IN THE SUPREME COURT OF OHIO

FRISCH'S RESTAURANTS, INC.,	:	Case No. 2007-0544
Appellants,	:	
v.	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
MARSHA P. RYAN, ADMINISTRATOR, OHIO, BUREAU OF WORKERS' COMPENSATION	:	
Appellee.	:	

REPLY BRIEF OF APPELLANTS FRISCH'S RESTAURANTS, INC., UNITED DAIRY FARMERS, INC., J.W. HARRIS CO., AND PECK, HANNAFORD & BRIGGS

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STATEMENT OF FACTS

The BWC's assertion that Plaintiffs were not R.C. 4123.32(A) subscribers to the State Insurance Fund rests squarely on the factual allegation contained only in its Brief that each had "terminated" their "participation" in the Retro program when they became self-insured or group rated. It follows, the BWC argues, that Plaintiffs were reasonably excluded from R.C. 4123.32(A) premium relief on the retrospectively rated premiums they incurred during the Class Period because they were no longer "Retro program subscribers", but instead self-insured or group rated subscribers. Nothing in the summary judgment record supports this factual allegation. The record instead demonstrates that Plaintiffs were active participants in the Retro program throughout the Class Period. They continued to pay their retrospectively rated premiums, and they continued to have all the same rights and responsibilities as any other retrospectively rated state fund employer or subscriber to the fund. R.C. 4123.32(A) requires only that an employer be a "subscriber to the fund" or state fund employer in order to qualify for the premium relief authorized by that statute. In the context of its otherwise uniform recognition of Plaintiffs' ongoing state fund employer status, it is the BWC's refusal to recognize this same legal status for purposes of R.C. 4123.32(A) premium relief that is at issue in this case.

A. The Plaintiffs did not terminate their participation in the Retro premium program when they assumed the additional rights and responsibilities of self-insurance or group rating.

The BWC would have this Court believe that once Plaintiffs became self-insured or group rated, they no longer took part in the Retro program. This argument boldly contradicts the undisputed summary judgment record in this case.

Consistent with their continued retrospectively rated state fund premium obligations after the effective dates of their self-insurance and/or group rating, Plaintiffs' legal rights and responsibilities with respect to their retrospectively rated claims remaining in their ten year evaluation periods, and the BWC's overall administration of those claims, did not change in any respect. (Supp. 38, Tr. 141.) According to Vicky Pickens, the BWC's Underwriting Supervisor responsible for retrospectively rated employers and the BWC's administration of their claims, Plaintiffs had the exact same legal rights and responsibilities "as any other state fund employer" in the ongoing administration of their retrospectively rated claims. (Supp. 38, Tr. 147.)

For example, after they became self-insured or group rated, Plaintiffs continued to be eligible to apply for and receive R.C. 4123.343 handicap reimbursement in their open retro claims from the state fund "bucket" of the surplus account. Plaintiffs also continued to be eligible to apply for and receive surplus reimbursement from the state fund "bucket" of the surplus account for R.C. 4121.66 vocational rehabilitation expenses in the retro claims remaining in their ten year evaluation period (i.e. their open state fund retro claims). And Plaintiffs continued to be eligible for R.C. 4123.512 surplus reimbursement on successful appeals in the retrospectively rated claims remaining in their ten year evaluation periods. These surplus charges were also charged to the state fund "bucket" of the surplus account. (Supp. 38, Tr. 141) And like R.C. 4123.32(A) dividend credits, all three of these statutory benefits made use of the SIF's statutory surplus account[1] to reduce Plaintiffs' ongoing retrospectively rated premium obligations during the Class Period. (Supp. 38, Tr. 146-147.)

In short, it is undisputed that subsequent to the effective dates of their self-insurance or group rating participation, Plaintiffs incurred and paid retrospectively rated annual and final adjustment premiums that qualified for R.C. 4123.32(A) discounts. It is also undisputed that,

[1] Established and maintained by the BWC pursuant to R.C. 4123.34.

with respect to their open retro related state fund claims, Plaintiffs continued to have the legal rights and responsibilities of retrospectively rated state fund employers, including statutory surplus account benefits that reduced their ongoing retrospectively rated premium obligations. And it is in the context of these undisputed facts that the BWC created a single exception by excluding Plaintiffs from participating in the surplus related benefits of R.C. 4123.32(A) dividend credits.

The BWC argues in its Brief that this exclusion was reasonable because Plaintiffs were no longer participating in the Retro program. This baseless assertion defies the affirmative evidence relied on by Plaintiffs in their Motion for Summary Judgment, has no support in the record and must be rejected by the Court in accordance with Civ. R. 56(E)[2].

Nor does there exist in the record any other evidence that contradicts the admissions of BWC employees Vicky Pickens, Martin Herf, and John Romig that there was no factual justification for denying Plaintiffs' R.C. 4123.32(A) dividend credits on the retrospectively rated premiums they incurred during the Class Period. According to Vicky Pickens, the BWC did not recognize the possibility that an employer could have the legal status of both a "subscriber to the fund" and a self-insured employer. Once a retrospectively rated state fund employer became self-insured, the BWC viewed them solely as a self-insured employer, even though the employer continued to have the same rights and responsibilities as any other retrospectively rated employer in the ongoing administration of their open retrospectively rated claims. And she could think of no other justification for denying the self-insured or "dual status" employers R.C. 4123.32(A) premium discounts. (Supp. 38, Tr. 169-170.) This same answer was provided by Martin Herf who was the Chief Risk Officer for the Bureau throughout much of the Class Period. According

[2] Civ. R. 56(E) provides that when a motion for summary judgment is made and supported as provided in this Rule, an adverse party...must set forth specific facts showing that there is a genuine issue for trial. "If the party does not so respond, summary judgment, if appropriate, shall be entered against the party."

to Mr. Herf, there was no factual justification for the Agency's exclusion of the self-insured Plaintiffs from the premium discount program. (Supp. 74, Tr. 65-67.) And even John Romig, who authored the administrative orders that prompted this action, admitted that if Plaintiffs had the legal status of state fund subscribers during the Class Period they would be entitled to R.C. 4123.32(A) dividend credits as a matter of law. (Supp. 17, Tr. 118.)

The same is true with respect to PH&B. Sitting as the administrator's designee, the BWC's Chief of Employer Operations, John Romig, issued an Order denying PH&B the dividend credits to which it was entitled during the Class Period on the *single* ground that it would be inequitable for PH&B to receive this premium relief. The specific Order attached to Plaintiff's Complaint as Exhibit F did not identify this inequity. In his deposition, Mr. Romig explained this purported inequity went only to his view that retrospectively rated annual and final adjustment premiums should not be discounted; an opinion rendered irrelevant by the Agency's decision to include these premiums in the premium discount program. He knew of no other inequity, let alone one that would justify the denial of dividend credits for PH&B's ongoing payment of retrospectively rated premiums simply because it had also assumed group rating responsibilities (Supp. 17, Tr. 126-129.) And Plaintiffs went one step further in support of their Motion for Summary Judgment by including the deposition admission of BWC employee Martin Herf who affirmatively found no factual justification for denying PH&B the premium discounts at issue in this case. (Supp. 74, Tr. 66-69.)

The Court must reject the BWC's efforts to contradict this evidentiary record by now arguing in its Brief that its disparate treatment of Plaintiffs was justified by the false notion that they were no longer participating in the Retro premium program during the Class Period.

ARGUMENT

The BWC concedes in its Merit Brief at p. 11 that whether Plaintiffs were eligible for R.C. 4123.32(A) premium relief during the Class Period turns on "the meaning of the word 'subscriber' in R.C. 4123.32(A), and who has the authority to determine its meaning." Plaintiffs have demonstrated in their Merit Brief that it is for the Court to declare what the Legislature intended by its use of the term subscriber to define the class of eligible employers. Plaintiffs have also demonstrated that when that intention is declared in accordance with well-recognized rules of statutory construction, Plaintiffs indeed had the legal status of R.C. 4123.32(A) subscribers during the Class Period because they continued to pay their full retrospectively rated premiums.

This was all that was required of Plaintiffs. The Legislature intended the term subscriber to be defined by the particular meaning it has in the field of workers' compensation[3], and it is undisputed within this field that the terms subscriber, state fund employer and state risk are synonymous.[4] Moreover, Plaintiffs have demonstrated that defining the term subscriber in this manner is consistent with their BWC acknowledged state fund employer status during the Class Period for numerous other statutory purposes. And it avoids the patently unfair result, for which the BWC's key employees denied any factual justification, of Plaintiffs paying the same premiums for the same policy years at a rate as much as four times what the BWC charged other employers.

By contrast, the BWC claims that it has the authority to define the term subscriber to the fund pursuant to O.A.C. Rule 4123-17-10, and it argues in its Merit Brief that its claimed authority was reasonably exercised by requiring that an employer maintain the single status of a

[3] R.C. 1.42

[4] O.A.C. Rule 4123-19-01(A) defines a state risk as "any employer who pays their full premium into the state fund."

retrospectively rated employer in order to be a "subscriber to the fund." As will be demonstrated below, R.C. 4123.32(A) did not authorize the BWC to write a Rule that effectively enables the Agency to substitute its judgment for the intent of the Legislature on a matter as critical as the legal status of an employer and its corresponding legal rights. And assuming, *arguendo*, that Rule 4123-17-10 was a proper exercise of the BWC's R.C. 4123.32(A) rulemaking authority, the BWC did not comply with its own Rule when it excluded Plaintiffs from the premium discount program.

Proposition of Law No. I:

THE TERM SUBSCRIBER AS USED IN R.C. 4123.32(A) MUST BE INTERPRETED IN ACCORDANCE WITH LEGISLATIVE RULES OF STATUTORY CONSTRUCTION. WHERE THE INTENT OF THE LEGISLATURE CAN BE DISCERNED FROM THOSE RULES, DEFINING THE TERM IS NOT A MATTER WITHIN THE DISCRETION OF THE OHIO BUREAU OF WORKERS' COMPENSATION

The BWC argues in its Merit Brief at p. 15:

> ...while R.C. 4123.32(A) and O.A.C. 4123-17-10 grant the Bureau the authority and discretion to determine which employers are subscribers eligible to receive premium rebates or credits, the statutes and code are silent as to the definition of the term 'subscriber'. Thus, as in *Northwestern* and *Swallow*, the Legislature has created a "gap" for which an administrative agency has the power to "formulate policy and the making of rules to fill any gap left, implicitly or explicitly, by the legislature." *Morton v. Ruiz* (1974), 415 U.S. 199, 231
>
> The General Assembly meant the Administrator to fill in the missing details with regard to a rebate program in a reasonable manner. And as explained below, that is what the Administrator has done.

A. R.C. 4123.32(A) does not grant the BWC the authority and discretion to determine which employers are subscribers to the fund and thus eligible to receive R.C. 4123.32(A) premium relief.

In its form during the Class Period,[5] R.C. 4123.32(A) expressly required the administrator, with the advice and consent of the workers' compensation oversight commission, to adopt certain rules including a:

> (A) rule providing that in the event there is developed...a surplus of earned premium...larger than is necessary adequately to safeguard the solvency of the fund, the administrator may return such excess surplus to the subscriber to the fund in either the form of cash refunds or a reduction of future premiums.

There are three distinct legislative directives in R.C. 4123.32(A). First, the Administrator must write a rule with the advice and consent of the workers' compensation oversight commission before engaging in any premium refunds or reductions. Second, the Administrator must limit the return of excess surplus to cash refunds or the reduction of future premiums. And third, in the event the Administrator decides to provide premium reductions, the intended recipients are "subscribers to the fund." It is only after complying with these three mandates that the Administrator may exercise his rulemaking authority to fill in the rest of the details.

To the extent O.A.C. Rule 4123-17-10 permits the Administrator to define the term "subscriber", the BWC acted beyond the scope of its R.C. 4123.32(A) rulemaking authority. The limit of that authority went to terms necessary to the implementation of a premium discount program not already dictated by the Legislature. Because R.C. 4123.32(A) expressly identified subscribers to the fund as the intended recipients of R.C. 4123.32 premium relief, and because the meaning of that term must be construed in accordance with its particular meaning in the field

[5] i.e. prior to September 10, 2007, when the Legislature amended R.C. 4123.32(A) to revoke the Administrator's authority to declare premium dividend credits under R.C. 4123.32.

of workers' compensation[6], the Bureau exceeded its rulemaking authority by giving itself the right to substitute its judgment for that of the Legislature's.

B. O.A.C. Rule 4123-17-10 does not grant the Bureau the authority and discretion to substitute its judgment for what the Legislature intended by its use of the term subscriber to define the intended recipients of R.C. 4123.32(A) premium relief.

From the beginning, the BWC's enactment of and reliance on O.A.C. Rule 4123-17-10 is best described as a train wreck of mistakes.

First, O.A.C. Rule 4123-17-10 was not enacted by the BWC until October of 1999, a full three years after the BWC began reducing premiums because of an excess surplus. It cannot thus be used to retroactively justify the exclusion of Plaintiffs from the premium discount program for the 1996, 1997 and 1998 policy years. To hold otherwise would create an unprecedented and dangerous green light for an Agency to retroactively declare the legal status and corresponding rights of employers under the workers' compensation laws of Ohio.

Second, once O.A.C. Rule 4123-17-10 was enacted, it expressly conditioned the Administrator's authority to make any decisions relevant to the premium discount program on first obtaining the advice and consent of the Workers' Compensation Oversight Commission. The BWC has admitted that it *NEVER* obtained the advice and consent of the Oversight Commission in its decision to define subscribers to the fund so as to exclude Plaintiffs. (Supp. 17, Tr. 141-142.)[7] Absent the mandatory advice and consent of the Oversight Commission, the BWC did not follow the terms of its own Rule, and it should not be permitted to evade this check

[6] Pursuant to R.C. 1.42 as fully discussed in Appellants' Merit Brief.

[7] The BWC's contrary allegations at p. 23 of its Brief are among the most egregious factual misrepresentations it makes to the Court.

on its purported authority to declare the legal status of employers. *State ex rel. H.C.F., Inc. v. Bureau of Workers' Comp.*, 80 Ohio St.3d 642, 1998-Ohio-175, 687 N.E.2d 763.

For the first three years of the BWC's premium discount program, it ignored the Legislature's direction to write a Rule, and it forced a union to go all the way to this Court to enforce that obligation.[8] The BWC also ignored the legislative requirement that the premium relief authorized by this statute be limited to "future premiums". *Id.* Then, when it finally wrote a rule, the BWC bypassed the mandatory advice and consent of the workers' compensation oversight commission as expressly required by its own Rule. And now it seeks to avoid this Court's authority to declare Plaintiffs' legal status as state fund employers eligible for R.C. 4123.32(A) premium relief. The BWC has no such omnipotent role, and their arguments to the contrary have no merit.

C. O.A.C. Rule 4123-19-01(A) requires only that employers pay their premiums in full in order to have the legal status of a state risk.

The BWC also argues in its Brief that even if the Court follows its recent decision in *Hoffman v. State Med. Bd. Of Ohio*, 113 Ohio St.3d 376, 2007-Ohio-2201, 865 N.E.2d 1259, and declares Plaintiffs' subscriber status in accordance with the legal definition of a state risk, Plaintiffs cannot satisfy that definition because they did not pay payroll based premiums as required by the definition of a state risk in O.A.C. Rule 4123-19-01(A).

It is self-evident that employers can pay only the premiums they are charged. Indeed, O.A.C. Rule 4123-19-01(A) requires only that employers pay "their" full premium in order to have the legal status of a state risk. The fact that Plaintiffs paid in full all the premiums Defendant charged them subsequent to the effective date of their self-insurance or group rating

[8] *State err el. United Auto Aerospace & Agricultural Implement Workers of America v. Ohio Bureau of Workers' Compensation*, 95 Ohio St.3d 408, 2002-Ohio-2491, 768 N.E.2d 1129.

means that they paid "their" full premium[9]. To require more of an employer, as the BWC argues, is not required by Rule 4123-19-01(A) and would be impossible to satisfy. Employers cannot pay premiums Defendant does not charge them. It is precisely this type of absurd result that Courts must avoid when declaring the rights and legal status of a party under an administrative regulation. Indeed, the Ohio Supreme Court has made clear that "[The] BWC and the Commission must follow their own rules as written. *State, ex rel. Cincinnati v. Ohio Civ. Rights Comm.* (1981), 2 Ohio App. 3d 287, 288 2 Ohio B. Rep. 317, 319, 441 N.E. 2d 829, 831. They cannot give selective effect to provisions to produce a desired result or otherwise change them without complying with the R.C. Chapter 119 rulemaking procedure. *State, ex rel. Reider's, Inc. v. Indus. Comm.* (1988), 48 Ohio App. 3d 242, 549 N.E. 2d 532." *H.C.F.*, supra. at 647.

Proposition of Law No. II:

WHERE THE BUREAU OF WORKERS' COMPENSATION PRACTICE OF DENYING CERTAIN EMPLOYERS THE LEGAL STATUS OF A R.C. 4123.32(A) SUBSCRIBER IS INCONSISTENT WITH ITS PAST ADMINISTRATIVE PRACTICES, AND WHERE SUCH PRACTICE EFFECTS DISPARATE TREATMENT AMONG PREMIUM PAYING EMPLOYERS FOR WHICH THE BWC OFFERS NO FACTUAL JUSTIFICATION, ITS PRACTICE IS UNREASONABLE AND UNLAWFUL AS A MATTER OF LAW

The BWC does not dispute the admission of BWC employee Vicky Pickens that, subsequent to their self-insurance privilege, Plaintiffs: (1) continued to pay state fund premiums for so long as they had continuing retro policy claims in their ten year evaluation periods; (2) continued to qualify for retrospectively related state fund employer benefits that have a beneficial impact on those premiums; (3) did *not* lose "any benefits the Bureau normally provides state fund employers just because they went self-insured on a prospective basis", and;

[9] See Plaintiffs' affidavits at Supp. 94, 96, 98.

(4) otherwise had "the exact same benefits, the exact same rights and responsibilities" "as any other state fund employer" in the administration of their open state fund retro claims. (Supp. 38, Tr. 146-147.)

The BWC instead argues in its Merit Brief that it was reasonable for it to make a single exception to its recognition of the Plaintiffs' "exact same rights and responsibilities" "as any other state fund employer" for purposes of the surplus related benefits provided by R.C. 4123.32(A). And it argues that this inconsistent recognition of the Plaintiffs' legal status as ongoing state fund employers is justified by the nature of the affected rights. According to the BWC at pp. 21-23 of its Brief, it is perfectly reasonable to recognize the dual legal status of Frisch's, UDF, and JW Harris for the purposes of some, but not all, statutory rights. This argument has no basis in the record. And it defies rational explanation.

The same is true for the Agency's second argument, that because these statutes recognize the distinction between state fund and self-insured employers, and reserve their benefits solely for employers with the legal status of a state fund employer, they demonstrate that "there is no such thing [as] a "dual status." The undisputed facts demonstrate that the BWC recognized this dual status by continuing to recognize the Plaintiffs' continuing right to state fund employer statutory benefits, even as these same employers were also administering self-insured claims. The only issue before the Court is whether it was reasonable for the BWC to make an exception to its otherwise uniform practice of recognizing the Plaintiffs' dual legal status. And despite the novel arguments of counsel for the BWC, there remains no explanation in the record for this exception. Instead, the truth is that the BWC's key employees all admitted that they could think of no factual justification for the disparate treatment of Plaintiffs that resulted from this exception.

The BWC also argues that this exception did not offend Plaintiffs' constitutional rights to equal protection of the law because it "bears a rational relationship to a legitimate government interest." BWC Merit Brief at p. 18 citing *Menefee v. Queen City Metro* (1990) 39 Ohio St. 3d 27, 29. It then goes on to identify the government's legitimate interest, in connection with R.C. 4123.32(A), "in rebating excess premiums in the Fund *to employers participating in the Fund."* (emphasis added) Plaintiffs agree that this is the appropriate governmental interest because R.C. 4123.32(A) expressly identifies "subscriber(s) to the fund" as a whole as the intended recipients of R.C. 4123.32(A) premium relief.

But when the BWC decided to exclude Plaintiffs, all of whom were "participating in the Fund" in one form or another, it created a disparate premium policy that served only to force these Plaintiffs to pay their premiums at a rate as much as four times what the BWC charged other participants in the Fund. There is no legitimate governmental interest in creating classifications where employers paying the same premiums for the same policy years are arbitrarily charged those premiums on materially different terms and conditions. Nor is there any evidence in the record on which the Court could rely to find "reasonable grounds" for the distinction the BWC made among the Class of employers incurring retro related annual and final adjustment premiums during the Class Period. The BWC had the affirmative obligation to provide Civ.R. 56 evidentiary materials to create an issue of fact regarding the reasonableness of this disparate billing practice. Having failed to do so, and in light of the record evidence that no factual justification existed, it cannot rely on the contrived claims of counsel to change the facts and thereby defeat summary judgment for the Plaintiffs.

Proposition of Law No. III:

PLAINTIFFS DID NOT SIGN A RELEASE OR WAIVER OF THE CLAIMS WHICH ARE THE SUBJECT OF THIS ACTION.

The Release signed by PH&B (BWC Supp. at 37.) is immaterial to this lawsuit. For consideration paid PH&B by the BWC, it released the BWC from all claims for dividend credits for the "calendar years 1996, 1997 and 1998." This lawsuit challenges the dividend credits denied PH&B for periods it incurred and paid retrospectively rated annual and final adjustment premiums on and after January 1, 1999.

The BWC's reliance on the "buyout" Agreements signed by Harris, Frisch's, and UDF is also misplaced. Defendant relies solely on paragraph 6 of those uniform Agreements to argue that it was the clear intention of these Plaintiffs to waive their future rights to R.C. 4123.32(A) dividend credits in exchange for the privilege of becoming self-insured. Paragraph 6 of the "buyout" Agreements Plaintiffs signed provides: "6. The employer, its assigns and successors in interest expressly waives forever any claims for premium or loss adjustments not expressly contained in this agreement." (emphasis added) The "claims for premium or loss adjustments not expressly contained in this agreement" refers to those claims the employer has the obligation to identify at paragraph 4 of the same Agreement.[10] Paragraph 4 requires the employer to list "protest letters", "applications for handicap reimbursement" and "other requests" "effecting **[sic]** the employer's State Fund risk experience" that are "known to the employer" by "actual or constructive knowledge" in order for such items to be considered by the BWC with respect to either a "rebate of premium on State Fund experience" or the "calculation of the buyout amount." This language requires only that Plaintiffs identify claims relevant to a rebate of

[10] The intent of the parties to contract is to be determined from the four corners of the contract. *Inland Refuse Transfer Co. v. Browning-Ferris Indus. of Ohio, Inc.* (1984), 15 Ohio St. 3d 321, 322, 474 N.E. 2d 271.

premiums on their State Fund experience or the calculation of their buyout amount when such claims are known to the employer at the time they enter into the Agreement. Only that type of claim is deemed waived if omitted from the Agreement.

Plaintiffs could not have had actual or constructive knowledge of their dividend credit claims against Defendant at the time they entered into their buyout Agreements between July and November of 1995. The first dividend credit during the Class Period was for the 1996 policy year. Plaintiffs could not have known they would be denied the 1996 dividend credit (and thus have a claim against the BWC) until after July of 1997, when their 1996 policy year concluded (effective June 30, 1997) and the BWC first billed them for their 1996 annual and final adjustment premiums in the latter part of 1997. (*See* Pickens Depo. at pp. 117-122, attached hereto as Exhibit 1.) On this basis alone, the Court must reject Defendant's assertion that Frisch's, UDF, and Harris are bound by a contractual waiver of their premium R.C. 4123.32(A) discount claims.

In addition, only a "clear and unequivocable" contractual waiver would entitle the BWC to Judgment as a matter of law. *(See Jacob v. Grant Life Choices Fitness Ctr.* (June 4, 1996), Franklin App. No. 95APE12-1633, attached to the BWC's Merit Brief) The scope of the release relied on by the BWC goes only to requests known to the employer that are relevant to either "a rebate of premium on State Fund experience" or "the calculation of the buyout amount." It is not clear from the contract that R.C. 4123.32(A) dividend credits have any connection to either the Parties' state fund experiences or their buyout amounts. Defendant's reliance on those contracts to pursue summary judgment against Plaintiffs must therefore be rejected.

Finally, Defendant's modification of Paragraph 6 conclusively establishes that the 1995 version signed by UDF, Frisch's, and JW Harris was not intended to waive future claims for

premium relief authorized by R.C. 4123.32(A). In 1999, the BWC amended Paragraph 6 of its standard Buyout Agreement to specifically include, for the first time (BWC Merit Brief, p. 24.), a clear and unequivocal release of future claims for dividend credits. After restating the original waiver signed by Plaintiffs in 1995, Paragraph 6 of the 1999 buyout Agreement added:

> ...The employer, its assigns and successors in interest also expressly waives its claim to any future rebates or dividends from the State Insurance Fund for state fund employers payable after the effective date of the employer's self-insurance.

(emphasis added) (*See* 8-20-99 buyout Agreement BWC's Supp. 33.) The term "also" is to be given its common or ordinary meaning in determining the intent of the BWC in adding this provision to its standard buyout Agreement. *Foster Wheeler, Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.* (1997), 78 Ohio St. 3d 353, 361, 1997-Ohio-202, 678 N.E.2d 519. By its use of the term "also", the BWC evidenced its intent to add a type of claim (for future dividend credits) not previously included in the scope of the waiver Appellees originally agreed to in 1995.

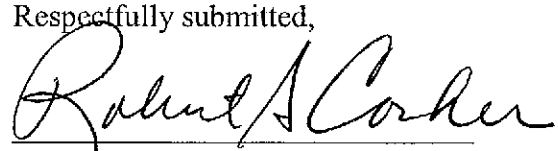
Ohio Courts have routinely held that "contracts are to be construed so as to give effect to the intent of the parties, and that intent is presumed as a matter of law to be fully revealed in the language the parties choose to incorporate into the agreement." *Adelman v. Timman* (1997), 117 Ohio App. 3d 544, 550, 690 N.E. 2d 1332 (citing *Indiana Ins. Co. v. Carnegie Constr., Inc.* (1995), 104 Ohio App. 3d 219, 222-223, 661 N.E. 2d 776). When the terms of a contract are unambiguous, courts look to the plain language of the document and interpret it as a matter of law. *Alexander v. Buckeye Pipeline Co.* (1978), 53 Ohio St. 2d 241, 374 N.E. 2d 146. But when there is ambiguity, parole evidence may be taken to ascertain the intent of the parties. *Inland Refuse*, supra. The BWC's 1999 buyout Agreement confirms that Defendant did not intend for its 1995 buyout Agreement to include a waiver of Plaintiffs' claims. The intent to require a

waiver of these claims, as a condition to the privilege of self-insurance, did not arise until the 1999 amendment to that contract. Consequently, the Court must reject the BWC's claim that Plaintiffs waived their legal rights to R.C. 4123.32(A) credits.

CONCLUSION

For the foregoing reasons, Plaintiffs urge this Court to vacate the lower court's Entry of summary judgment for the BWC and instead enter summary judgment for the Plaintiffs on their claims that they had the legal status of state fund subscribers during the Class Period and thus were entitled as a matter of law to the same premium discounts on their retrospectively rated annual and final adjustment premiums as the BWC afforded all other subscribers to the State Insurance Fund.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief of Appellant was sent by Electronic Mail to Counsel of Record for Appellee, William P. Marshall, Elise Porter, and Gerald H. Waterman, Assistant Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, wmarshall@ag.state.oh.us, eporter@ag.state.oh.us, gwaterman@ag.state.oh.us on this 24th day of December, 2007.

ORC Ann. 4123.343

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH DECEMBER 18, 2007 ***
*** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2007 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH DECEMBER 13, 2007 ***

TITLE 41. LABOR AND INDUSTRY
CHAPTER 4123. WORKERS' COMPENSATION
PREMIUMS; FUNDS

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ORC Ann. **4123.343** (2007)

§ **4123.343.** Incentives for employing handicapped employees; definitions

This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section, "handicapped employee" means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

(1) Epilepsy;

(2) Diabetes;

(3) Cardiac disease;

(4) Arthritis;

(5) Amputated foot, leg, arm, or hand;

(6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally;

(7) Residual disability from poliomyelitis;

(8) Cerebral palsy;

(9) Multiple sclerosis;

(10) Parkinson's disease;

(11) Cerebral vascular accident;

(12) Tuberculosis;

(13) Silicosis;

(14) Psycho-neurotic disability following treatment in a recognized medical or mental institution;

(15) Hemophilia;

(16) Chronic osteomyelitis;

(17) Ankylosis of joints;

(18) Hyper insulinism;

(19) Muscular dystrophies;

(20) Arterio-sclerosis;

(21) Thrombo-phlebitis;

(22) Varicose veins;

(23) Cardiovascular, pulmonary, or respiratory diseases of a firefighter or police officer employed by a municipal corporation or township as a regular member of a lawfully constituted police department or fire department;

(24) Coal miners' pneumoconiosis, commonly referred to as "black lung disease";

(25) Disability with respect to which an individual has completed a rehabilitation program conducted pursuant to sections 4121.61 to 4121.69 of the Revised Code.

(B) Under the circumstances set forth in this section all or such portion as the administrator determines of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer. If the employer is a self-insuring employer, the proportion of such costs whether charged to the statutory surplus fund in whole or in part shall be by way of direct payment to such employee or the employee's dependents or by way of reimbursement to the self-insuring employer as the circumstances indicate. The provisions of this section apply only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division (B) of section 4123.57 of the Revised Code. The administrator shall adopt rules specifying the grounds upon which charges to the statutory surplus fund are to be made. The rules shall prohibit as a grounds any agreement between employer and claimant as to the merits of a claim and the amount of the charge.

(C) Any employer who has in its employ a handicapped employee is entitled, in the event the person is injured, to a determination under this section.

An employer shall file an application under this section for a determination with the bureau or commission in the same manner as other claims. An application only may be made in cases where a handicapped employee or a handicapped employee's dependents claim or is receiving an award of compensation as a result of an injury or occupational disease occurring or contracted on or after the date on which division (A) of this section first included the handicap of such employee.

(D) The circumstances under and the manner in which an apportionment under this section shall be made are:

(1) Whenever a handicapped employee is injured or disabled or dies as the result of an injury or occupational disease sustained in the course of and arising out of a handicapped employee's employment in this state and the administrator awards compensation therefor and when it appears to the satisfaction of the administrator that the injury or occupational disease or the death resulting therefrom would not have occurred but for the pre-existing physical or mental impairment of the handicapped employee, all compensation and benefits payable on account of the disability or death shall be paid from the surplus fund.

(2) Whenever a handicapped employee is injured or disabled or dies as a result of an injury or occupational disease and the administrator finds that the injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting disability or death was caused at least in part through aggravation of the employee's pre-existing disability, the administrator shall determine in a manner that is equitable and reasonable and based upon medical evidence the amount of disability or proportion of the cost of the death award that is attributable to the employee's pre-existing disability and the amount found shall be charged to the statutory surplus fund.

(E) The benefits and provisions of this section apply only to employers who have complied with this chapter either through insurance with the state fund or as a self-insuring employer.

(F) No employer shall in any year receive credit under this section in an amount greater than the premium the employer paid if a state fund employer or greater than the employer's assessments if a self-insuring employer.

(G) Self-insuring employers may, for all claims made after January 1, 1987, for compensation and benefits under this section, pay the compensation and benefits directly to the employee or the employee's dependents. If such an employer chooses to pay compensation and benefits directly, the employer shall receive no money or credit from the surplus fund for the payment under this section, nor shall the employer be required to pay any amounts into the surplus fund that otherwise would be assessed for handicapped reimbursements for claims made after January 1, 1987. Where a self-insuring employer elects to pay for compensation and benefits pursuant to this section, the employer shall assume responsibility for compensation and benefits arising out of claims made prior to January 1, 1987, and shall not be required to pay any amounts into the surplus fund and may not receive any money or credit from that fund on account of this section. The election made under this division is irrevocable.

(H) An order issued by the administrator pursuant to this section is appealable under section 4123.511 [4123.51.1] of the Revised Code but is not appealable to court under section 4123.512 [4123.51.2] of the Revised Code.

History:

126 v 947 (Eff 9-27-55); 127 v 816 (Eff 9-4-57); 128 v 743 (Eff 11-2-59); 132 v H 331 (Eff 10-31-67); 133 v H 680 (Eff 11-25-69); 135 v H 1 (Eff 3-22-73) 136 v S 545 (Eff 1-17-77); 138 v H 138 (Eff 7-27-79); 138 v H 736 (Eff 10-16-80); 141 v S 307 (Eff 8-22-86); 143 v H 222 (Eff 11-3-89); 145 v H 107 (Eff 10-20-93); 147 v S 45*; 148 v H 180. Eff 8-6-99.

Section Notes:

FOOTNOTE

* The amendments made by SB 45 (147 v --) were rejected by the 11-4-97 referendum vote on Issue 2.

COURT OF COMMON PLEAS

FRANKLIN COUNTY, OHIO

FRISCH'S RESTAURANTS, INC., et al., Plaintiffs, vs. JAMES G. CONRAD, ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION, Defendant.	CASE NO. 04CVD01856

Deposition of: JIMMY S. FICKENS

Pursuant to: Notice

Date and Time: Monday, April 25, 2005
10:05 a.m.

Place: Ohio Bureau of
Workers' Compensation
30 West Spring Street
Columbus, Ohio 43215

Reporter: Amy B. Calhoun, RPR
Notary Public - State of Ohio

APPEARANCES OF COUNSEL:

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Also Present:

Daniel Caudill
Gregory Johnson

- - -

VICKY S. PICKENS
a witness herein, having been duly sworn, was examined and deposed as follows:

EXAMINATION

BY MR. CORKER:

Q. Ms. Pickens, my name is Bob Corker. I'm an attorney from Scheuer, Mackin & Breslin in Cincinnati, Ohio, and you probably know I represent a number of employers in a pending lawsuit against the Ohio Bureau of Workers' Compensation regarding their payment of retrospectively rated premiums and whether they were entitled to discount on those premiums. You're familiar with that lawsuit, I assume?

A. Yes.

Q. I'm going to be asking you a few questions today. You understand you're under oath, and therefore, have an obligation to tell the truth, no matter what the consequences of that truth may be; is that correct?

A. Yes.

Q. If at any time you don't understand one of my questions, please let me know and I will rephrase the question so that you do understand; is that fair enough?

A. Yes.

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Q. If you do answer a question, we are going to assume you understood the question; is that fair enough?

A. Yeah.

Q. I'm also going to ask that you provide answers in words and sentences, as opposed to expressions, so that our court reporter can accurately take down and otherwise understand your testimony; is that fair enough?

A. Yes.

Q. Would you state your full name for the record?

A. It's Vicky Sue Pickens.

Q. And what is your date of birth?

A. 7/10/60.

Q. What is your social security number?

A. 268-68-2283.

Q. Have you ever had your deposition taken before?

A. No.

Q. This is the first time?

A. Correct.

Q. Have you ever been charged with a crime?

A. No.

Q. Where did you graduate from high school?

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A. Briggs.
Q. Could you repeat that?
A. Briggs High School.
Q. Is that here in Columbus?
A. Columbus, Ohio.
Q. And what year did you graduate from Columbus Briggs High School?
A. 1978.
Q. Before we go any further, one other ground rule, so to speak, as we go through this, since you've not had your deposition taken before, is that it would be best if you let me complete a question before you answer it. And I'll let you complete your answer before I go on to the next question. Is that understood?
A. Yes, it is.
Q. After you graduated from Columbus Briggs High School in 1978, did you attend college?
A. No.
Q. Were you immediately employed after graduating from Columbus Briggs High School?
A. Yes.
Q. And where were you immediately employed?
A. Sears.
Q. In what capacity did you work for Sears?

A. I priced clothes.
Q. How long did you work at Sears?
A. Six months.
Q. And why did your employment with Sears end after six months?
A. I came to the State of Ohio.
Q. So you accepted employment with the State of Ohio approximately six months after graduation from high school?
A. Well, I -- I came to the State of Ohio through a temporary agency.
Q. What was that temporary agency?
A. I don't recall the name of it.
Q. Was it a local agency here in Columbus?
A. Uh-huh, uh-huh.
Q. And when you say you came to the State of Ohio, was that with a specific state agency?
A. Yes.
Q. And what agency was that?
A. Industrial Commission.
Q. Ms. Pickens, prior to your deposition today, did you review any documents?
A. Yeah. I looked over some documents.
Q. What document were those?
A. The retro rules.

Q. Are you referring to the administrative rules or regulations of the Ohio Bureau of Workers' Compensation as they relate to retrospectively related employers?
A. Yes.
Q. What other documents did you review?
A. The adjudication orders.
Q. What adjudication orders are you referring to?
A. The ones that were for Peck, Hannaford and Manpower of Dayton.
Q. Are those the only two adjudication orders that you reviewed prior to your deposition today?
A. Yes.
Q. Did you review any other documents?
A. No.
Q. Did you consult with anybody other than your attorney regarding your testimony today?
A. I don't understand your question.
Q. Okay. In preparation for your deposition today you indicated that you reviewed the Bureau's administrative regulations as they relate to retrospectively rated employers, correct?
A. Uh-huh.
Q. You also, in preparation for your testimony

today, reviewed adjudication orders involving Peck, Hannaford & Briggs and Manpower of Dayton.
As part of your preparation for your testimony today, did you consult with anybody other than your lawyer regarding what your testimony might be today or to otherwise prepare for your testimony today?
A. No.
Q. Now, in your earlier testimony you indicated that you left Sears approximately six months after you were employed by Sears to accept a position with the Industrial Commission of Ohio; is that correct?
A. Yes. I -- can I give you the start date?
Q. You sure can.
A. It was December of '79.
Q. So you would have graduated Briggs High School in May or June of 1978 --
A. (Nodding head.)
Q. -- you worked six months for Sears --
A. (Nodding head.)
Q. -- between the May, June period of 1978 and December of 1979 when you accepted a position with the Industrial Commission?
A. (Nodding head.)
Q. That's about an 18-month period; is that correct?

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A. I don't know it would be 18 months, but --
Q. Between May of '78 and December of 1979 --
A. Uh-huh.
Q. -- you worked for Sears for approximately six months. What did you do the remaining time of that period?
A. I worked for the temporary agency.
Q. So did you have miscellaneous jobs, then, during the balance of that 18-month period?
A. I -- there was a period where I -- I -- I didn't work for the temporary agency, I didn't work for anybody. And then I went to the temporary agency to the Industrial Commission.
Q. Did the temporary agency place you at Sears?
A. No.
Q. What was your first position with the Industrial Commission in December of 1979?
A. I coded workers' comp claims.
Q. And what did that process involve?
A. That involved reviewing the claim, coding for demographics, analyzing the accident, coding for the accident and the injuries.
Q. And how long were you in that position?
A. For -- I was a clerical specialist when I got

hired on. I don't know how long I was that. And then I became a nosologist. It's knowledge of medical terms. Which is essentially the same job, in the same department.
Q. What department was that?
A. Research and statistics, division of safety and hygiene.
Q. How long did you remain an employee of the Industrial Commission in the research and statistics, division of safety and hygiene?
A. I believe that was until about -- I'm guessing here. It was about 1996 or so, I believe, when they abolished that department.
Q. So you had approximately 16 or 17 years of employment with the Industrial Commission in their research and statistics division?
A. Well, actually, at one point toward the end there the division of safety and hygiene moved from the Industrial Commission and it was put underneath BWC.
Q. And you were just transferred from technically an Industrial Commission employee to technically a Bureau employee, but otherwise performed the normal job duties?
A. That's correct.
Q. Reporting to the same people?

A. That's correct.
Q. Now, as you can imagine, that's a long time to be in one division. Why don't you summarize for me the various positions you held during the period you were in the research and statistics division.
A. I was clerical specialist, then I was nosologist, then I was a supervisor.
Q. Repeat for me what a nosologist is?
A. It's knowledge of medical terms.
Q. And is the term nosologist a uniquely Bureau term?
A. I believe that the health department might also utilize that term.
Q. And how do you spell that term?
A. N-o-s-o -- I believe it's n-o-s-o-l-o-g-i-s-t.
Q. So you essentially had three different positions during that 16 to 17-year period. A clerical position, where you entered statistical data for tracking purposes; is that correct?
A. Well, I actually analyzed it, the data.
Q. Drew conclusions from that data --
A. Uh-huh, correct.
Q. -- regarding trends of injuries and illnesses in the workplace?

A. Uh-huh.
Q. Is that an accurate description?
A. Yes.
Q. And then you moved on to become a nosologist?
A. Yes.
Q. And later in your term with the division of research and statistics became a supervisor; is that correct?
A. That's correct. And the department was called the department of research and statistics. It was the division of safety and hygiene.
Q. Describe for me what the scope of your job responsibilities were as a nosologist.
A. I coded -- I did the same thing. I analyzed claims for accident statistics; however, as a nosologist, I coded death claims and occupational disease claims.
Q. What does the process of coding injury or death and occupational disease claims involve?
A. You analyze the accident and you code for the accident; you're collecting statistics on the accident and then the injury or the disease for the occupational disease.
Q. And what variables were you looking for to

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1 track and otherwise code?
2 A. The plain demographics; the nature of the
3 injury, what caused the accident and what caused the
4 injury.
5 Q. And then did you have to extrapolate from
6 that certain trends and report your impressions of the
7 data to other people?
8 A. No. I would just code per claim, just do
9 analysis per claim.
10 Q. Do you know what that information was
11 ultimately used for?
12 A. Yes. For Ohio accident statistics --
13 injuries and statistics, and it was used by the federal
14 government as well.
15 Q. Does that completely describe your job
16 responsibilities as a nosologist?
17 A. Yes.
18 Q. When were you promoted to be a supervisor?
19 A. I think it -- I think it was around '87.
20 Q. That would be a fair approximation?
21 A. I believe so.
22 Q. How did your job responsibilities change when
23 you became a supervisor in the department of research
24 and statistics?
25 A. I was in charge of personnel decisions.

1 ensuring the quality of the coding of my staff.
2 training for new personnel.
3 Q. Tell me what type of personnel decisions you
4 had to make?
5 A. Hiring, firing, approving leave,
6 disciplining, training.
7 Q. And those job responsibilities continued even
8 after the division of safety and hygiene was
9 transferred from the jurisdiction of the Industrial
10 Commission over to the Bureau of Workers'
11 Compensation?
12 A. Yes.
13 Q. The training that you were provided was to
14 ensure that your employees were able to do the clerical
15 positions required of the coding process; is that
16 correct?
17 A. The -- that's correct.
18 Q. Was there any other training involved?
19 A. To ensure the quality of the actual
20 analysis.
21 Q. Now, you indicated your employment with the
22 division of safety and hygiene ended in 1996; is that
23 correct?
24 A. Uh-huh.
25 Q. What position did you accept at that time?

1 A. The position I'm in now.
2 Q. And what position is that?
3 A. A workers' comp underwriting supervisor.
4 Q. Did any of your experience with the
5 department of research and statistics in the division
6 of safety and hygiene prepare you to accept a different
7 position as the workers' comp underwriting
8 supervisor?
9 A. Yes.
10 Q. And what experience was that?
11 A. The supervisory experience.
12 Q. Describe for me the scope of the
13 responsibilities you assumed in 1996 when you were
14 first employed as an underwriting supervisor?
15 A. I had underwriters report to me. We were --
16 at that particular moment it was partial transfers.
17 Q. Did you know anything about underwriting
18 before you assumed the responsibility in 1996 as an
19 underwriting supervisor?
20 A. Yes.
21 Q. What did you know?
22 A. Employer -- let me see. Employers'
23 experience.
24 Q. What did you know about an employer's
25 experience?

1 A. How claims and payroll are used to calculate
2 an experience, the importance of risk management and
3 claims management for an employer, the merging of
4 policies, either full or partial.
5 Q. Does that complete what you knew when you
6 first accepted that position in 1996 as it relates to
7 underwriting activities?
8 A. What I can remember at this time that --
9 Q. How do claims and payroll impact a state fund
10 employers' risk experience?
11 A. If you have -- if you're a smaller employer
12 and you have less than $8,000 in expected losses, you
13 will be base rated. If you're talking about employers
14 that are experience rated, if they have a higher claim
15 loss and not enough payroll, they will be penalty
16 rated. If they have more payroll basically than
17 claims, then they're going to be credit rated.
18 There's an expected loss factor, of course,
19 that goes into each manual.
20 Q. How did you acquire this knowledge prior to
21 accepting employment in 1996 as an underwriting
22 supervisor?
23 A. From working at BWC.
24 Q. Your knowledge about how claims and payroll
25 impact a state fund employer's risk experience, was

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1 that relevant to performing your job in the department
2 of research and statistics?
3 A. I think the more you know about how BWC
4 works, all the inner workings, is relevant to
5 everybody's job.
6 Q. Okay. How did you acquire your knowledge
7 specifically about --
8 A. On-the-job training.
9 Q. So you received on-the-job training while you
10 were in the division of safety and hygiene, and part of
11 that on-the-job training involved employers' risk
12 experience and the variables that impact the premiums
13 an employer pays; is that correct?
14 A. Uh-huh.
15 Q. And part of that on-the-job training also
16 involved risk management and claims management
17 issues?
18 A. Yes.
19 Q. Did that same on-the-job training prepare you
20 for understanding the methodology for the merging of
21 policies, either on a full or partial basis?
22 A. Yes.
23 Q. Does that complete the on-the-job training
24 subjects you received that prepared you to accept the
25 position as an underwriting supervisor?

1 A. I would say so.
2 Q. Are you currently an underwriting
3 supervisor?
4 A. Yes.
5 Q. Have you received any promotions or job
6 reassignments between 1996 and the present?
7 A. I did not get the underwriting supervisor job
8 in 1996.
9 Q. What job did you get?
10 A. Well, I was laid off because of safety and
11 hygiene, and so then I filed an action with the
12 personnel board of review. And that's how I have the
13 underwriting job.
14 Q. Okay. So are you telling me that when the
15 division of safety and hygiene was transferred from the
16 Industrial Commission's jurisdiction to the Bureau of
17 Workers' Compensation's jurisdiction you were laid
18 off?
19 A. No. I'm not saying that.
20 Q. Okay. When were you laid off?
21 A. I was laid off in June of 1996, I believe.
22 Q. Was this before the division of safety and
23 hygiene changed jurisdictions from --
24 A. No.
25 Q. -- the Commission or after?

1 A. After.
2 Q. So you were technically an employee of the
3 Bureau --
4 A. Uh-huh.
5 Q. -- when you were laid off in June of 1996; is
6 that correct?
7 A. Yes.
8 Q. Were you told why you were laid off?
9 A. Yes.
10 Q. And what were you told?
11 A. They abolished the department.
12 Q. And who told you that?
13 A. The letter I got in the mail.
14 Q. And who signed the letter?
15 A. I don't -- honestly, I don't recall.
16 Q. And so you then filed a charge against the
17 Bureau for unlawfully terminating your employment; is
18 that correct?
19 A. Correct, uh-huh.
20 Q. Was that charge ever the subject of a
21 lawsuit?
22 A. It was resolved at the personnel board of
23 review, and I was reinstated.
24 Q. And you were reinstated in what position?
25 A. A workers' comp underwriting supervisor.

1 Q. And when did that reinstatement occur?
2 A. I believe that occurred in May of '97.
3 Q. Were you unemployed from June of 1996 to May
4 of 1997?
5 A. No. I was unemployed until January of '97.
6 Q. Where were you employed from January of '97
7 to May of '97?
8 A. OBES.
9 Q. Now, take me from May of 1997 to the present
10 and list for me in chronological order the position
11 you've held with the Bureau of Workers' Compensation.
12 A. Can you repeat that, please?
13 Q. Take me from May of 1997, when you were
14 reinstated, to the present and list for me in
15 chronological order the position you've held with the
16 Bureau of Workers' Compensation?
17 A. Workers' comp underwriting supervisor.
18 Q. Have you had any reassignments during that
19 time?
20 A. No.
21 Q. Have you had any promotions during that
22 time?
23 A. No.
24 Q. Has the scope of your job responsibilities
25 changed at any time from May of 1997 to the present?

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A. I have more programs that I'm responsible for.
Q. What programs are you currently responsible for?
A. Group rating, retrospective rating, PDP plus.
Q. Could you --
A. You want me to say premium discount program plus, drug-free workplace and one claim program.
Q. At any time during your employment with the Bureau since May of '97, when you became an underwriting supervisor, have you had responsibility for any other Bureau programs?
A. No.
Q. How long have you had group rating responsibility as a supervisor?
A. Since '97, May of '97.
Q. How long have you had responsibility as a supervisor for retrospective rating programs?
A. May of '97.
Q. How long have you had supervisory responsibility for the premium discount program?
A. I think -- I think it was December of 2003.
Q. And how long have you had supervisory responsibility for the Bureau's drug-free workplace

program?
A. December of 2003.
Q. And how long have you had supervisory responsibilities for the Bureau's one claim program?
A. That's just brand new this year. So maybe about three -- three or four months.
Q. What is the Bureau's one claim program?
A. It is a program for employers that were currently in group that are going to not be renewed for the upcoming rating year because of one significant claim. The employers can voluntarily join the program.
Q. And describe for me the terms of that program?
A. I don't know what you mean by terms.
Q. What is the purpose of the one claim program?
A. The purpose of the one claim program is to lessen the financial impact of an employer being removed from group and going back to their own individual rate. They received a 40 percent discount by participating in the program.
Q. And what does an employer need to do to fully participate in that program, and thereby, qualify for a 40 percent discount in their premiums?

A. They had to have been in group the most recent year; they can only have one significant claim, lost time or medical, that's over the TLL; they can have no more than three additional medical claims -- two medical claims, if your -- if your significant claim is a medical; they must attend the workers' comp university and one other approved BWC class; they can't have lapses greater than 59 days 18 months prior to the application deadline and must be current on their premiums and in an active status -- coverage status.
Q. How does a state fund employer qualify as having an active coverage status?
A. Their account has to be active, which meant they paid their premium, or reinstated status, which means they at one time were lapsed but now have paid and they are now covered.
Q. So any state fund employer who pays their premium is recognized as having an active coverage status; is that correct?
A. If they paid their premium.
Q. They lose their active coverage status by not paying their premium in a timely way; is that correct?
A. Correct.
Q. And they lose that active coverage status

during the period of their default or the lapse in their timely payment; is that correct?
A. I'm not sure what you mean.
Q. If you have a state fund employer who has timely paid their premium, the Bureau views all of those employers as having active coverage status, correct?
A. Yes.
Q. Is there just one way to lose your active coverage status, and that would be by the nonpayment of a premium that's due by a date certain?
A. I'm not -- I'm not sure what you're saying there.
Q. Okay. You mentioned earlier that if a state fund employer does not pay their premium timely, they go into a lapsed coverage status --
A. Yes.
Q. -- is that correct?
A. Yes.
Q. And that lapsed coverage status remains in effect until the employer pays the premium that was due when the Bureau put them into lapsed coverage; is that correct?
A. Yes.
Q. So once they make up the premiums that they

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1 owed the Bureau, they're reinstated into an active
2 coverage status?
3 A. Yes.
4 Q. And that is true of all state fund employers
5 who owe the Bureau premiums?
6 A. Yes.
7 Q. You referenced TLLs. On a going forward
8 basis, during the course of this deposition it might be
9 best if we minimize the unique lingo of the Bureau of
10 Workers' Compensation and refer to things as best you
11 can in lay terms that might be understood by people who
12 are not as familiar with all the abbreviations and
13 lingo that's common within the Bureau. Is that fair
14 enough?
15 A. Yes.
16 Q. TLLs are total limited losses, aren't they?
17 A. Yes, they are.
18 Q. Ms. Pickens, during the course of your
19 testimony thus far you have referred to base rate, the
20 state fund employers who have less than $8,000 in
21 expected losses, and that is one form of -- or one
22 category of a state fund employer; isn't that correct?
23 A. Yes.
24 Q. You've also referenced experience rated
25 employers, and that would be a second category of state

1 fund employers; is that correct?
2 A. Yes.
3 Q. You've mentioned group rated employers, and
4 that would be a third category of state fund employers;
5 is that correct?
6 A. It's not the same.
7 Q. What's not the same?
8 A. I mean, that's an alternative rating program.
9 The other two aren't. Something that the employer
10 could elect.
11 Q. I understand that. But my question simply
12 goes to the various categories of employers that the
13 Bureau recognizes as being state fund employers. All
14 base rated employers are viewed as state fund
15 employers, correct?
16 A. Yes.
17 Q. But base rated employers are in a different
18 premium program than experience rated employers; is
19 that correct, and let me --
20 A. I don't feel comfortable associating the word
21 program with that.
22 Q. Okay. The methodology for calculating an
23 experience rated state fund employer is different than
24 the methodology for calculating the premium of a base
25 rated employer; isn't that correct?

1 A. Yes.
2 Q. But both the experience rated employer and
3 the base rated employer are state fund employers
4 because they pay premiums, however calculated by the
5 Bureau?
6 A. Yes.
7 Q. A third category of employers that are
8 recognized as state fund employers are group rated
9 employers, is that correct, because their premiums are
10 determined in a different methodology than either base
11 rated or experience rated employers?
12 A. I -- I can't answer that, I mean, because
13 it's two different things.
14 Q. Explain for me what the two different things
15 are.
16 A. An experience rated and a base rated employer
17 is determined by the calculation. It's not an elective
18 program that the employers can get into. Group rating
19 is an alternative rating plan, so you can be base rated
20 and experience rated, but then you join a group. So I
21 can't say they're the same.
22 Q. I'm not asking you whether or not they're the
23 same. I'm asking you whether the Bureau treats group
24 rated employers as a category of state fund employers
25 distinct from experience rated employers or base rated

1 employers?
2 A. We look at them as a participant in an
3 alternative rating plan, group rated.
4 Q. Under the state insurance fund?
5 A. Yes, that's correct.
6 Q. They remain a state fund employer, they're
7 simply participating in an alternative premium rating
8 program?
9 A. That's correct.
10 Q. The fourth type of state fund premium program
11 you mentioned was the retrospectively rated state fund
12 premium program; is that correct?
13 A. That's an alternative rating program they can
14 join.
15 Q. Who can join?
16 A. Base rated or experience rated -- well,
17 experience rated employers.
18 Q. Are there any other state fund premium rating
19 programs an employer can join, other than being base
20 rated or experience rated or group rated or
21 retrospectively rated?
22 MS. HASTINGS: Objection. Go ahead.
23 A. Again, you can't join base rating or
24 experience rating. That's not -- you don't have an
25 option.

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1 BY MR. CORKER:
2 Q. Okay. But you do have the option of applying
3 for group rating?
4 A. Yes.
5 Q. And group rating is a state fund premium
6 program where the Bureau accepts applications, and some
7 state fund employers are accepted into group rating and
8 others are not; is that correct.
9 A. Yes.
10 Q. Is that a fair way to characterize it?
11 A. Yes, yes.
12 Q. So is there an application process?
13 A. Uh-huh.
14 Q. And the Bureau reviews each application and
15 determines whether or not the individual employer is
16 going to be accepted or rejected from group rating?
17 A. Yes.
18 Q. Employers also have the option to make
19 application for the retrospective rated premium
20 program; is that correct?
21 A. Yes.
22 Q. And only state fund employers are eligible to
23 make that application; is that correct?
24 A. Yes.
25 Q. And again, the Bureau can either accept that

1 application or reject that application; is that
2 correct?
3 A. Yes.
4 Q. Are there any other alternative premium
5 programs that state fund employers can apply for?
6 A. Yes.
7 Q. What are they?
8 A. The premium discount plus program, the
9 drug-free workplace/drug-free easy program, and the one
10 claim program.
11 Q. Could you repeat those for me?
12 A. Sure. The premium discount plus program, the
13 drug-free/drug-free easy program and the one claim
14 program.
15 Q. Can a base rated employer apply for group
16 rating?
17 A. Yes.
18 Q. Simply because they're base rated, they would
19 not be rejected from group rating program; is that
20 correct?
21 A. That's correct.
22 Q. Can a base rated employer apply for
23 retrospectively rated premium coverage?
24 A. They can apply.
25 Q. Will they be necessarily rejected because

1 they're a base rated employer?
2 A. No.
3 Q. So the mere fact that they're a base rated
4 employer doesn't automatically disqualify them from
5 either a group rated state fund premium program or a
6 retrospectively rated state fund premium program?
7 A. Yes, that's correct.
8 Q. And the same would be true of an experienced
9 rated employer, the fact that they're experience rated
10 would not automatically disqualify them under the
11 Bureau's guidelines for acceptance into an either group
12 rated state fund premium program or retrospectively
13 rated state fund premium program?
14 A. That's correct.
15 Q. What is the premium discount plus program?
16 A. That is for employers whose experience
17 modifier is higher than .90.
18 Q. Stated otherwise, they're in a penalty rated
19 premium situation with the bureau at a 90 percent
20 penalty or higher; is that correct?
21 A. No.
22 Q. All right. What is an experience modifier
23 higher than .90?
24 A. .90 is a credit of 10 percent.
25 Q. So let me see if I can state this in a

1 different way that I might understand.
2 A. Okay.
3 Q. If a state fund employer who is paying
4 premiums to the state insurance fund has a credit
5 rating of 10 percent or less, which means they are
6 paying 10 percent or less below base manual rates, then
7 they qualify for the premium discount plus program; is
8 that correct?
9 A. Can you say that again, please?
10 Q. You mentioned earlier that a person with an
11 experience modifier higher than .90 can qualify for the
12 premium plus discount program. You also mentioned that
13 a person with -- I'm sorry -- a state fund employer
14 with an experience modifier higher than .90 would have
15 a premium credit of 10 percent or less; is that
16 correct?
17 A. I hate to make you say that again. I just
18 want to make sure that I'm understanding it as you mean
19 it.
20 Q. Let me start over. What does it mean to have
21 an experience modifier higher than .90?
22 A. If it's higher than .90, then you're less --
23 if it's above .90, you're EM, then you're getting
24 closer to base rate and it will eventually become
25 penalty rated.

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Q. So if an individual employer -- again, I'm just referring to a state fund employer -- and you know what I mean by a state fund employer versus a self-insured employer, correct?
A. Yes.
Q. -- has an experience modifier of .92, they are closer to paying base manual rates for their premiums than the state fund employer who has an experience modifier of .90?
A. That's correct.
Q. And if we flip this around, the state fund employer with an experience modifier of .90 would be paying 10 percent less than base manual rates?
A. Yes.
Q. And a state fund employer with an experience modifier of .92 would be paying 8 percent less than base manual rates?
A. Yes.
Q. And every occupation has a base manual rate, doesn't it?
A. Yes.
Q. And premiums are determined by applying payroll to the manual rate in effect for a particular employer per hundred dollars of payroll; is that correct?

A. Yes.
Q. If a state fund employer has five different job classifications recognized by the Bureau as a distinct manual classification, they would report their payroll under those five different manual classifications, wouldn't they?
A. Yes.
Q. And each of those manual classifications has a base rate per one hundred dollars of payroll for purposes of generating the workers' comp premium that state fund employer owes the Bureau of Workers' Compensation, correct?
A. Yes.
Q. And as claims occur and as payroll fluctuates, the experience rated employer may see their experience modifier change from time to time, won't they?
A. Yes.
Q. And so as that experience modifier is moving closer to 1.0, the state fund employer is working or moving closer to paying base manual rates?
A. Yes.
Q. Is there an experience modifier higher than 1.0?
A. Yes.

Q. What's the maximum experience modifier?
A. There isn't one.
Q. So in going through the normal calculations of examining the employer's injury and illness history and their payroll, a state fund employer could have an experience modifier of 3.5?
A. Yes.
Q. Which would lead to paying actual rates per manual classification 3.5 times higher than the Bureau's base manual rates for that state funded employer's manual classifications?
A. Say that part again.
Q. If a state fund employer had an experience modifier of 3.5 --
A. Uh-huh.
Q. -- that would result in the employer paying on a per manual classification basis 3.5 times the base manual rate for their individual manual classifications?
A. No.
Q. Why is that?
A. It would be 3 -- well, it would be more than 3.whatever -- 3.whatever you said, because -- I mean, that's -- that would be 300 times more.
Q. Oh, I see. That helps clarify things for me.

At 3.5 they would be paying 350 times base manual rates; is that correct?
A. Yeah.
Q. What is the purpose of the premium discount plus program?
A. The purpose for the program is for BWC to work with employers to create a safer work environment to improve risk management and claims management.
Q. What does an employer have to do to qualify for the premium discount plus program?
A. Their EM has to be .90 or higher, they can't have lapses greater than 59 days 18 months prior to the application -- or the beginning of the policy year, they have to be in a current status, they have to pay -- have paid BWC any monies owed within 45 days -- I mean, they can't be more than 45 days past due, and they have to implement the 10-step business plan.
Q. So the qualifications for the premium discount plus program closely parallel the qualifications for the one claim program?
A. Yes.
Q. And both programs are designed to assist employers who are experiencing an increase in their premiums implement safer claims management practices?
A. Yes.

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1 Q. And as an incentive for the employer to
2 engage in those safe claims management practices, the
3 Bureau of Workers' Compensation gives them premium
4 relief?
5 A. Yes.
6 Q. What is the amount of the premium relief an
7 employer can qualify for under the premium discount
8 plus program?
9 A. For the first two years they can receive 10
10 percent reduction off of their premium. The third year
11 is 5 percent.
12 Then we also have -- if you're out of the
13 program for two years you can get back into the program
14 for an additional two years. The first year is 10
15 percent of the extension and the second is 5 percent.
16 They also are able to earn a severity and
17 frequency bonus if they reduce their claims frequency
18 and severity by 15 percent.
19 Q. Can a retrospectively rated state fund
20 employer qualify for the one claim program?
21 A. Qualify when? I mean -- you mean they're
22 currently retrospectively rated? I mean, are they
23 currently a retrospectively rated employer?
24 Q. Yes.
25 A. No.

1 Q. That's because only employers who were in
2 group rating and got rejected by group rating on their
3 renewal application because of one significant claim
4 can qualify for the one claim program?
5 A. That's correct.
6 Q. Can a retrospectively rated state fund
7 employer qualify for the premium discount plus
8 program?
9 A. No.
10 Q. And that's because retrospectively rated
11 employers are -- you fill in the blank. Why don't they
12 qualify for the premium discount plus program.
13 A. Because they're currently in retrospective
14 rating, that was the scenario, correct?
15 Q. Yes.
16 A. Yes. The rules prevent that.
17 Q. Can you explain what the rationale is behind
18 eliminating retrospectively rated state fund employers
19 from the premium discount plus program?
20 A. I -- that's the way the rules were written.
21 Q. So you know what the rule is, but you don't
22 know what the rationale is behind the rule?
23 A. No, no.
24 Q. And the rule you're referring to is a Bureau
25 of Workers' Compensation administrative regulation?

1 A. Yes.
2 Q. And those administrative regulations are
3 written by the Bureau; is that correct?
4 A. Yes.
5 Q. And then approved by whom before they go into
6 effect?
7 A. I would say the administrator and the
8 executive staff and, of course, the law department.
9 Q. Now, Ms. Pickens, in the performance of your
10 job as an underwriting supervisor you understand the
11 role of the Bureau administrative regulations in
12 defining the rights and responsibilities of state fund
13 employers together with the rights and responsibilities
14 of the Bureau; is that correct?
15 A. Yes.
16 Q. Explain for me your understanding of the role
17 of those administrative regulations, again, in the
18 context of employer rights and responsibilities and
19 Bureau rights and responsibilities.
20 A. The -- can you repeat the question?
21 Q. You testified earlier that the Bureau's
22 administrative regulations play a role in defining an
23 employer's rights and responsibilities in their
24 workers' compensation program and in their relationship
25 with the Bureau of Workers' Compensation; is that

1 correct?
2 A. Yes.
3 Q. Those same administrative regulations that
4 the Bureau writes and approves, implement into law; is
5 that correct --
6 A. Uh-huh.
7 Q. -- also define the Bureau's rights and
8 responsibilities in its relationship with state fund
9 employers; is that correct?
10 A. Yes.
11 Q. Now what I want you to do is tell me your
12 understanding of the role those regulations play?
13 A. Are you speaking to just the rules relating
14 to alternative rating plans or do you mean the entire
15 workers' comp rules or --
16 Q. In the broadest general sense.
17 A. I would say that the rules are written so
18 that employers know what their obligations are, and BWC
19 for their particular point is so that we're collecting
20 enough premium to pay for the claim losses.
21 Q. Okay. Would you agree that to the extent
22 those administrative regulations apply to a particular
23 situation you might face, that the Bureau has an
24 obligation to follow those administrative
25 regulations?

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A. Yes.
Q. Just as an employer cannot expect more from the Bureau than an applicable administrative regulation might provide?
A. Yes.
Q. Because the Bureau is essentially a creature of the law, isn't it?
A. Yes.
Q. And so the law controls the Bureau's options, whether they appear in a state statute or an administrative regulation, just in the same way employers' rights and responsibilities are controlled by the law, whether it appear in a state statute or an administrative regulation; is that your understanding?
A. Uh-huh.
Q. Was that a yes?
A. Yes, it was.
Q. What is the drug-free easy program?
A. The drug-free easy program is for employers that have 25 or fewer employees, and it's to implement a drug-free workplace program, environment.
Q. Does the Bureau have a drug-free workplace program for employers with more than 25 employees?
A. Yes. That's called the drug-free workplace

program.
Q. So that's yet another premium program we haven't yet discussed today; is that correct?
A. Yes.
Q. And that's the drug-free workplace program?
A. Yes. The drug-free workplace program and the drug-free easy program are basically under the same umbrella. It's just one is for 25 or fewer employees, the drug-free easy.
Q. Is a group rated employer eligible for a drug-free workplace program, whether it be under the umbrella of the drug-free easy program or the broader umbrella of the drug-free workplace program?
A. Yes.
Q. Is a retrospectively rated premium paying state fund employer eligible for those same drug-free workplace programs?
A. Yes.
Q. Describe for me what the qualifications are for the drug-free workplace program.
A. You mean for an employer to apply?
Q. Correct.
A. They have to be in an active status, they cannot owe BWC any premiums more than 45 days past due, they can't have lapses greater than 59 days.

Q. Any other qualifications?
A. No, not --
Q. They have to make a commitment to do certain things in order to implement a drug-free workplace, don't they?
A. Yes. Yes, they do.
Q. And what do they have to agree to do in that regard?
A. There's three different levels they can participate in. But in essence, they have to have prehire drug testing, they must educate their employees, they have to have a drug-free workplace policy, they have to have -- provide training -- supervisor training. And if they want a higher discount, then they can have, I believe, it's 15 percent random testing for level II and I believe it's 20 percent for level III.
And they must implement a portion of the 10-step business plan for level II. For level III, they have to implement all 10 steps.
Q. And all of those qualifications are set forth in the administrative regulations of the Bureau of Workers' Compensation involving drug-free workplace program?
A. Yes.

Q. The same is true of the one claim program, all of the qualifications and all of the benefits have been reduced to administrative regulations?
A. Yes.
Q. And the same is true of the drug-free easy program, correct?
A. Yes.
Q. Is the same also true of the premium discount plus program?
A. Yes.
Q. Is the same also true for the retrospectively rated state fund premium program?
A. Yes.
Q. Is the same also true of group rating?
A. Yes.
Q. In each of those instances, the qualifications to participate in those programs -- the employer's rights and responsibilities under the program and the Bureau's obligations under those programs, are set forth in the administrative regulations?
A. Yes.
Q. Is that also true of base rated and experience rated employers?
A. Yes.

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Q. Are you on any committees of the Bureau?
A. No.
Q. Do your job responsibilities since May of '97 include anything other than supervising the group rating program, the retrospectively rated program, the premium discount program. the drug-free workplace program and the one claim program?
A. Those are my job duties.
Q. Okay. But you also participate in the adjudicating committee processes, don't you?
A. I represent BWC.
Q. Before the adjudicating committee?
A. Correct.
Q. What is your understanding of the function of the adjudicating committee?
A. My understanding is that they review our -- our decision and determine if we are compliant with the rule.
Q. With whatever administrative regulation might apply to the issue that's before the committee?
A. Correct.
Q. And so an employer comes in and states its position because they're obviously not happy with the decision that somebody under your supervision or maybe even you made as it pertains to the employer's state

fund relationship with the Bureau: is that correct?
A. That's correct.
Q. And you attend those adjudicating committee hearings to state the policy or position of the Bureau in defense of whatever position you've taken?
A. That's correct.
Q. And then the adjudicating committee resolves who's right?
A. They make a ruling.
Q. They make a ruling. And that ruling is typically either you're right or the employer is right?
A. Correct.
Q. How long have you been representing the Bureau at adjudicating committee hearings?
A. I would say since '97.
Q. So if a dispute between a particular employer and the Bureau arose out of, say, an employer's exclusion from group rating, you would represent the Bureau in that adjudicating committee hearing against the employer: is that correct?
A. Yes. Either me or my -- one of my underwriters.
Q. So somebody who reports directly to you?
A. Correct.

Q. Is it fair to say you're the top dog on group rating issues here at the Bureau?
A. No.
Q. Who's the top dog?
A. I would say the executive staff.
Q. Who's the executive staff?
A. That would consist of John Romig --
Q. Anybody else?
A. He -- well, I don't know if you'd say John Romig now, because Jeff Redmond is now in his place. So --
Q. But for purposes of the adjudicating committee, Mr. Romig would never appear before the adjudicating committee to defend the position of the Bureau, would he?
A. I can't say never.
Q. Has he ever?
A. No.
Q. Indeed, he's often the administrator's designee for hearing appeals of adjudicating committee decisions, isn't he?
A. Yes.
Q. So it would be inappropriate for him to represent the Bureau and defend a particular position that you or one of your subordinates have taken on a

group rating matter and hear the appeal before the adjudicating committee?
A. Yeah. I don't think he would ever represent us at adjudicating committee and then go in front of the designee. I don't think that would ever happen.
Q. So since May of 1997, is it fair to say that in terms of resolving protests with employers over group rating decisions, you're the top dog in representing the Bureau before the adjudicating committee?
A. I can say the majority of the time.
Q. And when you don't appear before the adjudicating committee, somebody under your direct supervision and control does?
A. Yes.
Q. And when that happens, do you review with that subordinate what their position is going to be and how they would defend a decision that someone within your group rating responsibility made?
A. Yes.
Q. How about with respect to retrospectively rated employers, if a dispute arises between a decision made by the Bureau and that employer, you would typically appear before the adjudicating committee to defend the position of the Bureau, correct?

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A. Yes.
Q. And that's been true since May of '97?
A. Yes.
Q. And if you didn't appear, somebody who reports directly to you would appear?
A. Yes.
Q. After consulting with you on what the position of the Bureau should be?
A. Yes.
Q. Is that also true with respect to disputes that arise with employers under the premium discount program, the drug-free workplace program or the one claim program?
A. It's true for the premium discount program and the one claim program, but I do not represent -- I haven't represented anybody for drug-free.
Q. Is that because disputes have not arisen?
A. We -- we received a few, but there hasn't been a hearing during this time.
Q. Okay. If a hearing did occur under the drug-free workplace program before the adjudicating committee, it would be your responsibility to appear before the adjudicating committee to defend the Bureau's position or assign one of your subordinates to do that, correct?

A. Yes.
Q. Does anybody at the Bureau currently employed by the Bureau know more about the nuts and bolts and everyday operations of group rating than you?
A. No.
Q. Does anybody currently at the Bureau know more about the nuts and bolts and everyday operations of retrospective rating than you?
A. No.
Q. How about -- I'm going to try to condense this. I just have to have a clear record. Would you understand if I said I'm going to ask you the same question with regards to premium discount, drug-free workplace and one claim programs, in those areas does anybody here at the Bureau currently know anything more about the day-to-day operations or nuts and bolts of those programs than you?
A. No.
Q. Since May of 1997, I gather the names of people to whom you report have changed over time; is that correct?
A. Yes.
Q. Can you take me through, beginning in May of 1997, the people to whom you reported?
A. Al Monahan, Lauree Raica, Todd Spence.

Q. Is there anybody else?
A. (Shaking head.)
Q. Over what period of time did you report directly to Al Monahan?
A. From '97 until -- I'm trying to remember when he retired. I think it was 2003, about June of 2003.
Q. And is that when Mr. Monahan retired?
A. Yes.
Q. And when Al Monahan retired in June of 2003, Lauree Raica replaced him as the person to whom you immediately reported?
A. Yes.
Q. How do you spell Lauree's last name?
A. R-a-i-c-a. And her first name is spelled L-a-u-r-e-e.
Q. How long did you report directly to Lauree Raica?
A. From June until -- I believe it was about November of '03.
Q. Do you know why you no longer reported to Lauree Raica after November of '03?
A. Yeah. Basically she's the chief of the division until they put somebody in for Al's place. That's when Todd came in.
Q. So you currently report directly to Todd

Spence?
A. That's correct.
Q. And have been reporting directly to him since November of '03?
A. Yes. I think that's right.
Q. When you reported directly to Al Monahan, do you know who Mr. Monahan's direct supervisor was?
A. Yes.
Q. Who was that?
A. It was Marty Herf for the majority of the time.
Q. Who, other than Marty?
A. John Romig.
Q. And Al Monahan reported directly to John Romig after Marty Herf left the Bureau; is that correct?
A. I believe that was for a short time, but then he reported to Lauree Raica.
Q. You say he, are you referring to Marty Herf or John Romig?
A. No. I'm referring to Al Monahan.
Q. So when you first started reporting to Al in 1997, at that time Marty Herf was Al Monahan's direct supervisor?
A. Correct.

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Q. Marty Herf then left the Bureau?
A. Yes.
Q. And there was a temporary void there?
A. Yes.
Q. And that temporary void was filled by whom?
A. John Romig.
Q. Until Lauree Raica stepped in to fill that void?
A. Correct.
Q. Then Al Monahan left the Bureau in June of '03 because he retired?
A. Yes.
Q. So now we have yet another void of leadership, correct?
A. Yeah.
Q. And that's when Lauree Raica stepped in as the person to whom you directly report?
A. Correct.
Q. That was on a temporary basis?
A. Yes.
Q. Until Todd Spence was assigned to fill the void that Al Monahan's retirement created?
A. Yes.
Q. When you reported directly to Al Monahan, at the time Al Monahan reported directly to Marty Herf.

Who did Marty Herf report to?
A. At one point Sandy Blount. And then there was a reorganization, and then it was John Romig.
Q. And whether it was Sandy Blount or John Romig, the next step up in the food chain would have been James Conrad; is that correct?
A. Yes.
Q. So when you reported directly to Lauree Raica, Lauree Raica would have reported directly to either John Romig or Sandy Blount?
A. It was John Romig.
Q. And John Romig would have reported directly to James Conrad?
A. Yes.
Q. And now that you're reporting directly to Todd Spence, my guess is he reports directly to Lauree Raica?
A. Yes.
Q. And Lauree Raica reports directly to whom?
A. Today it's Jeff Redmond.
Q. How long has that been the case?
A. I believe it was effective on April 11th.
Q. Of this year?
A. Yes.
Q. But at all times prior to April 11th of this

year, Lauree Raica would have reported to John Romig?
A. Yes.
Q. And at all times John Romig has reported to Jim Conrad?
A. Yes.
Q. And now it's Jeff Redmond who reports to James Conrad?
A. No. He reports to Tina Kilmeyer (phonetic) now.
Q. So we've added a new player; is that correct?
A. Yes. That's correct.
MR. CORKER: Can we go off the record for a moment.
(Off the record.)
BY MR. CORKER:
Q. How do you spell Tina's last name?
THE WITNESS: Do you know, Greg? Are we on the record?
MR. CORKER: We are currently on the record.
MS. HASTINGS: If you don't know, say you don't know.
A. I don't know.
BY MR. CORKER:

Q. Can you tell me how long Todd Spence has been at the Ohio Bureau of Workers' Compensation?
A. I believe he's been here over ten years.
Q. Can you tell me how long Lauree Raica has been at the Ohio Bureau of Workers' Compensation?
A. I'm not positive, but I'd say at least four years.
Q. Can you tell me how long Jeff Redmond has been at the Bureau of Workers' Compensation?
A. I don't know.
Q. You don't know whether it's been one year or 20 years?
A. No. I'm sorry.
Q. Have you ever met Mr. Redmond?
A. I've met him. I've seen him on the elevator.
Q. How long has, if you know, Tina -- is it Kilmeyer?
A. Uh-huh.
Q. How long has she been at the Ohio Bureau of Workers' Compensation?
A. I don't know.
Q. Ms. Pickens, in your tenure with the Bureau of Workers' Compensation, have you had any direct involvement in the premium discount program that the

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1 Bureau has implemented in order to return excess
2 surplus within the state insurance fund to premium
3 paying state fund employers?
4 A. Say that again.
5 Q. In your tenure with the Bureau, have you had
6 any direct involvement in the Bureau's program of
7 giving premium paying state fund employers discounts on
8 their premiums in order to return an excess of surplus
9 in the state insurance fund to those premium paying
10 state fund employers?
11 A. What is your definition of direct?
12 Q. Have you ever been actively engaged to help
13 define how that program was going to operate, what the
14 terms and conditions of returning that excess surplus
15 would be?
16 A. For the premium discount?
17 Q. Let me make sure you and I are on the same
18 page here. I'm not referring to the drug-free
19 workplace program or any of those programs we've
20 previously discussed.
21 You understand there has been an excess of
22 surplus in the state insurance fund dating back, I
23 believe, to 1996, correct? You do understand?
24 A. Yes.
25 Q. And you also understand that the

1 administrator, Mr. Conrad, has made the decision to
2 return that excess surplus to Ohio's premium paying
3 state fund employers; is that correct?
4 A. That the administrator is -- yes.
5 Q. Okay. And you also understand that that has
6 been the discount program we're describing now, a
7 situation wholly distinct from your operation of any of
8 these other alternative rating programs, correct?
9 A. Yes.
10 Q. Have you directly been involved in the
11 formation or implementation of any of the Bureau's
12 practices or policies as they relate to the premium
13 discount program that was instituted to return this
14 excess surplus to Ohio's premium paying state fund
15 employers?
16 A. The implementation part.
17 Q. Okay. Describe for me when you first became
18 directly involved in the implementation part of this
19 premium discount program?
20 A. In our -- in our system, our computer system,
21 it notes who is in the premium discount program. And
22 whatever the dividend is for that year, it applies that
23 towards their premium.
24 Q. So your responsibility -- let me see if I can
25 restate what I think you just said, and you tell me if

1 I missed anything --
2 A. Okay.
3 Q. -- or just got it wrong.
4 A. Okay.
5 Q. Don't be too anxious to tell me I got it
6 wrong. Once the administrator declared what the
7 dividend percentage would be for a given policy year --
8 and it is the administrator who determines what the
9 dividend percentage is going to be, correct?
10 A. Yes.
11 Q. Okay. -- then it has been your job to
12 implement that dividend percentage in what capacity?
13 A. It's -- it's systematic. The system
14 recognizes what premium they paid. So if they're in
15 the premium discount program, then depending on what
16 year it is, then they pay their premium according to
17 that and then the dividend is reduced from that.
18 Q. So you play -- you have played no role in
19 providing information or opinions on what a particular
20 discount or dividend percentage should be; is that
21 correct?
22 A. That's correct. That's correct.
23 Q. You've played no role in deciding or
24 contributing information as to whether or not a
25 dividend should be declared for any given policy year;

1 is that correct?
2 A. That's correct.
3 Q. Has your job responsibility since May of '97
4 been limited to simply implementing the applicable
5 dividend percentage?
6 A. Yes.
7 Q. And the implementation role you've played has
8 been limited to ensuring that the computer system the
9 Bureau uses to generate premium bills to state fund
10 employers reflects the correct dividend percentage for
11 that year?
12 A. That's correct.
13 Q. Let's talk about terminology for a minute. A
14 risk in Bureau terms is the same thing as an employer,
15 isn't it?
16 A. Yes.
17 Q. And a state risk is the same thing as a state
18 fund risk, correct?
19 A. Yes.
20 Q. And a state fund risk is the same thing as a
21 state fund employer?
22 A. Yes.
23 Q. An SI employer is the same thing as a
24 self-insured employer, correct?
25 A. Yes.

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1 Q. Self-insured employers don't pay premiums, do
2 they?
3 A. No.
4 Q. State fund risks or state risks or state fund
5 employers do pay premiums, correct?
6 A. Yes.
7 Q. Are those the only two classifications of
8 employers that the Bureau recognizes, or are there
9 others?
10 A. Those are the two largest, but there's marine
11 funds.
12 Q. What other classifications of employers does
13 the Bureau recognize?
14 A. I believe there's the marine fund and black
15 lung.
16 Q. So there are certain employers who choose to
17 purchase their marine industrial workers' comp coverage
18 through the Ohio Bureau of Workers' Compensation?
19 A. Correct.
20 Q. Not anybody's -- not just anybody's
21 interested in marine industrial fund workers' comp
22 coverage, are they?
23 A. No.
24 Q. Only those employers who engage in marine
25 operations probably, correct?

1 A. Yes.
2 Q. And in that respect, the Bureau competes in a
3 commercial market, where employers can get their
4 coverage elsewhere, correct?
5 A. I don't know.
6 Q. Okay. And the black lung fund, there are
7 certain employers who pay premiums through the Ohio
8 Bureau of Workers' Compensation to ensure black lung
9 claims?
10 A. Yes.
11 Q. And only black lung claims?
12 A. Yes.
13 Q. Are you familiar with how the state insurance
14 fund as a whole is set up by the Bureau in this
15 respect? Are you familiar with different accountings
16 the Bureau maintains to distinguish between, for
17 example, charges to surplus for a self-insured employer
18 versus charges to surplus for a state fund employer?
19 A. Yes.
20 Q. You are familiar with that? Why don't you
21 describe for me how those accounts are set up.
22 A. Well, we call them buckets in our department.
23 Q. And before we go any further, a bucket simply
24 designates that there's a separate account a certain
25 charge to the state insurance fund has to be debited

1 to?
2 A. Yes. So for state fund employers, there are
3 certain charges that are -- basically you can charge to
4 the employer's experience. And then you have the
5 surplus fund, which are charges that are paid out for
6 claim costs, but they're not charged to the employer's
7 experience.
8 Q. So if a self-insured employer loses a
9 workers' compensation claim before the Industrial
10 Commission and then has to pay medical benefits and/or
11 compensation because the Industrial Commission has
12 determined that the employee sustained a compensable
13 injury, and then the employer appeals that to court and
14 they're successful in convincing the court that this
15 was not a compensable injury, that self-insured
16 employer is eligible for surplus reimbursement --
17 reimbursement for the surplus account of the state
18 insurance fund, correct?
19 A. I can't speak for self-insured. I can only
20 speak for state fund.
21 Q. Who could speak to the self-insured aspects
22 of that, would that be Dave Boyd?
23 A. Yes.
24 Q. Anybody at the Bureau more knowledgeable of
25 self-insured issues here than Dave Boyd?

1 A. I would say not.
2 Q. Let's take the state fund employer, with
3 which you are familiar.
4 A. Yes.
5 Q. Same scenario. They lose a claim and the
6 Bureau charges their risk experience for the expenses
7 that have been paid in that claim while it's on appeal
8 to court. As a result of charging those expenses to
9 the employer's risk experience, the employer's premiums
10 increase during the pendency of the appeal to court.
11 The employer wins the appeal in court. The
12 Bureau then credits the employer's risk experience for
13 the full amount of what it had been previously charged
14 to their risk experience as a result of that one claim,
15 correct?
16 A. Yes.
17 Q. And when that credit is given the employer,
18 the amount of the expenses the Bureau charged -- first
19 paid and then charged to the employer's risk experience
20 is charged to the surplus account?
21 A. Yes.
22 Q. And that is one the benefits of being a state
23 fund employer, that under the law, the Bureau is
24 providing state fund employers, correct? It is a
25 benefit to be fully made whole for an incorrect

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1 decision, correct?
2 A. Yeah.
3 Q. Let's talk about retrospective rating for a
4 moment. It's my understanding that an employer
5 interested in retrospective rating needs to make
6 application to the Bureau to be approved by the Bureau
7 as a retro rated employer on a
8 policy-year-by-policy-year basis; is that correct?
9 A. Yes.
10 Q. And the Bureau's policy year for all private
11 state fund employers runs from July 1st any given year
12 to June 30th of the following year?
13 A. Yes.
14 Q. And that's regardless of what premium program
15 you might be in? In other words, if you're base rated,
16 your policy year runs the same, July 1st to June 30th
17 year; is that correct?
18 A. Yes.
19 Q. If you're experience rated, the Bureau's
20 policy year is the same, July 1 to June 30th period?
21 A. Yes.
22 Q. If you're group rated, the policy year is
23 July 1 of one year to June 30th of the following
24 year?
25 A. Yes.

1 Q. And that is also true of retrospectively
2 rated employers?
3 A. Yes.
4 Q. Describe for me the application process.
5 A. An employer completes our retrospective
6 rating application and they submit five years of
7 audited financials. They send it to BWC. We review it
8 for financial stability and also to make sure that they
9 meet the other criteria of the retrospective rating
10 rules.
11 On the application, the employer will select
12 their maximum premium and the maximum claim level.
13 They will give us estimated payroll information, which
14 we will review and determine which hazard group they're
15 in and will then determine what the minimum premium
16 percent is that they're going to pay. And they take on
17 a ten-year liability.
18 Q. Is that a ten-year premium liability?
19 A. It's ten-year liability for the claim
20 costs.
21 Q. Okay. So the application process allows the
22 Bureau to assess the financial strength of the company,
23 correct?
24 A. Yes.
25 Q. And there are routine standards by which the

1 Bureau reviews the financial data of an employer
2 applying for retrospectively rated coverage, correct?
3 A. Yes.
4 Q. And if the Bureau makes a determination that
5 the employer has sufficient financial security or
6 strength to justify granting the application for
7 retrospectively rated coverage, then the application is
8 approved; is that correct?
9 A. Yes.
10 Q. Is there any negotiation in that process
11 between the employer and the Bureau?
12 A. No. No.
13 Q. You're either in or you're out?
14 A. Yes. Tier I or Tier II.
15 Q. What's the difference between Tier I and Tier
16 II?
17 A. Tier II -- an employer could choose to be in
18 Tier II. Tier II -- if you're in Tier II, it requires
19 the implementation of the 10-step business plan. But
20 if you're not as financially stable or you haven't been
21 a participant within the last three years, then you
22 might opt for Tier II, as opposed to Tier I. It's less
23 of a gamble.
24 And there are certain criteria -- financial
25 criteria that needs to be met in order to participate

1 in Tier I.
2 Q. The Bureau looks for even greater financial
3 strength to justify approving a Tier I retrospectively
4 rated application than a Tier II?
5 A. Yes.
6 Q. And the potential savings to the employer are
7 greater under a Tier I program than a Tier II?
8 A. Yes.
9 Q. And that's largely because under a Tier I you
10 can qualify for a larger discount on the semiannual
11 discount portion of the retrospective premium for a
12 given policy year?
13 A. Because you assume more liability. Yes.
14 Q. Okay. Let me clarify this for the record.
15 You do qualify for a greater discount in exchange for
16 assuming greater financial liability?
17 A. Yes.
18 Q. And that greater financial liability takes
19 the sole form of what the maximum chargeable per claim
20 cost is going to be?
21 A. Yes.
22 Q. So let me see if I can summarize this, and
23 you tell me what, if anything, I get wrong. An
24 employer's interested in becoming a retrospectively
25 rated state fund employer. They make application on an

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1 application prepared by the Ohio Bureau of Workers'
2 Compensation; is that correct?
3 A. Yes.
4 Q. And that application is the same for any
5 employer seeking to become a retrospectively rated
6 state fund employer?
7 A. Yes.
8 Q. The purpose of that application is largely,
9 if not entirely, to assess the financial stability of
10 the employer in terms of whether or not the Bureau's
11 going to accept that application or approve the
12 application?
13 A. Yes.
14 Q. Is there anything that application discloses,
15 other than financial data, that is relevant to the
16 Bureau's decision to approve or reject the
17 retrospectively rated state fund application?
18 A. At that time we review them for lapses and
19 active coverage and that type of criteria.
20 Q. So if they've incurred lapses, you might
21 reject the application?
22 A. That's correct.
23 Q. And the existence of lapses in coverage
24 occurs when an employer has failed to timely make their
25 premium payments?

1 A. Correct.
2 Q. And so if there have been lapses, that's an
3 indication of less than the financial strength you're
4 looking for to approve the application?
5 A. That's in accordance with the rules.
6 Q. Okay. So the application process and what is
7 asked of employers in the application process is
8 controlled by the administrative regulations the Bureau
9 drafts?
10 A. Yes.
11 Q. And the review process of that application
12 is, again, controlled by the Bureau's regulations?
13 A. Yes.
14 Q. An employer who wants to qualify for a Tier I
15 retrospectively rated program will have to demonstrate
16 higher financial strength?
17 A. Yes.
18 Q. And if they do qualify, they will receive a
19 larger discount on their semiannual retrospectively
20 rated premium, correct?
21 A. Can you repeat that?
22 Q. If the employer does qualify for a Tier I
23 retrospectively rated premium program --
24 A. Uh-huh.
25 Q. -- they will receive a larger discount on

1 their semiannual retrospectively rated premium than if
2 they were to qualify for a Tier II retrospectively
3 rated program?
4 A. It will be their payroll premium.
5 Q. That's -- the semiannual premium is the same
6 thing as the payroll premium?
7 A. Right.
8 Q. Okay. And under Tier I, they apply -- they
9 qualify for a larger discount on that payroll or
10 semiannual premium?
11 A. Yes.
12 Q. Under Tier II, again, the application
13 process, the approval process is also controlled by the
14 Bureau's administrative regulations?
15 A. Yes.
16 Q. There's really no subjective element to this,
17 is there?
18 A. No.
19 Q. And by that you know I mean, any subjective
20 element to the decision-making process of whether it's
21 approved or not approved, correct?
22 A. Yes. That's correct.
23 Q. Under Tier II, the employer may simply not
24 wish to take on as much risk as a Tier I program, they
25 would like lower per claim limits on what can be

1 charged to their retro experience, correct?
2 A. Yes.
3 Q. Or they may simply not qualify financially
4 under the Bureau's regulations for assuming the greater
5 risk and the greater rewards or potential rewards of a
6 Tier I program?
7 A. Yes.
8 Q. But again, the application and approval
9 process has no subjective discretion to it, it's just a
10 matter of applying the administrative regulations of
11 the Bureau?
12 A. Yes.
13 Q. And once a retrospectively rated employer is
14 approved by the Bureau of Workers' Compensation,
15 regardless of Tier I or Tier II -- and let's say they
16 first become, as an example, a retrospectively rated
17 employer effective July 1 of 2005, they would -- and
18 you tell me if I get this wrong -- they would report
19 their payroll for the period July 1 to December 31st of
20 2005 and pay their discounted payroll or semiannual
21 premium by February 28 of 2006?
22 A. Yes.
23 Q. And by virtue of making that payment by
24 February 28 of 2006, the law states that their coverage
25 is then in effect through August 31st of 2006?

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1 A. Are you --
2 Q. You report your payroll for the second half
3 of 2005 --
4 A. Uh-huh.
5 Q. -- which is the first six-month period of
6 your first retro policy. You pay a premium based upon
7 that payroll by February 28th of 2006, correct?
8 A. Yes. That part is correct.
9 Q. And the amount of the premium you pay on the
10 basis of that payroll for the second half of 2005 is
11 discounted by the fact you are in a retrospectively
12 rated program, correct?
13 A. That's what you're calling the minimum
14 premium percent?
15 Q. Yes.
16 A. Okay. Yes.
17 Q. Once the employer makes that timely payment
18 by February 28th of 2006, then they're entitled to
19 workers' comp coverage at least through August 31st of
20 2006, aren't they?
21 A. That's when -- that's when their next payment
22 is due.
23 Q. Correct.
24 A. That's correct.
25 Q. So between February -- let's say they pay on

1 the last day --
2 A. Uh-huh.
3 Q. -- which is February 28th, isn't it?
4 A. Yes, yes.
5 Q. By virtue of making that premium payment, by
6 applying the discounted retrospective minimum premium
7 percentage to their payroll for the second half of
8 2005 -- are we following each other?
9 A. Uh-huh.
10 Q. -- they get coverage, as a matter of law,
11 until the next time they have a premium payment due?
12 A. That's correct.
13 Q. And the next time they have a premium payment
14 due is August 31st of 2006?
15 A. Yes.
16 Q. And that premium would be based upon the same
17 discounted percentage as was applied to the payment
18 made in February, correct?
19 A. Yes.
20 Q. But only the second -- I'm sorry -- the first
21 half of 2006 payroll would be reported for purposes of
22 generating the premium paid August 31st --
23 A. Yes.
24 Q. -- 2006, correct?
25 A. Uh-huh.

1 Q. And now we've completed the first retro
2 policy year?
3 A. Yes.
4 Q. And by making that premium payment -- let's
5 say the employer waits until the last day, pays it on
6 August 31st. Their coverage is extended until February
7 28th of the following year, isn't it?
8 A. Yes.
9 Q. They can't be sued for any injuries that
10 occur between August 31st and February 28th of
11 following year, can they?
12 A. I don't --
13 Q. You don't know that?
14 A. I don't know.
15 Q. Okay. But that's not the only thing that the
16 Bureau's administrative regulations provide for because
17 the employer was in that retrospectively rated state
18 fund premium program for the 2005 policy year, is it?
19 They have other premium obligations, don't they?
20 A. You mean the ten-year liability?
21 Q. Well, why don't you answer my question first,
22 and then we'll get to the ten-year?
23 A. Okay.
24 Q. There's more to it than just paying a
25 discounted semiannual premium when you're in a retro

1 policy year?
2 A. Yes.
3 Q. There is more to it?
4 A. Yes.
5 Q. The next part would be that under the
6 Bureau's administrative regulations, they take on
7 responsibility for reimbursing the Bureau the actual
8 claims cost of any injuries or illnesses occurring
9 during the 2005 policy year, and they agree to do that
10 for the ensuing ten years, don't they?
11 A. Yes.
12 Q. That would be the second component of their
13 obligation to pay the Bureau, correct?
14 A. Yes.
15 Q. Just for that one policy year?
16 A. Yes.
17 Q. And then there's a third element of their
18 obligation to the Bureau, isn't there, financial
19 obligation, and that's the final adjustment premium
20 that the Bureau charges an employer at the end of the
21 ten-year period following the policy year for which
22 they were retrospectively rated?
23 A. Yeah. It's on the tenth year.
24 Q. And then they pay the Bureau what amounts to
25 a buyout; is that correct?

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A. They pay the reserves on the claim.
Q. Okay. The reserve is established at the sole discretion of the Bureau, isn't it?
A. Yes.
Q. And the purpose of the employer paying the reserve at the end of the ten-year period is to ensure that the Bureau collects sufficient funds from the employer to cover what the Bureau anticipates will be the future cost of the claims from that employer arising during the policy year that we're now ten years removed from, correct?
A. Can you say that again?
Q. We were talking about the final adjustment premium --
A. Uh-huh.
Q. -- correct?
A. Yes.
Q. You know what a final adjustment premium is, don't you?
A. Yes.
Q. The final adjustment premium is the final payment a retrospectively rated employer makes to the Bureau at the end of the ten-year evaluation period following a retrospective rated policy year?
A. Yes.

Q. And the purpose of the final adjustment premium is to collect from the employer what the Bureau determines to be the probable future cost of the claims that occurred during the now ten-year removed policy year, correct?
A. Yeah.
Q. And the Bureau determines what it's going to charge on a per claim basis, correct?
A. Yes.
Q. So at the end of the ten-year period after -- and -- let me just scratch that. We'll start over.
At the beginning of the retro policy year -- and we're talking about the 2005 policy year --
A. Uh-huh.
Q. -- the employer pays a semiannual premium based upon payroll in the normal fashion any other employer pays its semiannual premium based on payroll, correct?
A. Say that again.
Q. At the beginning of a retro policy year -- and for purposes of this example, we're talking about a 2005 policy year.
A. Uh-huh.
Q. -- the retrospectively rated employer has applied and been accepted in the 2005 retro policy

year, will report its payroll for the second half of 2005, pay a discounted premium consistent with Tier I or Tier II participation, receive coverage through August 31 of 2006 by making that payment, correct?
A. Yes.
Q. And then again will pay for that policy year, the second half -- forgive me -- the first half of 2006 payroll and pay premium by August 31st of 2006. The premium they pay in August of 2006 will be discounted consistent with their Tier I or Tier II participation, correct?
A. Yes.
Q. And by virtue of that payment alone, their coverage with the Bureau will be extended to February 28th of 2007, correct?
A. Yes. That's when next payment is due.
Q. And they have coverage until that next payment is due, correct?
A. Yeah. You pay in arrears.
Q. Okay. You pay on past payroll, but you get prospective coverage, don't you?
A. Yes.
Q. And that premium was discounted pursuant to the Bureau's own administrative regulations, because the employer has agreed to, one, a cap on how much the

Bureau will charge that employer, correct?
A. You mean the claim limit they picked?
Q. Correct.
A. Okay.
Q. And that claim limit can be anywhere from $100,000 to $500,000, am I wrong?
A. The claim limit can be unlimited.
Q. It can be unlimited?
A. Uh-huh.
Q. So there are options on what the per claim limits of what can be charged to the employers risk experience are?
A. Yes.
Q. You get the discounted premium -- the Bureau collects that discounted premium?
A. Correct.
Q. In February of '06 and August of '06?
A. Yep.
Q. We're still talking about the 2005 policy year.
A. Okay. You're still in retro?
Q. We're still talking about a retro employer, but the employer assumes the responsibility then for the next ten-year period of paying -- reimbursing, I should say, the Bureau, of all claims costs incurred by

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1 the Bureau in those claims that occurred during the
2 July 1, 2005 to June 30th, 2006 period?
3 A. Yes.
4 Q. And then after doing that for ten years, the
5 Bureau then determines what the future -- into, what,
6 2016 and beyond, the cost of those same claims
7 occurring during the same policy year might be,
8 correct?
9 A. Yes.
10 Q. And they charge the employer the full amount
11 of that projected future cost?
12 A. Yes.
13 Q. Now, let's go back to the ten-year period
14 when the employer is being billed for just the annual
15 adjustment premiums or the annual claims costs.
16 If the employer unfortunately has a death
17 claim, the Bureau reduces the dollar value of that
18 death claim to a present value, doesn't it?
19 A. We did in the past.
20 Q. You don't anymore?
21 A. No. Because of MIRA.
22 Q. Because of what?
23 A. MIRA reserves.
24 Q. Okay. How long did you do that?
25 A. How long?

1 Q. How long did you reduce to present value the
2 anticipated lifetime cost of a death claim and then
3 charge the retrospectively rated employer the full
4 amount of that present value in the year the death
5 claim was approved by the commission?
6 A. That was done until 7 -- I believe it was 7/1
7 of 2002.
8 Q. Now, after 7/1 of 2002, how do you treat a
9 death claim or the cost of a death claim that occurs
10 during the ten-year evaluation period where the
11 employer is paying -- or reimbursing the Bureau for the
12 actual claim cost incurred by the Bureau in their retro
13 claims?
14 A. What happens now is, any monies that are paid
15 out, obviously to the beneficiary in this case here,
16 those will be deducted from the MIRA reserve. So every
17 year, whatever the benefits are that we're paying out,
18 then the employer will be charged in their annual
19 evaluation. And then at the end of the ten years,
20 that's when the MIRA reserve will be charged to the
21 employer.
22 Q. Okay. So essentially the Bureau has deferred
23 charging the employer the full cost or the anticipated
24 full cost of the death claim until the end of the
25 ten-year evaluation period?

1 A. That's correct.
2 Q. Have the administrative regulations been
3 revised to reflect this change?
4 A. No.
5 Q. So if an employer is simply looking at the
6 law, they would expect to receive the full present
7 value bill of a death claim in the year the death claim
8 was officially paid by the Bureau, just going on what
9 the administrative regulations say?
10 A. Yes.
11 Q. So that's one example of how actual practice
12 differs from the Bureau regulation?
13 A. Yes.
14 Q. How about a permanent total disability award,
15 have we gone through the same methodology changes for
16 permanent total disability award as you just described
17 for death awards?
18 A. Yes.
19 Q. And the rationale for making that change or
20 deviating from what the administrative regulations say
21 is because you've gone from a tabular system of
22 establishing the final adjustment premium to a MIRA
23 system of establishing the final adjustment premium?
24 A. Actuarial has gone from tabular to MIRA
25 across the board. So retro is just following suit with

1 what actuarial is assessing and regular experience for
2 employers.
3 Q. I want you to explain to me how this might
4 work, as a practical matter.
5 A. Okay.
6 Q. If on June 30th, 2002 the Bureau had to pay
7 out a death award --
8 A. Uh-huh.
9 Q. -- would the employer get charged the full
10 amount of that death award under a retro premium
11 program immediately?
12 A. Retro? No.
13 Q. Or would it be deferred?
14 A. It would be deferred, just as in an
15 experience calculation.
16 Q. Okay. And you know we're talking just about
17 retro employers?
18 A. Right.
19 Q. There must be some retro employers who prior
20 to July 1st 2002 were billed for the full amount --
21 full present value determination of a death award or a
22 permanent total disability award by the Bureau?
23 A. Yes.
24 Q. Has the Bureau gone back and done anything to
25 ease those employers paying by comparison to the

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1 employers who are now allowed to defer that full
2 payment to the end of the ten-year evaluation period?
3 A. When they're -- when they were billed up
4 until -- it will be -- this is the first year it will
5 be strictly MIRA. It was the lower of the two reserves
6 at the aggregate level. So some employers paid their
7 retro -- their tenth year under tabular and some paid
8 it under MIRA.
9 Q. Right.
10 A. Whichever was lower. So yeah, there's a
11 transition period.
12 Q. Well, I understand -- I think what you just
13 described to me was the transition period for moving
14 from a tabular reserving system to determine what the
15 final adjustment premium would be to a MIRA reserving
16 system for determining what the final adjustment
17 premium would be, correct? There was a transitional
18 where the Bureau would compare which was the lesser --
19 A. Uh-huh.
20 Q. -- of the final adjustment premiums under one
21 or the other of those two reserving mechanisms, and the
22 employer would be charged the lesser total final
23 adjustment premium?
24 A. Yes.
25 Q. Under one or the other methodologies?

1 A. Yes.
2 Q. Effective what date is the Bureau going to
3 implement the MIRA reserving system exclusively?
4 A. 6/30, 2005.
5 Q. Is that for expenses incurred after 6/30 of
6 2005 or is that for retro bills paid after 2 -- 6/30 of
7 2005?
8 A. It will be all -- it will be the billings
9 that were incurred from 7/1, '04 through 6/30 of '05.
10 They will all be under MIRA.
11 Q. Okay. Now, if I was retrospectively rated in
12 1998 --
13 A. Uh-huh.
14 Q. -- for the policy year July 1, 1998 to June
15 30th, 1999, and during that one-year period I had an
16 injury claim occur, and in 2003 the person who was
17 injured during the 1998 retro policy year unfortunately
18 dies as a result of that 1998 policy year injury and
19 that death claim is allowed, the Bureau starts paying
20 out death benefits, and they do all of that in 2003?
21 A. Uh-huh.
22 Q. The retrospectively rated employer for the
23 1998 policy year is going to receive an annual
24 adjustment premium bill from the Bureau, correct, at
25 the conclusion of the 2003 policy year?

1 A. Uh-huh.
2 Q. Which will capture the initiation of those
3 death payments --
4 A. Uh-huh.
5 Q. -- to the widow?
6 A. Uh-huh.
7 Q. How will that retrospectively rated employer
8 be billed for the cost of that death claim?
9 A. They will be billed any medical expenses that
10 happened, and they will be billed compensation. And
11 because also now it is a death claim, they will also be
12 billed for the death benefits that were paid.
13 Q. Just --
14 A. And they'll have a new reserve set, but they
15 won't be paying on the reserves at that time.
16 Q. That's how the system has changed effective
17 July 1, 2002?
18 A. Yes.
19 Q. Prior to July 1, 2002, under the system that
20 the Bureau implemented prior to July 1 of 2002, the
21 employer would have received a bill following the 2003
22 policy year when the death benefits were initially
23 incurred for the full amount of the present value of
24 that death award?
25 A. That's correct.

1 Q. And now the Bureau just defers hitting the
2 employer with that amount until the end of the ten-year
3 evaluation period, at which time the Bureau looks at
4 the reserve or appropriate future cost analysis of that
5 same death claim at the end of the ten-year evaluation
6 period under MIRA, determines what MIRA methodology
7 says is the future cost of the claim and charges the
8 employer at that time?
9 A. Yep.
10 Q. So it's been deferred to the final adjustment
11 premium process from the annual adjustment premium
12 process?
13 A. You mean there's not a PV assessed anymore,
14 is that what you're saying?
15 Q. Correct?
16 A. Yes.
17 Q. That's true, whether it's a death claim or a
18 permanent total disability claim?
19 A. Yes.
20 Q. Are those the only two types of claims that
21 historically the Bureau has charged the full present
22 value to a retro employer?
23 A. Yes.
24 Q. If a retrospectively rated employer chooses
25 an unlimited dollar value on what can be charged on a

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1 per claim basis -- what's the shorthand expression you
2 use for that, minimum?
3 A. The minimum premium percent, you mean?
4 Q. No. I'm talking about the per claim cap,
5 the --
6 A. It's claim limit.
7 Q. Claim limit. If they exercise their right to
8 an unlimited claim limit --
9 A. Uh-huh.
10 Q. -- going back to the 1995 policy year, they
11 pay their semiannual payroll premium -- which is
12 discounted under the retro methodology, correct?
13 A. Uh-huh.
14 Q. -- they have an unlimited claim value, so
15 it's during the period of the ten-year evaluation
16 period, anything the Bureau incurs by way of expense in
17 that claim is charged back to the employer, correct?
18 A. They have the maximum premium that they
19 selected. I mean, it would eventually cap it.
20 Q. Okay. So there's two ways to cap what an
21 employer reimburses the Bureau for?
22 A. Yes, yes.
23 Q. One is the per claim limits.
24 A. Correct.
25 Q. And one is the maximum premium?

1 A. Yes.
2 Q. But for purposes of our illustration, there's
3 an unlimited per claim limit.
4 A. Okay.
5 Q. There is no claim limit.
6 A. Okay.
7 Q. That's one option employers have, correct?
8 A. Yes.
9 Q. And they don't hit the maximum premium on any
10 of their claims -- or collectively for that policy year
11 they don't hit the maximum premium limit, and then at
12 the end of that ten-year period, after reimbursing the
13 Bureau dollar for dollar for all claims costs incurred
14 for the injury and illness claims occurring during that
15 1995 policy year, in 2005 the Bureau is going to employ
16 MIRA methodology to determine what the future cost of
17 all those 1995 policy year claims will be from 2006
18 forward, correct?
19 A. Are you saying they -- they got -- that this
20 is for a 1995 participation year in retro?
21 Q. Correct.
22 A. All right. Yes.
23 Q. And so they pay their final adjustment
24 premium --
25 A. Yes.

1 Q. -- in 2006?
2 A. Well, let me see. I have to look at this.
3 It will be 6/30, 2005 when they would be -- pay off
4 their tenth year.
5 Q. So their ten-year evaluation period would end
6 with claims cost incurred through June 30th, 2005?
7 A. Yes.
8 Q. And sometime thereafter, or however long it
9 takes the Bureau to capture all those claims cost and
10 generate a bill --
11 A. Yes.
12 Q. -- they'll receive their final adjustment
13 premium due --
14 A. Yes.
15 Q. -- for the 1995 policy year?
16 A. Yes.
17 Q. When those final adjustment premium bills are
18 sent, is the employer given a time frame within which
19 they have to pay that bill?
20 A. Yes. Well, we send out the annual
21 evaluation, which has the claim cost that are incurred
22 that year and the reserves, and then we send out an
23 invoice about 30 days later.
24 Q. When that invoice is sent out --
25 A. Uh-huh.

1 Q. -- is the employer given a due date?
2 A. Yes.
3 Q. And what is that date? Is it the same every
4 year?
5 A. No. It depends on when the invoice is sent
6 out.
7 Q. Okay. But the employer is clearly notified
8 on a per invoice basis --
9 A. Yes.
10 Q. -- when the Bureau expects to be paid this
11 premium?
12 A. Expected to pay the claims billing on the
13 invoice. Yes.
14 Q. Right. And if the administrative regulations
15 of the Bureau refer to those claims costs as premiums,
16 you wouldn't argue that I can call them premiums?
17 A. You can call them premium. We just don't
18 call them that in our section.
19 Q. And you would agree if there was a difference
20 between your terminology and what the Bureau's own
21 administrative regulations refer to these payments as,
22 the Bureau's own administrative regulations would have
23 to control?
24 A. According to the law, you mean?
25 Q. Yes.

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A. Yeah.
Q. So under a retrospectively rated program, it's possible, where the employer does not hit up against their per claim limits or their total premium limit -- in fact, it's likely under that circumstance that the Bureau is going to collect far more in premium from the combined dollar value of the semiannual payroll premium, the annual adjustment premium for ten years and the final adjustment premium than they'll ever pay out in those retrospectively rated claims, isn't it?
A. I don't agree with that.
Q. Tell me how that wouldn't happen?
A. You're taking -- you're taking a gamble when you get in retro. So we're only collecting a minimum premium up front.
Q. Right.
A. And if an employer has implemented safety -- safe work environments, then they might not have any claims. So, therefore, we will be collecting less -- less than what the experience premium is.
Q. I understand. By comparison to other --
A. Uh-huh.
Q. -- premium programs, you might collect less premium.

A. Uh-huh.
Q. But I want to focus on just what the Bureau's costs for the claims occurring during that 1995 policy year are.
If you collect the actual cost of those claims on a dollar-for-dollar basis for ten years, and if at the end of that ten-year period you collect what the Bureau determines to be the probable future cost of those claims --
A. Uh-huh.
Q. And that's what the Bureau does, doesn't it, it collects for ten years the actual cost of those claims through annual adjustment premiums, correct?
A. That's correct.
Q. Then at the end of the ten-year period it collects a final adjustment premium, which is intended to cover what the Bureau determines to be the probable future cost of those 1995 policy year claims?
A. That's correct.
Q. So just those two components of the premium payment process cover both the actual cost of those claims and what the Bureau determines to be the probable lifetime cost of those claims?
A. That's true.
Q. And over and above that -- again, we're

talking about a situation where the employer does not bump up against its per claim limit or it's total premium limit. Over and above that, you get the up front premium, albeit on a discounted basis, correct?
A. Yes.
Q. Under that scenario, you can't help but collect more premium than what you'll ever pay out in those 1995 policy years?
A. Unless the guess was off on what the reserve was going to be.
Q. But that's the Bureau's guess, isn't it?
A. Right.
Q. And it goes through expensive research to make sure that those guesses are pretty accurate?
A. Yes.
Q. And it would probably err on the side of overestimating or underestimating the future cost of that claim?
A. I can't answer that, because I don't know.
MR. CORKER: Okay. Would you agree this is probably a good time to take a break?
MS. HASTINGS: Can you estimate at all from where you're at now how much longer you have?
MR. CORKER: I'd say we're halfway through.
(A lunch recess was taken from 12:20 to

1:20.)
BY MR. CORKER:
Q. Ms. Pickens, we're ready to resume after a lunch break.
A. Okay.
Q. We left off before we took our lunch break where you were explaining that when the Bureau issues annual adjustment premium bills to retrospectively rated employers and final adjustment premium bills to retrospectively rated employers, they are first given a printout of what those premiums are going to be, correct?
A. What the claims billings are. Yes.
Q. That's kind of an advance notice of what the amount of the bill is going to be when you send the invoice, correct?
A. Yes.
Q. And how those final adjustment and annual adjustment premiums were calculated, correct?
A. Can you say that again?
Q. Sure. We're referring to the advance notice to the retrospectively rated employer of what their annual adjustment and final adjustment premium billings are going to be when you send them an invoice for those billings --

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1 A. The tenth year -- if it's not in their tenth
2 year, then they wouldn't get it.
3 Q. I understand.
4 A. Okay. Okay.
5 Q. But occasionally we will hit the tenth
6 year?
7 A. Yes.
8 Q. Where a final adjustment premium becomes due
9 and payable?
10 A. Yes.
11 Q. So whether they're talking about an annual
12 adjustment premium billing to a retro employer or a
13 final adjustment premium billing to a retro employer,
14 the Bureau always sends out advance notice of what that
15 premium is going to be to the employer, correct?
16 A. The claims billings, yes.
17 Q. Okay. And the claims billings you're
18 referring to are what are referred to in the
19 administrative regulations as final adjustment premiums
20 or annual adjustment premiums?
21 A. Yes.
22 Q. And that advanced notice is not a bill?
23 A. Correct.
24 Q. But it does serve to give the employer
25 advance notice of both the claims costs on a per claim

1 basis that went into what their annual adjustment
2 premium is going to be for that year, correct?
3 A. What their annual claims billing is going to
4 be. We don't call them adjustment.
5 Q. Okay. I understand.
6 A. Right.
7 Q. That's your internal terminology?
8 A. Right.
9 Q. Different from how these same payments are
10 referred to in the administrative regulations, correct?
11 A. Okay. Yes.
12 Q. Your annual claims billings terminology
13 refers to the same thing as what the Bureau's
14 administrative regulations call annual adjustment
15 premiums or final adjustment premiums?
16 A. Yes, that's correct.
17 Q. That is correct?
18 A. Yes.
19 Q. So for purposes of clarity, may I refer to
20 them as annual adjustment premiums and final adjustment
21 premiums, and you'll know I'm actually talking about
22 the annual claims cost?
23 A. Yeah. But I'll have to call them claims
24 billing. I think of adjustment in a different
25 context.

1 Q. Okay. I understand. As long as you and I
2 can agree we're talking about one and the same thing;
3 is that correct?
4 A. Okay. Yes, yes, yes.
5 Q. The advance notice gives the retro employer
6 the data on a per claim basis as to how their annual
7 claims cost or annual adjustment premium will
8 ultimately come out?
9 A. Yes.
10 Q. And if we hit the tenth year, that retro
11 employer will receive, again, the advance notice of the
12 data behind what their final adjustment premium will
13 be?
14 A. Yes.
15 Q. Neither of those advance notices, whether
16 we're talking about an annual adjustment premium or a
17 final adjustment premium, are a bill?
18 A. Correct.
19 Q. Shortly after the Bureau sends out that
20 advance notice of the data going into the annual
21 adjustment and final adjustment premium billings, you
22 actually do send out an invoice?
23 A. Yes.
24 Q. And you indicated earlier that, depending
25 upon when that invoice is actually sent to the retro

1 employer, the Bureau will give a due date that may be a
2 variable date by which the employer has to pay that
3 premium, correct?
4 A. Yes.
5 Q. Can you give me a range of how long you
6 typically give the retro employer to pay their annual
7 adjustment or final adjustment premium once you've sent
8 out the invoice?
9 A. For any billing that goes out on an invoice,
10 regardless of what it is, it's 45 days.
11 Q. Okay. So each retro employer who receives an
12 annual claims billing limited solely to annual
13 adjustment premiums, because none of their retro
14 policies' years have hit the tenth year, will receive
15 an invoice for their annual adjustment premium that
16 must be paid within 45 days of receipt of the
17 invoice?
18 A. Yes.
19 Q. And if the tenth year has matured to the
20 point where they are now obligated by the Bureau's
21 administrative regulations to pay a final adjustment
22 premium, once you issue the final adjustment premium
23 invoice, they'll have 45 days to pay it -- they'll have
24 45 -- forgive me.
25 Once you issue the final adjustment premium

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1 invoice, they'll have 45 days within receipt of that
2 invoice to make payment?
3 A. Yes.
4 Q. Let's take the example of an employer who
5 became retrospectively rated effective July 1 -- I'm
6 sorry -- July 1, 1992.
7 A. Okay.
8 Q. And they remain in the retro program in the
9 sense that they continue to apply for and be approved
10 for retrospectively rated coverage on an annual basis
11 through the 2002 policy year. So they're in retro from
12 1992 continuously --
13 A. -- through 2002? They participate in 2002 as
14 well?
15 Q. Correct.
16 A. Okay.
17 Q. For each policy year between the 1992 policy
18 year beginning July 1, 1992, through the 2002 policy
19 year beginning July 1, 2002, they have remained
20 annually in the retrospectively rated premium program
21 because they've applied for retrospective coverage and
22 were approved on an annual basis.
23 A. Now, did you say they started in 1991 instead
24 of 1992 in that example?
25 Q. I meant 1992.

1 A. Okay.
2 Q. In the year 2002, for what policy years are
3 they paying annual adjustment premiums?
4 A. I have to --
5 MS. HASTINGS: Off the record.
6 (Off the record.)
7 A. Okay. And you're saying this is the annual
8 evaluation as of 6/30, 2003; is that correct?
9 BY MR. CORKER:
10 Q. Correct.
11 A. Okay. So -- so they will be billed for --
12 their claims billings will be for the 1992 rating year,
13 the 1993, '94, '95, '96, '97, '98, '99, 2000, 2001 and
14 2002.
15 Q. So as of the end of the 2002 policy year,
16 which ends June 30th of 2003 --
17 A. Uh-huh.
18 Q. -- they will be billed in that year for the
19 annual adjustment premiums on all of their retro claims
20 that fall within the 1993 through 2002 policy years; is
21 that correct?
22 A. Say that one more time.
23 Q. When you close the 2002 policy year,
24 effective June 30th 2003 --
25 A. Uh-huh.

1 Q. -- the retrospectively rated employer who has
2 been continuously in the retrospective program since
3 the '92 policy year will be billed annual adjustment
4 premiums for all claims occurring at any time from the
5 beginning of the 1993 policy year through the end of
6 the 2002 policy year?
7 A. What they will be billed for are for claims
8 costs associated -- claims costs that were paid out
9 from 7/1, 2002 to 6/30, 2003 on all the claims that
10 occurred from 1992 through 2002, which would be
11 6/30, 2003.
12 Q. So there's ten different policy years that
13 have stacked --
14 A. Yes.
15 Q. -- one on top of the other, all of which have
16 to be paid in terms of the annual adjustment premium
17 for each of those ten policy years at the close of the
18 2002 policy year?
19 A. Yes.
20 Q. Do they also pay a final adjustment premium
21 on their 2002 policy -- I'm sorry -- on their 1992
22 policy year at the same time?
23 A. Yes.
24 Q. And then if we go into the 2003 policy year,
25 which ends June 30th, 2004 --

1 A. Uh-huh.
2 Q. -- the '92 policy year claim activity is
3 dropped off and we're now stacking the '93 policy year
4 through the 2003 policy year.
5 A. Because they got in retro again for 2003?
6 Q. Correct.
7 A. Okay.
8 Q. Is that how it operates?
9 A. Uh-huh.
10 Q. Let's go back to the first example. 2002.
11 Ending June 30th, all the same conditions, they've been
12 a continuously and annually approved retrospectively
13 rated employer since the 2 -- since 1992.
14 A. Uh-huh.
15 Q. And in 2002 there is an applicable premium
16 discount because of the excess surplus in the state
17 insurance fund. And let's say that's 75 percent for
18 that policy year, the 2002 policy year, just as an
19 example.
20 Are you familiar with how the Bureau would
21 apply that 75 percent discount to the annual and final
22 adjustment premiums paid by that retrospectively rated
23 employer?
24 A. Yes. In this scenario, the person -- this is
25 2002 and this person is in retro?

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1 Q. Yes. For the 2002 policy year.
2 A. Uh-huh.
3 Q. Tell me how the Bureau would apply the 75
4 percent discount in effect for the 2002 policy year
5 because of the excess surplus in the state insurance
6 fund?
7 A. Okay. Was the 75 percent given for both
8 periods?
9 Q. It was given for both the first half of 2002
10 and the second half of 2002.
11 A. Okay. We would -- we would have the claims
12 billing and then we would take 75 percent off of each
13 year. So for the annual evaluation for 6/30 there
14 would be 75 percent reduction for -- I mean, for the
15 '93 rating year there would be a reduction for '94,
16 '95, '96, '97. Each one would have 75 percent taken
17 off, as well as the final adjustment.
18 Q. And that's true even though there was no
19 discount for the '93 policy year?
20 A. That's correct.
21 Q. So the application of the discount attaches
22 to premiums incurred by the retrospectively rated
23 employer during the effective period of the discount
24 associated with the excess surplus in the state
25 insurance fund?

1 A. You want to say that again?
2 Q. The application of the 2002 policy year
3 discount -- which we've assumed to be 75 percent, as
4 set by Mr. Conrad, right?
5 A. Uh-huh.
6 Q. You told me earlier that the percentage is
7 set by Mr. Conrad?
8 A. Approved by the administrator.
9 Q. And that's Mr. Conrad, isn't it?
10 A. Yes, it is.
11 Q. That 75 percent discount for the 2002 policy
12 year applies to all annual adjustment and final
13 adjustment premiums incurred by the retrospectively
14 rated employer during the 2002 policy year, regardless
15 of which policy year is being paid at that time?
16 A. And this person is a participant in retro for
17 2 --
18 Q. They applied for and were approved --
19 A. Yes, that is --
20 Q. -- retrospective coverage for the 2002 policy
21 year.
22 A. That is correct.
23 Q. So we apply the 75 percent to all of their
24 claims costs, even though there was no discount for the
25 '92 policy year. But we're paying '92 policy year

1 premiums in 2002, aren't we?
2 A. Yes. They're paying the claims billing.
3 Q. And that same employer is paying '93 policy
4 year premiums in 2002?
5 A. Uh-huh.
6 Q. There was no discount for 1993, was there?
7 A. No.
8 Q. But because they're paying those premiums or
9 incurring those premiums during the 2002 policy year,
10 they get the 75 percent discount?
11 A. Correct.
12 Q. And the general idea is, any premiums
13 incurred during the effective policy of the discounts
14 are discounted by the applicable percentage set by
15 Mr. Conrad?
16 A. Yes.
17 Q. Let's take that same employer who has
18 consistently applied for and been approved for retro
19 coverage on an annual basis from 1992 through 2002 and
20 change one variable.
21 In 2001 -- for the policy year 2001 they got
22 out of retro and they were instead a group rated
23 employer. In the 2001 policy year, when this was a 75
24 percent discount -- they paid their annual adjustment
25 premiums going back to the 1992 policy year, didn't

1 they?
2 A. Uh-huh.
3 Q. But they received the 75 percent discount
4 only on their group rated premiums, correct?
5 A. You mean the annual evaluation for 6/30,
6 2002?
7 Q. That's the end of the 2001 policy year, isn't
8 it?
9 A. Yes.
10 Q. But the 2001 policy year they're a group
11 rated employer, not a retrospectively rated employer.
12 For that 2001 policy year, even though there's 75
13 percent discount, the Bureau's policy has been to apply
14 the 75 percent discount to the group rated premium they
15 paid for the 2001 policy year, correct?
16 A. Yes.
17 Q. It's also been the Bureau's policy not to
18 give that same employer the 75 percent discount during
19 the 2001 policy year --
20 A. Yes.
21 Q. -- for their retro premiums incurred during
22 that policy year?
23 A. Yes.
24 Q. So in effect, in applying discounts to
25 retrospectively rated employers -- and I'm just talking

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1 about the bottom line effect of all this -- if you
2 continued buying retrospective policy years from the
3 Bureau because you've applied and been approved for a
4 retrospective policy, you continue to receive the
5 discounts.
6 But if for any reason -- I'm talking about
7 the discount on your retro obligations -- premium
8 obligations. Are you following me?
9 A. I'm following you.
10 Q. But if there's a year you choose not to apply
11 for and be approved for retrospective rating, you don't
12 get the discounts for the retro premiums you continue
13 to incur during the policy year that you're a group
14 rated employer, correct?
15 A. Yes.
16 Q. So the bottom line effect is -- and we can
17 apply 20/20 hindsight to this answer -- the Bureau has
18 created a situation where employers must continue to
19 buy retro policy years from the Bureau in order to
20 continue the discounts that are otherwise applied to
21 their retro premium obligations?
22 MS. HASTINGS: Objection.
23 A. Employers don't buy retro.
24 BY MR. CORKER:
25 Q. We can use buy and apply for and be approved

1 for retro policy coverage synonymous with buying a
2 retro policy year. They do make a payment to you,
3 don't they? You don't give away retro policy year
4 coverage for free, do you?
5 A. I don't believe we charge.
6 Q. You don't charge premiums for this
7 coverage?
8 A. We charge premiums for coverage period. But
9 you don't -- you don't buy retro.
10 Q. Okay. Let me rephrase the question, then.
11 Using 20/20 hindsight analysis, the only way a
12 retrospectively rated employer was going to continue to
13 receive discounts on a policy-year-by-policy-year basis
14 is if they continued to apply for and be approved
15 retrospectively rated coverage on a
16 policy-year-by-policy-year basis?
17 A. That's true.
18 Q. If for any reason they got out of retro and
19 into a different form of state fund coverage, during
20 the period of being out of retro, even though they
21 would continue to pay retro premiums, they wouldn't get
22 the discounts on those retro premiums?
23 A. That's correct.
24 Q. Once they went back into retro -- and some
25 employers did go in and out, didn't they?

1 A. Uh-huh.
2 Q. Peck, Hannaford & Briggs is a good example,
3 isn't it?
4 A. Yes, it is.
5 Q. Once they went back into retro -- let's say
6 they were out for the 2001 policy year, during which
7 time, am I correct, they received the 75 percent 2001
8 discount for just their group rated premium?
9 A. Yes. On the year that they were out. I
10 don't remember the year. But that's correct.
11 Q. But just as an example --
12 A. Right.
13 Q. -- for illustration purposes.
14 A. Yes.
15 Q. They go back into retro for 2002. Any annual
16 adjustment premiums paid or incurred during 2002,
17 because they're in retro, the 75 percent discount is
18 applied across the board?
19 A. Yes.
20 Q. Why don't you take a look at that? And I
21 want you to take a look at that. Have you had a chance
22 to review it, Ms. Pickens?
23 A. Uh-huh.
24 Q. I'm going to be asking you some questions
25 regarding this document. Hopefully you can help me

1 clarify some things about this. And for clarity
2 purposes, we're going to ask our court reporter to mark
3 this as Plaintiff's Exhibit A. And I want to use it
4 just for discussion purposes at this point. Okay.
5 (Plaintiffs' Exhibit A was marked for
6 identification.)
7 A. Uh-huh.
8 BY MR. CORKER:
9 Q. At the top of the chart we've listed BWC PY,
10 or policy years 1992 through 2002. Is that clear to
11 you?
12 A. Uh-huh, yes.
13 Q. And then just below the BWC is an example
14 policy year. 1992. We indicate the 92 SARP or
15 semiannual minimum retro premium. SARP, as you'll note
16 from the ledger at the bottom, stands for semiannual
17 minimum retro premium. AARP stands for annual
18 adjustment retro premium. And we've put the
19 corresponding administrative regulation in parentheses.
20 And then FARP is final adjustment retro premium. SAP
21 being pure state fund semiannual premium outside of the
22 retro context.
23 We also have REB, which stands for premium
24 paying subscribers paid 1998 premiums in full but
25 received a rebate check from OBWC equal to 125 percent

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1 of 1997 premiums, exclusive of discounts. You'll also
2 notice at the left-hand corner there's a column
3 identified as retro with an asterisk. Do you see that?
4 A. Yes.
5 Q. And going left to right under each of the BWC
6 policy years, 1992 through 2002 -- let's say that retro
7 employer initiated retro coverage July 1, 1992, which
8 was the beginning of the 1992 policy year, correct?
9 A. Uh-huh.
10 Q. They would initially pay for 1992 their
11 semiannual minimum retro payment, wouldn't they?
12 A. Yes.
13 Q. But there would be no discount applied to
14 that premium, because there was no applicable discount
15 for the 1992 policy year based on an excess surplus in
16 the state insurance fund; is that correct?
17 A. Yes.
18 Q. And, again, as we discussed this, I'm
19 referring only to the discounts Mr. Conrad gave premium
20 paying state fund employers because of the excess
21 surplus in the state insurance fund.
22 During the course of the 1993 BWC policy
23 year, that same retrospectively rated employer, who is
24 continuously applying for and being approved for
25 retrospectively rated policy years from 1992 through

1 2002, would pay its 1993 semiannual retro minimum
2 premium payment plus its annual adjustment retro
3 premiums incurred for its 1992 policy year claims; is
4 that correct?
5 A. Yes.
6 Q. And in 1994, again, it would pay its
7 semiannual minimum retro premium and annual claims
8 costs or annual adjustment premiums for the 1992 and
9 '93 policy years?
10 A. Yes.
11 Q. Do you see how this works from left to right,
12 then, for the '95 policy year? They pay their '95
13 semiannual minimum retro premium and their annual
14 claims costs for their 1992 through 1994 policy
15 years?
16 A. Yes.
17 Q. Is all that accurate thus as far?
18 A. It looks -- the only part that's confusing is
19 they pay their claims billing as of 6/30. So I -- I'm
20 assuming that you're -- you're -- you kind of have the
21 years mixed together. I mean, you have --
22 Q. How would you adjust this chart on that issue
23 alone to make it perfectly accurate?
24 A. I would put a column in that says 6/30 and
25 then whatever --

1 Q. As of -- for example, if we look at the retro
2 employer under BWC policy year 1995 --
3 A. Uh-huh.
4 Q. -- you would take that as of June 30th,
5 1995?
6 A. Well, if -- if you're saying they're paying,
7 yeah, the '92 through the '94, then that would have to
8 be as of 6/30.
9 Q. Okay. So the Bureau takes its snapshot of
10 the '92 through '94 policy year claims costs effective
11 June 30th, 1995?
12 A. Yes.
13 Q. And subsequently bills the employer those
14 annual adjustment retro premiums sometime after June
15 30th of 1995?
16 A. Yes.
17 Q. And those are the bills that need to be paid
18 within 45 days of receipt?
19 A. Yes.
20 Q. So --
21 A. Because what you have here, the way it's
22 displayed is, the payroll is for both halves of '95,
23 but the billing is really for '94.
24 Q. In other words, the semiannual minimum retro
25 premium is for payroll occurring during the 1995 policy

1 year, correct?
2 A. Yes.
3 Q. But the annual adjustment retro premiums that
4 are paid during the effective period of the '95 policy
5 year, which begins July 1, 1995, are paid sometime --
6 are billed and paid sometime during the 1995 policy
7 year?
8 A. Yes. But it's for '94.
9 Q. But it's actually for '92, '93 and '94 policy
10 year claims?
11 A. Yes.
12 Q. So I will make that adjustment in this chart
13 to reflect that in each policy year, whether it be '93,
14 '94, '95, or any other policy year listed on this
15 chart, the snapshot taken by the Bureau to capture the
16 annual adjustment retro premiums is taken as of June
17 30th of the policy year indicated and it captures
18 actual claims costs or annual adjustment premiums --
19 because we're using those terms synonymously -- for the
20 immediately preceding retro policy years that are
21 within the ten-year evaluation period. Would that make
22 it accurate?
23 A. Yes.
24 Q. Now, it's my understanding that 1996 was the
25 first policy year that private state fund employers

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1 received a discount on their premiums because of an
2 excess of surplus; is that correct?
3 A. I believe that is correct.
4 Q. It's also my understanding from documents we
5 received from the Bureau that that initial discount was
6 20 percent. Does that sound about right?
7 A. Yes, yes.
8 Q. And so for the payroll -- and again, we're
9 referring only to the retro employer with the
10 asterisks, moving left to right, for the payroll
11 incurred by that retrospectively rated employer during
12 the 1996 policy year. They would pay just 80 cents on
13 the dollar, having received a 20 percent discount on
14 their semiannual minimum retro premium?
15 A. Are you --
16 Q. I'm under the BWC policy year 1996.
17 A. Right. I just want to understand, in this
18 column here you have -- you have the asterisk up here
19 for retro. Does that mean any retro employer, or are
20 you saying that these people who were retro --
21 Q. I'm referring only to the hypothetical retro
22 employer --
23 A. Okay.
24 Q. -- who was continuously in the retro
25 program --

1 A. Okay.
2 Q. -- on an annual basis from 1992 policy year
3 through the 2002 policy year.
4 A. Okay.
5 Q. In 1996, when the Bureau first implemented a
6 discount because of the excess surplus in the state
7 insurance fund, the administrator determined that there
8 should be a 20 percent across-the-board dividend to
9 premium paying state fund employers, correct?
10 A. Yes.
11 Q. Now, as applied to the retrospectively rated
12 employer, that 20 percent would first apply to the
13 semiannual minimum retro premium the employer paid
14 based on payroll for the second half of 1996, correct,
15 because --
16 A. You mean the 7/1?
17 Q. The 7/1, '96 to December 31st, '96 payroll.
18 A. Yes.
19 Q. That's the first six months of the 1996
20 policy year, isn't it?
21 A. I call it the first half of the policy year.
22 But that's okay.
23 Q. Okay. First half or first six months --
24 A. Right.
25 Q. -- we're still talking about the same thing,

1 aren't we?
2 A. Yes.
3 Q. They would pay the premium by February 28th
4 of 1997, and because the administrator determined there
5 should be a 20 percent discount, that 20 percent would
6 apply to the semiannual minimum retro premium they paid
7 by February 28th of 1997?
8 A. Yes.
9 Q. That same 20 percent would also apply to the
10 payroll premium for the payroll January 1, '97 through
11 June 30th of '97, or the second half of the 1996 policy
12 year. And so the premium they paid based on that
13 payroll by August 31st of 1997 would also receive a 20
14 percent discount?
15 A. Yes.
16 Q. But that same 20 percent would also apply to
17 the annual adjustment retro premiums the employer paid
18 arising out of claim costs incurred in its 1992, 1993,
19 1994 and 1995 policy year claims?
20 A. And I believe it should have the 1996 as
21 well.
22 Q. Well, you told me that for the 1996 policy
23 year the Bureau would take its snapshot June 30th of
24 '96?
25 A. No. For '97 -- for the '96 rating year it

1 would be 6/30, 6/30, '97.
2 Q. Correct.
3 A. That's why I said over here you -- you have
4 the payroll portion, but it's not matching up with the
5 annual billing that goes with the associated policy
6 year.
7 Q. Here's what I want to get to, Ms. Pickens.
8 The 1996 policy year lasts from July 1, '96 through
9 June 30th of '97?
10 A. Yes.
11 Q. The billing for annual adjustment retro
12 premiums that occurs during that same 12-month period
13 could not possibly capture actual retro claims costs
14 incurred by the Bureau during that 12-month period.
15 Let me rephrase that or restate it so you're
16 clear, because I can tell from your expression I've
17 lost you.
18 The Bureau will send out bills for annual
19 adjustment premiums, expecting them to be paid within
20 45 days, during that 1996 policy year.
21 A. Yes. I agree that we send out billings, but
22 it's not -- if you're saying it's 6/30, '96, that is
23 for the '95 billing year. And there wasn't a dividend
24 given that year.
25 Q. Okay. Okay. So when do you -- when would

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1 the Bureau apply the 20 percent discount effective
2 during the 1996 policy year to a retro employer's
3 annual adjustment retro premium obligations?
4 A. For the 1996 claims billings we would bill
5 them 6/30, 1997. And that billing would have the 20
6 percent applied to it, if that person was in retro for
7 that -- for the 1996 rating year.
8 Q. So sometime after the end of the 1996 policy
9 year the retrospectively rated employer who has been
10 continuously in the retro program from '92 through the
11 end of the '96 policy year will receive an annual
12 adjustment retro bill for the '92 through the '96
13 policy year?
14 A. (Nodding head.)
15 Q. So to clarify this chart, should we put under
16 the 1996 policy year -- do you see where AARP is in
17 gray?
18 A. Yes.
19 Q. That should really be '92 through '96?
20 A. Correct.
21 Q. And we should clarify that that 1996 annual
22 adjustment retro premium billing does not go out until
23 after July 1, 1997 or -- which is the close of the '96
24 policy year?
25 A. That's correct.

1 Q. And so to make this uniformly correct, the
2 AARP under the 1997 policy year should -- will capture
3 annual adjustment retro premiums incurred from the '92
4 to the '97 policy years; is that correct?
5 A. Yes.
6 Q. And we can just add one number as we go
7 down -- or go across each policy year?
8 A. Yeah.
9 Q. '98 policy year captures '92 through '98
10 annual adjustment retro premiums; is that correct?
11 A. Yes.
12 Q. The '99 policy year captures the '92 through
13 '99 annual adjustment retro premiums?
14 A. Yes.
15 Q. The 2000 policy year captures annual
16 adjustment retro premiums from '92 through 2000?
17 A. Yes.
18 Q. If we go to 2001 policy year, the Bureau
19 captures annual adjustment retro premiums from '92
20 through '01?
21 A. Yes.
22 Q. And then when we get to the 2002 policy year,
23 which, like all other years, is billed to a retro
24 employer at the conclusion of the policy year -- which
25 in this case would be June 30th of '03 for the 2002

1 policy year, correct?
2 A. Say that again.
3 Q. If we go to the 2002 policy year --
4 A. Uh-huh.
5 Q. -- which concludes on June 30th of '03 --
6 A. Uh-huh.
7 Q. -- at which time the Bureau takes its
8 snapshot of all retro premiums owed for each of the
9 retro policy years remaining in the ten-year evaluation
10 period, correct?
11 A. Yes.
12 Q. Then the Bureau will capture on June 30th of
13 '03 annual adjustment retro premiums incurred by the
14 employer during the 2002 policy year for any one or
15 more of its 1992 through '02 policy year claims?
16 A. Actually, '92 would be closed out -- oh, wait
17 a minute. Sorry. No. That would be okay. Make that
18 2002, and that's the final year for '92, the final
19 billing.
20 Q. And then they would also get their final
21 adjustment retro premium shortly after June 30th of
22 '03, but just for their '92 policy year?
23 A. Yes.
24 Q. And the final adjustment retro premium
25 billing for 1992, together with the annual adjustment

1 retro billings incurred during the 2002 policy year
2 with respect to any one or more of the claims occurring
3 during the '92 through '02 policy years, that would be
4 one bill?
5 A. Yes. It's one invoice.
6 Q. One invoice, payable within 45 days of
7 receipt?
8 A. Yes.
9 Q. And if there was in 2002 for private state
10 fund employers a 75 percent discount, then just like
11 the annual adjustment retro premiums would be
12 discounted by 75 percent, the final adjustment premium
13 would be discounted by 75 percent in the scenario we
14 just discussed?
15 A. And they gave the discount for both payroll
16 periods?
17 Q. On the assumption that the 75 percent
18 discount applied to both the first and second half --
19 A. Yes.
20 Q. -- of the 2002 policy year, then all of the
21 annual adjustment retro premiums would be discounted by
22 75 percent, as well as the final adjustment retro
23 premium for the 1992 policy year?
24 A. Yes.
25 Q. Once that final adjustment retro premium is

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1 paid to the Bureau within 45 days of receiving your
2 invoice, the employer has no further premium
3 obligations to the Bureau for its 1992 policy year
4 claims?
5 A. Yes.
6 Q. That's correct?
7 A. Uh-huh.
8 Q. They finally put it behind them --
9 A. They paid the bill.
10 Q. -- is that correct?
11 A. That's what you said, right? They paid the
12 bill, so they're done.
13 Q. They paid the bill.
14 A. Yeah.
15 Q. Ms. Pickens, I want you to assume for
16 purposes of the next series of questions that we're
17 talking about United Dairy Farmers, who was
18 retrospectively rated continuously from 7/1, '89 --
19 which is the beginning of the 1989 policy year,
20 correct?
21 A. Uh-huh, yes.
22 Q. -- through September 30th of 1995. So they
23 were continuously a retrospectively rated state fund
24 employer for 7/1, '89 through September 30th of 1995.
25 And they became self-insured effective 10/1, 1995. If

1 we go to the 1996 policy year --
2 A. Yes.
3 Q. -- at the top --
4 A. Uh-huh.
5 Q. -- and then we go down that column to United
6 Dairy Farmers, they didn't pay a 1996 semiannual
7 premium of any nature, did they?
8 A. No.
9 Q. But they would have paid their annual
10 adjustment retro premiums for their 1989 through 1994
11 retro policy years, together with any claims occurring
12 during the 1995 policy year between July 1 and
13 September 30th of 1995; is that correct?
14 A. Yes. They were retro. They would have been
15 considered retro for 7/1, '95 through September 30th.
16 So they would be responsible for any claim billings
17 that occurred.
18 Q. And they would have paid those shortly after
19 the 1996 policy year for, again, any annual adjustment
20 claims costs or premiums incurred by the Bureau during
21 the 1996 policy year for any one or more of their retro
22 policy years from 1989 through September 30th of 1995?
23 A. Yes. They would have the annual evaluation
24 as of 6/30, 1996, and it would have been for '89
25 through September, when they went self-insured.

1 Q. Okay. The retro employer who was in retro
2 for the 1996 policy year -- again, I'm going back to
3 the hypothetical retro employer.
4 A. Uh-huh.
5 Q. -- would have paid annual adjustment premiums
6 for the '92 policy year, right?
7 A. Yes.
8 Q. Referring only to the '96 policy year now.
9 A. Yes.
10 Q. The '93, the '94 policy year, correct?
11 A. Yes.
12 Q. And all of the '95 policy year, including
13 that July 1 to September 30th, 1995 period where UDF
14 was still paying retro annual claims adjustment,
15 correct?
16 A. Yes.
17 Q. The retro employer who was in the
18 retrospective program for 1996 would have paid just 80
19 cents on the dollar of those retro premiums, having
20 received a 20 percent discount?
21 A. Were you talking as of 6/30, 1996 or 6/30 --
22 Q. No. I am using the adjusted format here,
23 based upon your testimony, that for the 1996 policy
24 year retro annual adjustment and final adjustment
25 premiums are not billed until the conclusion of the

1 policy year, so that effective June 30th of 1997 --
2 A. Uh-huh, okay.
3 Q. -- you would have sent out retrospectively
4 rated bills for the 1996 policy year, correct?
5 A. Yes.
6 Q. Because June 30th of 1997 is the conclusion
7 of the 1996 policy year.
8 A. Yes.
9 Q. And to the retro employer who's been in the
10 retro program continuously since 1992, the bill you
11 send out shortly after June 30th of the 1997 for the
12 1996 policy year will include annual adjustment retro
13 premiums for claims costs incurred during the '96
14 policy year by the Bureau in any one or more of the
15 claims arising out of the 1992 through 1996 policy
16 years?
17 A. Yes.
18 Q. And to the extent United Dairy Farmers was
19 retrospectively rated, prior to 10/1 of 1995, they
20 would receive a billing for the -- for the 1992 policy
21 year claims where costs were incurred by the Bureau
22 during the 1996 policy year, correct?
23 A. State that again.
24 Q. To the extent United Dairy Farmers was a
25 retrospectively rated employer prior to 10/1, '95 --

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1 A. Uh-huh.
2 Q. -- the Bureau will take its same snapshot of
3 UDF's retro history --
4 A. Uh-huh.
5 Q. -- as of June 30th of the 1997?
6 A. Uh-huh.
7 Q. And they will send United Dairy Farmers a
8 bill for any claims costs or annual adjustment premiums
9 incurred by the Bureau during the term of the '96
10 policy year arising out of claims that are still in the
11 retro evaluation period. They will send them a bill
12 for any claims that they had from 7/1, 1989 through
13 September -- did you say it was September 1st or
14 September 30th of 1995?
15 A. September 30th of 1995.
16 Q. Because all of these claims are still in the
17 ten-year evaluation period?
18 A. That's correct.
19 Q. Now, in that situation, UDF is paying retro
20 annual adjustment premiums for many of the same policy
21 years as the retro employer who has been in the
22 program -- the retro program continuously, correct?
23 A. Yes.
24 Q. The '92 policy year, the '93 policy year, is
25 that correct?

1 A. Yes.
2 Q. The '94 policy year, correct?
3 A. Correct.
4 Q. And at least a portion of the '95 policy
5 year?
6 A. Yes.
7 Q. And the Bureau's practice in 1996 - or at
8 least I should say for the '96 policy year, to the
9 extent those two employers were paying the same annual
10 adjustment retro premiums for the same policy years
11 that overlapped --
12 A. I'm sorry. I got distracted.
13 Q. The extent these two employers were paying
14 annual adjustment retro premiums --
15 A. Uh-huh.
16 Q. -- for the same policy years that
17 overlapped -- you follow me so far?
18 A. No.
19 Q. All right. Let's try this again.
20 Ms. Pickens.
21 A. Okay.
22 Q. The Bureau took its snapshot of retro claims
23 costs or annual adjustment expenses on or after June 30
24 of 1997 for the 1996 policy year?
25 A. Yes.

1 Q. There was a 20 percent premium discount
2 applicable to all premium paying state fund employers
3 for the 1996 policy year, correct?
4 A. Yes.
5 Q. So when the Bureau sends the hypothetical
6 retro employer who has been in retrospective coverage
7 continuously since 1992, and they send them that bill
8 for the '96 policy year, they will see an
9 across-the-board 20 percent reduction in all annual
10 adjustment retro premiums paid for all retro policy
11 years still in their evaluation period?
12 A. Yes.
13 Q. Included in that hypothetical retro
14 employer's evaluation period are retro claims arising
15 out of injuries and illnesses occurring during the '92
16 through '95 policy years?
17 A. For claim costs that associate with that.
18 Q. For claim costs incurred by the Bureau during
19 the '96 policy year?
20 A. Yes.
21 Q. Included in the billing sent to United Dairy
22 Farmers --
23 A. Yes.
24 Q. -- for annual adjustment retro premiums would
25 be actual claims costs or annual adjustment costs for

1 the 1992 through the 1994 policy years, correct?
2 A. They -- we're not paying attention to this
3 here saying they got in in 1989?
4 Q. I just want to focus on those years that
5 would be identical to the years the hypothetical retro
6 employer is paying at the same time. Okay. So just
7 pretend like they're in '92 as well.
8 A. Okay. Yes, if they're in '92 as well.
9 Q. So the billing goes out at the same time.
10 The hypothetical retro employer we've just discussed
11 gets the same bill at the same time as United Dairy
12 Farmers.
13 A. Yes.
14 Q. And under the facts that I've just described,
15 both the hypothetical retro employer and United Dairy
16 Farmers are billed for annual adjustment retro premiums
17 incurred by the Bureau during the 1996 policy year
18 involving claims arising out of injuries or illnesses
19 incurred during the 1992, 1993 and 1994 policy years?
20 A. Yes.
21 Q. At least in part. The hypothetical retro
22 employer --
23 A. And '95 as well.
24 Q. Correct.
25 A. So it would be for the same years basically.

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1 Q. The hypothetical employer received a 20
2 percent discount from the Bureau on its '92 through '95
3 and '96 annual adjustment retro premium expenses,
4 didn't they?
5 A. Yes.
6 Q. United Dairy Farmers having paid the same
7 premiums for at least some of the same policy years,
8 right?
9 A. I don't know -- when you say same premium, I
10 don't know what you mean.
11 Q. The same annual adjustment retro premium.
12 A. You mean they're going to get billed for the
13 same --
14 Q. They're going to get an annual adjustment
15 retro premium billing, aren't they?
16 A. Yes.
17 Q. Just like the hypothetical retro employer?
18 A. Yes.
19 Q. And the years captured by the Bureau when
20 they send out the 1996 policy year annual adjustment
21 retro billing will actually be from 1989 policy year
22 through September 30th of 2005 policy year, correct?
23 A. Yes.
24 Q. And at least some of those years overlapped
25 the same policy years as the hypothetical retro

1 employer?
2 A. Yes.
3 Q. '92 through '94 and a portion of 1995,
4 correct?
5 A. Yes.
6 Q. The hypothetical retro employer gets the 20
7 percent discount on all of its annual adjustment retro
8 premium, regardless of the policy year involved,
9 correct?
10 A. I don't know what you mean when you say,
11 regardless of the year involved.
12 Q. The hypothetical retro employer receives a 20
13 percent discount on its 1996 policy year annual
14 adjustment retro premiums, regardless of which policy
15 year that annual adjustment retro premium is traceable
16 to?
17 A. If you mean from 1992 through 1996, because
18 those were the years of participation, then yes, I
19 agree with that.
20 Q. Great. United Dairy Farmers wouldn't receive
21 the discount on any of its annual adjustment retro
22 premiums, would they?
23 A. That's correct.
24 Q. Even though they're being billed at the same
25 time an annual adjustment retro premium for at least

1 several of the same policy years, 1992, 1993, 1994 and
2 a portion of 1995, over and above the fact they're also
3 being billed for their 1989 policy year claims, their
4 1990 and their 1991 claims?
5 A. Yes. They're self-insured now. So no,
6 they're not a retrospectively rated employer.
7 Q. They pay 100 cents on the dollar for all of
8 their retro premiums?
9 A. That's correct.
10 Q. And if we take this -- just using United
11 Dairy Farmers as an example. If we go to the '97
12 policy year and assume there was a 75 percent discount
13 for the entire year, the hypothetical retro employer
14 would only pay 25 cents on the dollar when they receive
15 their 1997 annual adjustment retro premium billing,
16 correct?
17 A. Yes.
18 Q. But United Dairy Farmers would receive their
19 annual adjustment retro billing for many of the same
20 policy years, some that aren't identical to the
21 hypothetical employer, and they would pay 100 cents on
22 dollar across the board?
23 A. Yes.
24 Q. And because they went self-insured effective
25 10-1, '95 until such time as they exhaust the final

1 adjustment premium payments on their last retro policy
2 year, they're going to continue to pay 100 cents on the
3 dollar for any annual adjustment retro premiums or
4 final adjustment retro premiums the Bureau charges
5 them?
6 A. Unless they get back into retrospective
7 rating.
8 Q. Which is another way of saying that the only
9 way you can qualify for retro discounts is to be -- is
10 to apply for and be approved into a retrospective
11 rating program during the policy year that corresponds
12 to the effective date of the discount?
13 A. Correct.
14 Q. Now, in 1998, it's my understanding there was
15 no discount, but instead a rebate. Does that
16 correspond with your understanding of what happened in
17 1998?
18 A. I believe that's correct.
19 Q. And that rebate was generally 125 percent of
20 an individual employer's paid premium for the 1997
21 policy year?
22 A. That sounds about right.
23 Q. Now, United Dairy Farmers, Frisch's and
24 J. W. Harris Company, plaintiffs in this action, all
25 paid retrospectively rated annual adjustment premiums

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1 in 1998, didn't they?
2 A. 1998. Yes.
3 Q. And they all paid retrospectively rated
4 annual adjustment premiums for the policy year 1997,
5 too, didn't they?
6 A. Yes.
7 Q. But they didn't get any rebate at all in
8 1998, did they?
9 A. I -- honestly, I don't know sitting here.
10 Q. What are the chance they received a check
11 from the Bureau for a dividend in 1998 that took the
12 form of this 125 percent rebate, having been
13 continuously self-insured, in UDF's case, since 10/1,
14 '95, in Frisch's case since 6/1, '96 and in the case of
15 J. W. Harris, from 7/1, '96?
16 MS. HASTINGS: Objection. Go ahead.
17 A. If we're following this chart and we look
18 here, then no, they would not. So --
19 BY MR. CORKER:
20 Q. Aside from the chart, based upon your own
21 experience at the Bureau --
22 A. Well, what --
23 Q. -- what would the chances be the Bureau paid
24 them a dividend rebate in 1998?
25 A. I think there was a SI dividend or

1 something -- some other kind of dividend that some
2 self-insured employers received.
3 Q. Okay.
4 A. And I just don't recall all the details. I
5 mean, so I just can't say that I know for a fact they
6 didn't.
7 Q. Okay. Now, if we look under the 1996 policy
8 year, you'll note that with respect to UDF, Frisch's
9 and J. W. Harris, I put an N/A under the '96 semiannual
10 minimum retro premium --
11 A. Yes.
12 Q. -- to indicate not applicable. That would be
13 accurate, wouldn't it?
14 A. Yes, yes.
15 Q. And the same would be true because we put
16 not -- we put N/As under each of those policy years as
17 they relate to the semiannual minimum retro premium.
18 They just weren't paying semiannual retro premiums at
19 any time after they become self-insured?
20 A. You mean they weren't paying payroll reports
21 or the payroll portion of it?
22 Q. Correct.
23 A. You're not talking about the annual
24 evaluation? Yes. That's correct.
25 Q. Okay. And it's also correct that, then, any

1 annual adjustment or final adjustment premiums they
2 were billed after the effective date of their
3 self-insurance would be paid at 100 percent of the
4 actual billing, regardless of whether the Bureau had an
5 effective dividend percentage or discount percentage
6 for the premiums incurred after the effective date of
7 the self-insurance?
8 A. That's correct.
9 Q. Ms. Pickens, a retrospectively rated employer
10 continues to pay retrospectively rated annual
11 adjustment and final adjustment premiums even after the
12 effective date of their self-insurance, don't they?
13 A. If they still have the liability, any of the
14 years left.
15 Q. In other words, if there are still policy
16 years within the ten-year evaluation period --
17 A. That's correct.
18 Q. -- the fact that they've become self-insured
19 does not relieve them of any premium obligation
20 incurred in association with their retro policy
21 years?
22 A. That's correct.
23 Q. Now, prior to becoming self-insured, a
24 retrospectively rated state fund employer is eligible
25 for certain benefits available under the workers' comp

1 laws of Ohio. For example, are you familiar with
2 handicap reimbursement?
3 A. Yes.
4 Q. Retrospectively rated state fund employers
5 are eligible for handicap reimbursement, correct?
6 A. That's correct.
7 Q. And you understand handicap reimbursement and
8 how it works?
9 A. I mean, I know the concept.
10 Q. If an employee's injury and resulting
11 recovery is made more serious because of a preexisting
12 medical condition that the law views as a handicap,
13 then the state fund surplus account will incur whatever
14 percentage cost of that claim is attributable to the
15 preexisting handicap?
16 A. That's correct.
17 Q. And retrospectively rated employers who are
18 in the state insurance fund are eligible for that
19 handicap reimbursement, if the facts of a particular
20 claim justify a handicap award?
21 A. That's correct.
22 Q. Now, it's also my understanding that after a
23 retrospectively rated employer becomes self-insured and
24 during the time, subsequent to their self-insurance,
25 where they still have retrospectively rated policy year

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1 claims in the ten-year evaluation period they can
2 continue to apply for handicap reimbursement in their
3 retrospectively rated state fund claims, even after the
4 effective date of their self-insurance?
5 A. That's correct.
6 Q. They can apply, as long as they apply within
7 the statute of limitation for filing a handicap
8 reimbursement application, correct?
9 A. Yes.
10 Q. And I believe that's six and a half years,
11 isn't it?
12 A. I don't know the --
13 Q. Okay. But if United Dairy Farmers became
14 self-insured 10/1 of '95 and they had an injury occur
15 on September 30th of '95, they could file for handicap
16 reimbursement in that September 30th 1995 retro-covered
17 injury claim even after the effective date of their
18 self-insurance?
19 A. Yes.
20 Q. And that application would be processed, and
21 their future annual adjustment and final adjustment
22 premiums would be reduced by whatever applicable
23 handicap percentage was charged to the surplus
24 account?
25 A. Yes.

1 Q. And that applicable percentage would be
2 charged to the state fund bucket of the surplus
3 account, wouldn't it?
4 A. Yes.
5 Q. And state fund employers also benefit by
6 surplus reimbursement in successful appeals, correct?
7 We talked about that earlier.
8 A. Yes.
9 Q. So let's take that same September 30th claim.
10 The employer contests the allowance of the claim, but
11 the Industrial Commission allows it. You're going to
12 send that employer, United Dairy Farmers, an annual
13 adjustment billing for that September 30th claim just
14 as soon after you begin incurring those expenses as you
15 can?
16 A. Well, we do it at the next annual
17 evaluation.
18 Q. Correct. And then the employer appeals it
19 into court.
20 A. Uh-huh.
21 Q. And let's say expenses are continuing to be
22 incurred during the pendency of the appeal. Let's say
23 it's $50,000. But if the employer is successful in
24 that appeal to court, they're now a self-insured
25 employer, correct?

1 A. Yes.
2 Q. They then submit the judgment entry to the
3 Bureau indicating the claimant has no right to
4 participate for that September 30th, 1995 injury, and
5 their next billing will be reduced -- their next annual
6 adjustment billing will be reduced by $50,000. And
7 that $50,000 will be charged to the surplus account?
8 A. Because the court ruled that -- yes. That's
9 true.
10 Q. And again, that $50,000 is charged to the
11 state fund bucket of the surplus account?
12 A. Yes.
13 Q. Let's take that same September 30th injury
14 claim. The employer doesn't contest it. It's a
15 compensable claim, and the employee needs vocational
16 assistance and they qualify for rehabilitation,
17 right?
18 A. Uh-huh.
19 Q. But the qualification doesn't occur until
20 after the employer has become self-insured, because
21 they were self-insured effective the next day. The
22 cost of that rehabilitation program will be borne by
23 the state fund bucket of the surplus account, correct?
24 A. Uh-huh.
25 Q. And that will reduce the annual adjustment

1 premium otherwise paid by United Dairy Farmers, won't
2 it?
3 A. It will not be included in the annual
4 billing.
5 Q. Right. Another benefit still available to
6 this employer under its state fund claims, correct?
7 A. Yes.
8 Q. A benefit only available to state fund
9 employers, correct?
10 A. To state funded claims. Yeah.
11 Q. Okay. Now, during that rehabilitation
12 period, the employer receives living maintenance wage
13 loss, don't they?
14 A. Yes.
15 Q. That's not charged to United Dairy Farmers,
16 is it?
17 A. No.
18 Q. That's charged to the state fund bucket of
19 the surplus account of the state insurance fund, isn't
20 it?
21 A. Yes.
22 Q. So in the administration of the
23 retrospectively rated claims that remain in the
24 employer's ten-year evaluation period subsequent to the
25 effective date of the employer's self-insurance, the

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1 administration of those claims doesn't change one iota
2 in terms of how those claims are processed by the
3 Bureau or what the cost impact of those claims will be
4 on this employer?
5 A. It's -- yes. It's the state fund rules that
6 apply.
7 Q. Okay. Correct. You are referring to the
8 Bureau's administrative regulations?
9 A. Yes.
10 Q. And so there's really -- from the employer's
11 perspective, they're still paying state fund premiums
12 after the effective date of their self-insurance,
13 aren't they?
14 A. Say that again.
15 Q. From the employer's perspective, United Dairy
16 Farmers, that became self-insured on 10/1, '95, after
17 10/1 of '95, because of their prior retrospectively
18 rated state fund experience, they're still paying state
19 fund premiums. Aren't they?
20 A. You say from the employer's perspective? I
21 don't know what their perspective would be.
22 Q. Well, is it true that they continue to pay
23 state fund premiums after 10/1 of '95 for as long as
24 they have continuing retro policy years in the ten-year
25 evaluation period?

1 A. Yes.
2 Q. Is it also true that they continue to qualify
3 for state fund benefits that have a beneficial impact
4 on those premiums?
5 A. On those claims. Yes.
6 Q. Okay. With respect to those continuing retro
7 claims that are still in their ten-year evaluation
8 period, do they lose any benefits the Bureau normally
9 provides state fund employers just because they went
10 self-insured on a prospective basis?
11 A. For those claims they have the exact same as
12 any other state fund employer.
13 Q. The exact same benefits, the exact same
14 rights and responsibilities?
15 A. For those claims. Yes.
16 Q. Okay. Now, Ms. Pickens, you have defended on
17 behalf of the Bureau a number of different protests by
18 employers, different employers, going to the issue of
19 the discount program traceable to the excess surplus,
20 haven't you?
21 A. You mean the dividends?
22 Q. Yes.
23 A. Okay. Yes, I have.
24 Q. And I've reviewed the adjudicating committee
25 decisions where you've prepared a statement of fact --

1 and you're the one who prepares those statements of
2 fact, don't you?
3 A. Yes. On some of them I did, on some of them
4 I didn't. Ron Lukey (phonetic) prepared some.
5 Q. Okay. After reviewing the documents, I want
6 you to tell me if this impression is wrong. It's my
7 understanding that you have defended an employer's
8 continuing right to dividends traceable to the excess
9 surplus in their continuing retro premium obligations
10 after they've become self-insured because of a Bureau
11 policy that only recognizes one identity of an employer
12 at any given time. Is that an accurate statement of
13 the policy?
14 A. No.
15 Q. Tell me what the accurate statement of the
16 policy has been that you have used to defend the
17 Bureau's practice of denying employers like United
18 Dairy Farmers, J. W. Harris and Frisch's discounts on
19 the retro premiums they paid the Bureau subsequent to
20 the effective date of their self-insurance.
21 A. For the self-insured employer's portion,
22 that's a true statement. They're no longer a
23 subscriber to the state fund, so they're a self-insured
24 employer, not a retrospectively rated employer. So,
25 therefore, they're not entitled to the dividend.

1 Q. That has been your consistent policy --
2 A. Yes.
3 Q. -- is that correct?
4 A. Yes.
5 Q. And the basis for that policy is what?
6 A. The basis for that policy is the dividend was
7 given to state fund employers only, and they're not a
8 state funded employer.
9 Q. If the law recognized them as state funded
10 employers, would you agree that they should have been
11 receiving their dividends all along?
12 A. No. Not if they're not a current
13 participant.
14 Q. Whether or not -- whether or not -- let's
15 back up.
16 You told me earlier that it's the law that
17 controls the Bureau's rights and obligations in this
18 area, together with an employer's rights and
19 obligations in its relationship to the Bureau, correct?
20 A. Uh-huh.
21 Q. You just also told me that because once an
22 employer goes self-insured, they're no longer a state
23 fund employer, you've adopted the policy that they're
24 no longer entitled to any dividend credit after the
25 effective date of their self-insurance, correct?

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1 A. Because they're not a retrospectively rated
2 employer.
3 Q. All right.
4 A. They're not a state funded retrospectively
5 rated employer. And if I left out that portion there,
6 I apologize. But that was the whole thing in this case
7 here. That's why I said, we're talking specifically
8 about self-insured employers, because I have a
9 different answer --
10 Q. For the Peck, Hannaford & Briggs of the
11 world?
12 A. Yes.
13 Q. I understand that. We're confining ourselves
14 just to the employers who the Bureau has denied
15 discounts to on the retro premiums they pay the Bureau
16 subsequent to the effective date of their
17 self-insurance.
18 A. Okay.
19 Q. If the law viewed these same employers as
20 continuing to be state fund employers subsequent to the
21 effective date of their self-insurance, then you'd have
22 to agree they would be entitled to the discount?
23 A. You mean, if the law was changed and
24 self-insured employers are considered to be state
25 funded employers?

1 Q. I'm not asking you to change the law. I'm
2 just asking you to assume for the moment --
3 A. That the law was changed?
4 Q. -- the law views any employer who pays their
5 full premium into the state insurance fund as a state
6 fund employer, then you'd have to admit, based upon
7 what you've told me already, that those employers,
8 because they're recognized under the law as state fund
9 employers, would be eligible for the dividends.
10 Now, that may or may not be the law, but if
11 it's the law, you wouldn't argue --
12 A. If it was the law, you're right.
13 Q. Okay.
14 A. But we wouldn't call them self-insured.
15 Q. This Bureau policy that employers who become
16 self-insured are automatically no longer state funded
17 employers, and, therefore, not entitled to any
18 dividends on their continuing retro premiums -- did I
19 just accurately state the policy?
20 A. Yes.
21 Q. -- when did this policy arise?
22 A. I believe from the very beginning of when
23 they gave the dividends for the self-insured portion.
24 Q. Okay. Do you know where this policy arose
25 from?

1 A. No.
2 Q. No?
3 A. No.
4 Q. How did you learn of this policy?
5 A. When we were told that we had to apply the
6 dividend.
7 Q. Okay. Do you remember back in 19 -- when the
8 dividends were being paid out for the 1996 policy year?
9 A. Yes.
10 Q. The Bureau did not initially apply those
11 dividends to the annual adjustment premiums due for the
12 '96 policy year, did they?
13 A. No. They did not.
14 Q. They didn't do it for the '97 policy year
15 either, did they?
16 A. No.
17 Q. They didn't apply the dividends applicable or
18 the rebate that was granted for the 1998 policy year
19 initially to annual adjustment premiums, did they?
20 A. No.
21 Q. But in 1999, they changed their mind,
22 correct?
23 A. Yes.
24 Q. Much to your chagrin, correct?
25 A. This reflects the changed methodology.

1 Q. I'm asking whether or not you approved or
2 disapproved of the change in 1999?
3 A. I -- it doesn't matter.
4 Q. You had no opinion on that?
5 A. I mean, yeah. It's not going to change.
6 Q. You had no opinion on the advisability of
7 applying the dividends on an annual basis to annual
8 adjustment premiums?
9 A. I was not included in any conversation.
10 Q. That's not what I asked you. I asked you
11 whether or not you thought this was a good idea or a
12 bad idea?
13 A. I don't know what I thought back in 1999.
14 Q. Okay. Today, as you look back; good idea,
15 bad idea or indifferent idea?
16 A. A lot of work.
17 Q. Didn't ask you how much work it involved. If
18 you were the czar, the administrator, back in 1996,
19 would you have agreed to apply these dividends to the
20 annual adjustment retro premiums employers pay?
21 A. I don't know.
22 Q. Okay. Now -- so this policy of excluding
23 self-insured employers from dividends on their
24 continuing retro premium obligations could not have
25 arisen in 1996 or 1997 or 1998, because nobody paying

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1 those premiums was receiving any dividends on them,
2 could it?
3 A. That's correct.
4 Q. It wasn't until 1999 that the administrator
5 made the decision to retroactively go back to 1996 and
6 allow these dividends to apply on a
7 policy-year-by-policy-year basis to both annual
8 adjustment and final adjustment premiums as they became
9 due?
10 A. Yes.
11 Q. Were you part of the decision-making process
12 in making that retroactive change in the retro
13 methodology of dividends?
14 A. No.
15 Q. But you understand what I mean by that?
16 A. Yes. I was involved in how we were going to
17 do that systematically.
18 Q. Okay. Now, when you were involved with how
19 to implement this change, it's my understanding the
20 Bureau went back to every employer who was
21 retrospectively rated -- applied for and approved retro
22 employer in any one or more of those 1996 through 1998
23 policy years and cut them a check equal to the discount
24 or the dollar value of the discount they should have
25 received all along?

1 A. Yes. We did go back and change it to this
2 methodology here. That is absolutely correct.
3 Q. By this methodology here, you're referring to
4 Plaintiffs' Exhibit A?
5 A. Yes.
6 Q. So if an employer was in the retro program,
7 because they had applied for and been approved for
8 retro coverage for the '96 and '98 policy year, but not
9 the 1997 policy year, they would have gotten a check
10 from the Bureau equaling what they should have received
11 in their dividends for the '96 and '98 policy years?
12 A. Yes.
13 Q. But not the 1997?
14 A. Because when they paid their annual valuation
15 for '97, they were not a current participant. That's
16 correct.
17 Q. And that goes back to the notion that, in
18 effect, the only way you can keep your discounts on
19 your retro premiums is to keep applying for and being
20 approved for retrospective state fund premium
21 coverage?
22 A. Yes.
23 Q. To your knowledge, was that bottom line
24 effect ever communicated to the employer community that
25 they -- if they wanted to keep their discounts on their

1 ongoing retro premium obligations, they have to stay in
2 the retro premium program?
3 A. To my knowledge, the TPAs, as well as our
4 business consultants, were well aware of the
5 requirements. So those employers would know.
6 Q. You're assuming they would know?
7 A. Yes.
8 Q. Now, if the Bureau has a pretty strong track
9 record of taking affirmative communications to the
10 employer community when there's been a material change
11 that might impact their premiums or what programs they
12 might want to apply for -- communications been a big
13 theme to Mr. Conrad's administration, hasn't it?
14 A. Yes.
15 Q. Communication with the employer community in
16 a timely and informative way so that employers can make
17 sound business decisions as they relate to their
18 workers' comp liabilities with the Bureau of Workers'
19 Compensation?
20 A. (Nodding head.)
21 Q. You don't know of any specific communications
22 from Mr. Conrad to the employer community on this
23 particular issue, do you?
24 A. Not Mr. Conrad, but the business
25 consultants.

1 Q. The business consultants?
2 A. Yes.
3 Q. Who is the head of the business consultant
4 group.
5 A. Todd Spence.
6 Q. Is he? How long has he been the head of that
7 group?
8 A. I think he's been the head of that group
9 since about 2000, I'm thinking, maybe 2001, something
10 in there.
11 Q. And who preceded him?
12 A. Ron Lukey.
13 Q. Where is Ron Lukey these days?
14 A. He works for comp management.
15 Q. You indicated that you were involved in the
16 implementation of the change in 1999 that first allowed
17 retrospectively rated employers to receive the
18 dividends on their retro annual adjustment and final
19 adjustment premiums?
20 A. Yes.
21 Q. Who did you work with in implementing those
22 changes?
23 A. I worked with the IT department and with
24 actuarial and, of course, the employees of our
25 section.

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1 Q. Do you remember having to address the issue
2 of which retrospectively rated employers were going to
3 qualify for this methodology change and which weren't?
4 A. Yes.
5 Q. Describe for me the circumstances of how that
6 issue came up.
7 A. I'm not sure exactly -- you mean what made
8 them change the methodology they were using?
9 Q. No. Once the administrator made the
10 decision --
11 A. Uh-huh.
12 Q. -- to allow retrospectively rated employers
13 to receive dividends on their annual and final
14 adjustment premiums --
15 A. Uh-huh.
16 Q. -- my next question goes to this issue, do
17 you remember how the issue of which retro employers
18 would qualify for the discounts on their annual and
19 final adjustment premiums and which wouldn't came up?
20 A. We -- I believe -- I believe -- this has been
21 a while back, and I hope I -- I hoped I never have to
22 revisit this, but I believe we received a run from IT
23 which explained who received a discount off their
24 minimum premium payroll and who was in retrospective
25 rating for those policy years. And then we went back

1 and adjusted the claims billing and the minimum premium
2 percent payroll accordingly.
3 Q. Okay. So you don't know who within the
4 Bureau decided to exclude -- let me rephrase the
5 question.
6 You don't know who within the Bureau made the
7 decision to limit the benefit of these dividends to
8 just those employers who had applied for and been
9 approved into the retro coverage program for the
10 effective date of the policy year?
11 A. It was -- it was Sandy Blount, Marty Herf,
12 Terry Gasper and Bill Darlage.
13 Q. Sandy Blount, Bill Darlage, Marty Herf --
14 A. And Terry Gasper.
15 Q. How do you know that?
16 A. Because Al told me.
17 Q. And Al was your boss?
18 A. That's right.
19 Q. And so is it fair to say, Ms. Pickens, that
20 your role in defending these numerous protests on
21 behalf of the Bureau where self-insured employers think
22 they got the short end of the stick by having to pay
23 100 percent of their retro annual and final adjustment
24 premiums while other employers paying the same premiums
25 were getting substantial dividends, your defense of

1 that issue is traceable to the policy that, once they
2 became self-insured, they were no longer paying
3 premiums, and, therefore, no longer a state fund
4 employer, therefore, no longer a subscriber to the
5 state insurance fund, which is what you have to be to
6 qualify for the dividends; is that correct?
7 A. Yeah.
8 Q. Am I stating it accurately thus far?
9 A. That they're now a self-insured employer.
10 That is absolutely correct.
11 Q. And they're not a state fund employer because
12 they're not paying premiums, and, therefore, they're
13 not a state fund employer, and, therefore, they're not
14 a subscriber to the state insurance fund?
15 A. Correct. That's why their policy number
16 begins with a 2.
17 Q. And that policy, as best you understand from
18 speaking with Al Monahan, is traceable to a decision
19 that was collectively made shortly after dividends were
20 applied to annual and final adjustment premiums for the
21 first time by Sandy Blount, Bill Darlage, Marty Herf
22 and Terry Gasper?
23 A. Yes.
24 Q. I understand Terry Gasper is no longer with
25 the Bureau?

1 A. That's correct. Neither is Marty Herf or
2 Sandy Blount.
3 Q. Or Bill Darlage?
4 A. Or Bill Darlage.
5 Q. None of the four are still with the Bureau.
6 Terry Gasper is still in Columbus?
7 A. I -- honestly, I don't know. I would assume,
8 but I don't -- I don't have any idea. I know Sandy
9 Blount is in North Dakota.
10 Q. I thought Al Monahan was in North --
11 A. No. Al Monahan is in Missouri.
12 Q. Bill Darlage is in Columbus?
13 A. Yeah.
14 Q. Marty Herf is in Columbus?
15 A. Uh-huh.
16 Q. Terry Gasper is in Columbus, we think?
17 A. (Nodding head.)
18 Q. But Al Monahan is where again?
19 A. I believe he's in Missouri.
20 Q. So as best you can tell, nobody currently
21 with the Bureau is responsible for the policy as we've
22 just expressed it that you've used to defend these
23 protests?
24 A. I guess that's a fair statement.
25 Q. I'm going to show you -- this is something

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1 you've produced. Have you had a chance to review what
2 we are going to ask our court reporter to mark as
3 Plaintiffs' Exhibit B, Ms. Pickens?
4 A. Yes.
5 (Plaintiffs' Exhibit B was marked for
6 identification.)
7 BY MR. CORKER:
8 Q. Have you ever seen this document before?
9 A. I would guess. Yes.
10 Q. It's not uncommon for the Bureau to issue
11 talking points for Bureau employees on important issues
12 as they arise so that there's a consistent message
13 being given the employer community in fielding
14 questions from employers; is that correct?
15 A. Yes, that's correct.
16 Q. And this is one of those -- at least a
17 portion of one of those talking points memos; is that
18 correct?
19 A. That's what it looks like. I think it was
20 for the business consultants.
21 Q. Okay. One of the questions is, Why didn't
22 self-insuring employers receive a rebate. And the
23 answer that Bureau employees were directed to give --
24 is that correct?
25 A. Yes.

1 Q. -- self-insuring employers do not pay into
2 the state insurance fund, instead they pay an
3 administrative assessment to the BWC for the
4 administration of their claims. The rebate resulted
5 from a state fund surplus and was returned to those
6 employers who paid into the state insurance fund.
7 Is that a perfectly consistent answer with
8 the policy that you've been defending and that you've
9 just described for us that, in effect, self-insured
10 employers no longer pay premiums into the state
11 insurance fund, and, therefore, are no longer a state
12 fund employer, and, therefore, no longer a subscriber
13 to the state insurance fund?
14 A. Yes.
15 Q. The two things are -- essentially your policy
16 we've just described and the recommended talking points
17 within the Bureau are two different ways of saying the
18 same thing?
19 A. Yes.
20 MS. HASTINGS: What's the document number on
21 that?
22 MR. CORKER: 004214.
23 MS. HASTINGS: Thank you.
24 BY MR. CORKER:
25 Q. I've also got a document you produced,

1 007664, 007665.
2 A. This is basically just two copies of the same
3 thing.
4 Q. Okay. Well, they are tabbed two different
5 numbers. Ms. Pickens, have you had a chance to review
6 what we're going to ask our court reporter to mark as
7 Plaintiffs' Exhibit C?
8 A. Yes.
9 (Plaintiffs' Exhibit C was marked for
10 identification.)
11 BY MR. CORKER:
12 Q. Did you prepare that document?
13 A. I don't believe I prepared it, but I believe
14 that one of my staff members prepared it.
15 Q. So it was prepared under your direction and
16 control?
17 A. Yes.
18 Q. And you reviewed this document before you
19 passed it on to your supervisor --
20 A. Al Monahan.
21 Q. -- Todd Spence?
22 A. This would have been underneath Al.
23 Q. This would have been underneath Al?
24 A. (Nodding head.)
25 Q. Okay. And this document, if I am not

1 mistaken, summarizes at the top the conditions
2 employers have to satisfy in order to receive dividends
3 on their state fund premiums; is that correct?
4 A. Yes.
5 Q. And then to illustrate those conditions, you
6 put together the boxed chart?
7 A. Yes.
8 Q. And it helps illustrate some employers will
9 come in retro and out of retro and then back into retro
10 and how the dividend would be applied to that employer
11 who changes premium -- state fund premium programs
12 within the state insurance fund, correct?
13 A. Yes.
14 Q. And it also illustrates the impact of how the
15 Bureau would treat an employer who became self-insured,
16 correct?
17 A. Yes.
18 Q. So it pretty much does the same thing as what
19 we had marked as Plaintiffs' Exhibit A, doesn't it?
20 A. Yeah.
21 Q. Only you added actual numbers or --
22 A. Yep.
23 Q. So it's a little more detailed than what
24 Plaintiffs' Exhibit A provided, correct?
25 A. Yes.

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1 Q. But anybody looking at either of these
2 exhibits would be able to understand that, under the
3 Bureau's policy to date, there are employers paying the
4 same premium for the same policy year under materially
5 different terms and conditions, depending upon whether
6 or not they're in the retrospectively rated program
7 during the policy year of the dividend, correct?
8 A. Yes.
9 Q. If they're in the retrospectively rated
10 program during the policy year of the dividend, they
11 get a discount on any and all premiums incurred during
12 that same policy year?
13 A. Yes.
14 Q. But if they're not in the retrospectively
15 rated program, they get -- during the effective date of
16 the dividend, right --
17 A. Uh-huh.
18 Q. -- they don't get any discounts on the very
19 same retro premiums they pay that were incurred during
20 the very same policy year, do they?
21 A. They do not get it for the claims billing.
22 Q. I'm sorry?
23 A. They do not get the dividend credit off the
24 claims billing. If they're a state fund employer, they
25 get it off their payroll premium, though.

1 Q. We haven't gotten to going from retro to a
2 different form of state fund coverage. We're only
3 talking about going from retro to --
4 A. To self-insurance?
5 Q. -- to self-insurance.
6 A. That's correct then.
7 Q. The self-insured employer pays 100 cents on
8 the dollar, when the retrospectively rated employer,
9 paying the same premiums at the same time for the same
10 policy years, are paying anywhere from 25 to 80 cents
11 on the dollar; is that correct?
12 A. Yes.
13 Q. And the reason behind that is the policy we
14 discussed earlier, correct?
15 A. Yes. That you have to be a current
16 participant in the year of the dividend.
17 Q. The policy of the Bureau has been, unless
18 you're a current participant in the retro program, once
19 you've become self-insured, you're no longer paying
20 state fund premiums, and, therefore, you're no longer a
21 state fund employer, and, therefore, you're no longer a
22 qualifying subscriber to the state insurance fund and
23 you have, in effect, left your dividends behind?
24 A. Yes.
25 Q. And you've admitted that if the law says that

1 they've continued to pay premiums, thereby making them
2 a state fund employer, even after the effective date of
3 their self-insurance, that they would have to be viewed
4 as a subscriber to the state insurance fund, and,
5 therefore, a qualifying employer for purposes of the
6 dividends?
7 A. You mean if the law said that?
8 Q. Yes.
9 A. Yeah. If the law said that.
10 Q. You would agree that's the way the world
11 would have to be, correct?
12 A. Yep.
13 Q. How would you factually -- I'm not talking
14 about the law now. You've got two employer groups, one
15 who went self-insured, but continues to pay their retro
16 premiums, another group of employers who don't go
17 self-insured, remain in the retro program, continue
18 applying for and being approved for retro coverage.
19 There are many instances where those two employer
20 groups are paying the same premiums -- the same retro
21 premiums for the same policy years at the same time on
22 materially different terms, correct?
23 A. Yes.
24 Q. The self-insured employer group is paying 100
25 cents on the dollar, the employer group that remained

1 in the retro program is paying a fraction of 100 cents
2 on the dollar, depending upon what the applicable
3 discount is?
4 A. The dividend. Yes.
5 Q. All right. Now, are you familiar with the
6 fact that self-insured employers can participate in
7 handicap reimbursement if they elect to pay a handicap
8 reimbursement surplus assessment?
9 A. No, I'm not.
10 Q. You don't know anything about that?
11 A. No. Not --
12 Q. Don't know that that option even exists?
13 A. Right.
14 Q. Okay. If an employer came to you and said,
15 what is this group of employers who are receiving the
16 discounts doing to factually justify paying so much
17 less than the self-insured group of employers is paying
18 for the same premiums, how would you factually justify
19 that?
20 MS. HASTINGS: Objection. Go ahead.
21 A. I would say that they are current retro
22 participants, that we recognize them as a retro
23 employer for that policy year. And the other ones we
24 don't represent -- recognize as a current retro
25 participant. They're a self-insured employer. That's

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1 how I would --
2 Q. You don't recognize them as a current state
3 fund employer?
4 A. Right.
5 Q. Right. And you can't justify it on any other
6 grounds --
7 A. No.
8 Q. -- is that correct?
9 A. That's correct.
10 MS. HASTINGS: Bob, what are the odds of you
11 going past 4:00?
12 MR. CORKER: I'm petty close to being done.
13 BY MR. CORKER:
14 Q. What I'm handing you is the adjudicating
15 committee order on Frisch's. I know you've seen those.
16 MS. HASTINGS: Yeah. Do you need to review
17 this?
18 THE WITNESS: No. I think it's probably
19 pretty close to what I read today for Manpower.
20 BY MR. CORKER:
21 Q. Ms. Pickens, I want to quote a section from
22 this adjudicating committee order that Mr. Johnson
23 chaired. You were the Bureau's representative at the
24 hearing conducted on Frisch's protest on September 5th,
25 2002; is that correct?

1 A. Yes.
2 Q. And you're the one who actually spoke on
3 behalf of the Bureau, weren't you?
4 A. Yes.
5 Q. So in this order that I'm assuming
6 Mr. Johnson wrote, because he was the acting
7 chairperson for that day, and attested to by Paul
8 Watson, the secretary, it states, The Bureau's
9 representative -- that order's referring to you at that
10 point in time, isn't it?
11 A. Yeah.
12 Q. -- states that the resolutions granting the
13 reductions provided that eligible employers must be
14 subscribers to the state insurance fund for premiums
15 due on payroll reports for the payroll period for which
16 the reduction is granted. In this case, once the
17 employer became self-insured, it was not a subscriber
18 to the fund for subsequent reporting periods since it
19 paid no premiums for those periods.
20 A. Yes.
21 Q. Now, to that extent, you're referring only to
22 the semiannual minimum retro premiums, correct?
23 A. The payroll premiums. Yes.
24 Q. All right. You go on to state that the
25 annual payments made for the claims costs -- and now

1 we're referring to annual adjustment premiums,
2 correct?
3 A. Yep. Claim costs is what I call them.
4 Q. That are otherwise referred to by the
5 Bureau's administrative regulations as annual
6 adjustment premiums, correct?
7 A. Yes.
8 Q. -- with respect to those claims costs or
9 annual adjustment premiums incurred while participating
10 in a retrospective rating program are not premiums. Is
11 that still your position today?
12 A. I -- I still believe that that is not
13 considered a premium -- premiums as far as, you know,
14 making you an active or lapsed account.
15 Q. But they are premiums in the sense that the
16 Bureau has recognized them as qualifying payments for
17 purposes of the discount or dividends. The annual
18 adjustment premiums are being discounted provided
19 you're a qualifying employer for the dividend?
20 A. Provided you're a retro employer.
21 Q. That's your definition of a qualifying
22 employer?
23 A. Right.
24 Q. Okay. So they are qualifying premiums. The
25 only question really relevant to this lawsuit is

1 whether or not Frisch's was a qualifying employer after
2 it became self-insured or whether United Dairy Farmers
3 or the J. W. Harris Company was a qualifying employer
4 after they became self-insured?
5 A. Yes.
6 Q. You go on to indicate that the claims costs
7 or annual adjustment premiums incurred while
8 participating in a retrospective rating program are not
9 premiums, as demonstrated by the fact that an employer
10 that fails to pay those charges is not considered a
11 noncomplying employer, as is an employer who fails to
12 pay its premium?
13 A. Correct.
14 Q. What if the law said that the failure to pay
15 an annual adjustment premium was grounds for being
16 declared noncomplying, that would change what the
17 policy of the Bureau should be, wouldn't it?
18 MS. HASTINGS: Objection.
19 A. When I say noncomplying, that --
20 BY MR. CORKER:
21 Q. There is a legal definition of what a
22 noncomplying employer is?
23 A. Sure. And when I'm saying noncomplying, I
24 mean that they're now lapsed -- their account is
25 lapsed.

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1 Q. And they have no coverage?
2 A. Exactly. That's exactly right.
3 Q. Because they didn't pay their premium on
4 time?
5 A. That's exactly right.
6 Q. And as we sit here, you're telling me that
7 it's the Bureau's policy that if a retrospective annual
8 adjustment premium or final adjustment premium invoice
9 is sent out, you don't view that as a premium that
10 needs to be paid on time --
11 A. No. That's not what I'm saying.
12 Q. Let me finish. -- in the same way that a
13 semiannual payroll premium needs to be paid on time or
14 subject the employer to a lapsed coverage?
15 A. First of all, I think all premiums should
16 be -- all payments should be paid on time. But if you
17 don't -- if an employer does not pay their claims
18 billing, their account is not lapsed.
19 Q. As a matter of policy?
20 A. That's correct. As a matter of BWC policy,
21 which is what you said.
22 Q. And based on that policy, because the Bureau
23 does not lapse coverage or declare the employer
24 noncomplying -- that's one and the same thing, isn't
25 it? If you go into a lapsed coverage status, you're a

1 noncomplying employer?
2 A. Yes, yes.
3 Q. The Bureau, as a matter of policy, does not
4 do that when annual adjustment premiums or final
5 adjustment premiums are not paid within 45 days of
6 receiving the invoice?
7 A. That's correct.
8 Q. And this policy that you have been defending
9 for how many years now, six years --
10 A. Yeah.
11 Q. -- is again accurately stated in this
12 paragraph? And I'm referring to the second paragraph
13 of the adjudicating committee's decision, beginning
14 with, The Bureau's representative states and ending
15 with, Therefore, the employer was properly denied the
16 benefit of the 75 percent reduction in premium?
17 A. I think that that statement is correct. But
18 there's more to it than that.
19 Q. What's the more to it part?
20 A. It doesn't cover the lapse issue that I spoke
21 about. It doesn't state that they are not a current
22 retrospectively rated employer.
23 Q. I see. So if we took this second paragraph
24 of the order at the bottom of the page of what we'll
25 mark as Plaintiffs' Exhibit D, and we added the

1 additional comment that it has been the Bureau's policy
2 only to recognize one employer status at any given
3 time, then we'd have the complete policy?
4 A. And the lapse issue.
5 Q. Is the lapse issue not adequately addressed
6 when quoted as saying, Retrospective claims costs or
7 annual adjustment premiums are not premiums because
8 employers who fail to pay them are not considered
9 noncomplying?
10 A. I would just feel more comfortable if I was
11 making a full statement that it would say, And does not
12 cause their account to be lapsed.
13 Q. As a matter of policy?
14 A. Uh-huh.
15 Q. Okay. Now, there's really two elements to
16 this policy, then, isn't there; the first element being
17 the Bureau's policy of only recognizing an employer's
18 current status, and, therefore, their -- the rights and
19 responsibilities of that employer under the workers'
20 compensation laws that attach to that status; is that
21 correct?
22 A. Yes.
23 Q. So United Dairy Farmers, Frisch's, J. W.
24 Harris, once they became self-insured, the Bureau's
25 policy is to view them strictly as a self-insured

1 employer, correct?
2 A. Yes. For their current status. Yes.
3 Q. And that same first element of this policy
4 that you've been defending for six years would say that
5 a retro employer that becomes group rated, during the
6 period of their group rating participation is viewed
7 only as a group rated employer, not as both a
8 retrospectively rated and a group rated employer, even
9 though during the period of their group rating they
10 continued to pay retrospectively rated premiums?
11 A. Yes. That's true.
12 Q. And the self-insured employer is viewed only
13 as a self-insured employer, even though they continue
14 to pay retrospectively rated premiums for retro policy
15 years that remain in the ten-year evaluation period?
16 A. Yes.
17 Q. Now, let's talk first about the
18 retrospectively rated employer who goes self-insured.
19 You admitted earlier that if the continuing
20 retrospectively rated premium obligations paid by these
21 employers subsequent to the effective date of their
22 self-insurance were truly premiums, then these
23 employers, by paying these premiums, would be state
24 funded employers, correct, and, therefore, subscribers
25 to the state insurance fund, and, therefore, qualify

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1 for the discounts.
2 You've also indicated that one of the reasons
3 the Bureau doesn't view these retrospectively rated
4 adjustment and final adjustment premiums as premiums
5 for purposes of being a state fund employer is because,
6 if they don't pay them, the Bureau, as a matter of
7 policy, doesn't lapse their coverage.
8 A. Yes.
9 Q. What if the law says, if you fail to pay any
10 premium required by the regulations of the Bureau of
11 Workers' Compensation, you are deemed to be a
12 noncomplying employer, and, therefore, in a period of
13 lapsed coverage --
14 MS. HASTINGS: Objection.
15 Q. -- would that change your policy?
16 MS. HASTINGS: Objection. Go ahead.
17 A. You mean if -- if the rule was rewritten?
18 BY MR. CORKER:
19 Q. No. I'm just asking you to assume that the
20 definition of a noncomplying employer under the law is
21 any employer who fails to pay their premium as required
22 of them by the rules and regulations of the Bureau of
23 Workers' Compensation. That's what the law said. And
24 we know the annual adjustment premiums and final
25 adjustment premiums are required payments under the

1 rules of the Bureau of Workers' Compensation, aren't
2 they?
3 A. Yes.
4 Q. If the law said failure to pay them
5 automatically deems you, as a matter of law, regardless
6 of the policy of the Bureau, to be a noncomplying
7 employer, you'd have to change your policy, wouldn't
8 you?
9 A. Yeah.
10 MS. HASTINGS: Objection.
11 A. If our interpretation was that.
12 BY MR. CORKER:
13 Q. Okay. Or if a court told you that that was
14 what the law is?
15 A. Yeah.
16 Q. You'd have to change your policy, wouldn't
17 you?
18 A. Yeah. If the court tells us. Uh-huh.
19 Q. And you'd have to change it to admit that
20 these are premiums, the nonpayment of which subjects
21 even the UDFs and the Frisch's and the J. W. Harrises
22 of the world to noncompliance, and, therefore, they're
23 true premiums and the payment of those true premiums
24 makes them a state funded employer, which makes them a
25 subscriber to the state insurance fund, which makes

1 them a qualifying employer for purposes of the
2 discounts, correct?
3 A. If -- if that's what the law said.
4 Q. Then that's what you'd recommend the Bureau
5 do?
6 MS. HASTINGS: Objection.
7 MR. CORKER: Correct.
8 A. If that's what the -- our interpretation
9 of -- BWC's interpretation of the law was, that it
10 changed and that's it now. Yeah.
11 BY MR. CORKER:
12 Q. Then you'd have to include these employers in
13 the dividend program?
14 A. Yeah. If it changed.
15 Q. Right. If the Bureau changed its
16 interpretation of what the law is or the court told you
17 that's what the law is, correct, you'd follow what the
18 court told you the law is?
19 A. Well, basically, yeah, because it would have
20 to come down the chain, just like this did the first
21 time.
22 Q. Is that a yes?
23 A. That's a -- if my bosses told me to do it,
24 that's a yes.
25 Q. Okay. Now, let's assume for the minute that

1 that is what the law is, that retrospectively rated
2 annual and final adjustment premiums are real premiums,
3 that they must be paid or the employer is exposed, as a
4 matter of law, to noncompliance, and, therefore, a
5 lapse in their coverage, that the payment of those
6 premiums qualifies them as a state fund employer, even
7 though they've been granted the privilege of also being
8 a self-insured employer. At that point in time would
9 you maintain the first part of this policy, which is,
10 you only recognize one employer identity at any given
11 time?
12 A. For a policy year. Yes.
13 Q. Okay. And why would you do that?
14 A. Because you can only be one type of employer
15 per policy year.
16 Q. At least that's your understanding?
17 A. With the exception of the programs you can
18 stack.
19 Q. What programs can you stack?
20 A. Group and drug-free. PDP plus and drug-free.
21 I should say, you can only participate in one
22 alternative rating plan.
23 (Off the record.)
24 BY MR. CORKER:
25 Q. Now, let's go to the Peck, Hannaford &

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1 Briggses of the world. Those employers were denied
2 continuing dividends on their retro premium obligations
3 once they went from the retrospective state fund form
4 of state fund coverage to a different -- either base
5 rated, experience rated or group rated -- state fund
6 program; is that correct?
7 A. Uh-huh, yes.
8 Q. And the policy there to deny them their
9 dividend on their continuing retro premium obligations
10 has nothing to do with the fact that they're no longer
11 a subscriber to the state insurance fund as you have
12 maintained in the case of retro employers who go
13 self-insured, correct?
14 A. Correct.
15 Q. You acknowledge they continue to be a
16 subscribers to the state insurance fund?
17 A. Yes.
18 Q. But you're not going to give them dividends
19 on their continuing premium obligations as a matter of
20 policy, because during the year of a particular
21 dividend they were in base, experience or group rated
22 state fund premium coverage?
23 A. Correct. They weren't a current retro
24 participant.
25 Q. That's under the policy that you only

1 recognize one identity of an employer at any given
2 time?
3 A. Yes.
4 Q. Do you understand how this dividend program
5 actually works, or would I have to talk to somebody
6 else about that within the Bureau?
7 A. I don't know what you mean by, how it
8 works.
9 Q. Well, do you understand why these dividends
10 are being granted to state fund employers?
11 A. Not probably in the detail you need.
12 Q. Who would understand all that?
13 A. I would -- that's an actuarial decision.
14 Q. Who in actuarial would be able to have an
15 intelligent conversation about why these dividends have
16 been granted from time to time by the administrator?
17 A. Liz Bravender.
18 Q. Liz Bravender?
19 A. Yes. She took Bill Darlage's place.
20 Q. Excuse me?
21 A. She took Bill Darlage's place.
22 Q. Did she work underneath Bill --
23 A. Yes, she did.
24 Q. -- prior to being promoted to replace him?
25 A. Yes.

1 Q. Is Mr. Conrad the only person who would be
2 knowledgeable in the decision-making process on a year
3 to-year-basis as to how much of a dividend to grant
4 state fund premium paying employers?
5 A. I would say that actuarials is who makes
6 those determinations on how much excess they have.
7 That would be my thought.
8 Q. Well, Mr. Darlage told me that those
9 decisions were made on the 29th floor. Who's on the
10 29th floor?
11 A. John Romig, Jeff Redmond, Tina Kilmeyer,
12 Tracy Valentino, Chuck Quinlan, Mr. Conrad. I'm sure
13 I'm forgetting some people.
14 Q. So those are all the top people in the
15 Bureau?
16 A. Yes.
17 Q. Where policy is established?
18 A. Yes.
19 MR. CORKER: Why don't you mark this as D?
20 (Plaintiffs' Exhibit D was marked for
21 identification.)
22 BY MR. CORKER:
23 Q. Now, you're responsible for implementing
24 Bureau policy as it relates to whether or not a
25 retrospective rated bill that goes out shows the

1 discount or doesn't show the discount; is that
2 correct?
3 A. Yes.
4 MR. CORKER: Kim, do you have any objection
5 to us suspending the deposition at this time? I
6 would like to talk to Liz Bravender, and then, if
7 after talking with Liz, it becomes necessary to
8 come back to Vicky, is that agreeable?
9 MS. HASTINGS: I'm not sure I understand why
10 you would have to come back to Vicky.
11 MR. CORKER: Well, she just told me that Liz
12 Bravender would be the most knowledgeable person
13 for understanding the ins and outs of the discount
14 program, correct?
15 THE WITNESS: You mean the dividends?
16 MR. CORKER: Yes. The dividend program.
17 MS. HASTINGS: Haven't you -- aren't we
18 already trying to get you Bill Darlage?
19 MR. CORKER: Well, I don't know that you need
20 to try to get me Bill. I don't know that I've
21 raised that. I know we've asked for Bureau
22 employees who would be substituted for Terry
23 Gasper or Bill Darlage, because you initially
24 identified Terry Gasper and Bill Darlage on your
25 witness list.

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1 MS. HASTINGS: Right.
2 MR. CORKER: So now that they're no longer
3 employees of the Bureau --
4 MS. HASTINGS: Let me put this another way.
5 If you take Liz Bravender, do we not have to worry
6 about finding and arranging for Bill Darlage?
7 Because I don't want to go through two depositions
8 when one could do it.
9 MR. CORKER: I'm all for economy. Let's
10 do -- I don't want to take both of them either. I
11 just can't tell you right now which one would be
12 more appropriate to take, because I don't know.
13 One of the problems we're dealing with, Kim,
14 is that Bill was actually more directly involved
15 during the relevant time frame --
16 MS. HASTINGS: Right.
17 MR. CORKER: -- than somebody underneath him
18 would be. That's a fair assumption. So I guess
19 my question is, we're going to take Liz and/or
20 Bill's, preferably one or the other. It's
21 possible things could come up where Liz would say,
22 only Bill would know this, or Bill would say no,
23 only Liz knows that.
24 But I would like to reserve the opportunity
25 to come back to Vicky on the implementation issues

1 involved in those employers like Peck, Hannaford &
2 Briggs that went from one form of state fund
3 coverage to the next form of state fund coverage,
4 since that's your responsible area, after we talk
5 to one or both of these people to explain the
6 overall dividend program.
7 MS. HASTINGS: On that limited issue -- I
8 mean, subject to her availability, I'll agree, but
9 I will remind you that you are the one who
10 insisted on taking Vicky first, before anybody
11 else.
12 MR. CORKER: Right.
13 MS. HASTINGS: So --
14 MR. CORKER: Well -- and there's a lot of
15 good reason to have done that.
16 MS. HASTINGS: I understand.
17 MR. CORKER: We just can't anticipate every
18 aspect of what she knows and what she doesn't
19 know. So on that limited issue, we may come back
20 on your involvement in implementing the dividend
21 program as it relates to those employers who went
22 from one form of state fund coverage, being retro,
23 to a different form of state fund coverage, so
24 that we can address the Peck, Hannaford & Briggs
25 issues.

1 I'm satisfied we've talked enough at this
2 time about going from retro to self-insurance as
3 it relates to UDF, Frisch's and the J. W. Harris
4 Company. Is that fair enough?
5 MS. HASTINGS: Do you have any problem with
6 that, besides the fact that I know you love this
7 so much?
8 THE WITNESS: Sure.
9 MS. HASTINGS: All right.
10 MR. CORKER: We'll suspend it at this time,
11 subject to those conditions.
12
13 _____
VICKY S. PICKENS
14
15
- - -
16
DEPOSITION ADJOURNED AT 3:45 P.M.
17
- - -
18
19
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21
22
23
24
25

1 CERTIFICATE
2
3 STATE OF OHIO :
: SS
4 COUNTY OF HAMILTON :
5
6 I, Amy B. Calhoun, RPR, the undersigned, a
7 duly qualified and commissioned notary public within
8 and for the state of Ohio, do certify that before the
9 giving of her deposition, VICKY S. PICKENS was by me
10 first duly sworn to depose the truth, the whole truth
11 and nothing but the truth; that the foregoing is the
12 deposition given at said time and place by VICKY S.
13 PICKENS; that I am neither a relative of nor employee
14 of any of the parties or their counsel, and have no
15 interest whatever in the result of the action; that I
16 am not, nor is the court reporting firm with which I am
17 affiliated, under a contract as defined in Civil Rule
18 28(D).
19 IN WITNESS WHEREOF, I hereunto set my hand and
20 official seal of office at Cincinnati, Ohio, this
21 _____ day of _____, 2005.
22
23 _____
My commission expires: Amy B. Calhoun, RPR
24 March 19, 2006. Notary Public - state of Ohio
25

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1 ERRATA SHEET
2 DEPOSITION OF: VICKY S. PICKENS
TAKEN: APRIL 25, 2005
3
4 Please make the following corrections to my deposition transcript:
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6 Page Line Number Correction Made
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Witness Signature Date
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