would have been those. There's

1 one case listed on the second page where I provided
2 a report on behalf of an insurance company. I was
3 retained by Columbia Casualty Company.

4 Q Is it correct that in all of the court
5 proceedings listed there on those two pages in your
6 CV, that you appeared on behalf of the claimant
7 making a claim against an insurance company or a
8 financial institution and not on behalf of the
9 insurance company or financial institution defending
10 that claim?

11 A In the Columbia Casualty Company case,
12 I provided a report on behalf of the insurance
13 company. In the others, I believe I was involved
14 with the plaintiffs. So you could say it's an
15 insurance company or a financial institution.

16 Two of these involved state funds which
17 aren't really insurance companies, they're
18 quasi-governmental agencies. Those are the Ohio
19 Bureau of Workers' Compensation cases.

20 MR. SPIVEY: Let me have just a moment.

21 (Pause.)

22 MR. SPIVEY: Thank you.

23 BY MR. SPIVEY:

24 Q Now, Mr. Schwartz, on page 1 of your
25 CV, you set out a number of items under the heading

1 Professional Affiliations, do you not?

2 A Yes.

3 Q The first item there is the Casualty
4 Actuarial Society, and the second item is the
5 American Academy of Actuaries, correct?

6 A Yes.

7 Q And you're a member of both of those
8 actuarial organizations, right?

9 A Yes.

10 Q Are you in good standing with both of
11 those organizations?

12 A Yes.

13 Q Following those two items, there are
14 nine more entries, correct?

15 A Yes.

16 Q Do those entries reflect membership in
17 some particular organization?

18 A Not really, no.

19 Q In fact, each of those items is a
20 designation, if that's the right term, that you've
21 received from an entity known as the Insurance
22 Institute of America, correct?

23 A The first seven are the associate in
24 customer service, I think, was from that entity
25 jointly with another one, and the certified

1 rate-of-return analyst was from a completely
2 separate group.

3 Q What is the group that provided you the
4 designation shown for "associate, customer service"?

5 A In my testimony, my written testimony,
6 I think I -- the name of it. So in order to have it
7 accurate, let me go back and see.

8 So it was on page 2 of my testimony on
9 lines 24 to 26. It's a designation from LOMA, which
10 is more of a life insurance organization, in
11 partnership with the American Institute for
12 Chartered Property and Casualty Underwriters,
13 Insurance Institute of America.

14 And then while we are here, if you
15 wanted to know about certified rate of return
16 analyst, that was from the Society of Utility and
17 Regulatory Financial Analysts.

18 Q Thank you.

19 Is it correct that the Insurance
20 Institute of America -- and thank you for pointing
21 me back to page 2 -- you referenced that entity on
22 line 7 and 8 on that page, right?

23 A Right. That's where I reference the
24 Insurance Institute of America.

25 Q Is it correct that that entity changed

1 its name in 2009 to The Institutes?

2 A I don't know when it changed the name,
3 but it's called The Institutes. And it's not just
4 the Insurance Institute of America, there are
5 various subgroups in there.

6 Q Each of those designations provided by
7 The Institutes was awarded to you based on an online
8 or textbook-based self-study program and the passing
9 of one or more examinations at the conclusion of the
10 program, correct?

11 A It wasn't necessarily self-study. I'm
12 sure there were classes that people could have taken
13 if they felt the need to do that. I didn't. I was
14 able to learn the material by reading the textbooks
15 and through my experience. And, yes, there were
16 exams. I don't recall exactly how many tests there
17 were. But a number of them, I think, could have had
18 three or four exams that you had to pass.

19 Q The criteria for awarding those
20 designations did not include actual work experience
21 in any of those areas, did it?

22 A You didn't have to show work experience
23 in those areas. But as I said, one of the reasons I
24 was able to pass the exams on self-study, as opposed
25 to taking courses which were given, was that my

1 experience gave me knowledge about many of those
2 subjects in addition to what I learned from the
3 books.

4 Q On your CV, again, on page 1 next to
5 the designation "Associate in Reinsurance," you
6 showed June 1998, correct?

7 A Yes.

8 Q Does that mean that that is when you
9 obtained that designation?

10 A Yes.

11 Q Is the same true for the dates beside
12 each of the other designations?

13 A Yes.

14 Q For the designations you described a
15 few moment ago that you received in -- as associate
16 in customer service from LOMA and certified rate of
17 return analyst from the Society of Utility and
18 Regulatory Financial Analysts, is it likewise the
19 case that you obtained those designations by virtue
20 of some type of self-study program and passing one
21 or more examinations?

22 A Yes. I studied for those programs on
23 my own. Again, not everybody did it by self-study,
24 but I did.

25 Q Are there any ongoing or continuing

1 requirements in order to maintain your designations
2 as shown on your CV?

3 A Not -- well, for the actuarial one,
4 there are continuing education requirements. For
5 the rest of them, there aren't continuing education
6 requirements.

7 So I would, in essence, say it's the
8 same type of thing as you get a degree in some
9 subject from a college. They don't take it away
10 from you if you don't show continuing education.
11 Once you've reached that designation or got that
12 level of education, you keep it.

13 You don't have to show the entity that
14 you got it from that you are continuing to have
15 education in those areas. Although I would say as
16 part of my professional work, I continued to learn
17 about each of those areas.

18 Q Do you have any professional
19 designations that are not shown on your CV?

20 A No.

21 Q On page 2 of your CV you list
22 publications, correct?

23 A Yes.

24 Q If I counted correctly, I think there
25 are 11 shown there.

1 A Yes.

2 Q The most recent one was published in
3 1992, right?

4 A Yes.

5 Q Are you familiar with the term
6 "peer-reviewed journal"?

7 A Yes.

8 Q Are any of your publications published
9 in a peer-reviewed journal?

10 A I mean, I think most of these could
11 have been reviewed in some way. I think the
12 proceedings of the Casualty Actuarial Society would
13 be considered a peer-review-type organization, and
14 the Journal of Insurance Regulation, the same thing.
15 Some of these others, I don't know exactly what
16 their peer-review process is.

17 So, for example, you know the paper
18 "Actuarial Issues to be Addressed in Pricing Excess
19 of Loss Reinsurance" was in the proceedings of the
20 Los Angeles CPCU Technical Conference. So CPCU is
21 their Chartered Property Casualty Underwriters. The
22 professional organization, I'm not sure to what
23 extent they might have had somebody look at my paper
24 before it was published, but it did receive a
25 Research Excellence Award from Farmers Insurance

1 Group. So I assume somebody read it and decided it
2 was a worthwhile paper.

3 Q The fourth item you list there on your
4 publications is titled "Actuarial Issues to be
5 Addressed in Pricing Excess of Loss Reinsurance"; is
6 it not?

7 A Yes.

8 Q And that one was published in 1984,
9 correct?

10 A Yes.

11 Q Did that publication relate to property
12 insurance?

13 A It would have related to
14 property/casualty insurance in general and how you
15 take into account things like loss development and
16 loss trend and experience in evaluating reinsurance.
17 So it wasn't exclusively focused on property
18 insurance. But the concepts in there would have
19 been applicable to it.

20 Q Further down the list there, there's
21 one titled "The ABCs of Reinsurance"; is that
22 correct?

23 A Yes.

24 Q That one was published in The
25 Self-Insurer, right?

1 A Yes.

2 Q Did that paper involve reinsurance for
3 Workers' Compensation insurance?

4 A I would have to look at it. I mean,
5 The Self-Insurer is an organization for people who
6 are self-insured, and the most common thing is
7 Workers' Comp. So certainly the publication itself
8 was Workers' Comp-focused. But I don't believe that
9 my paper was focused exclusively on Workers'
10 Compensation. A lot of the concepts of reinsurance
11 are the same for one property/casualty line to the
12 other.

13 Q Was that paper focused on homeowners
14 insurance?

15 A I don't believe it was focused on any
16 particular line of insurance.

17 Q And that paper was published in 1985,
18 correct?

19 A Yes.

20 Q Almost 40 years ago?

21 A I was just a baby then.

22 Q Have you published anything on
23 reinsurance since those two papers in 1984 and 1985?

24 A Not in a formal publication.

25 Q In your testimony at page 3, at around

1 line 22, you note that you were editor of Fresh Air
2 magazine, do you not?

3 A Yes.

4 Q You also note that was a newsletter
5 published by a special interest group called
6 Actuaries in Regulation; is that right?

7 A Yes.

8 Q Does that newsletter still exist, or is
9 it still published today?

10 A I'm not 100 percent sure, but I have
11 not seen it recently.

12 Q Do you have any recollection of when it
13 was last published?

14 A No.

15 Q What years were you the editor of that
16 newsletter?

17 A Probably the mid-1980s.

18 Q Does the special interest group
19 Actuaries in Regulation still exist?

20 A I am not sure.

21 Q When were you last active in that
22 group?

23 A Probably right after I left the
24 insurance department in New Jersey as an employee.

25 Q So that would have been in the 1980s

1 also?

2 A Maybe 1990. That's 1990. Not 1990s.

3 Q Following your CV attached in DOI 1,
4 the next document is identified as Appendix AIS-B,
5 correct?

6 A Yes.

7 Q That document appears to be titled on
8 page 1 of AIS-B, "General Managers Report to Board,"
9 correct?

10 A Yes.

11 Q Is that document a report to the boards
12 of the FAIR Plan and Beach Plan?

13 A That's what it says.

14 Q Is that your understanding of what it
15 is?

16 A Well, it's on the first page. That's
17 my understanding.

18 Q I'm curious, did you obtain written
19 consent from the NCIUA and NCJUA so that you could
20 include that document in your testimony?

21 A I don't know exactly what you mean by
22 "written consent."

23 So I'll explain how we obtained it, is
24 the insurance department asked the FAIR Plan and the
25 Beach Plan for certain information, and the FAIR

1 Plan and the Beach Plan provided some of the
2 information to the insurance department --

3 MS. FUNDERBURK: If you could speak
4 into your microphone, please.

5 A Right. The FAIR Plan and the Beach
6 Plan provided some information to the insurance
7 department and said: These are public-type
8 documents that we've given to you. And other
9 documents that were asked for, the Beach Plan and
10 the FAIR Plan said: These are confidential
11 documents that we can't give you.

12 So my understanding was that any of the
13 documents that the Beach Plan and the FAIR Plan
14 provided to the insurance department were public
15 documents, and there wasn't any -- wouldn't be any
16 concern about including it with my testimony.

17 MR. FRIEDMAN: Your Honor, also to the
18 extent they're suggesting there's some
19 impropriety with regard to those, I
20 appreciate the opportunity to explain what
21 the department did and how it obtained them.

22 MS. FUNDERBURK: Okay. Let Mr. Spivey
23 complete his cross. If you have an
24 objection, you can raise that. But
25 otherwise, we'll reserve those arguments and

1 address them when he's completed his cross.

2 BY MR. SPIVEY:

3 Q Mr. Schwartz, I take it from your
4 answer that, at least to your knowledge, you did not
5 obtain written consent to include this in your
6 testimony.

7 Did I understand your answer correctly?

8 MR. FRIEDMAN: Objection, Your Honor.

9 BY MR. SPIVEY:

10 Q You didn't obtain written consent.

11 MR. FRIEDMAN: Objection, Your Honor.

12 This is exactly what -- they're trying to
13 imply there's something illicit about our
14 contention and the use of these, and they're
15 attempting to imply that in part because
16 their actual law partner -- I went through
17 him asking for these from the Beach Plan,
18 explained very expressly what the purpose of
19 them would be for use in these proceedings
20 and obtained them from him.

21 MS. FUNDERBURK: I understand that. At
22 this point, he's asking Mr. Schwartz about
23 his personal knowledge. I understand you
24 have some arguments about the appropriateness
25 of how they were obtained and are advocating

1 that they were obtained correctly. But at
2 this point, Mr. Spivey is questioning
3 Mr. Schwartz about his knowledge, and I am
4 going to allow him to proceed.

5 Should you feel that strays from his
6 knowledge, please feel free to object again.
7 But at this point, he's asking about
8 Mr. Schwartz's personal knowledge.

9 MR. FRIEDMAN: Can I also address one
10 matter? I do not recall that these were
11 placed under the protective order, but if
12 they were -- and that's their contention
13 that -- and that these shouldn't have been
14 filed with the prefilled testimony.

15 We also very carefully went back and
16 reviewed everybody's prefilled testimony and
17 designated what we understood to be subject
18 to the protective order. And haven't heard
19 anything about this, if that's what they're
20 getting into --

21 MS. FUNDERBURK: And we don't know yet
22 what they're getting into. I'm going to
23 allow him to continue his line of questioning
24 to lay a foundation of where he is going with
25 it, and then we can have further discussions

1 on that.

2 But at this point, Mr. Spivey, please
3 continue your examination.

4 BY MR. SPIVEY:

5 Q As I said with my first question about
6 this particular document, Mr. Schwartz, I was
7 curious, would you please look at that document and
8 confirm for me that there's a footer on every page
9 of it that states that written consent must be
10 requested from and given by NCIUA/NCJUA prior to
11 copying, reproducing, displaying, or transmitting
12 any material from this presentation.

13 A That's what it says.

14 MR. SPIVEY: That's all I have for that
15 document. If there's any concern, I'm not
16 asking about confidentiality or anything.
17 I'm just noting what's on that document and
18 asking that question.

19 MS. FUNDERBURK: Thank you, Mr. Spivey.
20 Mr. Friedman, redirect?

21 MR. FRIEDMAN: About that --

22 MS. FUNDERBURK: Oh, I'm sorry, are you
23 concluding your testimony --

24 (Overlapping speakers.)

25 MS. FUNDERBURK: You're like, no, no,

1 no. Hold up. I'm not done. I'm sorry. I'm
2 trying to jump you ahead too much. My
3 apologies.

4 MR. SPIVEY: And I don't know that
5 there's anything to dig into. I mean,
6 Mr. Friedman -- well, strike that.

7 I've asked what I need to ask about
8 that document.

9 MS. FUNDERBURK: About that particular
10 document. Okay.

11 Please proceed with the rest of your
12 cross. I won't try to cut you off and shift
13 again. My apologies.

14 BY MR. SPIVEY:

15 Q Mr. Schwartz, the underwriting profit
16 factor you recommend in this case is 3.8 percent of
17 premium, is it not?

18 A Yes.

19 Q You derive your recommended
20 underwriting profit factor starting with an
21 estimation of a target operating return using what
22 you refer to as a "comparable earnings analysis."
23 Is that correct?

24 A I started from a target operating
25 return.

1 Q Did you use what you referred to as a
2 "comparable earnings analysis" to arrive at the
3 target operating return that you started with?

4 A The comparable earnings analysis was
5 part of it. I also looked at the risk of the line
6 of business that we're talking about. So whether
7 you want to call that part of the comparable
8 earnings or an adjustment to the comparable
9 earnings.

10 Q Starting at line 4 on page 33 and
11 continuing through line 24 --

12 A Where are you starting?

13 Q I'm sorry?

14 A I didn't get where you're starting.

15 Q Line 4 on page 33.

16 Is it correct that on line 4 you ask
17 the question: How did you determine the operating
18 return as a percent of premiums?

19 A Yes.

20 Q And in the answer to that, which starts
21 on line 6 and continues down through line 26, you
22 describe generally what you did and conclude with
23 the sentence at line 26: This procedure can be
24 referred to as a comparable earning method.

25 A Yes. And I'm just clarifying for the

1 record that I compared earnings and also considered
2 the riskiness of the line of business. So I just
3 wanted to make sure we are all on the same
4 understanding of what's involved in that.

5 Q Where did you obtain guidance on how to
6 implement a comparable earnings method?

7 A From my years and years of experience.

8 Q Are there any particular publications
9 that you relied upon or that you consulted in
10 selecting your approach to implement the comparable
11 earnings method?

12 A Not one in particular. I've read many
13 documents over time and seen many analyses. And
14 given that this is a well-known method, I didn't
15 feel it was necessary to cite to a particular
16 document.

17 Q How did you determine that -- I'm
18 sorry.

19 How did you determine which states and
20 which lines of insurance are comparable to North
21 Carolina homeowners insurance?

22 A In terms of the information that's
23 available, profit figures are not typically
24 published from insurance company financial
25 statements, giving business by line of insurance at

1 stake.

2 The annual statements and the financial
3 statements for insurance companies include with it
4 profit figures by line of business. And by "annual
5 statement," I would include supplements to the
6 annual statements such as the insurance expense
7 exhibit.

8 So the published annual statements and
9 financial statements of insurance companies only
10 allow for countrywide numbers. Now, the National
11 Association of Insurance Commissioners does some
12 calculations where they try and break that down by
13 state. And so what I've done is relied on the
14 businesses that are compiled by AMS showing profits
15 by line of insurance based on the financial
16 statements of insurance companies file. And I also
17 look at the NAIC numbers which break it down by
18 state.

19 So I started with the published
20 numbers, took into account the NAIC numbers. And in
21 terms of homeowners insurance, it being a property
22 line of insurance and a personal line of insurance,
23 I looked at things which I thought would have some
24 characteristics in combination with it, but also
25 look at the insurance industry as a whole as being

1 the most comprehensive type of comparison for
2 property/casualty insurance. And then I made
3 adjustments for what I thought was the risk of
4 homeowners relative to property/casualty insurance
5 in general.

6 Q Did you conduct any empirical studies
7 to validate your selection of lines of business or
8 the number of years to utilize in your analysis?

9 A Well, I showed the different numbers
10 for different lines of insurance. So that shows
11 empirically what the values have been so you can see
12 what the range of values were depending on the
13 particular lines of insurance that you had under
14 consideration. And I also looked at a time history
15 going back as far as I could and then summarizing it
16 by different time periods so that you could look at
17 different time periods, different lines of insurance
18 and see if there was any significant variation or
19 trends.

20 Q So as I understood what you just
21 testified to, you selected a number of years and
22 then looked at the numbers maybe empirically. My
23 question: Did you do an empirical study to
24 determine what number of years would be appropriate
25 to look at?

1 A Well, it's a fact-based situation, so
2 you look at the facts and you look and see over
3 30 years, 25 years, 20, 10, 5, have things changed,
4 has there been a pattern, is it varying up and down?
5 It's no different in a sense than what the Rate
6 Bureau does for items like trend and loss
7 development where they look at data over a time
8 period and then they use their judgment to determine
9 what time period they believe is appropriate for the
10 rate level.

11 There's no empirical analysis in the
12 Rate Bureau filing where they said they've done this
13 scientific study that determines this is the exact
14 number of data points to use for trend.

15 So it's the same exact thing. I've
16 empirically looked at the data and evaluated it and
17 made what I believe is a reasonable projection for
18 what a target operating profit should be.

19 Q If I heard your answer correctly a few
20 moments ago, you also said that you used all the
21 data that were available, all the years that were
22 available.

23 Did I understand you correctly?

24 A All the ones that I had available, I
25 showed on the page.

1 So why don't we actually look at the
2 page and we can see what it looks like, instead of
3 talking in abstract terms? I'll let you know in a
4 minute what page I'm going to. So this is in
5 AIS-15. Schedule AIS-15.

6 Q I'm looking at AIS-15. What is it that
7 you wish to point out to me from AIS-15 that
8 illustrates your answer that you used all the data
9 that were available to you?

10 A Yes. The information that I had
11 available for this information, it went back to
12 1988. So you have a time period of over 36 years,
13 which I believe is sufficient for looking at
14 operating profits and seeing if they changed over
15 time and what the pattern is.

16 Q So just let me make sure I'm clear.
17 You're not testifying that the years from 1988 to
18 the year 2023 are all of the years that are
19 potentially available, you're testifying that those
20 are the ones that you had available to you?

21 A And I'm also testifying that in my
22 opinion that is a sufficient number of years that
23 there wouldn't be any benefit in going back farther
24 than that.

25 Q This wasn't my question, Mr. Schwartz.

1 MR. FRIEDMAN: Objection, Your Honor.
2 That's argumentative. I mean, I let many,
3 many witnesses make similar statements and
4 then just did follow-up, not try to argue
5 with them about what the question was.

6 BY MR. SPIVEY:

7 Q Mr. Schwartz --

8 MS. FUNDERBURK: Overruled. Please
9 restate your question.

10 BY MR. SPIVEY:

11 Q Mr. Schwartz, the years 1988 through
12 2023 are not all of the years that are available
13 from -- the source you indicate there as Best's
14 Aggregates and Averages; is that correct?

15 A Yeah, it's possible there might be
16 earlier years that people have. I did not believe
17 it was necessary to go back earlier than 1988.

18 Q I'm simply trying to make sure I
19 understand your answer when you said you used the
20 "data that were available," and then I think you
21 added subsequently "available to you."

22 So am I correct in understanding that
23 you've used here what was available to you and not
24 necessarily what may be available, you know, if
25 someone wants to go looking for more data?

1 A If someone wants to go looking for more
2 data, certainly they had that option. I don't
3 believe it would be useful to go back earlier.

4 Q Now, looking, again, at page 33 of your
5 testimony. You list there, in lines 11 through 19,
6 various groupings of lines of business within the
7 property/casualty insurance industry, do you not?

8 A Yes.

9 Q Am I correct that your "all lines"
10 compilation includes operating returns for all lines
11 of business?

12 A Yes.

13 Q And, therefore -- I mean, that includes
14 private passenger auto insurance, right?

15 A Yes.

16 Q Workers' Compensation insurance?

17 A Yes.

18 Q Medical malpractice insurance?

19 A Yes.

20 Q General liability insurance?

21 A Yes.

22 Q On the lower half of the page --

23 MR. BEVERLY: Sorry.

24 MS. FUNDERBURK: Just a moment.

25 Mr. Schwartz, do you need to take a

1 break?

2 THE WITNESS: Well, I think we're about
3 halfway through. We started at 1:45. It's
4 2:54 now. If we're going to end at 4:00,
5 it's at the halfway point if we're going to
6 have any break.

7 MS. FUNDERBURK: Do the parties have
8 any objection to taking a break at this
9 point? Letting the witness have a little
10 rest spell?

11 We will be in recess for ten minutes.
12 It's five till 3:00. Be in recess until five
13 after 3:00. Thank you. We're off the
14 record, and Mr. Schwartz, you remain under
15 oath.

16 (A recess was taken from 2:55 p.m. to
17 3:08 p.m.)

18 MS. FUNDERBURK: My apologies,
19 Mr. Spivey. Please continue.

20 BY MR. SPIVEY:

21 Q Just to review what your -- in summary
22 fashion what your findings were, you found that the
23 average for all lines of insurance combined during
24 the 36-year period from 1988 to 2023 was
25 4.9 percent, correct?

1 A Yes.

2 Q For homeowners insurance, the value was
3 minus 2.7 percent, correct?

4 A Yes.

5 Q For personal lines, the value was
6 1.9 percent, correct?

7 A Yes.

8 Q Fire insurance, the value was
9 8.5 percent, right?

10 A Yes.

11 Q For allied lines insurance, the value
12 was minus 7.9 percent?

13 A Yes.

14 Q On page 34 of your testimony, at
15 lines 6 through 10, you state that: It can be
16 concluded that insurance company management and
17 investors consider these historical returns on
18 insurance operations to be a reasonable and adequate
19 operating rate of return, do you not?

20 A If you want me to follow along, why
21 don't we -- tell me exactly which line you're
22 starting with, and I'll read it with you.

23 Q I believe I was reading from lines 8,
24 9, and 10 of your testimony.

25 MR. FRIEDMAN: Your Honor, if I could

1 clarify, perhaps it would be better for the
2 witness and the record if Mr. Spivey wanted
3 to read the sentence.

4 MR. SPIVEY: We're going to get there.

5 MS. FUNDERBURK: Yeah. Please proceed,
6 Mr. Spivey.

7 BY MR. SPIVEY:

8 Q And then you argue that conclusion,
9 based on your statement, that resources did not
10 leave the property/casualty industry during that
11 time and that capital and surplus of the
12 property/casualty insurance industry grew during
13 that time period; is that correct?

14 A You're taking like little excerpts out
15 and mixing them together. I mean, the sentence
16 says -- if you want to read the whole sentence into
17 the record, and then I'll follow along with you and
18 I'll say that's what the sentence says. Otherwise,
19 I'm having trouble following it when you read a
20 portion of a sentence and then go on to something
21 else and read a different portion of it.

22 MR. FRIEDMAN: At this point,

23 Your Honor --

24 MS. FUNDERBURK: Hold on.

25 Could you break it down more succinctly

1 and specifically for the witness, please?

2 BY MR. SPIVEY:

3 Q Mr. Schwartz, we summarized a moment
4 ago the findings you made of your study of actual
5 historical returns on insurance operations over this
6 36-year time period, correct?

7 A These were particular numbers that were
8 picked out over the entire time period. So I guess
9 I would consider it an overview summary. But I
10 think the point is, if you wanted to really look at
11 the data, you should look at the exhibit. But these
12 are numbers for the different lines of insurance
13 over the entire time period.

14 Q And then the sentence beginning on
15 line 6, about four or five words in, that starts
16 with the word "Since," do you see where I'm
17 starting?

18 A Yes.

19 Q Your sentence there reads, in its
20 entirety: Since resources did not leave the
21 property and casualty insurance industry during this
22 time span and, in fact, the capital and surplus of
23 property and casualty insurance industry grew at a
24 substantial rate, it can be concluded that insurance
25 company management and investors considered these

1 historical returns on insurance operations to be a
2 reasonable and adequate operating rate of return.

3 Did I read that sentence correctly?

4 A I believe so.

5 Q So that's the conclusion that you make
6 and present your argument for why company management
7 and investors consider those historical returns to
8 be reasonable and adequate, right?

9 A That's a statement about why, given the
10 facts of the situation, it's logical to draw that
11 conclusion.

12 Q Is it your testimony that "insurance
13 company management and investors consider the
14 historical returns on insurance operations to be a
15 reasonable and adequate operating return," to be a
16 true statement for every line of property/casualty
17 insurance?

18 A You only have -- so capital and surplus
19 with the property/casualty insurance industry, or
20 for any particular company, is only published for
21 the all lines combined. So you would be looking at
22 it and saying for all lines combined, the insurance
23 industry is earning a reasonable profit. And that's
24 one of the reasons why you want to look at the
25 operating return for, I believe, for all lines

1 combined because it's matching up the change in the
2 capital and surplus of the property/casualty
3 industries for all lines combined to the operating
4 profit for all lines combined.

5 Q Do you believe that insurance company
6 management and investors consider a return of minus
7 7.9 percent for allied lines to be a reasonable and
8 adequate operating rate of return for that line of
9 insurance?

10 A I don't believe, taken in isolation,
11 that a company would continue to write business if
12 they were having operating return of minus
13 7.9 percent a year.

14 Q What about the homeowners line? Is a
15 minus 2.7 percent operating return a reasonable and
16 adequate operating return?

17 A I don't believe that's a return that
18 companies would find acceptable for homeowners
19 insurance or any other line of insurance.

20 Q Your support for your statement that
21 resources did not leave the property/casualty
22 insurance industry during this time period and that
23 capital and surplus of the property/casualty
24 insurance industry grew during this time period is
25 provided on Schedule AIS-16, is it not?

1 A Yes.

2 Q On that schedule, you display numbers
3 for insurance industry capitalization, do you not?

4 A The title says "Property/Casualty
5 Insurance Industry Capitalization."

6 Q And despite the fact that the heading
7 on that exhibit is North Carolina Homeowners
8 Insurance, the numbers there are not just homeowners
9 insurance numbers, are they?

10 A No. I mean, I've already stated you
11 cannot get a policyholder surplus number for one
12 line of insurance.

13 Q So the numbers there are for the entire
14 property/casualty insurance industry, correct?

15 A Yes. That's what I said many times.

16 Q And it appears that the conclusion you
17 intend to convey from the data shown on that page is
18 stated in the box at the bottom of the page, and
19 I'll read it, it states: The capitalization of the
20 property/casualty insurance industry has increased
21 significantly over time resulting in
22 overcapitalization.

23 A Yes.

24 Q You agree that looking at the growth of
25 the insurance industry capital and surplus over time

1 should be considered in conjunction with the growth
2 in insurance companies' exposures and liabilities,
3 do you not?

4 A Consideration to be given to all of
5 those.

6 Q Schedule AIS-16 displays data over a
7 period of 54 years, does it not?

8 A Yes.

9 Q The measure of insurance industry
10 capitalization that you look at in that exhibit is
11 the ratio of total liabilities plus premium to
12 surplus, correct?

13 A I show a column for that. I also show
14 columns individually for Reserves, Liabilities,
15 Premium, and Surplus. So you could look at the
16 rates of change for all of those items over time.

17 Q And you display those four columns that
18 you pointed out there in order to be able to
19 calculate the ratios shown in the final column on
20 the right, do you not?

21 A Well, those four columns are used to
22 calculate the ratio on the fifth column. We're not
23 counting the column that says "Year" as a column.
24 But I think each of those columns individually has
25 information in it.

1 Q If we look at the year 2013, is it
2 correct that the ratio in the final column on the
3 right for that year is 2.32?

4 A Yes.

5 Q And do I understand correctly that that
6 means that there are \$2.32 of liabilities plus
7 premium for every dollar of surplus?

8 A Yes.

9 Q The ratio for the year 2023 is 2.52, is
10 it not?

11 A Yes.

12 Q And that means that, as compared to
13 2013, the amount of surplus has declined relative to
14 liabilities and premium?

15 A During those two time periods, if you
16 compare those two periods.

17 Q Turning back now to page 33 in your
18 written prefiled testimony, the underwriting profit
19 factor that you recommend here of 3.8 percent is
20 derived using the equation shown there at the top of
21 the page 33, is it not?

22 A Yes.

23 Q And that equation is -- using the words
24 instead of the abbreviations -- it's underwriting
25 profit equals operating return minus investment

1 income on reserves minus installment fee income,
2 right?

3 A Right. On page 32, you can see what I
4 used those initials for, if someone actually wants
5 to go back to that page so they can see where I'm
6 using those abbreviations and what words go with
7 them.

8 Q Finally, on page 33, you describe in
9 words what each item is and show what your
10 abbreviation for it is, correct?

11 A The bottom of page 32.

12 Q I'm sorry. Thirty-two.

13 And then applying that formula, you
14 ultimately developed a return for operating return
15 and a number or investment income on reserves and a
16 number for installment fee income, right?

17 A Yes.

18 Q What was your number for operating
19 return that you plugged into the formula?

20 A I used a value of 8 percent.

21 Q What was your number for investment
22 income on reserves that you plugged into that
23 formula?

24 A 3.9 percent. So I would just point, if
25 anyone wants to see it, it's on Schedule AIS-14,

1 sheet 1.

2 Q And the number you plugged in for
3 installment fee income is shown there on Schedule
4 AIS-14, sheet 1, as 0.3 percent, is it not?

5 A Yes.

6 Q So you show your 8 percent operating
7 profit on line H, and your 3.9 percent input for
8 investment income on reserves on line F, correct?

9 A Yes.

10 Q And your underwriting profit factor of
11 3.8 percent is shown on line I as being equal to
12 line H minus line G minus line F; is that correct?

13 A Yes.

14 Q The value you show and use for
15 installment fee income of 0.3 percent is drawn from
16 the Rate Bureau's filing, is it not?

17 A Yes.

18 Q Per your footnote, you state that comes
19 from Exhibit RB-24; is that correct?

20 A Let me go look.

21 The footnote shows RB-24, sheets 3 and
22 7. So I'm just going to take a look and see what
23 those sheets show.

24 Yeah. Actually, I wrote "sheets 3 and
25 7." They're actually called pages in the Rate

1 Bureau filing, but same thing.

2 So sheet -- or page 3, shows 0.29. So
3 that's where the 0.3 would come from.

4 Q Do I understand correctly that in order
5 to determine what you show on line F as the return
6 on insurance operations, you determine a dollar
7 amount of investment income on reserves?

8 A Yes.

9 Q And that dollar amount is shown on
10 line E of your exhibit?

11 A Yes.

12 Q To determine that dollar amount of
13 investment earnings on reserves, you first determine
14 a dollar amount on total reserves, and then multiply
15 that by an average rate of return, correct?

16 A So I show a -- line C shows a total
17 amount of reserves that I consider to be investable.

18 Q And then you multiply that total amount
19 of reserves by an average rate of return, do you
20 not?

21 A Yes.

22 Q And you're showing that in your exhibit
23 on lines C and D, if I'm understanding correctly,
24 correct?

25 A Right. Well, C is the total reserves;

1 D is the rate of return; and then E is line C times
2 D, which shows the investment income -- or
3 investment earnings on reserves.

4 Q And the average rate of return that you
5 use there or you show there on line D is drawn from
6 the rate filing at Exhibit RB-24, page 7, is it not?

7 A Yeah. On line D on RB-24, page 7,
8 shows a 5.19 percent.

9 Q So what we see on Schedule AIS-14,
10 sheet 1, is that your recommended underwriting
11 profit factor is derived by starting with an
12 operating return and subtracting out installment fee
13 income and investment income on reserves, correct?

14 A Well, I don't know if I'd phrase it as
15 backing it out. But the operating profit would
16 consist of the investment income on reserves and
17 installment fees. So the residual of it would come
18 from the underwriting profit. So you just need to
19 take that difference.

20 Q The formula you show in line I for
21 underwriting profit factor is line H, which is
22 operating profit, minus line G, which is installment
23 fee income, minus line F, which we've -- you've
24 testified is the return on insurance reserves,
25 correct?

1 A Yes.

2 Q Looking at the source notes on
3 Schedule AIS-14, sheet 1, we've talked about the
4 items you got from Exhibit RB-24, sheets 3 and 7,
5 from the rate filing, correct?

6 Let's look at the other source --
7 sources that you cite there. The first one I see is
8 Schedule AIS-14, sheet 2. You see that's referenced
9 in your source?

10 A Yes.

11 Q That will be the next page, right?

12 A Yes.

13 Q What -- what number or numbers are you
14 getting from Schedule AIS-14, sheet 2, that you've
15 utilized on Schedule AIS-14, sheet 1?

16 A In column 5, in Schedule AIS-14,
17 sheet 2, is the Percent of Unearned Premium Reserve
18 Invested, UPR, meaning unearned premium reserve.
19 And the selected value is 100 percent. And so that
20 carries over to Schedule AIS-14, sheet 1, on line
21 A3.

22 Q Any other numbers on sheet 1 come from
23 sheet 2?

24 A No.

25 Q Your next entry, as I'm understanding

1 it, on your sources for Schedule AIS-14, sheet 1, is
2 Schedule AIS-11, sheet 1.

3 A Well, that's probably a wrong
4 reference.

5 Q So just -- let me just --

6 MR. FRIEDMAN: Your Honor, if I -- he
7 was answering the question.

8 MR. SPIVEY: Can we get a question?

9 MR. FRIEDMAN: I think there was a
10 question.

11 MS. FUNDERBURK: Counsel, that's enough
12 from both.

13 Please restate your question, ask the
14 witness your question.

15 BY MR. SPIVEY:

16 Q My question, Mr. Schwartz, was I
17 pointed you to your reference in the sources for
18 Schedule AIS-14, sheet 1, to the second item listed
19 there, and you took a couple moments to look at that
20 sheet. Are there any numbers or pieces of
21 information on Schedule AIS-11 that you use on
22 Schedule AIS-14, sheet 1?

23 A No.

24 Q So I believe you started to indicate
25 that that was a mistaken reference. Am I --

1 A Well, right. That's -- well, right.

2 Q Am I characterizing that fairly?

3 A Right. Schedule AIS-11, sheet 1,
4 probably was a reference on the exhibit, used to be,
5 and things moved around and I didn't catch that it
6 needed to change.

7 Q So on Schedule AIS-14, sheet 1, the
8 reference in the sources to Schedule AIS-11,
9 sheet 1, is a mistake? I mean, that's just not
10 correct, right?

11 A It's not right. There's nothing from
12 Schedule AIS-11, sheet 1, that gets carried over for
13 that.

14 THE COURT REPORTER: Could you center
15 your microphone? I believe it might be off
16 center.

17 MS. FUNDERBURK: Are you referring to
18 Mr. Spivey or the witness?

19 THE COURT REPORTER: The witness.
20 (Adjustment of microphone.)

21 MS. FUNDERBURK: Mr. Schwartz, if you
22 could center your microphone. Perhaps get it
23 a little closer and sometimes it helps to
24 unbend it.

25 THE WITNESS: Okay. I just had to move

1 it underneath the screen to get it closer to
2 me.

3 BY MR. SPIVEY:

4 Q Just to further clarify, Mr. Schwartz,
5 is there a page in your schedule, or in these
6 exhibits, is there a page labeled Schedule AIS-11,
7 sheet 1?

8 A No.

9 Q All right. The next item listed in
10 your sources on Schedule AIS-14, sheet 1, is
11 Schedule AIS-2, sheet 1; is that correct?

12 A Yes.

13 Q Looking at Schedule AIS-2, sheet 1,
14 now, what numbers from that sheet are you utilizing
15 in Schedule AIS-14, sheet 1?

16 A The numbers aren't there directly. You
17 would have to do calculations off of it, you know,
18 with -- it's getting how much of the losses of
19 premium is available for --

20 MR. FRIEDMAN: Mr. Schwartz, I'm sorry,
21 could you --

22 A It's -- you'd have to do calculations
23 off the numbers on this page, which you could do it,
24 but a better reference, I think, would have been
25 Schedule AIS-9.

1 So even though you can get the stuff
2 from Schedule AIS-2 by looking at how much goes for
3 expenses, reinsurance, contingencies, and things of
4 that nature, an easier reference would be
5 Schedule 9. That would have been a more direct way
6 to put it down, because the numbers in Schedule 9
7 would show the expenses I used in Schedule AIS-2.
8 So you could get it from AIS-2, sheet 1, but it's
9 probably easier to explain from Schedule 9. So that
10 would have been a better reference.

11 Anyway, you see down at the bottom, it
12 has an Expected Loss of Fixed Expense Ratio of
13 81.4 percent. So I subtracted the 15 percent for
14 reinsurance to get 66.4 percent, and that's the .664
15 on line B2.

16 BY MR. SPIVEY:

17 Q So let me make sure I'm following you.
18 We were looking at Schedule AIS-14, sheet 1, and the
19 sources there. And on this particular item, I'm
20 understanding, that instead of the source being
21 Schedule AIS-2, sheet 1, a better reference would
22 have been Schedule AIS-9, and that the numbers from
23 AIS-9, are used to develop the .664 in line B2 on
24 Schedule AIS-2 -- I'm sorry -- AIS-14, sheet 1?

25 A Yes.

1 Q Okay. We've already spoken to some
2 degree about your operating return of 8.0 percent,
3 and the formula you use to determine that, which
4 was -- I'm sorry. Let me start again.

5 We talked earlier about the formula you
6 used to determine underwriting profit as being
7 operating return minus investment income on reserves
8 minus installment fee income, correct?

9 A Yes.

10 Q And, again, that operating return that
11 you input into that formula was 8.0 percent?

12 A Yes.

13 Q We were talking earlier about the
14 historical operating returns of a number of
15 different groupings of lines of business within
16 property/casualty insurance industry that you
17 reviewed to determine the 8 percent, right?

18 A Yes.

19 Q And those groupings and historical
20 operating returns for those groupings over a period
21 of years are displayed on Schedule AIS-15, correct?

22 A Yes.

23 Q Looking back now to your testimony
24 about this on page 33 in your written prefiled
25 testimony, you note, at line 40 on page 33, that the

1 average profit ranged from 4.2 percent -- I'm
2 sorry -- 4.4 percent to 6.2 percent depending upon
3 the time period used for the All Lines Combined,
4 correct?

5 A Yes.

6 Q And when we look at your
7 Schedule AIS-15, those numbers are all coming from
8 the column 1, Total All Lines; is that correct?

9 A Yes.

10 Q And the averages that you described
11 ranging from 4.4 percent to 6.2 percent are the
12 averages displayed in the section of that page on
13 the lower half that display a variety of averages.
14 Am I understanding correctly?

15 A Yes.

16 Q Mr. Schwartz, when you show in that
17 column the average 36 years, which is the label on
18 one of the rows toward the bottom of the page, am I
19 correct in understanding that's the average for all
20 of the years shown from 1988 to 2023 for that
21 column?

22 A Yes.

23 Q You have a row labeled Average Five
24 Years. Do you see that?

25 A Yes.

1 Q And for the Total All Lines column,
2 that number is 4.4 percent; is it not?

3 A Yes.

4 Q So which five years is that describing?
5 Which five years is that the average of? Is it the
6 most recent five years or the earliest five years or
7 some other group of five years?

8 A The most recent five years.

9 Q Is the same true for the other
10 averages, the ones that say 10 years, 15, and so on?

11 A Yes.

12 Q Looking at the line for the year 2023,
13 you show there for the Total All Lines column a
14 percentage of 7.0 percent, do you not?

15 A Yes.

16 Q Is that 7.0 percent comprised of solely
17 the other four columns and groupings shown on this
18 exhibit, namely, homeowners, personal lines, fire,
19 and allied lines?

20 A No.

21 Q So there are other lines of
22 property/casualty insurance business in addition to
23 those shown here that are included in the Total All
24 Lines numbers?

25 A Yes.

1 Q On Schedule AIS-15, just beneath the
2 line showing the average 36 years, there's a line
3 labeled Average Across All Combinations and Time
4 Groups.

5 Do you see that?

6 A Yes.

7 Q And the number shown for that line is
8 2.2 percent, right?

9 A Yes.

10 Q What numbers are included in that
11 2.2 percent?

12 A So it would be all of the numbers going
13 from average of five years to average of 36 years
14 for each of the columns. So -- one, two, three,
15 four -- so there are seven columns -- there's seven
16 lines in each column, and there are five columns.
17 So it would be the 35 numbers shown between the two
18 sets of lines.

19 Q So you literally just add up the 35
20 numbers and take the average of the result?

21 A Yes.

22 Q Similarly, for the row labeled "Median
23 Across All Combinations and Time Groups," that line
24 shows 2.3 percent, does it not?

25 A Yes.

1 Q Is the explanation for what the
2 2.3 percent is essentially the same; is 2.3 percent
3 the median of those 35 numbers?

4 A Yes.

5 Q And is the same true for the next row
6 which is titled "75th Percentile Across All
7 Combinations and Time Groups"?

8 A Yes.

9 Q What was the average historical
10 operating return for the homeowners line of business
11 over the entire 36-year period shown in your
12 Schedule AIS-15?

13 A Minus 2.7.

14 Q Is that minus 2.7 percent -- first of
15 all, it's not just for the State of North Carolina,
16 is it?

17 A No, it's a countrywide number.

18 Q Similarly, all the numbers on this page
19 are countrywide numbers and not just North Carolina,
20 correct?

21 A Yes.

22 Q It is correct, is it not, that the
23 minus 2.7 percent operating return for homeowners
24 insurance is included within and is part of the
25 4.9 percent average operating return during that

1 time period for all lines of property/casualty
2 insurance business?

3 A Yes.

4 Q We're setting rates in this proceeding
5 for homeowners insurance in North Carolina, are we
6 not?

7 A Yes.

8 Q We're not setting rates in this
9 proceeding for all lines of property/casualty
10 insurance on a countrywide basis?

11 A That is correct.

12 Q Are you testifying that insurance
13 company management and investors are content to have
14 a negative return on homeowners insurance operations
15 because they're making money in other lines in other
16 states around the country?

17 A That's not what I testified to.

18 MS. FUNDERBURK: One brief question,
19 Mr. Spivey, since I think you're moving away
20 from the number calculations, so now may be a
21 good time to clarify this.

22 You had asked if one of the numbers
23 represented the median of the years. Did you
24 mean "mean" or "median"?

25 MR. SPIVEY: On the exhibit it says

1 "medi an. "

2 MS. FUNDERBURK: I just wanted to make
3 sure we were dealing with medi an and not the
4 mean, the average. My apologi es for
5 interrupti ng.

6 MR. SPIVEY: Your Honor, my
7 observati on, and certainly Mr. Schwartz can
8 correct me if I'm wrong, is the line above
9 that is the average of all the numbers. And
10 then that row is the --

11 (Overl appi ng speakers.)

12 MS. FUNDERBURK: Now, I see.

13 MR. SPIVEY: -- medi an of all the
14 numbers.

15 MS. FUNDERBURK: And the medi an. My
16 apologi es. I see that now. When you were
17 talki ng averages and then said medi an, I was
18 listeni ng rather than reading the lines and
19 wanted to make sure we were all on the same
20 page wi th the language.

21 Thank you for the clari ficati on, si r.

22 MR. SPIVEY: No probl em.

23 MR. BEVERLY: Your Honor, may we have a
24 moment?

25 MS. FUNDERBURK: Yes, si r.

1 MR. SPIVEY: Thank you, Your Honor.

2 BY MR. SPIVEY:

3 Q Just to make sure it's clear,
4 Mr. Schwartz, we spoke about the fact that the
5 average over 36 years for homeowners of minus
6 2.7 percent is included within and is part of the
7 average for total all lines of 4.9 percent.

8 Do you recall testifying to that a few
9 moments ago?

10 A Yes.

11 Q Is it correct that the same is true for
12 the minus 7.9 percent for allied lines over that
13 period of time?

14 A Yes.

15 Q Similarly for the other averages for
16 personal lines and fire that you displayed?

17 A Yes. I mean, every number by line of
18 insurance, whether it was higher or lower than the
19 all lines average, would get incorporated into the
20 all lines average.

21 Q In your display of the averages, in
22 calculation of the averages that you're showing
23 there, is it true that the 2023 value for total all
24 lines of 7 percent is included in the five-year
25 average?

1 A Yes.

2 Q Is it included in the 10-year average?

3 A Yes.

4 Q Is it included in the 15-year average?

5 A Yes.

6 Q Is it included in all of the averages
7 shown in that column?

8 A Yes.

9 Q And is the same true for the
10 15.3 percent value for homeowners; is it included in
11 all of the averages shown in that column?

12 A Yes.

13 Q What about the value shown for
14 homeowners in 1992, am I looking at the exhibit
15 correctly to state that that appears to be minus
16 51.5 percent?

17 A Yes.

18 Q Is that average included in any of the
19 averages other than the 36-year average?

20 A I don't believe so.

21 Q Do you know, based on your
22 calculations, whether it's in any of the averages
23 other than the 36-year average?

24 A Well, it shouldn't be because if you
25 take 36 years and the 51.5 is in the fifth year,

1 that would be the 31st year, so it wouldn't have
2 been included in any of the other averages because
3 they were all --

4 (Reporter requested clarification.)

5 A The 51.5 is in the 31st year, and
6 therefore it wouldn't be in any of the averages
7 other than 36-year average.

8 BY MR. SPIVEY:

9 Q And the same is true of any of the
10 oldest years, the years from '88 through '92,
11 they're only in the 36-year average, correct?

12 A Yes.

13 Q If you would, please, turn to
14 page 34 -- excuse me, turn to page 30 in your
15 testimony. You describe three broad categories of
16 profit there, do you not? And I'm looking at
17 lines 28 and following that.

18 A Yes.

19 MR. FRIEDMAN: Can I just clarify.
20 Counsel, are we going over to 31 also?

21 MR. SPIVEY: Page 30.

22 MR. FRIEDMAN: It looked like the three
23 categories, the third one, Total Return, ends
24 up on 31. Maybe I'm mistaken.

25 MR. SPIVEY: I believe he testified

1 that the three broad categories of profit
2 start there around line 28 and are described
3 thereafter.

4 MR. FRIEDMAN: Yes, the description
5 thereafter.

6 (Overlapping speakers.)

7 MR. SPIVEY: -- on the top of page 31.

8 MR. FRIEDMAN: I understand, thank you.

9 BY MR. SPIVEY:

10 Q On page 30, at line 34, you present a
11 definition of operating profit. That then carries
12 over to the top of page 31, do you not?

13 A Yes.

14 Q And the phrase "investment income from
15 insurance operation" is often stated as "investment
16 earnings on reserves," is it not?

17 A It can be described both ways.

18 Q On line 31, on page 30 of your
19 testimony, you present a definition of underwriting
20 profit, correct?

21 A Yes.

22 Q The definition that you show there is
23 that underwriting profit equals premium minus
24 losses, loss adjustment expenses, underwriting
25 expenses, and policyholder dividends, correct?

1 A Well, I would say there's also a
2 footnote that goes with it, which is to the
3 explanation. So you read part of it. I think it
4 needs to be read in conjunction with the footnote.

5 Q That's what I was going to clarify with
6 you. You note in your footnote to that line that
7 underwriting profit can also be calculated before
8 subtracting out policyholder dividends, correct?

9 A That's a paraphrase of what's written.

10 Q That's how you phrase it in the
11 footnote?

12 A Well, I think you left out the -- the
13 words "out of profits," before subtracting out
14 profits distributed in the form of policyholder
15 dividends. I don't believe you read those middle
16 words.

17 Q Mr. Schwartz, I want to ask you to turn
18 to ASOP 30.

19 MR. SPIVEY: Mr. Friedman, can you help
20 me, where in your book that would be found?

21 MR. FRIEDMAN: Sure. That is in DOI
22 Exhibit 12, in book 3, and I don't know what
23 page in there, but that's where the ASOPs,
24 are.

25 MS. FUNDERBURK: I believe it's in the

1 40s. Correction. It is Bates stamp page 50.

2 BY MR. SPIVEY:

3 Q Do you have ASOP 30 in front of you
4 now?

5 A Yes.

6 Q And am I understanding correctly that
7 there is a definition in Section 2.14 of ASOP 30 for
8 underwriting profit?

9 A Yes.

10 Q Can you read that definition for us?

11 A "Premiums less losses, loss adjustment
12 expenses, underwriting expenses, and policyholder
13 dividends."

14 Q Mr. Schwartz, looking back at page 30
15 of your testimony again, you defined operating
16 return there as the sum of underwriting profit,
17 miscellaneous (noninvestment) income from insurance
18 operations, and investment income from insurance
19 operations. Is that correct?

20 A You started reading before I got to the
21 page. So whatever it says, it says.

22 Q Is it fair to say that the operating
23 return is the total return that insurers earn from
24 the insurance transaction alone?

25 A Well, I guess I haven't heard it

1 phrased that way. It was -- the operating profit is
2 based on the insurance operating returns, which are
3 underwriting profit miscellaneous income from
4 insurance operations and investment income from
5 insurance operations.

6 So if you want to say, when you hear
7 those three, you want to call that the total, you
8 could define it that way, but I haven't seen it
9 written that way that I recall.

10 Q Well, then, the sum of an underwriting
11 profit and investment income from insurance
12 operations is everything that an insurance company
13 earns its -- from the business of insurance,
14 correct?

15 A Well, there's miscellaneous
16 (noninvestment) income also as a third component. I
17 don't know if you said that. It seemed to me like
18 you just said underwriting profit and investment
19 income from reserves.

20 Q I think I said investment income from
21 insurance operations.

22 A Okay. Well, in any case, miscellaneous
23 (noninvestment) income from insurance operations are
24 also included.

25 Q Do you believe or think that insurers

1 and inventors are satisfied when they earn a
2 negative return from being in the business of
3 insurance?

4 A I don't believe that on a long-term
5 basis investors would be happy with that, or on an
6 expected basis. But from year to year, sometimes
7 there are negative operating profits for a line of
8 business.

9 Q Am I understanding your exhibit -- or
10 Schedule AIS-15 correctly that over the most recent
11 36-year period, the return on homeowners insurance
12 has been negative 2.7 percent on average?

13 A Yes. Over that time period on a
14 countrywide basis, there was a negative operating
15 return for homeowners insurance.

16 MS. FUNDERBURK: Mr. Spivey, I'm
17 keeping an eye on the clock. When do you
18 think you may be at a natural stopping point?
19 I don't want to cut off your train of
20 thought. So where do you think a natural
21 point to recess for the day would be?

22 MR. SPIVEY: Perhaps we try maybe
23 another five or ten minutes.

24 MS. FUNDERBURK: That's fine. Please
25 proceed.

1 BY MR. SPIVEY:

2 Q On page 31 of your prefiled testimony
3 again, at line 4 you show a definition of "total
4 return."

5 Do you see that?

6 A Yes.

7 Q And you define it there as the sum of
8 operating profit and investment income on capital,
9 usually after income taxes often expressed in
10 percentage terms, do you not?

11 A Right. And I just want to make it
12 clear, when you're saying that I'm defining it, is
13 that I referenced a document that has that
14 definition in it. So I just want to reference
15 there.

16 Q Okay. In the footnote to that
17 definition, you state that: Capital as used in this
18 definition encompasses what is sometimes referred to
19 as capital and surplus.

20 Correct?

21 A Yes.

22 Q Do I understand correctly, then, that
23 "total return," as you're defining it for an
24 insurance company is the sum of operating profit and
25 investment income from capital and surplus?

1 A Yeah. I just want to make it clear
2 that the definition comes from Actuarial Standard of
3 Practice 30. And so I'm referencing it here, and
4 I'm just clarifying that sometimes people use
5 different words to represent the same thing.
6 Sometimes they say "capital," sometimes they say
7 "capital and surplus," sometimes people refer to it
8 as "policyholder surplus." So they're different
9 words, but they mean the same thing.

10 Q In determining your recommended
11 underwriting profit provisions of 3.8 percent, I
12 believe, for insurance companies writing homeowners
13 insurance in North Carolina, did you consider the
14 total return for insurance companies writing
15 homeowners insurance in North Carolina?

16 A Well, in North Carolina, my
17 understanding is that in doing a profit calculation,
18 you're not supposed to include investment income on
19 a capital and surplus. So depending on how you
20 define the word "consider," I considered what it is.
21 I considered what my understanding of the legal
22 requirements were.

23 Q So am I understanding you correctly,
24 then, that though you present a definition here of
25 total return as being the sum of underwriting profit

1 and investment income on capital and surplus in
2 describing what that total return is, that your
3 testimony is you've not given consideration to
4 investment income on capital and surplus in
5 determining your recommended underwriting profit
6 provision?

7 A I just want to make sure we're clear of
8 what we talk about when we talk about giving
9 consideration for something. I haven't included
10 investment income on capital and surplus in my
11 analysis and calculation of the underwriting profit.

12 MR. SPIVEY: Your Honor, this may be a
13 good place to break.

14 MS. FUNDERBURK: Thank you.

15 Counsel, are there any matters we need
16 to address before we recess?

17 MR. FRIEDMAN: Just in terms of
18 timing -- I'm not suggesting any rush for
19 Mr. Spivey by any stretch, but my
20 understanding, at least from Ms. Cavanaugh,
21 is her flight leaves at 6:30 on Friday
22 evening. She has said she's comfortable
23 grabbing an Uber at 4:00 o'clock from this
24 building.

25 I'm a little iffy about that on a

1 Friday, not knowing what the lines are there,
2 so I feel like probably the safest time for
3 her -- for us to break, if she's still on the
4 stand, would be around 3:30, 3:45.

5 And as far as Mr. Schwartz, what time
6 is your flight leaving on Friday?

7 THE WITNESS: If I'm still testifying
8 Friday afternoon, I'm going to be very sad.

9 MR. SPIVEY: Your Honor, I agree we
10 need to be talking about this. Do we need to
11 put this on the record? She's still
12 recording back there, yes?

13 MS. FUNDERBURK: Yes.

14 Mr. Schwartz, you can step down. When
15 you retake the stand tomorrow, just a
16 reminder, you'll continue to be under oath.
17 Thank you.

18 I'm going to take us off the record.
19 We're recessed for the day for official
20 business. Thank you.

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

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25

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 that
6 the hearing was taken before me at the time and place
7 hereinbefore set forth; that the proceedings were transcribed
8 and recorded by me by means of stenotype; which is reduced to
9 written form under my direction and supervision, and that this
10 is, to the best of my knowledge and belief, a true and correct
11 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 30th day of October, 2024.

16 
17 _____

18 Audra Smith, RPR, CRR, FCRR

19 Notary Number: 201329000033

20 Commission Expires: June 26, 2025

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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 _____

AS DATE _____