EXH. RLS-15
DOCKET TP-250574
2025 PSP GENERAL RATE CASE
WITNESS: R. LANE SISUNG

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND PILOTS,** **Respondent.**	**Docket TP-250574**

TENTH EXHIBIT (NONCONFIDENTIAL) TO THE PREFILED REBUTTAL TESTIMONY OF

R. LANE SISUNG

ON BEHALF OF PUGET SOUND PILOTS

FEBRUARY 2, 2026

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA PORT AUTHORITY, TITAN FLORIDA, LLC, FLORIDA-CARIBBEAN CRUISE ASSOCIATION, PORTS AMERICA FLORIDA, INC., DEL MONTE FRESH PRODUCE COMPANY, AND NETWORK SHIPPING, LTD., INC.,

Petitioners, DOAH Case No.: 23-3937

v.

PILOTAGE RATE REVIEW COMMITTEE, AND TAMPA BAY PILOTS ASSOCIATION,

Respondents.
_____/

DEPOSITION OF: SPENCER COHEN

TAKEN BY: Counsel for Respondents

DATE: July 26, 2024

TIME: 9:36 a.m. to 4:58 p.m.

PLACE: Shutts & Bowen
4301 Boy Scout Boulevard
Suite 300
Tampa, Florida

REPORTED BY: Felicia A. Newland, CSR
Notary Public
State of Florida at Large

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ALSO PRESENT: (Via Zoom)

Leasa Gillispie
Walter Kemmsies
Christopher B. Cooper
Terry Fluke
George Meros
Jack Timmel
Aaron Zarate
R. Zarumba

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The deposition, upon oral examination, of SPENCER COHEN, on the 26th day of July 2024, taken by counsel for Respondents, beginning at 9:36 a.m., reported by Felicia A. Newland, Certified Shorthand Reporter, and Notary Public in and for the State of Florida at Large.

* * * *

SPENCER COHEN

was called as a witness and, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. PAGE:

Q Good morning.

A Good morning.

Q Thanks for being here. My name is Eric Page. I represent the Intervenor, the Tampa Bay Pilots Association. You probably already knew that. And we're here today to take your deposition as an expert witness.

Is that your understanding?

A Yes.

Q Okay. And is it your understanding that you're an expert on behalf of all of the Petitioners

that are listed in this case?

A Yes.

(Cohen Deposition Exhibit Number 1 marked for identification.)

BY MR. PAGE:

Q Have you seen this notice of deposition previously?

And just before we -- before you answer that, I'm going to hand you documents that are going to have an exhibit sticker on them.

A Uh-huh.

Q Those are going to the court reporter at the end of the day, so don't stick them in your notebook or in your bag --

A Okay.

Q -- or write on them or anything. We need to keep those pristine or she'll get mad at us.

A Okay.

Q Have you seen that notice before?

A Yes.

Q All right. And is it your understanding that that notice is the reason basically for your appearance here today?

A I do.

Q Let's start with some basics. Have you

been deposed before?

A I have.

Q Have you been deposed as a party to a lawsuit, either a plaintiff or a defendant?

A Yes.

Q What was the context of that?

A The first time was in, I believe, 2017. And it was related to a land use issue in Seattle.

Q And you were, what, the owner of the property?

A No. I was an expert witness brought on by the plaintiffs.

Q Okay. Let's back up.

A Okay, sir.

Q You're here today in your expert capacity, correct?

A Yes.

Q Do you understand that there's a distinction between that and being an individual in a lawsuit?

A I believe -- yes. I'm sorry. I misunderstood your question.

Q Okay. So the land use case, you were neither the plaintiff or the defendant or petitioner or respondent. Is that right?

A That is correct.
Q Okay. Have you ever given a deposition other than in your capacity as an expert?
A I have not.
Q Okay. Good deal.
The 2017 deposition that you referenced, that was in your capacity as an expert?
A Yes.
Q Okay. Was that the first time that you had given a deposition in your capacity as an expert?
A It was.
Q And since then, how many times have you done that?
A One additional.
Q Okay. We'll come back to that.
So lawyers are different, right, like snowflakes? We all do things a little differently. I just want to go through sort of my ground rules for a deposition, and then I'll let counsel interject at the end there if he has anything to add.
MR. PAGE: Doug, I assume you're defending since you're sitting closer?
MR. MANSON: Yes.

BY MR. PAGE:

Q Okay. So this is a process where you're going to have an opportunity to express opinions, I'm going to have an opportunity to dig into those opinions. And I'm going to discover all that I can, and we're going to go through documents, all that sort of stuff.

But to make it work at the end of the day, we have a court reporter here and she takes down whatever she's hearing. So if she's hearing me and you at the same time, she can't take one down or the other or she's going to miss one, that sort of thing.

Does that make sense?

A Yes.

Q Okay. She also needs, as you are doing, audible answers, "yes," "no," "I don't understand," instead of head nods or "huh-uh," "uh-huh," or anything like that.

Does that make sense?

A Yes.

Q The other thing that so far we're doing well at, but I'm sure at some point we will mess up, is you are letting me finish my question and I am letting you finish your answer. So it's very

important, again for the transcript, that we do our best to respect each other's right to answer and ask.

Does that make sense?

A Yes.

Q Okay. So there are a variety of reasons that your counsel might object. And I don't know if he's spoken with you about that, but there's things like, the question is leading. The question is vague. The question has been asked and answered. The question asks for speculation, all those sorts of things.

In Florida, the norm in responding, if an attorney defending a deposition has an issue with the question, is they say, "Object to the form," which if you're not an attorney or you haven't been deposed a lot doesn't sound like it makes a lot of sense. But what it basically does is it lets your attorney put on the record, "I don't think that's an appropriate question."

You still have to answer the question unless your attorney directs you not to, and then later on we get to fight it out in front of a judge as to whether my question was appropriate and can -- and your answer can be used or my question was not

appropriate and, therefore, your answer cannot be used.

Does that make sense?

A Yes.

Q So unless you're instructed not to answer by your attorney, you need to answer the question.

Make sense?

A Yes.

Q If you need a break at any point, I normally try to take a break about every hour, just because I drink a lot of water, need to move around, but if you need a break before I say, "Hey, let's take a break," let me know. The only thing that needs to happen is if there's a question pending, I'll need you to answer it and then we can take the break.

Make sense?

A Yes.

Q You're under oath until you're released. So that means if we're on a break, you're under oath. All right? So it means potentially the discussions that you have during breaks are discoverable.

Does that make sense?

A Yes.

Q I think that about covers -- no, one more. If I ask you a question and you answer it, I'm going to assume that you understood the question. I can pretty much guarantee you I'm not going to ask 100 percent understandable questions today, at least from your perspective.

So if you don't understand it, ask me to restate it, tell me you don't understand it, ask the court reporter to read it back. Whatever you need, I will try to accommodate, because what I -- what I honestly want is for you to provide answers to questions that you understand.

Does that make sense?

A Yes.

MR. PAGE: Okay. Anything to add to the process or did I pretty much cover things?

MR. MANSON: No, the nodding part.

MR. PAGE: Oh, I think I did that.

MR. MANSON: Oh, did you?

MR. PAGE: Yeah.

MR. MANSON: Sorry.

BY MR. PAGE:

Q Audible answers.

A Yeah.

Q All right. Well, let's go back. You

said the first time that you had been deposed was 2017, and that was in your capacity as an expert. Is that correct?

A Let me confirm the dates. I believe it was -- yes, 2017, that's correct.

Q Okay. And you were looking at the supplemental CV that was provided this morning by counsel?

A Yes.

MR. PAGE: Let's, Sam, mark the CV we already had as Number 2 and the supplemental one as Number 3.

(Cohen Deposition Exhibit Numbers 2 & 3 marked for identification.)

BY MR. PAGE:

Q And did you update your CV specifically for use at this deposition?

A Yes.

Q When did you update your CV?

A Yesterday.

Q Were you directed to update your CV?

A Yes.

Q By counsel?

A Yes.

Q Was there a reason given for why you

should update your CV?

A Because I neglected to include the most recent deposition in my CV.

Q Okay. Can you take me in Exhibit 3, which is your updated CV, to where that is now indicated?

A That's on page 5.

Q Where?

A Under expert testimony. Sorry. Under expert testimony. It is the first entry below expert testimony.

Q Nealey Law Group?

A That's correct.

Q And you were deposed in that case on May 8th, I see; yes?

A Yes.

Q Is that a case that is still ongoing?

A Yes.

Q And is that a case that is based in the State of Washington?

A Yes.

Q State or federal court?

A State court. State Superior Court.

Q All states are different, so I don't know what that means, but I can look it up.

A State.
Q But state court?
A Yeah.
Q Got it.
And who retained you in that case?
A Nealey Law Group.
Q All right. And does Nealey Law Group represent the Houghton, et al., Plaintiff, or the Farmers Insurance Company of Washington, Defendant?
A The Houghton et al. Plaintiff.
Q What are the claims of Houghton in that case?
A The claims are that when the insured did not -- the claims are that the insured did not receive what they believed to be proper compensation for a total loss on a vehicle.
Q What type of vehicle?
A Passenger, or just personal vehicle, personal insurance.
Q Okay. So am I correct that you were doing a valuation of the vehicle that had been declared a total loss?
A No. I was brought on to evaluate the method that Farmers uses to determine what the appropriate compensation is for a total loss.

Q So more of a rebuttal expert?
A I believe -- yes, that -- that sounds about right, yeah.
Q Okay. You weren't creating your own models or coming up with your own opinions of value or anything like that, you were looking at what Farmers had done and you were finding fault with it?
A Correct.
Q Okay. Let's look at the next under expert testimony, Todd Milazzo, apparently the plaintiff, versus Hall, in King County Superior Court. That's state court again, right?
A Yes.
Q And you were retained by the plaintiff?
A Yes.
Q And what capacity were you retained in as an expert there?
A I was retained to provide an opinion about the losses accrued by Mr. Milazzo in that case.
Q So were those business losses?
A Personal losses.
Q Personal losses.
And I'm just looking at this, "Construction, labor, and materials," so were those

losses that Mr. Milazzo experienced because of the failure to pay for construction, labor, and materials?

A Yes.

Q And was that a failure to pay to a business that he ran?

A No. Mr. Milazzo was the one who had -- he was not paid for his services.

Q What were the losses? The failure to pay?

A The failure to pay.

Q Okay. So there weren't business losses or anything like that?

A It's a little bit complicated -- it was a little bit fuzzy, but basically he was a -- he was a tenant, and he was -- did perform services on behalf of his landlord with respect -- for construction services that he was not paid for, as well as a personal loan that he made to his landlord.

Q Okay. But no valuation work in that regard?

A Just in a tabulation of the losses that were accrued.

Q Is that something that a CPA could do?

A I would think so.

Q Okay. The next entry, Emery Reddy, PLLC, 2022 and 2023. There's not any case identified there. So was that an actual dispute that was filed in a court of law?

A That I was retained for, but I don't know the -- it was settled out of court. And I don't recall the actual case number.

Q Okay. And do you --

A I was not deposed.

Q You did it, you guessed what I was going to say.

A Sorry.

Q But let's not try to so that I can get the question out.

But not deposed, and you didn't provide any sworn written testimony or anything like that?

A I did not.

Q All right. And were you engaged two different times, because there's two different years there?

A Yes.

Q Were the cases substantially the same?

A They were different. There were two different cases, both related to wage arrears.

Q And was that again the sort of thing that

a CPA could do, or did that require the expertise of an economist?

A I'm not as familiar with the limits or ability. I -- it's hard for me to say if a CPA could do it. Possibly.

Q Okay. And I'm not trying to disparage it, I'm just trying to figure out what box it fits into. It doesn't sound like you were doing an economic loss analysis or a business loss analysis or any of that sort. Is that right?

A I was doing wage losses.

Q Okay.

A So yes.

Q More straight-line calculations?

A Correct.

Q Okay. The next one, Savitt Bruce -- and I don't know if that's -- Wiley or Willey, but 2021, impact of pandemic on restaurant business revenues and inability to pay lease under existing contract negotiations.

Wasn't 2021 a fun time? I got involved in quite a few of those landlord-tenant disputes myself.

So were you doing maybe an assessment of the tenants' attempts to avoid paying what was due

under the lease, or were you on the landlord side?

A I was on the landlord side.

Q Okay.

A Oh, no, I'm sorry. It was on the tenant side.

Q Okay. So were you doing some economic, let's say, modeling of how the loss of, you know, customers at the restaurant impacted revenue and the bottom line and the ability to pay the lease and that sort of thing?

A There were two experts involved in that case. One was a CPA that looked more specifically at profits and losses and impacts on the business in question. My role was to provide an opinion about the broader impact of the pandemic on tourism, because this was a tourist-reliant business.

Q What business was it?

A The Hard Rock Cafe.

Q Located where?

A In Seattle, Washington.

Q Is it still open?

A It is not.

Q Bad impact.

Did you actually provide testimony in that case?

A I did not.

Q So in terms of being under the heading "expert testimony," maybe it was a little bit misclassified since you didn't provide testimony. Is that fair?

A That's probably better to categorize it as expert opinion.

Q Okay. And did you provide any written sworn statements in that case?

A I did not.

Q Okay. Do you recall or can you obtain the information that would identify what the case was in terms of like these first two others, the case numbers and such?

A I could look back and see if I can find those.

Q Okay. Going back to the first one. You were deposed May 8th, 2024. I am guessing since that's very recently, you probably haven't provided testimony at a trial?

A Correct.

Q This second one says included testimony, the Milazzo one. Did you provide testimony in a trial there?

A I did.

Q Okay. And were deposed?
A I was not.
Q All right. Last one, Veris Law Group, PLLC, 2017. That's the one you mentioned previously about your first time being deposed; yes?
A Yes.
Q And you see there, at the end there, you said included prehearing deposition. Did you provide any testimony at a hearing?
A At the -- in front of a hearing examiner.
Q Okay. Sworn testimony; yes?
A Yes.
Q And what did -- describe what you were doing in that case.
Reviewing economic impact studies, analysis and testimony and such. Can you give me some more particulars about that?
A So there is a long-standing dispute between a bicycle community and a bicycle organization -- it's Seattle, so bear with me -- and industrial interests, industrial businesses in a part of Seattle called Ballard.
And so there is a bike trail, a famous bike trail, called the Burke-Gilman Trail, that is mostly all continuous, except for one section of

that -- that one section in Ballard, where it stops. And there's about a mile or so where bicyclists have to travel through an industrial area and then reconnect with the bicycle path. It's Seattle.

Q They don't like that.

A So it's been a long-standing dispute. The City has sided -- has -- the City sided with the bicycle community and wanted to build the bike path. The industrial interests were opposed to it because they're worried about the consequences of having more people biking and cycling across their loading zone, driveways, and lots of trucks.

So I was retained by the industrial parties who were filing to stop proceeding with the development of the bike path. My specific role in that case was to -- there had already been a study that was commissioned by the City of Seattle that was interpreted as being supportive of building the bicycle path. So my role was to review that study and provide an opinion about it.

Q Okay.

A And that's what that economic impact study is in reference to.

Q Right.

So the City did the Burke-Gilman missing

link economic impact study and you were retained by the property owners of the industrial operations to look at that study, analyze it, and basically find faults with it?

A Correct.

Q Who won?

A It's still ongoing. It's been ongoing for decades now.

Q So the bike path connection with the one mile or so of industrial property has not been built?

A I think the latest is they've decided on an alternative path.

Q Okay.

A But I don't know. That was in the news maybe even like a month ago, but I'm not sure. There's probably going to be a lot of issues around that as well that have to be resolved.

Q Build a bridge?

A They talked about that. And actually if they built a bridge, it would have been cheaper than all the litigation fees through the decades.

Q Lawyers are happy.

All right. So you did provide testimony on that Veris Law Group one and you did provide

testimony on the Milazzo one, correct?

A Correct.

Q Deposition experience -- were you actually deposed, like you're being deposed today, in the 2017 Veris Law Group matter?

A I was. I was deposed by a City attorney.

Q So you were deposed in the -- in the fifth one there, the Veris Law Group one, and you were deposed in the first one, the Nealey Law Group one, but not deposed in the other ones.

Am I getting that right?

A Correct.

Q Okay. And you testified in, correct me if I'm wrong, Milazzo and Veris Law Group?

A Correct.

Q Okay. Thank you.

I have here your CV marked as Exhibit 2 that was provided with the disclosures. And that's what I have marked up. And this morning I have gotten what's now been marked as Exhibit 3, your updated CV. I just want to confirm, and sorry if I asked it earlier, the only update is the addition of the Nealey Law Group entry under the expert testimony heading on page 5. Is that right?

A There is one additional update. Let me

see if I can find it here. Give me one moment. Sorry about that.

Q No, it's all right.

A Oh, okay. One additional update was on page 4. And it's the second entry. It's called Highline College Center of Excellence in Global Trade and Supply Chain Management. And the one update was I recently completed a new update -- I recently completed an update to that study, so I added an additional year to that. So the previous exhibit had 2018 and 2020, I added 2024.

Q I see it. Got it. Appreciate it.

Looking -- we can stick with Exhibit 3, since it's the updated one. And looking at your professional experience that goes backward in time from page 1 onto page 2. The first professional experience entry is teaching assistant. As a teaching assistant -- well, let's -- let's -- first off, let's mark your engagement letter as Exhibit 4.

(Cohen Deposition Exhibit Number 4 marked for identification.)

BY MR. PAGE:

Q I assume you're familiar with this document?

A I am.

Q The last page, is that your signature dated February 21st, 2024?

A Yes.

Q All right. And am I correct to state that this document is the basis of your engagement in this matter?

A Yes.

Q Are there any other written documents prior to this document that you believe is the basis for your engagement in this matter?

A No.

Q Any documents subsequent to this one that you believe is the basis for your engagement in this matter?

A No.

Q So the scope of your engagement, is it represented in this document?

A Yes.

Q And has that scope been modified in any manner, whether expanded or contracted, since this document?

A No.

Q Back to Exhibit 3, the amended CV. And starting with your first entry on professional experience is the teaching assistant. Are you with

me?

A Yes.

Q At the point in time that you were involved in that teaching assistant position, would you consider yourself to have been capable to do the work that is within the scope of your engagement in this matter?

A During the period in question, so from 2006 to 2008, 2011 to 2013 --

Q Yes.

A -- I would say possibly towards the end of that period, so 2013.

Q And your Ph.D. was obtained in 2016, correct?

A Correct.

Q Okay. And you were a teaching assistant while engaged in some of the professional experience that is also entered on here, such as the one above teaching assistant, the special projects manager; yes?

A Special -- those did not overlap. So the special project manager was from January until, I believe, July of 2006. And then I went back to school in the fall of 2006.

Q Thank you.

When you were a special projects manager in the first half of 2006, did you have the skills to perform the scope of your duties that you have been engaged for in this matter?

A I would say that I have -- I had the skills, but not the subject matter familiarity.

Q Okay. I just thought that based on your response to my question regarding the teaching assistance and you saying that you didn't think you could do the scope of this work until later in that time frame, around the, maybe, 2011 to '13, that you would not have had the ability to do the scope of your work in this matter when you were a special projects manager back in 2006.

A You know, it's -- to amend my answer, I don't really -- it would be hard for me to say whether or not I had the skills back in 2006 to do this. I'd have to think more carefully about what I knew and what I didn't know at that time.

Q Okay. So you're not sure if in 2006 you had, we'll call it the professional competency to do the work that you've been retained to do in this matter?

A I would say that's correct. I would say I did not have the professional competency and

experience to do this work.

Q Okay. Same question with contract researcher in 2007. At that point in time, did you have the professional competency to do the work that you have been retained to do in this matter?

A I would agree. Yes, I would agree with that as well.

Q That you did not?

A I did not.

Q Okay. And then back to the first page at the bottom, research manager, '08 to 2011, same question. During that time frame, did you have the professional competency to do the work that you have been retained to do in this matter?

A I -- again, I think that I probably had some of the skills and competency, but not the level that I have now to do the work.

Q When you were a research manager during that time frame, would you have agreed to enter into an engagement like the engagement that's represented by Exhibit 4?

A I doubt that I would have been -- I doubt -- I'm not sure that I would have been approached, because I was a government employee, to provide this level of -- this kind of engagement.

Q Okay. Putting that aside, and I'll try to clarify my question, if you didn't have that restriction on you, do you believe that you would have been comfortable executing an engagement agreement, like you have in this case, to do the scope that you've been retained to do in this case when you were a research manager back in '08 to 2011?

A Most likely not.

Q Okay. And the same question for senior policy advisor. Would you have been comfortable entering an engagement like you have in this case for the scope of work that you have been retained to do in this case?

A Possibly not.

Q Okay. We're getting closer.

So 2013, you go to the position of senior economist with Community Attributes Inc., Seattle, Washington; yes?

A Yes.

Q What's Community Attributes, Inc.?

A That is an economics and economic development consulting firm.

Q When you -- I'll ask you the question I've asked you for the others, but a little bit

differently.

During the time frame of 2013 to 2020, was there at some point in time in that time frame where you believe you would have had the competency to enter into the engagement that you have in this case to do the scope that you've been retained to do?

A Yes.

Q Can you identify for me, and not by month, but just generally speaking, between 2013 and 2020, when you think you had the competency to enter into an engagement like you have in this case?

A I would say probably by 2015, is my guess, but it's purely just a guess.

Q I understand. And I'm going to let it be a guess. But what I am trying to figure out is, what it is about your professional development that as of around 2015, you believed put you in a position where you were competent to enter an engagement like you have in this case?

A So the experience of being a consultant really helped to train me to understand how to look at questions like this, as well as the experience of working with the kinds of data sources that might be applicable to a case like this.

So it's the professional training that I received working as an actual consultant, that was the most -- that provided a lot of valuable experience for me that would be applicable to serving as an expert witness.

Q When you say how to look at a question like this, I -- what do you mean?

A To look at -- to -- it's -- to know how to unpack a question, to think about the data sources, to structure an analysis, to help to address a specific question in a scope like this. So having that experience of being a consultant trained me in a lot of the skills I believe would be applicable.

Q One of the things that I picked out of that is how to structure an analysis for a specific question. Is that a fair representation a part of your response?

A Yes.

Q Okay. You got your Ph.D. in 2016; yes?

A Yes.

Q So when you started as a senior economist in 2013, were you enrolled in the Ph.D. program?

A Yes.

Q So from 2013 through '16, were you

continuously enrolled in the Ph.D. program while also being a senior economist?

A Correct.

Q Up until the point in time that you obtained the Ph.D. in 2016, were you a full-time employee at the Senior Economist, Inc. company?

A I took a short sabbatical to work on my Ph.D. exclusively in the fall of 2013, but otherwise, I was working on -- I was both working and working on my Ph.D.

Q How long was the sabbatical?

A I think it was three months.

Q The last quarter of 2013?

A Yeah.

Q Okay. And then starting with the beginning of 2014, your recollection is you were full time in the Ph.D. program?

A Until -- I'm sorry, until 2013.

Q Beginning 2014, you were full time in the Ph.D. program?

A Well, I --

Q And prior to that, but just as of January of 2014, you were full time in the Ph.D. program?

A I was always -- it's hard to say full

time because I wasn't taking classes, I was just working on my dissertation.

Q Thank you.

Let me ask it a different way though. As of January 2014, your recollection is you were a full-time employee at Community Attributes, Inc.?

A Yes.

Q And what does it mean when I say full time, and you agree with me, what does full time mean to you?

A Standard 40 hours a week.

Q All right. 2015, or thereabouts, was the date that I believe you said you believed you probably had the competence to engage -- or to be engaged as you have in this case, right?

A Give or take, yeah. I'm just estimating.

Q Give or take.

Well, around the point in time when you feel like that happened in your professional development, what was it that had happened that, you know, as you sit here now makes you feel like you were competent at that point?

A I think that the -- having the experience of engaging with clients and building that experience was incredibly valuable.

Q What was it about that experience that you think, you know, made that shift happen from what, as you sit here now, was previously not capable of the engagement in this matter to as of that time capable of the engagement in this matter?

What was it about the client experience?

A I would -- I'm guessing, because I haven't thought carefully about this, so this is -- I would say the experience of asking the right questions, trying to understand what the client's specific analytic question is that they're hoping to understand.

It's really just -- it's ultimately just about the maturity as an analyst and as a consultant. So it's hard to pinpoint exactly when, but gaining that experience was super helpful to understanding how to look at a project, to execute on that project, and so forth.

Q Okay. Your first bullet here is, subject matter leadership on, and then there's a list of eight, nine, maybe or so, types of work. Fair?

A Yes.

Q Okay. So when you say subject matter leadership on those types of work, what were you -- what were you doing in those various areas?

Like the wine industry, which I think would be very interesting, international trade, seaport and airport operations, what were you actually doing?

A I was the -- oftentimes the project manager for a project specifically on a topic related to each of those -- or a project on specifically each of those topics, and/or was the lead economist on those projects. So we might be -- we would be hired by different, for instance, industry associations.

So, as an example, in 2015, I believe, we were hired by an organization called the Washington Technology Industry Association, which is a statewide industry association for the tech industry in Washington. So I was hired to be the lead economist for that project.

And I would be the one who would guide the research, develop the research agenda and plan, present the findings to the client, both interim and final report and so forth.

Q And am I correct to assume that if you were the lead economist on a project, then you were focused solely on economic issues?

A Yes.

Q If you were the project manager on a project, were you still focused on economic issues plus other things, or did the economic issues get pushed to the side and you just managed the project?

A It depends on the size of the project. So for smaller projects, I would be both the project manager and the lead economist. So the project manager would also take on the responsibilities of engagement with the clients, discussing contracting, invoicing, regular cadence for check-ins with the clients and so forth.

For much larger projects, I was the lead economist, but the role of project manager, given the size of the project, would be held by another person.

Q Who would the other person be in those instances?

A It would be another person at our firm.

Q From a different department?

A We did -- we were small, so department is not -- we wouldn't use the term "department," but it could be anyone. Everyone in our firm -- or most everyone in our firm was capable of being a project manager.

Q How many people were at the firm?

A It varied between 8 and 25.
Q And were they all economists?
A No.
Q What were some of the other professions?
A We would call them planning analysts, but people with experience in urban planning. We also had people whose roles were -- we had one person who was trained as a software engineer who was a data analyst. We had people who were specialists in economic development and strategy. And then also people who were responsible for communication materials, like graphic design.
Q You said that you had some people who were specialized in economic development strategy, right?
A Correct.
Q Were you one of those people?
A I was not trained in it but developed familiarity and capabilities over time. So I was engaged in it, yes.
Q What's the difference between people who were trained in that area and your education and background or training?
A There are specific programs where people can get a degree in economic development. More

often the case, people with a master's in public administration, or MPAs, often have more of a structured training in economic development.

The same is true for urban planning as well, as it relates to comprehensive plans, economic development plans that cities are required to produce.

Q Okay. As of, thereabouts, 2015 -- which we identified as the vague point in time where you felt capable to do this sort of work that you've been engaged to do here, right?

A (Moving head up and down.)

Q Yes?

A Yes.

Q Okay. By that point in time, had you been a project manager on any projects at Community Attributes?

A Yes.

Q Smaller ones though?

A Smaller, yeah.

Q How many people would be on the team that you were managing?

A For a specific project -- because I also managed staff in general, but for a specific project, maybe up to three or four.

Q Okay. And then 2015, and going forward until you left in 2020, if you were the project manager, are we talking about more people, larger projects?

A I'm sorry. Can you restate your question?

Q Sure. And thank you for asking.

You said up until that point in time, around 2015, if you were the project manager, you had, I think you said, like two, three, or four people on a project. After that point in time, 2015 to 2020, were you the project manager on projects that would have had more people involved?

A Sometimes, yes.

Q Okay.

A But also as -- it's just as a general rule, for a larger project, it was a higher and better use of my time to be the lead economist on a project, not to have me be the project manager. So it's a higher and better use of my time, as well as other people's time, for someone else to be the project manager on a larger project.

Q You used "highest and better use" twice in one answer. Do you know that?

A Yes, I'm aware.

Q All right. So on those larger projects where you're lead economist -- and I get it why that would make sense, highest and better use there -- did you have other people under you when you were the lead economist on the larger projects?

A Yes.

Q Okay. And the range of number of people that might be working under you on those projects?

A It really depends. Maybe an example would be helpful.

Q Sure.

A So in 2015, we did a very large project that was funded by the U.S. Department of Defense.

Q Okay.

A And the nature of the project meant that there was both a very intensive economic modeling component and there was also an intensive data visualization component to developing an online tool to test different impacts of changes in defense contracting on local communities in Washington State.

Given the nature of their project and the types of work that were required, we had an overall project manager, but then I served as -- while serving as lead economist, I also managed the

economic analysts and the economics part of the work, but there was also a team of people working on the data visualization on the online tool component of the scope.

Q Got you.

And what was the range or specific number, if you've got it, of economists that were on the economic side of that U.S. Department of Defense project?

A I believe it was three.

Q You plus two or you plus three?

A Maybe four actually. Sometimes we used people for small components, so people would work -- throughout my career, as a consultant as well, we work on lots of projects at the same time. So sometimes we would use someone's labor for a specific task, but they wouldn't be involved for the duration of the project.

Q Okay.

A So it could even be five. I'd have to -- it was a long time ago.

Q That's fine.

The first bullet of subject matter, leadership, where would that U.S. Department of Defense project fall in the categories that follow

that bullet, if any?

A That one was not included explicitly, but there are several elements. For instance, on the second line of that bullet, "Input/Output Modeling," that was -- that project was an application of input/output modeling. There was also a lot of -- a lot of the defense work involved aerospace.

So, for instance, a lot of the defense programs by Boeing in Washington State, like the 8KC46 tanker, the PA Poseidon program, and so forth. And also maritime. So there are a lot of defense contractors in the maritime sector in Washington State.

And I can go on to information engagement technology. A lot of tech firms, like Cray Computers, Microsoft, even Amazon, in Washington State that do defense contracts. So while it doesn't explicitly call out defense, there are a lot of aspects to that project that were called out in these other elements.

Q Okay. Thank you.

You mentioned maritime specifically. And let's just stick with the U.S. Department of Defense project, because that's kind of where we are.

Would you say there was a maritime

component to that?

A Yes.

Q What was the maritime component of that U.S. Department of Defense project?

A In that case, in that specific project, it was looking at the value of U.S. Department of Defense -- and also I should mention the U.S. Coast Guard, which are actually under Homeland Security, or were already Homeland Security at that point, contracts with shipyards, such as Vigor -- Vigor Industrial. And also the large footprints of the Puget Sound Naval Shipyards, which uses upwards of 14,000 civilian employees in the work that they do.

Q So break it down for me a little bit. You mentioned contracts with shipyards. And those are contracts where the shipyard is on one side and the Department of Defense or the U.S. Coast Guard is on the other side. Is that right?

A Correct.

Q Okay. And what are those contracts for?

A Manufacturing and delivery of Defense ships, Defense vessels, Navy vessels, or Coast Guard vessels.

Q That are being manufactured in shipyards?

A Correct.

Q Okay. So we're not talking about vessels going in and out on a constant basis, like we'll talk about in this case, we're talking about literally the construction of a ship in a shipyard per a contract with the Coast Guard or the Department of Defense; yes?

A As well as maintenance. So there was maintenance as well. So ships that -- ongoing maintenance of Navy and Coast Guard vessels.

Q Okay. So they dry dock them, they fix them, then they'd go back out once they're fixed; yes?

A That could be one situation, yeah.

Q Okay. But, again, not the continual in and out of a port like what we'll be talking about with Tampa Bay. Is that right?

A I don't know the schedule for maintenance, but it wouldn't be on the same frequency as what we're talking about here.

Q Okay. Not cargo ships in and out, in terms of having cargo on them?

A Correct.

Q And not cruise ships with people on them?

A In that specific project -- there are other projects that I've worked on in Washington

State that did look at Jones Act vessels.

Q Okay. And we can get to those. I'm just trying to get to the point where we both understand, if I'm correct, that the project that you did for the U.S. Department of Defense was not similar in terms of there were literally thousands of ships going in and out every year with passengers on them or cargo on them or fruit on them, or anything like that. That wasn't what you were doing in that project, right?

A That specific project, that's correct, they did not involve that.

Q Okay. And then what was your valuation of those contracts or what you were retained to do in terms of those contracts?

A To --

MR. MANSON: Object to form.

A To quantify the economic value of those contracts, as well as the broader deliver benefits of those projects and the state economy. And I can explain that.

Q You were doing it on the U.S. Department of Defense's side, right?

A I was doing -- yes, I was doing it to evaluate and to quantify the economic value of those

projects, both in terms of the direct spending in Washington State as well as the broader ripple effects of that spending.

So, for instance, what were the additional jobs, business revenues, as well as income that was generated or supported by workers who might work at a shipyard working on a Defense contract, who then spend their income elsewhere in the economy, or in the case of what we call indirect effects, what were the supply chain impacts as well. So what additional suppliers were supported in part by working -- by these Defense contracts.

Q So it's the direct and indirect economic impacts of the Department of Defense spending money in the State of Washington pursuant to those contracts. Is that generally correct?

A Yes.

Q Okay. Did that -- did that particular project -- and we can talk about other ones later, but did that particular project have anything to do with the rates that were being charged in the various ports of the state of Washington?

A No.

Q Did it have anything to do with the income of pilots for the various ports of the state

of Washington?

A No.

Q Okay. While you were with Community Attributes, Inc., 2013 to 2020, were you involved in any projects that had to do with the rates charged at the various ports of the state of Washington?

A For pilotage?

Q Yes.

A Yes.

Q Okay. What project or projects?

A That was the -- the most explicitly direct one was the project in 2017/2018, and that was for the Washington State Joint Transportation Committee.

Q Is that what resulted in the rather large report that I've read that's referenced in the report you produced in this case?

A I'm sorry. Can you repeat that question?

Q Is that engagement that you just referenced what resulted in the report that was produced in this case?

And I'm reading from the resources in this guy, in your January 8th report. It says "Washington State Joint Transportation Committee, January 18, 2018, Washington State Pilotage Final

Report and Recommendations."

A Yes.

Q Okay. So that was -- that was one that you did that related to pilotage rates is your testimony; yes?

A It included a discussion of pilotage rates, yes.

Q Okay. And when you say it "included discussion of pilotage rates," what do you mean by included a discussion?

A So it evaluated the process for determining rates.

Q Okay.

A As one of -- that was part of its scope. There were other parts, too, but that was one major component.

Q And that's in part -- I'll just pull one out of my brain, the Public Utility Commission process being one process that you discussed; yes?

A Yes.

Q Okay. The other processes in that report that you discussed were what?

A We evaluated the model at that time for setting rates, which was through the regulation of the Board of Pilotage Commissioners, as well as

other models of rate setting across the U.S. So our -- our scope included looking at what were referred to as best practices for rate setting across the U.S., among other pilotage districts.

Q And if I recall correctly, your recommendation was to adopt the Public Utility Commission process?

A Correct.

Q And that, in fact, did happen?

A That did happen. And, in fact, that recommendation was supported by both the Pacific Merchant Shipping Association, which were the shippers, and the Puget Sound pilots. Both sides supported that recommendation.

Q And as I recall then, literally the law was changed to implement that as the process to set pilotage rates?

A Correct. It was the next legislative session, that recommendation was codified into legislation that was passed.

Q Any other experience with changing the law?

A Not that I'm aware of.

Q Okay.

MR. MANSON: Counsel, when you're ready

for a break, I could use a comfort break.

MR. PAGE: Sure.

MR. MANSON: But it's not desperate.

MR. PAGE: Give me two minutes.

MR. MANSON: No problem.

MR. PAGE: Thank you.

BY MR. PAGE:

Q So we discussed the maritime portion of the U.S. Department of Defense project, direct and indirect economic impacts of the DoD spending money in the state of Washington, right?

A Correct.

Q And we just spoke about Washington State Joint Transportation Committee report and recommendation that ends up changing the law.

During your time at Community Attributes, 2013 to 2020, did you have any other projects that you would consider to be significant that involved pilotage rates?

A I did projects that included assessment of -- that included discussion of pilotage, but not specifically pilotage rates.

Q Okay. So you weren't taking Port A, Port B, and Port C, within locations in the state of Washington, and comparing the rates at Port A, Port

B, and Port C in making any type of analysis. Is that right?

A Correct. Although, to correct -- amend my answer, I also worked -- while I was at Community Attributes, and then later on in my current firm, I did also work with the Puget Sound pilots. And that was specifically helping them develop a model for the rates, a rate model.

Q That may take a minute, so let's take our break.

A Okay.

(Recess from 10:31 a.m. to 10:36 a.m.)

MR. PAGE: Let's go back on the record, please.

BY MR. PAGE:

Q Before we took a break, we had spoken about the U.S. Department of Defense work, and I think we had kind of exhausted that. We then spoke about your best practices work that resulted in your report that was done for the Washington State Joint Transportation Committee, right?

A Correct.

Q And correct me if I'm wrong, but I believe that your work for the Washington State Committee was based on an evaluation of the various

options in terms of a process for establishing pilotage rates. Is that right?

A That was part of our scope, yes.

Q Okay. Was there scope beyond that that I'm missing?

A Yes.

Q What am I missing?

A Two other components were to also look at best practices with respect to overall regulation of pilots, so including safety, number of -- the appropriate number of pilots and other aspects of the regulation of pilots. And the other piece was around the pipeline for pilots in the future. So looking at ways to potentially diversify pilots or the demographics of pilots.

Q Was the second part there, the pipeline for pilots, exclusively based on developing a pipeline to establish greater diversity amongst pilots?

A That was part of it, yeah.

Q What was the rest of it?

A Just looking at the methods or ways that pilots are recruited. I think actually you characterized it correctly. So that was it, just looking at the pipeline and having an understanding

of what is the pipeline and then examining are there opportunities or are there practices in other districts in the pilots association in other states that are worth considering to try to encourage more people to get into marine pilotage. And from a broader demographic than the current demographic that was there.

Q Okay. And then the overall regulation of pilots, you said that's in terms of numbers and safety. And were there other elements to that?

A That also included, I believe, general -- like training, for instance, was part of that. So the examination system, the training process for bringing on pilots, and then training them to become full pilots.

Q The examination system in the state of Washington, does it include a portion of the test where the folks taking the exam have to draw the waterways, chart the waterways of the port that they're looking to work at as a pilot?

A From what I remember, yes.

Q Okay.

A It was a very incredibly intensive process, a rigorous process.

Q Any idea what the passage rate was, on

average?

A I don't remember, but I think it was pretty high, in part because they typically didn't hire someone unless they believed they would be able to pass the exam or have a high confidence.

Q So they were hired before they were examined?

A There was -- you know, honestly, I would have to go back and review that part of the report. There was an initial examination -- I believe you had to apply then to take the exam. And then there was also additional -- once you passed the exam, then before you became a full pilot, you had to be signed off by the pilots.

Q Do you have a recollection, one way or the other, whether the people that were sitting to take the exam had already been hired in some capacity or not?

A I don't remember. I'd have to go back and look at the report.

Q That's fine.

And in terms of your work on that project regarding safety, what was the scope of that?

A We didn't look exclusively at safety, but looked at just the process for evaluating safety

concerns. We didn't find any faults with that system though, so we didn't -- we were -- that was part of our scope, but it was not the heavy focus of our scope, it was just one of the elements.

Q So in terms of safety, did you look at what was going on in Washington, plus what was going on in other states and compare, or did you just pretty much look at Washington and say, we feel like Washington's system is good?

A We did look at other states as part of our research, just to see what was the institutional structure for reviewing safety issues.

Q Okay. But you didn't find any best practices faults with the state of Washington is what I'm hearing. Is that right?

A We did not.

Q Got it.

In that overall regulation of pilots, did you do any assessment of the necessary rest for pilots?

A We did not review that, but we -- there was a lot of work that had already been commissioned by the Board of Pilotage Commissioners on circadian rhythm and respite periods.

Q When you say you didn't review it, does

that mean it wasn't included within the scope of your work?

A Our scope was broad in that respect, but we did not specially look -- we acknowledged that they did look at these issues, but we did not ourselves evaluate whether or not it was -- we didn't have an opinion about whether or not -- we trusted the Board of Pilotage Commissioners study with respect to the respite, but it was outside of our expertise.

Q Okay. Got it.

All right. I think that gets us up to the last comment that you had made about the Puget Sound pilots, doing some work for them. And that's associated with the Port of Seattle. Is that right?

A Port -- well, not just the Port of Seattle, but also the Port of Tacoma, I believe Ferndale, Olympia, a few other ports, smaller ports, also Port of Port Angeles. But the majority of their work is between the ports of Seattle and Tacoma.

Q How many members -- well, let me back up.

The Puget Sound pilots, are they an association?

A Yes.

Q Okay. So they're a scenario where the pilots are partners in the association. Is that right?

A Yeah. It's very similar to Tampa Bay.

Q Okay. And you say they serve how many different ports?

A I don't remember the exact number. The biggest ports, which represents the vast majority of their work, would be the Ports of Seattle and Tacoma, but they also do work, I believe, as far south as Olympia. And also work upward -- up to Bellingham, I believe, Ferndale, an area called Cherry Point. I'd have to go back and look at the list.

Also the Port of Port Angeles, which is in the Strait of Juan de Fuca. And other smaller ports. But the majority -- the vast majority would be the two ports of Seattle and Tacoma.

Q Okay. Do you know approximately at the time that you did that work, how many pilots were in that pilot association?

A I think it was about 51.

Q And those are state-licensed pilots?

A They are. Forty-nine or 51, one of those two numbers.

Q We'll call it 50.
A Okay. Round to 50.
Q That makes the math easier.
And I believe you said that -- well, I'm not going to try to recall it exactly. What was it that you were retained to do for the -- is it correct to say the Puget Sound Pilots Association?
A Yes.
Q That was your client?
A That was my client.
Q Okay. And what were you retained to do for that association?
A They had -- they wanted to build a model that would allow them to test different types of rates and to see what the revenue impacts are of those different rates based on historic data on vessels, on vessel traffic, that was handled by the pilots.
So we built -- and I -- I've done this twice, so I did it once -- I worked with them when I was with my old employer, Community Attributes, to develop the model. And then I've also been retained by them after starting my own practice.
But in both of those cases, it was to develop and refine, in Excel, in a spreadsheet model

to test different scenarios, based on different rates and what the gross revenue implications of that would be.

Q And for the Puget Sound Pilots Association, what are their rates based upon? What factors?

A Length overall, draft, beam, gross tonnage. And then there were various other situations. For instance, like conditions, if a vessel was -- based on that, if it was below a certain size, the rate might vary. Each of those rates might vary based on the size of the vessel.

So they were stratified. So if the gross -- if it's below, let's say -- and I'd have to -- I don't recall the specifics, so I'm just going to provide a hypothetical.

Q That's fine.

A If gross tonnage was below 2,000, that would yield a certain rate or that would be associated with certain rates. If between 2 and 10,000 gross tonnage, it would have another rate. And so the same would apply for length overall. So they had different conditions that would apply.

There were also conditions because -- because sometimes the pilots would have to pilot

the -- or conn the vessel into Canadian waters. That's particularly the case with certain ships, as well as cruise ships, I believe. On those rare occasions, there was also what is called a BC charge, or British Columbia charge.

Q Flat rate?

A I believe it was a flat rate. And there are also charges for transportation, shifts, other aspects of the delivery of that pilotage service.

Q Do you remember any of the other aspects?

You mentioned the BC charge, which is going up into Canada, which sounds beautiful, but transportation and shifts. Any other -- were those flat fee charges, to your recollection?

A I don't remember exactly. I know the cancelation charge, I believe, was a flat fee. There was also a cancellation charge. There were -- might have been other charges, too, I just don't remember the specifics.

Q Okay.

A But the model was designed to assign values to each of those rates and then use their historic data for handles to look at what the implications were, how the revenues would change based on a different kind of recalibrating of the

different -- the different variables.

Q And were the models limited to length overall, draft, gross tonnage, and beam, or did they include some of the other things that we've been talking about, like the BC charge?

A Yes, those others as well.

Q Okay.

A It was basically everything that would be involved with the final -- with the charge, with the tariff. Anything that would fit into the tariff, they would want to test.

Q Okay. And was the cancelation charge, as you understand it, a flat fee?

A I believe it was a flat fee.

Q Was the transportation charge, as you understand it, a flat fee?

A I don't recall. It depends if they would travel to -- it depends on where the job was assigned, but I don't actually recall the specifics. I'd have to go back and look.

Q And when you say "they," are you talking about a particular pilot?

A No, it wasn't a pilot -- it wasn't pilot-specific.

Q I'm sorry. Poor question.

You said something about the transportation charge would depend on -- well, I don't want to misstate what you said. My understanding of what you said was that there would be potentially a transportation charge based on a pilot needing to transport from wherever they were to wherever they were assigned. Is that right?

A If a pilot, for instance, in, I believe -- I would have to go back and check. But as an example, if a pilot had to conn a vessel to, let's say, Tacoma, there would be some transportation involved, but I just don't recall the specifics. I would have to go back and look at the model to see what the specifics were.

Q Okay. When you say "transportation," are you talking about ground transportation?

A Yes.

Q Okay. So either they had to travel to get to where the ship was or after they delivered the ship, they had to travel back to some other destination?

A Possibly, but I'd have to go back and check.

Q Okay.

A And that was variable. They were testing

as a hypothetical.

Q Okay. Yeah. Yeah, yeah, yeah. But they had cancellation, shift, BC charge, transportation charge. Those were all charges that they were, in fact, charging at the time you were doing that work.

Is that right?

A BC charge -- yes, BC charge was included. Length overall was already -- I believe was already in the rates, the rate calculation and the rate charge, yeah.

Q Okay.

A As well as some other ones, like gross tonnage.

Q Okay. I gave you too much there.

They were charging based on length overall historically; yes?

A Yes.

Q And same as the draft?

A Yes.

Q Same as to gross tonnage?

A Yeah.

Q Same as to beam?

A I believe so, yes.

Q Okay. And then historically, were they charging that BC charge?

A Yes.

Q Historically, were they charging a shift charge?

A I think so. I think that might have been one that was being debated. I'd have to go back and look.

Q Okay. Historically, were they charging a transportation charge?

A I think so, but I'd have to go back and check.

Q Okay. And then historically, were they charging a cancellation charge?

A Again, I think there was a cancellation charge, but I'd have to double-check that.

Q So what would you need to go back and look at to determine that?

A I'd look back at the model and look back at historic -- any historic information about the rate at the time that they were -- that they retained us to develop the model.

Q And when you say "retained us," are we still talking about Community Attributes, Inc.?

A Yeah.

Q Okay. And then have you since done a similar project for them as principal and founder of

High Peak Strategy?

A I have.

Q Okay. Do you still have possession of the model and data and work papers and such from the work that you did when you were at Community Attributes, Inc., for the Puget Sound Pilots Association?

A Not when I was at Community Attributes.

Q Okay.

A Not from when I was at Community Attributes.

Q Got it.

That work stayed with them?

A It ultimately stayed with the pilots.

Q Got it.

The work that you did for the Puget Sound Pilots with High Peak Strategy, is that information that you have in your possession?

A I believe I have draft information, but the model itself is the property of the pilots.

Q And you do not have the model itself?

A I believe I have a draft of the model.

Q Did you -- in the work that you've done so far in this case, did you rely on any of the work that you had done for the Puget Sound Pilots

Association?

A No.

Q We talked about the DoD, the State of Washington work, and Puget Sound Pilots Association, all while at Community Attributes. Was there any other maritime work that you did while with Community Attributes?

A Yes.

Q What was that?

A I led two statewide studies of the maritime sector. And those studies both looked at the economic impacts and economic contributions of the maritime sector to Washington State.

Q Did either of those studies delve into pilotage ratemaking?

A Not specifically ratemaking.

Q Okay.

A It did cover pilots, but not specifically ratemaking.

Q When you say it covered pilots, what do you mean?

A In order to estimate the size of the maritime sector, we had to include all aspects of maritime, so it included pilots, both the Puget Sound pilots and the Grays Harbor pilots.

Q What do you mean by include them? What did you include about them?

A Number of people who were pilots, estimated income from pilotage, and revenues generated overall by pilotage.

Q Okay. But there was no comparison port to port or association to association regarding rates? Compensation? Anything like that?

A Not a comparison.

Q Okay.

A And in addition to that, we also -- I also did a lot of work around seaports and port activity that did not explicitly cover pilotage, but inherently involves -- as a topic, includes pilotage.

Q Seaports and port activity. Is that what you said?

A Yes.

Q And what type of activity are we talking about?

A One example would be the economic impacts of ports and ports activities. So it's the similar type of analysis; what are the -- what's the economic value of ports and the importance of ports and port infrastructure and port activities to the

economy.

So I did one study for the Washington Public Ports Association in 2016, I think. I did the -- I led the development -- or lead economist on a study for the Ports of Seattle, Tacoma, and the Northwest Seaport Alliance, which is an alliance between -- on the containerized activities, as well as some other related activities, other activities between the ports of Seattle and Tacoma.

I did work related to -- I did the global supply chain analysis work, which also included estimating the value of pilotage, as well. I did that for Highline Community College -- or sorry, Highline Center of Excellence on Global Trade Supply Chain Management, while I was at Community Attributes. And I did that again recently this year.

I did an analysis of -- also I should mention for the City of Kent. Sorry, I forgot to add that one, for the same study.

Q City of?

A Kent.

Q Kent.

A Looking at global trade supply chain management. I've done a lot of work on trade, which

also, to some degree, entails pilotage, because pilots are critical to the movement of cargo.

I did work on looking at any sort of disruptions to port activities and what that would mean. So, for example, I think it was -- it was -- I think it was -- it's in my CV, but I think it was 2017 or 2016, there was a big push to acquire property and build an arena to bring back the Sonics.

So the Port was concerned about given the location of the proposed arena, what impact that would have on drayage and transloading operations, because the proposed location was in an industrial district that saw a lot of truck traffic moving to and from the Port of Seattle and transloading activities.

Q Okay.

A So those are just a few. And I might be missing a few. But those are the ones that I've done while at Community Attributes. And then I've done additional port work and maritime work since starting my own practice.

Q One of the pieces of work that you mentioned was analyzing the interruption in port activity. And just, generally speaking, what were

your conclusions about the consequences of interruptions in port activity?

A Oh, it would create significant impacts on the port, in part because that region of Seattle is already quite congested. So the introduction -- and there are already two stadiums in that industrial district.

So the Port was able to make modifications with the owners of the teams and the state planners to work around peak periods, where there's a high amount of pedestrian traffic.

But the introduction of an arena and the frequency of games would make it -- it would be a tipping point where it would make it far more difficult to continue to operate efficiently, given all the traffic and all the pedestrians moving in that industrial district that was not traditionally designed to have a lot of people walking around.

Q Okay. And by -- and the interruption would be in the inability of vessels to get in and out. Am I correct about that?

A It would be with the -- it could indirectly affect vessels moving in and out because it would impact drayage operations, and so it would slow down the ability to load and unload vessels at

the ports, and specifically Terminal 46, and another -- I believe another terminal as well down in that area.

Q Okay. You were talking about, I believe, economic value, supply chain analysis, and trade, and some things along those lines. I think you made the comment that pilots are critical to all of that. Am I remembering that correctly?

A Pilots are a critical part of trade, yes.

Q Okay. And why do you say that pilots are critical to that?

A Because you need to ensure the safe navigation of cargo vessels and other kinds of vessels into and out of ports.

Q Have you developed any experience regarding what is or is not safe navigation?

A That if -- I have not.

Q So when you say that safe navigation is -- is it fair to say that safe navigation is critical?

A Yes.

Q Okay. So when you agree with me that safe navigation is critical, how do you reach that conclusion?

What are you basing, you know, apples

versus apples on to say that safe navigation is critical?

A Because if there was an accident, it could be potentially catastrophic or at least cause significant economic damage, as well as personal and safety -- you know, damage to humans and environment.

Q And are there any examples that you have of that that you've, you know, pointed to to say this is why safe navigation is critical?

A I'm not -- it would be hard for me to pull a specific example, but I know that there's a long -- there's plenty of resources one could find of when there have been accidents. I mean, I'm not sure the Exxon Valdez is the best example. I don't -- but there's lots of examples where when something was -- when you don't have safe navigation, it could create significant havoc.

Q And would an example of that be the recent experience up in Baltimore?

A Yes; although I -- the details of that are still -- I believe there was a malfunction on the vessel itself, so --

Q Putting aside the navigation, but the accident itself and the consequences of the

accident --

A Yes.

Q -- would that be an example?

A Yes. That's a good example then.

Q Okay. We've talked about Community Attributes, Inc. a good bit here. And I feel like we have exhausted the work that you did there that's relatable to the work that you're doing in this case. But do you disagree with me and is there anything else?

A There are probably a few other examples. Dr. Kemmsies and I worked together on a project for the Northwest Seaport Alliance, I believe in 2019, looking at cargo flows as well and the destination of cargo inland.

Q What was the reason for that work?

A The specific reason was more for planning purposes, I believe, for the Northwest Seaport Alliance to understand what are the -- understand how -- the extent of the hinterland of customers and where are those customers and the importance of the Port of Seattle, Port of Tacoma to hinterland economies, as far as the U.S. Midwest even. So hinterland going even further out.

Q Because I'm sure there will be somebody

who's going to read this deposition who's not really going to understand what hinterland means, and it could possibly be me, what does hinterland mean?

A Or just the -- I can rephrase it. Just areas beyond the port. So inland.

Q Okay.

A As well as even further to other economies in the U.S.

Q Okay. So sort of the radius of the impact. Would that be fair?

A Yeah. Like the Port of Seattle often likes to describe itself as the Port of Chicago, because a lot of -- a lot of products that are moved through the Port of Seattle do go as far -- into the Midwest. So that's correct, it's the radius, understanding the broader radius of impacts and benefits. And the number of -- to the extent to which inland economies utilize and benefit from the Northwest Seaport Alliance as a gateway for trade.

Q Port of Chicago, is that what they call it?

A They don't use that as much anymore, but things have changed. But that was thrown out there quite a bit quite a few years ago maybe.

Q Is --

A One --

Q I'm sorry.

A One other aspect is not specific, again, to pilots, but I also did a lot of workforce analysis. So I did a lot of work looking at wages among different occupations. So that was -- included maritime, it's part of some of the maritime impact studies.

But it also involved -- I was involved with other, we call them, talent pipelines, but essentially modeling the supply demand gaps for different kinds of occupations, including many maritime occupations. And that would be done, for instance, for workforce associations and other organizations that had a stake or are involved with training and education and workforce issues.

Q Okay. Did you do any workforce analysis for state-licensed pilots?

A I did not.

Q Okay.

A Other than the work that I did for the Joint Transportation Committee, which looked at where pilots were traditionally recruiting pilots -- new -- were recruiting pilots from.

Q Okay.

A And understanding that pipeline.

Q And as we discussed, that was with a scope of seeing if the pipeline could be improved to -- improve the diversity amongst the pilot association?

A Correct.

Q I guess associations, because it was the whole state, right?

Or was there just one association?

A Associations --

Q For Washington, is there just one pilot association or are there multiple?

A There's one that -- there's the Puget Sound Pilots Association. They're an association. I'm not sure the legal -- I think they're an association, but then there's also the Grays Harbor Pilots. There's actually, in theory, between one and two. And they're employees of the port there. So just one association. But they're both regulated by the Board of Pilotage Commissioners, and the rates are governed by the Utility Transportation Committee or Commission.

Q And the Utility Transportation Commission, in regards to governing those rates, is that based off of a target income process?

A Target income is an input into that. That is a consideration.

Q All right. High Peak Strategy, LLC. Congrats on being a founder.

A I'm the founder, the CEO, the accountant, the custodian.

Q There you go.

When in 2020?

A October.

Q Wow. Okay. Right in the midst of it.

A Uh-huh.

Q Okay. What made you go out on your own?

Well, let me rephrase that. Are you basically on your own?

A Yes.

Q Okay. What caused that or led you to do that?

A I had wanted to start my own company for several years, and I know it sounds crazy that I did that during the pandemic, but working remotely actually was sort of proof of concept for me that I could do it because I just could work from home and do work. And my wife's prodding to finally do it. So I took the leap. I figured if I could make it work during a pandemic, I could make it work.

Q Okay. So it sounds like the Puget Sound Pilots Association went with you as a client?

A I wouldn't say went with me, because I didn't actively try to recruit them as a client. I was very careful about that. I didn't want to, like, recruit clients.

Q I'm not trying to put you in a box. They came back to you for some --

A They reached out to me. Yeah, they reached out to me twice to help them.

Q Did you help them twice or just the one time that we discussed?

A Mainly once. And then they came back earlier this year with a few, very small, sort of, questions about the model they were working with.

Q Okay. That's the -- when you say "the model," you're talking about the model of which you have a draft and of which they have a final?

A Correct.

Q Got it.

With High Peak Strategy, LLC, have you done work that you would consider comparable to the work that you're doing in this case other than potentially the Puget Sound work?

A I would say this -- the Puget Sound work

is the most maybe specifically related, but there's -- I've done lots of work with ports and port operations that I believe is applicable.

Q Okay. Other than the Puget Sound Pilots Association, have you done any work specifically for a pilot association?

A I have not.

Q And the ports work that you're describing, we've talked a good bit about direct and indirect economic impact of a variety of potential interruptions, things like that, when it comes to port activity. With High Peak Strategy, LLC, have you done work with ports that is different than what we've already spoken about?

A So in -- I've done other port-related projects that go beyond -- port logistics and trade-related projects that go beyond the economic impacts. Although I have also done economic impacts as well of ports with various in port infrastructure, in Port Stockton, Port Houston -- at the Port of Houston, also in Louisiana.

Dr. Kemmsies and I worked together on a project for the Georgia Ports Authority. That project looked specifically at what impacts a draft set of new rules that are being promulgated by the

National Oceanic and Atmospheric Administration, or NOAA, were issuing that had direct relevance to pilot operations at the ports of Savannah and Brunswick.

So in that case, we developed a model to look at what the potential disruption impacts might be from those proposed rules, because they specifically affected the speed limits that pilotage boats could operate -- or pilot boats could operate at for a large segment of the year.

Q Okay. That work for the Georgia Ports Authority was not work associated with rates for pilotage services?

A Not specifically on rates.

Q Okay. Was the work in Houston specifically related to rates for pilotage services?

A It was not.

Q Was the work in Louisiana specifically related to rates for pilotage services?

A It was not. I believe there was a -- in the model that we did, there was -- actually there was not, yeah.

Q Okay.

A Included longshoreman costs, but not pilotage cost.

Q Okay. And then in a more general sense, you mentioned port logistics and trade work that you had done. Any of that work associated with the rates for pilotage services?

A Not specifically on rates, although it would involve -- the subject matter would involve pilots, but not specifically on rates.

Q So it would -- correct me if I'm wrong, I'm trying to cut to the chase, it would involve pilots in terms of via the logistics of a port operation and in terms of getting trade in and out, things like that?

A As well as the economic value of that.

Q Okay. Got it.

But in terms of the rates that were charged for the pilotage services or the income of the pilots or the revenue to the association, is it true that in that -- in that logistics and trade work, it just was what it was and you used it as data?

A I did not even look specifically at rates, but looked at the revenues.

Q Okay.

A So yeah, did not scrutinize the revenues.

Q Thank you.

There's a fair bit of work on your resume that I don't often see on resumes.

A Let me guess what this is.

Q What do you -- what do you guess it is?

A Something about China?

Q Yeah. Incredible advanced fluency. That's extremely impressive. I had to hire a tutor in college to pass Spanish.

Let's say, back at Community Attributes -- well, hold on a second.

So your language training goes back to 2003.

A Formal training, but I started in 2001.

Q Okay. So when you were a senior economist at Community Attributes, Inc., were you already -- did you already have advanced fluency in Chinese?

A Yes. It's a lifelong project, so it's never good enough, to be clear.

Q Understood.

A It's advanced.

Q Got it.

And while you were at Community Attributes, was your -- I mean, it says in your resume advanced fluency, so that's what I'll stick

with.

What percentage of your work had some relation to your advanced fluency in Mandarin Chinese?

A It's a very small percentage.

Q Okay. And then since that time, with High Peak Strategy, what percentage of your work has had to do with your advanced fluency in Mandarin Chinese?

A I may have one caveat or amendment. A very small percentage of my paid work. But I did a lot of pro bono work while I was at Community Attributes.

Q All right.

A And outside of my normal work hours, but I did a lot of work -- volunteer work. So giving presentations on the U.S.-China trade war, for instance, on the Washington State-China relationship and the economic investment and trade relationship, and so forth. So I did a lot of pro bono work in that space. But in terms of paid work, very, very little.

Q And is the answer the same for your use of your advanced fluency in Mandarin Chinese during your time at High Peak Strategy?

A Correct. I still use it, but for a small percentage of my work.

Q Okay. And still do the pro bono?

A Yeah, but trying to do less pro -- trying to do less and less of the pro bono.

Q I get it.

We spoke earlier about, I believe, Ph.D.s and economic development and strategy, right?

A Not Ph.D. in economic development and strategy, but experience in economic development and strategy.

Q It's a separate degree?

A A separate degree or typically someone might have an MPA or MBA, too. There's also degrees specifically in -- or people who have MBAs do it as well.

Q Got it.

A So my former employer had an MPA, but was known as an expert in economic development.

Q Are you saying "P" as in Paul?

A Or MPA, yeah.

Q What is the "P"?

A Oh. Public administration.

Q Thank you.

MR. MANSON: Counsel, Ms. Heeter is going

to take over Defense for just a moment.

MR. PAGE: Okay.

BY MR. PAGE:

Q At the very -- close to the very top of your resume it notes, "Regional and trade economist and economic geographer."

Are you with me?

A Uh-huh. Yes.

Q What is an economic geographer?

A Economic geography is economics, but with a spatial component to it. So thinking about the spatial aspect of economics. So, for instance, common topics in economic geography would involve the dispersion of supply chains, land issues, whether it's land markets. It could also involve economic relationships between two regions, two areas, whether those are separate economies or jurisdictions or states or countries.

So it's a -- it's a pretty expansive category of economics that is really the intersection of geography and geographic concepts of spatial analysis and economic principles.

The input -- another part of economic geography is referred to also as regional science. So a lot of the input/output modeling that I do is

commonly known to be -- or commonly understood or associated with regional science.

Q And that's the input/output modeling you said?

A Yes.

Q What is an input/output model?

A It's a model to quantify the -- both direct, as well as the broader indirect impacts of a given activity to an economy. So it's -- it's -- effectively it's -- essentially it's a -- it's a model rendering of an economy that links all the different industries together, as well as households, and even government in some cases.

Q Okay. Have you done any -- have you done any input/output modeling in this case?

A Not in this specific case, no.

Q Have you applied any regional science to this case?

A Not the way I would characterize regional science, no.

Q Characterize it for me, please.

A As input/output modeling essentially, as well as other detailed economic metrics and analysis that looks at the spatial dispersion of different economic activities.

Q Okay. And when you are doing regional science and you're talking about, I think, you said spatial dispersion?

A That's part of it, yeah.

Q Okay. I know it's going to vary, I'm sure it varies, because apparently Seattle is the Port of Chicago, but what is that spatial component of regional science?

Like how far does it reach?

MS. HEETER: Objection to form.

A It could vary depending -- part of the -- like the question, how far can it reach, is actually a question of regional science.

Q Okay. Fair.

A So it could -- you know, like -- for instance, like how for a given economic activity, what are the spatial -- how far do those spatial impacts -- how far out distance-wise would the activity have an impact.

Q So I'm guessing there's a lot of variables to that?

A Yes.

Q Can you give me, let's say, three to five of them?

A Sure.

There's transportation costs. There's sort of availability of labor and labor supply and where the labor supply is concentrated. There's physical geography that could be an impediment to transfer of goods and services.

There could be also the institutional linkages, let's say, between governments that foster more or less trade, as well as rules, regulations, laws, that also either encourage or inhibit transactions in economic activity across regions. There could also be just simply the existing location of different types of activities and how they link together.

If you think about, you know, in a given region, like where there are agricultural activities versus -- and also access to infrastructure and in-transportation facilities or assets, even like rivers to barge certain goods. What are the costs of barging those goods and so forth.

So those are all -- that's not an exhaustive list, of course, but those are certainly the variables that would be considered depending on -- depending on the question.

Q Okay. It sounds like those might be the things that you would kind of always look at when

doing regional -- a regional science project?
A Yes.
Q Okay. The standards, I guess --
A Yeah.
Q -- the standard factors?
A It could be, yeah.
Q Okay.
A It depends -- it just depends on the research question.
Q Got it.
The first time you were deposed -- no, never mind. I answered my own question.
Let's take a look at Exhibit 4. When was the last time that you took a look at that document?
A I know I looked at it recently -- well, you just shared it with me.
Q Sure.
Before today?
A Before today? I believe this week.
Q Okay. And did you look at it as part of your preparations for today?
A It was probably in part to prepare, just to -- I believe it was in part to refresh, yes.
Q What else did you look at to prepare for today?

A Just the -- to make sure to review my report.

Q Okay. Did you review just the report or did you also review the resources that are identified in the last two pages of the report?

A I believe the reports. And I might have gone back and just looked at just a review -- not -- actually, mostly just the report. I might have gone back -- I believe I went back and looked at some of the resources -- some of the sources cited, at a cursory level.

Q Can you go to the -- you've got a copy of it there?

A Yes.

Q And we'll mark it later, but can you just go to page 20. That's the first of two pages of resources. And if you would, just identify the resources -- I'm sorry, the references --

A Uh-huh.

Q -- that you recall having looked at to prepare for today.

A Let's see. I looked back at the rate review, the rate committee reports. I also looked back at, let's see here --

Q Let me stop you there for just a second.

When you say "the report," are you looking at the last entry on page 20, "State of Florida Pilotage Rate Review Committee, 2023 Report of the Investigative Committee"?

A Yes.

Q Okay. Thank you.

A And I looked at the "Pilotage Rate Review Committee June 6th, 2022 Port Canaveral Pilotage Rate Change Investigative Report."

Q Okay.

A In fact, I would say I probably looked at all of these at some level in preparation for this case.

Q In preparation for today?

A In preparation for today, but over the last couple of weeks.

Q Okay. You initially identified the Investigative Committee report from this case and the Port Canaveral investigative report. Were those two that you looked at in more detail than the other documents?

A I think I looked at them fairly evenly.

Q Those two or all the documents?

A Most of the documents I looked at fairly evenly over the last few weeks in preparation.

Q Okay. The fifth reference on page 20 is the Terry Fluke deposition. Have you read that deposition in its entirety?

A I have.

Q And the third reference on page 20 is the Dibner Maritime Associates analysis, the Crescent River Port Pilots Association. Do you see that?

A I do.

Q Have you read that in its entirely?

A I have.

Q The next to the last reference on page 20, "State of Florida, Division of Administrative Hearing, 2024 Pilotage Rate Review Committee's Responses to Network Shipping, Inc.'s Second Set of Interrogatories." Have you read that in its entirety?

A I don't remember all the specifics that were in that second set. I'd have to go back to the response -- or the materials that I submitted.

Q Okay. Well, if you included it here in your references, would it stand to reason that you did read it in its entirety?

A I would have read or reviewed what was there. Which ones I read more thoroughly, I can't -- I would have to know which ones -- I'd have to

look at which ones are in there.

Q Okay. Flip to page 21, please. The first reference is the Tampa Bay Rate Review Application. Have you read that in its entirety?

A I have.

Q And you note the date there is August 10, 2022?

A Yes.

Q So is it your understanding that this is the date upon which that application was submitted?

A That is my recollection when I reviewed the document.

Q Okay. The U.S. Bureau of Economic Analysis and Labor Statistics and Census Bureau entries on page 21, are you the person that pulled all of that information?

A Yes.

Q Besides the other designated economist expert in this case, Mr. Kemmsies, has anyone else assisted you with the preparation of your work in this matter?

A In the actual preparation or just providing documents for me to review?

Q Providing documents. Let's start there.

A So I reviewed the -- received from the --

from the petitioning counsel the interrogatory responses. So the link to those documents.

Q Okay. In terms of -- let's put aside filings in this case and discovery in this case. Discovery includes interrogatory responses and amended petitions and all those sort of things. Let's put those aside.

In terms of other data and information, like the economic analysis from the U.S. Bureau or the Labor Statistics, has anyone else helped you gather that information besides you and Dr. Kemmsies?

A No one else has.

Q Okay. So there's not an assistant or anyone else that has, you know, taken assignments from you, going out and finding what you want and bringing it back?

A I wish.

Q I'm just making sure.

A It would have made it a lot easier.

Q I'm sure it would.

Okay. Let's go back to the engagement letter. Actually before we do that. Besides your report and besides the references in your report, which I believe you said you looked at all of them

to some degree over the last couple of weeks or so, did you review any other materials in preparation for today?

A Not specifically in preparation. I did receive the nexus economic reports --

Q Okay.

A -- but I have not had a chance to do a thorough review of it yet. That's part of what I plan to do over the next few weeks.

Q Okay.

A Because I did not -- that was not an input into my preparation for today.

Q Okay. So that is not something that you are prepared today to testify about?

A Correct.

Q Okay. When did you receive that report?

A I think it was Monday of this week.

Q Okay. And is it your understanding that the scope of your engagement, per the letter marked Exhibit 4, would be inclusive of reviewing that report and rendering an opinion regarding its contents?

A That is a part, I believe, that falls within my scope.

Q Okay.

A Is my understanding.
Q But, again, just to confirm, that's not something that you're prepared to do today?
A Correct.
Q So this engagement letter, Exhibit 4, is both as to yourself and as to Dr. Walter Kemmsies, right?
A Yes.
Q So you're jointly retained by Petitioners' counsel; yes?
A Yes.
Q Is it your understanding that you're retained to provide expert services as to all of the Petitioners?
A Yes.
Q And you referenced earlier reviewing your report. And, again, we'll mark that in a minute, but that's the July 8, 2024 discussion draft report that you have a copy of in front of you; yes?
A Yes.
Q So when you say your report, are you -- are you the exclusive author of that report?
A No. Dr. Kemmsies and I both contributed to this report.
Q Okay. And when we get to it, and as we

go through it, will you be able to identify portions of it that you are responsible for versus Dr. Kemmsies is responsible for?

A We -- so I would say I can identify which ones -- we each reviewed the work and supported each other, but I can identify the parts that I was primarily the lead on versus those that Dr. Kemmsies was primarily the lead on.

Q And will who was the lead on the various portions dictate who's going to be testifying regarding those topics?

A Yes.

Q Okay. Let's take a look at the first bullet in the engagement agreement, "Examination of the Most Recent Rate Increase Request by the Tampa Bay Pilots Association, Including Data and Sources Used to Inform the Association's Rationale for the Requested Increase."

Do you see that?

A Yes.

Q So what is your understanding in terms of what's being challenged?

Is it the request of the Association or is it the decision of the Pilotage Rate Review Commission?

A The decision.
Q Okay. So what is the rationale behind you doing the examination of the request, when, in fact, it's the decision that's at issue?
A To challenge the -- to challenge the decision and the rationale used to arrive at that decision, to increase the rates.
Q But this first bullet talks about, in that third line, the Association's rationale, right?
A Uh-huh. Yes.
Q Okay. So that -- that's -- considering the Association's rationale is not considering the Pilotage Rate Review Commission's rationale, correct?
A Yes.
Q Okay. The next bullet, "Assess Potential Impacts from the Association's Requested Increase." Do you see that?
A Yes.
Q And I believe you said you had done no input and output modeling in this matter?
A Correct.
Q Are you going to?
A No. Not to my -- it's not anticipated.
Q Not to your understanding of the scope of

your retention?

A Correct.

Q What is your understanding of the scope of your retention in terms of assessing potential impacts from the Association's requested increase?

A The cost -- the cost that would be borne by shippers and other parties from the increase.

Q Is that it?

A That -- yes, that would be the impact and what broader impacts that might have as well.

Q What do you mean by "broader impacts"?

A If the -- what impact it might have on future shipments as well, or future activity at the port, from higher -- higher pilotage costs.

Q Wouldn't that be some form of input/output modeling?

A It could potentially. I have not considered that.

Q Okay. But you said you're not doing input/output modeling as far as you know with the scope of your representation in this case, right?

A I have not done any input/output modeling throughout this report -- this draft report.

Q Okay. And I believe you said that it was your understanding that the scope of your retention

did not include input/output modeling. Is that right?

A Well, input/output modeling is a -- it's just a method. So I haven't considered it as a method yet for assessing impacts. So it -- I have not considered it a part of my scope.

Q Okay. The impacts then that I believe you specifically identified, and correct me if I'm wrong, are the costs borne by shippers and others who might potentially pay increased rates. Is that right?

A Correct.

Q Are there any other impacts?

A Those are the -- I'm not sure what other impacts potentially. I'd have to think about that. I'd have to think more carefully before responding to that. But I'm sure there are other -- that would be the main impact, would be the impact in terms of the cost that would be borne by shippers and others.

Q Okay. So this is -- this is, at least with me, your day in the spotlight. So unless you get called back as an expert witness to rebut the nexus report of Mr. Zarumba, I'm potentially not going to get to ask you another question under oath about what assessing the potential impacts from the

Association's requested increase is.

So if something else comes to you during today about impacts that you believe you're going to look at within the scope of your representation, would you please let me know?

A Yes.

Q Okay. And I've written it down to follow up with you.

MR. MANSON: Counsel, a clarification. I just want to be sure if I understood what you said. I believe his testimony was he will be reviewing the nexus report to provide any testimony.

MR. PAGE: That's what -- that's what I heard.

MR. MANSON: Okay. I just thought --

MR. PAGE: Whether he does --

MR. MANSON: -- I heard something different.

MR. PAGE: No, no, no. Whether he does or does not and whether he gets called back as a rebuttal expert in that capacity is yet to be determined, so I just didn't want to commit anybody to it.

MR. MANSON: Okay.

BY MR. PAGE:

Q Based on that first bullet, "Examination of the Most Recent Rate Increase Request by the Association," can you tell me whether that portion of the scope of work was handled by predominantly you or Dr. Kemmsies?

A It was handled by both of us. So I focused more on the -- the input, such as estimated net income per pilots, handle time, and other factors. And Dr. Kemmsies focused on the projected vessel traffic, but we also both exchanged input and feedback --

Q Okay.

A -- to each other.

Q Assessing potential -- start over.

Assessing potential impacts from the Association's requested increase, is that more you or Dr. Kemmsies?

A It will be both of us.

Q Can you distinguish between yourselves as you did with that first bullet?

A I have not -- so I would look at what the impacts are, what does that mean with respect to income, and would review the Rate Review Committee report and what they projected would be the

resulting income from that. That would be the part that I mostly focused on.

Q When you say "income," you mean the pilot's income?

A The pilot's income, yeah.

Q Okay. And I'll let Dr. Kemmsies answer for himself in terms of potential impacts. I won't put you in that corner.

The next bullet, "Prepare forecast for the vessel traffic within the Tampa Bay area ports, Port Tampa Bay, SeaPort Manatee, and Port of St. Petersburg."

Are you with me?

A Yes.

Q Is that you or Dr. Kemmsies?

A That is more so primarily Dr. Kemmsies, but with my input as well. So I supported him on that piece.

Q Supported him in terms of reviewing his work product?

A That, plus with data-gathering and preparation of data --

Q Okay.

A -- to do that analysis.

Q So if I'm going to ask you or Dr.

Kemmsies questions about preparing a forecast for the vessel traffic within the Tampa Bay area ports, who's going to take the lead on that? And are you going to defer to him?

A I will defer to him.

Q Okay. Thank you. You just eliminated some questions. Congratulations.

The next bullet, Review and testify on the, quote, fair, just, and reasonable, closed quote, standard for harbor pilot rates.

Are you with me?

A Yes.

Q Is that you or Dr. Kemmsies or both?

A That would be primarily me.

Q Do you know why fair, just, and reasonable is in quotes?

A That is specific language from statute.

Q Do you know what that language refers to?

A To the determination of the pilotage rates, when determining an increase or a change in pilots rates.

Q So would you agree with me that the -- I'm going to call it The Pilotage Rate Review Commission, the PRRC. Is that okay?

A Yes.

Q Okay. Would you agree with me then that the PRRC's standard is to set rates that are deemed fair, just, and reasonable?

A That is my understanding, yes.

Q And do you know who it is ultimately that determines whether the rates are fair, just, and reasonable?

MR. MANSON: Objection to form.

A My understanding is that is the PRRC.

Q And in a situation like this, when the PRRC's decision is challenged, do you know who it is that determines whether the rates have met the standard of being fair, just, and reasonable?

MR. MANSON: Objection. Form.

THE WITNESS: Do I still answer?

MR. PAGE: Yeah.

MR. MANSON: Only if I instruct you not to answer, do you not answer when an objection is made.

THE WITNESS: Oh, okay.

A That would be a judge. Pardon my lack of legal expertise to be specific.

Q Next bullet, "Review and Conduct Analysis of Comparable Ports to Port Tampa Bay, SeaPort Manatee, and Port of St. Petersburg."

Are you with me?
A Yes.
Q You or Dr. Kemmsies?
A That would be both of us.
Q If you can break it down for me who would cover what part of that topic.
A I --
Q Or let me put it this way, what are you going to cover?
A Okay. I gathered data and evaluated different net incomes per pilot across ports and port -- pilot associations that serve those ports. I would work with Dr. Kemmsies to refine the ports we wanted to review and to draw comparisons with, leveraging Dr. Kemmsies' extensive expertise on this topic, and just -- and his familiarity with ports and port operations.
Q So is it fair to say that you were more of the data and compilation person and he was more of the subject matter expert as to what ports to include?
A I would say that's a fair characterization, yes.
Q Okay.
A With the one caveat that the focus was --

actually, I -- yes. I'd say that's correct, yes.

Q Okay. Next bullet, "Review and Conduct Analysis of Prevailing Compensation in the Maritime Industry." I believe based on your testimony about workforce analysis and such, that that would be you?

A Yes.

Q Then lastly, "Review the Existing Studies on Compensation, Rates, Benchmarking." What is meant by that portion of the scope of representation?

A Review any studies on -- both on compensation for pilotage.

Q Something like the Dibner report?

A Exactly, the Dibner report.

Q Any others?

A Not studies, but -- not -- that was the main study. That was the study that I looked at.

Q Okay. And I believe in the report you relied on findings in that study?

A Yes.

MR. PAGE: Let's take a short break. Comfort break. Come back in five.

(Recess from 11:48 a.m. to 11:54 a.m.)

MR. PAGE: Back on the record.

Let's mark the disclosures as Exhibit 5.

(Cohen Deposition Exhibit Number 5 marked for identification.)

BY MR. PAGE:

Q The certificate of service, dated February 23rd, 2024, Supplement to Petitioners' Initial Disclosures Pursuant to Order of Prehearing Instructions.

Have you seen this document before?

A Yes. I believe so, yes. Yes.

Q All right. The underlined request there on the first page is inclusive of qualifications, area of claimed expertise, and summary of expected testimony of any witnesses who will present expert testimony under the cited evidence code rule.

Do you see that?

A I'm sorry. That's under supplement of Petitioners, this --

Q No. Go below that.

A In the addressed qualifications?

Q Yes, sir.

A Okay. That would be -- let's see, that would be --

Q Are you with me just on that location?

A Yes.

Q Okay. Flip the page, if you would. I

believe you'll see yourself identified as No. 1.

A Yes.

Q All right. So this goes with your understanding that you're here being deposed and retained in this case as an expert; yes?

A Yes.

Q Okay. And there is some language below the identification of you and Dr. Kemmsies that is responsive to the request that we looked at on the prior page.

Do you see that language?

A Yes.

Q Were you involved in drafting that language?

A Yes. For the qualifications, yes.

Q Okay. Let's look at the first paragraph.

A I'm sorry.

Q That's all right.

Were you involved in drafting the first paragraph that starts with "At this time"?

A I might have reviewed this. I don't remember if I wrote this specifically, but it's very familiar to me.

Q Would you agree with me -- we spent some time going through your engagement letter,

Exhibit 4, and now we're looking at this paragraph in Exhibit 5, that starts with "At this time."

Would you agree with me that the content of that paragraph pretty much tracks with the bullets of your engagement letter?

A Yes.

Q And you see in Line 5, specifically it states, "Analysis of statutory criteria for harbor pilot rates and their application to the relevant facts of this requested rate increase."

Do you see that?

A Yes.

Q So would you agree with me that in terms of the statutory criteria, you're considering the analysis of the rates; yes?

A Yes.

Q And the next after the semicolon is "Analysis of Comparable Ports to Tampa Bay Area Ports;" yes?

A Yes.

Q And the ports that you have deemed comparable to the Tampa Bay area ports, are those reflected in the report?

A Yes.

Q Next is analysis of pilotage rates and

other ports in comparison to the Tampa Bay area ports. Do you see that?

A Yes.

Q And is that reflected in your report as well?

A The report looks at net income per pilot, not the rates specifically.

Q Okay. Well, when you say it doesn't look at the rates specifically, it looks at the net income; yes?

A Yes.

Q So it is not looking at the rates, correct?

A Correct.

Q The report does include issues relating to CPI and other measures of inflation; yes?

A Yes.

Q And also an analysis of prevailing compensation in the maritime industry; yes?

A Yes.

Q And do you believe that your analysis of prevailing compensation in the maritime industry is inclusive of individuals in other maritime services and comparable professional skill and standing as those sought in pilots?

A I believe that's -- there is -- pilots are a unique occupation, but we included in our analysis professions that oftentimes are found in the pipeline or the progression of someone into becoming a pilot, so precursor professions to becoming a pilot.

Q So those -- the folks that are in those precursor positions, they are or are not in a comparable professional skill and training position?

A There are some that have overlapping skills and training, but pilots are also very unique. Oftentimes, in order to become a pilot, one has to have those other positions first in their career.

Q Okay. You can put Number 5 aside.

MR. PAGE: Let's go ahead and mark the report as Exhibit 6.

(Cohen Deposition Exhibit Number 6 marked for identification.)

(Discussion had off the record.)

BY MR. PAGE:

Q All right. I have marked as Exhibit 6 a document. Are you familiar with this document?

A Yes.

Q All right. What's the date of it?

A July 8th, 2024.
Q I looked at my calendar this morning, that was 18 days ago. Does that sound about right?
A Yes.
Q Have you created any supplemental versions of this report since July 8?
A No.
Q What does "discussion draft" mean?
Do you see that on the first page of the report?
A It is to emphasize this is a draft document for review and is the subject to revisions and updates.
Q And who is on the list of people who will be reviewing this document?
A Dr. Kemmsies and I.
Q No one else?
A As well as anyone -- well, anyone who has access, if they have valuable input, we will consider it, as well as new information that comes in.
Q Who has access?
A The -- the petitioning counsel for the -- petitioning counsels, as well as you.
Q Okay. Well, I have access to this

document in and of itself. Are you saying that there's additional information that they have access to that I do not?

A No, they do not.

Q Okay. And in terms of it being a discussion draft, then Petitioners' counsel are part of that discussion, to your understanding?

A I -- I believe so.

Q Okay. And you also -- anyone else that has access that is going to be part of that discussion going forward?

A I don't know. The other experts on this case, I don't know if they would have reviewed this or not and provided input.

Q But, to your knowledge, Dr. Kemmsies and Petitioners' counsel and you?

A Yes.

Q Okay. Is it also you, Dr. Kemmsies, and Petitioners' counsel who might have the information that you referred to that might be looked at further?

A It's -- any information would be through -- it would be hard for me to say at this point. Some of that for sure. Like the recent depositions that came after this, submission of this draft

report, for example, as well as general feedback that we would consider in refining any information in this report.

Q Okay. So in terms of depositions, are you saying that depositions taken after this July 8, 2024 date could provide information that might lead to an alteration of this report?

A Yes.

Q Okay. Depositions taken before July 8, 2024, have they been considered in terms of the production of this report that's marked Exhibit 6?

A Yes.

Q Okay. So the information from those pre-July 8, 2024 depositions have already been considered?

A Yes.

Q And, to your understanding, they then would not have information that would change this report?

A My understanding, yes.

Q I believe you mentioned having worked with Dr. Kemmsies previously.

A Yes.

Q When's the first time that you worked with him?

A I believe that was 2019. And we were retained -- I was still working at Community Attributes and he was on retainer with the Northwest Seaport Alliance. So we were hired to work together -- I sort of explained that Dr. Kemmsies is -- we worked together on that project that I described before, looking at the broader economic benefits of the Northwest Seaport Alliance to regional economies elsewhere in the U.S.

Q The hinterlands?

A The hinterlands, yes.

Q Did he work with you on any of the Puget Sound work, either with Community Attributes or with High Peak Strategy?

A Not on the Puget Sound work, no.

Q Did he work with you on the Department of Defense work?

A No.

Q Did he work with you on the Washington State best practices work?

A No.

Q When was the first meeting that you had regarding this case? When?

A That, I do not specifically recall. I would have talked to Dr. Kemmsies about it, just to

introduce me to the case sometime, I believe, in January. I would have to look back at my calendar.

I would presume it would have been -- we would have spoken -- I would have spoken with petitioning counsel prior to signing the contract for my services. So sometime in February, I'm guessing. I would have to look at my calendar. And then our first formal meeting to discuss the case and the project meeting, I think, would have been after that.

Q After the February 21st, 2024 engagement?

A But we spoke before then, too, because we would have to understand when -- you know, understand the scope, refine the scope, talk to the case -- you know, the specifics of the case. So I'm guessing sometime in late, maybe, January or February, but I just don't remember the exact date.

Q And then substantive detailed discussions, you're testifying would have occurred after February 21st, 2024?

A Actually working on the case, yeah, it would have been afterwards.

Q Okay. Do you remember when you had your first substantive working-on-the-case discussion after February 21st, 2024?

A I don't remember.
Q Do you remember who was involved in the discussion?
A It would have been the two petitioning counsels here today.
Q Okay. And Dr. Kemmsies?
A And Dr. Kemmsies.
Q What was discussed?
A Understanding of the case, so background about the case, characteristics or details about the case, available resources that have been submitted, such as the -- the publicly available resources, such as the PRRC report, and so forth.
Q At any time did you have substantive working-on-the-case discussions with anyone besides Dr. Kemmsies or the two Petitioners' counsel that are here today?
A Yes. I also spoke with Mr. Brett Cooper and Mr. Aaron Zarate.
Q Z-a-r-a-t-e?
A Yes.
Q Anyone else?
A I had a phone call with someone from the Washington State UTC to ask about a piece of information.

Q What piece of information?
A Wanted to know about how to access information on their website about cases that they've reviewed.
Q Okay.
A So not really substance in that case.
Q Data collection?
A Data collection. In terms of substance, it would be those individuals that are listed.
Q Okay. In terms of the substance of your conversations with Brett Cooper and Aaron Zarate, what were the substance of those discussions?
A We spoke about questions of data and modeling and analysis, as well as just general issues related to the case, related to -- I don't remember the specifics, but any kind of -- just kind of Q and A kind of information that we could share with each other.
Q What type of data are you talking about with Mr. Cooper and Mr. Zarate?
A That would be any of the data that was provided through the interrogatory responses. So, for instance, we talked about the handles data as one example.
Q Any other examples?

A Mr. Zarate also shared drafts of the model that -- and asked for feedback from Dr. Kemmsies and I, as well, and asked questions.

Q Draft of a model for what?

A That was their -- the model that they developed for this case.

Q Is that the model that's in the report of Mr. Cooper and Mr. Zarate?

A Yes.

Q And did you have input into that model?

A We provided verbal input, yes.

Q Regarding what?

A Oh, just testing or asking questions about assumptions.

Q Can you identify an assumption you are referring to?

A Like I provided inputs as of -- an input, for instance, like target net income for pilots as in something that we could test in the model. Also assumptions -- I talked with Mr. Zarate about how to -- resources or data to use for -- as well as input on how to project fuel prices.

Q Okay. In terms of projection of fuel prices at the end of the day, are you going to defer to Mr. Zarate and/or Mr. Cooper regarding that?

A Yes.

Q Okay. You mentioned that you had discussions -- you mentioned you had discussions about economic -- income input; yes?

A Yes.

Q When you say you had discussions about income input, what do you mean?

A So the -- the way that the model was structured could go two ways, is my recollection. So one way would be to use the model to look at the -- based on the rate structure, what would be the resulting net income per pilot.

The other way would be to use net income per pilot as an input and see what the resulting rate -- or I'm sorry, revenue would be, gross revenue resulting from that, with other inputs as well. So kind of going at it from two directions as a way to test different assumptions.

Q And is it your understanding that ultimately it was the income that was the input at the front end rather than the rates?

A I believe it was looking at it both ways, but I'd have to go back and review that report. I believe it was income, was primarily the main way to look at it, yeah. But I would have to go back and

check that.

Q Okay. And did you provide Brett Cooper and/or Aaron Zarate with a target net income for the Tampa Bay Pilots Association?

A I provided them a draft estimate, yes.

Q And what was it?

A I believe it was 527,000.

Q And that number came out of the work that we'll review in the report that we've marked here as Exhibit 6?

A Well, that number was a draft estimate. That was submitted before delivery of the final version of this draft. So it will be a little different from what's in here.

Q Okay. But you'll be able to explain to me based on what's in the report the process that got you to the 527,000 number that you provided to Cooper and Zarate; yes?

A Yes.

Q Good.

You referred to Exhibit 6 as a final of a draft.

A Bad use of language, sorry. The first submission of the draft, I should put it that way.

Q Submission to Petitioners' counsel?

A Yes.
Q Okay. So there's not been a version of that that's been previously shared by you with anyone?
A No. The only version has been -- oh, I -- Dr. Kemmsies and I worked on a draft together, but just amongst the two of us. No one else has seen that draft.
Q Okay.
A And then we submitted this draft to counsel.
Q "This draft," Exhibit 6?
A Exhibit 6.
Q Okay. And nothing since that draft, Exhibit 6?
A Nothing since.
Q What is your intention in terms of moving past that being a discussion draft, which is marked Exhibit 6, in terms of producing a final report?
A I would like to listen -- I'd like to incorporate information that's been disclosed through depositions from Captain Bushy, as well as from Captain Baker, and also future depositions, Richard Law, other individuals that may still be deposed. And then I would like to both use their

direct information, as well as based on what they say, also consider any other revisions to the report.

And I would also like to review the nexus economics report that was submitted, that I was -- that I received this week, to review that. And if there are any -- if that prompts any potential revisions, I would like -- I'd like the benefit of reviewing those reports and making potential revisions if necessary. That's why I call -- that's why we still call it a draft, so --

Q Depositions, you mentioned that you want to consider, and potentially incorporate, Captain Baker; yes?

A Yes.

Q Captain Bushy?

A Yes.

Q Richard Law?

A Yes.

Q And Richard Law is the CPA who is part of the Investigative Committee for the PRRC; yes?

A Yes.

Q And then you also mentioned other depositions that you might want to consider and potentially incorporate information from those. Are

you aware of any other depositions that might fall in that category?

A I would say I don't recall all of the scheduled depositions, as well as those that are not scheduled yet, but could be scheduled, so I'd like to keep it open to -- I want to be open to any input that comes in, so --

Q Okay. But as you sit here, there's no one that you can identify by name?

A No one I can identify by name, but it doesn't mean that -- it just means that I have a bad memory.

Q Okay. And then you said you wanted to have the ability to reassess your Exhibit 6 report based on that deposition information; yes?

A That's correct.

Q And additionally the nexus economics report; yes?

A Yes.

Q Okay. So I don't know when he's scheduled, but let's say Richard Law is scheduled for his deposition next week and has to be rescheduled for four weeks from now. Is it your position that you're not going to be able to produce a final report until you have the ability to assess

the information that comes out of Richard Law's deposition?

A I would have to evaluate if -- particularly if we think that there's a hard deadline for delivery of a final report, if it's no longer feasible given the timing, I'd have to just evaluate at that point in consultation with counsel.

Q That's fair.

And let's put aside the hard deadline and live in the fantasy world where litigation doesn't have deadlines. If it's open-ended and his deposition gets pushed out a month, is it your position that you want to be able to at least attend that deposition and listen to that deposition to get information from that deposition to potentially alter what is currently your draft report?

A I'd like to be open to that, yes.

Q Okay. Are there any other depositions or testimony or hearing that has already occurred that you have not considered and has not been assessed in terms of your draft report, Exhibit 6?

A Not that I recall. I have listened to and reviewed -- and/or reviewed the transcripts from Terry Fluke and Captain Rose. And I might be forgetting one.

Q Leasa Gillispie?
A I actually -- yeah, I have not listened to Leasa Gillispie's deposition.
Q Have you reviewed the transcript?
A I have not.
Q Did you review a transcript of the hearing before the PRRC?
A I have not.
Q Okay. Did you have any internal deadline on when you were needing to produce a final version of your report?
A No. I mean, it's -- for as long -- whatever the timeline is needed to ensure that we have the best possible product. So I don't have any -- I mean, just whatever -- it would be a function of when the hearing is and work backwards from there.
(Cohen Deposition Exhibit Number 7 marked for identification.)
BY MR. PAGE:
Q I'm handing you an e-mail which you are a recipient of. Do you see that, March 14th, 2024, from Dr. Kemmsies to Attorney Heeter and yourself?
A Yes.
Q Okay. And do you see down there,

Attorney Heeter writing to Walter, "E-mailing the CPI charts that you showed us today."

Do you see that?

A Yes.

Q And in terms of the timing of the meetings that you had that we discussed somewhat in generalities, does this help refresh your recollection on when you might have had your first substantive conversation with Petitioners' counsel and Dr. Kemmsies?

A Well, it would have been well -- it would have been before this.

Q Okay. Do you know what was discussed in meetings before this?

A Just what I described before in our meetings. So talking about the case, talking about -- you know, there were so many topics that were covered with respect to interrogatory responses and the availability of those, questions about the case, clarifications about items, aspects of the case.

Q Do you recall any particular clarifications that you sought?

A Understanding just -- I don't recall the specifics. I'm sorry.

Q That's all right.

Let's do the second set of rogs. Number 8.

(Cohen Deposition Exhibit Number 8 marked for identification.)

MR. PAGE: And do we have verification pages on the rogs on Mr. Cohen?

MS. HEETER: Is this the latest, the TBPA second set of interrogatories?

MR. PAGE: This happens to be Network Shipping, but we have TBPA coming next. Wait. Sorry.

MS. HEETER: I'm talking about you got the Pilots' Second Set of Interrogatories to each petitioner. Is that what you're asking about?

MR. PAGE: Yes.

MS. HEETER: Yes, I do have those. I don't have them all compiled, but I can send you his verification pages.

MR. PAGE: Please do, because we've got all six of the responses with verification pages ready, and it'll be a lot easier if over lunch we can just print those and not have to sweat it.

MS. HEETER: I can do that.

BY MR. PAGE:

Q Exhibit 8, "Petitioner Network Shipping Limited, Inc.'s Objections and Responses to Tampa Bay Pilots Association's Second Set of Interrogatories."

Do you see that?

A Yes.

Q Do you recognize the document?

A I do.

Q Is it something that you reviewed in anticipation of your deposition today?

A I'm certain that I reviewed this, so yes.

Q Okay.

MR. PAGE: Let's mark 9, please.

(Cohen Deposition Exhibit Number 9 marked for identification.)

BY MR. PAGE:

Q Number 9 is a similar document, but it is the Interrogatory -- the Second Set of Interrogatory Responses of Tampa Port Authority.

Do you see that?

A Yes.

Q And same thing; take a look at it, do you recognize that document, and did you review it in

anticipation of today's deposition?
A I do recall reviewing this.
Q Okay.
A It's very familiar.
Q Okay.
MR. PAGE: All right. Get the amended petition of the five.
(Cohen Deposition Exhibit Number 10 marked for identification.)
BY MR. PAGE:
Q All right. Marked as 10, the amended petition of all Petitioners, sans Tampa Port Authority. Do you see that?
A Yes.
Q Are you familiar with this document?
A I am familiar with it.
Q And did you review it in anticipation of today's deposition?
A I recall reviewing this document at some point, yes.
Q In preparation for the deposition?
A I remember reviewing it. I don't remember whether it was explicitly for this deposition, but I recall reviewing this document.
Q Are you familiar with it?

A I'm familiar with it.
Q Okay.
MR. PAGE: And let's mark the Port Authority's amended petition, please, Number 11.
(Cohen Deposition Exhibit Number 11 marked for identification.)
BY MR. PAGE:
Q The same question as to the Port Authority's amended petition. Have you reviewed that document and are you familiar with it?
A I'm familiar with it. Whether I -- specifics about it, I don't recall, but I do remember I'm familiar with it.
Q Okay. Do you see at the very bottom of Exhibit 11, there is a filed date of January 12th, 2024?
A Yes.
Q Did you have any involvement in drafting this amended petition marked Exhibit 11?
A No.
Q All right. Looking at Exhibit 10, it also has that same date on it. Did you have any involvement in drafting that amended petition?
A No.

Q Okay. Let's look at Exhibits 8 and 10 next to each other. And then let's also put 9 and 11 next to each other.

A Okay.

Q And then if you would turn to the -- it will be the -- they're not numbered -- third page of 8.

A Okay.

Q And No. 32. Do you see that?

A Yes.

Q "For each expert witness previously disclosed by you, please identify each and every paragraph of your amended petition on which each expert will express an opinion."

Do you see that?

A Yes.

Q And this is an interrogatory response from the five Petitioners, and excludes the Tampa Port Authority. Do you see there down below that you're identified with a multitude of paragraphs; yes?

A Yes.

Q Okay. And then if you look at Exhibit 9, in the same location, page 3, you'll see the same interrogatory regarding identifying each and every

paragraph that the expert is going to express an opinion.

Do you see that?

A Yes.

Q And then you'll see your name down there with a multitude of paragraphs, right?

A Yes.

Q Is it your understanding that those paragraphs are identical in terms of their content, it's just that there's different numbering in the two amended petitions?

A Without looking at it too carefully, it seems to be, yeah.

Q Okay. I will represent to you that they are. And if we have any problem with that, we can clean it up later.

MR. MANSON: Getting close.

MR. PAGE: Yeah.

BY MR. PAGE:

Q I want to hand you some documents and ask whether or not you're the person that would be responsible for these documents or Dr. Kemmsies.

A Okay.

Q I'm trying to figure out some scope questions. And I'll represent to you that these

were documents that were produced in connection with the report. So I've identified them as documents of interest, we'll call them, but I just don't know if it's you or if it's Dr. Kemmsies who would take the lead between the two economists on testifying regarding the documents.

A Uh-huh.

Q So is that a you or is that a Kemmsies?

A This would be Dr. Kemmsies.

Q All right.

A Let me just make sure it's all Kemmsies and not me.

Yes, this would be Dr. Kemmsies' analysis.

MR. MANSON: Was that an exhibit number or was that --

MR. PAGE: There's no number on it.

MR. MANSON: Okay.

MR. PAGE: And they don't have numbers because they didn't come with numbers.

MR. MANSON: No, I understand that, I was asking if it was marked as an exhibit for the deposition. That's all.

MR. PAGE: No, I'm not marking it.

BY MR. PAGE:

Q Same question: Is that yours to testify regarding or is that Dr. Kemmsies?

A I helped Dr. Kemmsies with the preparation of this data, but the actual forecast would be based on Dr. Kemmsies' analysis.

Let me take a fast look at this actually.

Yeah, I prepared this document.

Q So did you do the analysis or did he do the analysis?

A I did the analysis -- let me take that back. Let me take a closer look here.

I definitely did this part of it.

Q "This part" being that single cover page?

A The single cover page. I did that. I did the identification of which of these were Port Manatee -- SeaPort Manatee. I would say that the majority of this, the analysis -- the majority of the analysis and the breakup by tranches was Dr. Kemmsies, but I contributed to the preparation of this data --

Q Okay.

A -- if that helps.

Q Yeah, it does.

MR. PAGE: Let's mark that one as Exhibit 12, please.

(Cohen Deposition Exhibit Number 12 marked for identification.)

BY MR. PAGE:

Q And Sam will have to get copies during the break.

A Yeah, we both worked on this.

Q And we'll get copies at some point today to share and discuss.

A So that's what a 24,000-line spreadsheet looks like in the physical world.

Q Only the first ten pages of it.

I'm handing you another document. And the same question: Is that a document that you're going to take the lead on in terms of expert economic testimony or is that a Dr. Kemmsies?

A I -- I produced this document, but not the subsequent analysis, the forecasting, but I produced -- let's see. Yeah, I produced this document.

Q Okay. So when you say you produced this document, is the document containing data and you're the one that compiled the data?

A Yes.

Q And then I thought you said something about subsequent analysis.

A It was an input into the forecast. It was -- it was used to come up with a forecast.

Q And Dr. Kemmsies did the forecast?

A Correct.

Q Okay.

MR. PAGE: Mark this as 13.

(Cohen Deposition Exhibit Number 13 marked for identification.)

BY MR. PAGE:

Q Last one. And same question: Is that something that I need to be talking with you about because you're going to be the lead economist on it, or is that something that I need to be speaking with Dr. Kemmsies about?

A This would be me.

Q Okay. You exclusively?

A Me exclusively.

Q All right.

A Let me check before I say yes. Yes.

Q Okay.

MR. PAGE: Mark that as 14.

(Cohen Deposition Exhibit Number 14 marked for identification.)

MR. PAGE: And, again, we will get copies.

And let's go off the record for our break.

(Recess from 12:34 p.m. to 1:41 p.m.)

MR. PAGE: Back on the record, please.

(Cohen Deposition Exhibit Number 15 marked for identification.)

BY MR. PAGE:

Q I have marked as Exhibit 15, some documents with the heading "Verification" on them. I believe each of those bears your signature. Can you confirm that for me?

A Yes.

Q And what is your understanding --

A Yes.

Q -- of what you were verifying with those signatures and under oath?

A This is verifying my participation in this case as an expert witness.

Q Let me help you out a little bit, because I'm not trying to trick you. If you'll look at Exhibit 8.

A Yes.

Q Are you with me?

A Yes.

Q All right. Do you see what that document

is?

A Yes.

Q And on Exhibit 15, do you see the third page of that document?

A Yes.

Q Is it your understanding that your verification on the third page of Exhibit 15 relates to verifying the answers on Exhibit 8?

A Yes.

Q Okay. And does the name Network Shipping Limited, Inc. under that verification heading, is that part of what leads you to believe that?

A Yes.

Q And then was it your understanding that this verification for Network Shipping Limited was related to Exhibit 8?

A Yes.

Q And the verification on the first page of Exhibit 15 for Del Monte Fresh Produce Company, turn back to the first page, would it be your understanding that that was verifying the response similar to Exhibit 8, but from Del Monte?

A Yes.

Q And the next page, verification for Tampa Port Authority, the same thing --

A Yes.
Q -- verifying the response of that entity to the interrogatories?
A Yes.
Q Okay. Let's go two more pages to Ports America Florida, Inc. And the same thing, your signature is verifying the responses to the interrogatories of that entity?
A Yes.
Q And then we've got Titan Florida, LLC, and that, too is a verification of the interrogatory responses of that entity?
A Yes.
MR. PAGE: Off the record.
(Discussion had off the record.)
MR. PAGE: Back on the record.
BY MR. PAGE:
Q Do you see that the last verification page identifies a verification for Del Monte Fresh Produce Company?
A Yes.
Q And the first page as well for Del Monte Fresh Produce Company?
A Yes.
Q Is it your understanding that on behalf

of Petitioner FCCA, you executed the similar verification page?

A Yes, I see that.

Q So is it your understanding that you executed a similar verification page or that you would execute a similar verification page, or both?

A This was I think a -- we -- I think there's just a confusion. It was only -- I only intended to sign it once.

Q Right, once for Del Monte and once for each of the other Petitioners?

A Yes, that's correct.

Q Okay.

MR. PAGE: Off the record.

(Discussion had off the record.)

MR. PAGE: Back on the record.

BY MR. PAGE:

Q All right. So now let's go to Exhibit 8. And this specifically, the interrogatory responses of Network Shipping that, as we just discussed regarding Exhibit 15, you verified; yes?

A Yes.

Q All right. So let's go to 32. And I think we already looked at this a little bit. It's identifying each and every paragraph on which each

expert will express an opinion, correct?

A Yes.

Q So when we go down to the response, and the paragraph numbers identified next to your name, is it your understanding, per your verification, that you're intending to express an opinion as to the identified paragraphs?

A Yes.

Q All right. Let's go to Exhibit 10. Basically what I'm going to do is talk to you about the paragraphs that are identified in paragraph 8. And they relate to the paragraph numbers in 10.

Make sense?

A Yes.

Q All right. So starting with paragraph 14 -- actually, let me ask you a couple of questions about Exhibit 10 first.

You testified previously that you did not assist in drafting this document, right?

A Yes.

Q Okay. The new rates and fees in the PRRC's notice of intent that are at issue, do you know when those became effective?

A That would have been, I believe, October 1st, 2023.

Q Okay. So, to your understanding, those who pay the rates and fees of my client have been paying those since October 1st of 2023; yes?

A That's my understanding.

Q Okay. Are you aware of other ports where any of the Petitioners pay pilotage rates and fees?

A You're asking me if I know of any other ports in addition to Manatee and Port Tampa Bay where they would pay pilotage fees?

Q Correct.

Are you aware of any other ports where Tampa Port Authority pays pilotage fees?

A I'm sorry. Can you repeat it? If I know if Tampa Bay pays for pilotage fees?

Q Are you aware of any ports outside of the Tampa Bay ports where the Tampa Port Authority pays pilotage fees?

A I -- the way I understand your question, I do not -- I'm not aware of any.

Q Are you aware of whether or not the Tampa Port Authority pays pilotage fees for piloting services in Tampa Bay?

A My understanding is that it's the shippers that pay the fees.

Q Okay. So does that mean it's your

understanding that the Tampa Port Authority does not?

A That's my understanding.

Q Okay. And Titan Florida, LLC, do you have any knowledge of Titan Florida, LLC paying for pilotage services of ports outside of Tampa Bay?

A Not specifically, but I would assume that -- I am not -- I would assume that if they do work at other ports, they would, or certain ports they would, but I'm not aware of any specific cases.

Q Okay. Are you aware of any specific cases where Titan Florida, LLC paid for pilotage services in Tampa Bay?

A I am aware of them paying for pilotage services in Tampa Bay.

Q You've seen records to that effect?

A I don't recall seeing records. I'm sure I did see records, I just don't remember.

Q Is there any other basis for you to say that they pay pilotage fees in Tampa Bay besides records that you don't recall?

A Because they're a shipping company and they're one of the Petitioners.

Q And did anybody tell you that they paid pilotage rates in Tampa Bay?

A I don't believe anyone specifically told me, but I'm sure I would have seen examples in some of the responses to the PRC investigative reports, or at least as an addendum to the PRC investigative report letters from various shippers regarding the rates that they're paying.

Q Okay. But you don't specifically recall any documents?

A I'd have to go back and look. I recall seeing documents. I don't remember specifically who created those documents, if it was Titan or Del Monte. I know that there were documents created or provided that did illustrate the changes in rates paid, and the rates they're paying now, as a result of the change in the rate. I just don't remember exactly who wrote what or who presented which. I'd have to go back and look.

Q Okay. Are you aware of any affiliation or business relationship between Titan Florida, LLC and Del Monte Fresh Produce Company?

A I'm not familiar with their relationship.

Q Okay. Are you familiar with any relationship between Del Monte Fresh Produce Company and Network Shipping Limited, Inc.?

A I'm not -- I'm not -- if there is a

relationship, I'm just not clear about what it is.

Q Okay. Are you aware of whether or not the Florida Caribbean Cruise Association pays pilotage -- pays for pilotage services in Tampa Bay?

A I am not certain. I believe that they're petitioning on behalf of cruise ship companies that do pay the rate.

Q So it's your understanding that the cruise ship company pays for the pilotage services?

A That's my understanding, but I'm not -- I'd have to go back and double-check that.

Q And do you have an understanding as to whether or not those cruise ship companies are reimbursed for those expenses?

A I do not know.

Q It's not something that you've looked at?

A Not something that I've looked at.

Q For petitioner Ports America Florida, Inc., are you aware of whether or not they pay for pilotage services in Tampa Bay?

A I'm not specifically aware.

Q Okay. Are you aware of whether or not they pay for pilotage services in other ports?

A I'm not specifically aware.

Q And as to Del Monte, are you aware of

them paying for pilotage services in Tampa Bay?

A I'd have to go back and look at the documentation that was filed to verify that.

Q When you say "the documentation that was filed," what are you referring to?

A The materials, for instance, in the addendum to the PRC report, as one example. So the answer would be no, I'm not aware.

Q Are you aware of Del Monte Fresh Produce Company paying for pilotage services in any other ports?

A I'm not aware.

Q Same question for Network Shipping Limited, Inc.

A I'm not aware. If they operate in other ports, it's possible that they do, but I'm not -- I'm not specifically aware.

Q Okay. Leaving out the cruise industry, it sounded like you said that the shippers are the ones that pay pilotage rates to your understanding.

A That's my understanding.

Q Okay. When we spoke about, probably longer than you wanted to, your prior work history, and we talked about that loose-2015 date of being the point where you felt like you were at a level of

professional development where you could take on a task like you're taking on in this case -- am I getting that pretty much correct?

A Yes. Without being overly precise, because it's -- it's not something that I've considered before when exactly I was at the competency level or capable of doing this.

Q Right, right. But in hindsight, you think that sometime around that place in your professional development, this is something that you could probably have taken on?

A I think so; although I -- a lot of it is the ability to learn about the case. So even if I didn't have subject matter experience in pilotage, it's -- I was at a level of professional development where I could learn the case quickly to do it, so --

Q Got it.

Specifically, as to this case, what analysis did you structure for your client's specific question?

A So I looked at -- I scrutinized the use of CPI, or Consumer Price Index, and how both it was applied, as well as alternative ways -- alternative ways to look at inflation. I also looked at -- I scrutinized the 6 percent, 3 percent escalators, and

suggested alternative measures of inflation -- forecasted inflation that could be used and should be considered.

I also looked at net income per pilot in other regions of the U.S and evaluated which of those -- looking at potential comparators -- comparator regions to look at and compare it with Tampa Bay and SeaPort Manatee.

I also scrutinized and did an analysis of handle time to look at the data that was provided through several different interrogatory responses, that presented, based on dispatch data, the handles, the tariff charge, and the time that was expended on each of those, what they call, jobs or handles.

I also supported -- I looked at vessel traffic data in support of a forecast of future traffic flows by tranche or size group or classification or class through the two ports of Tampa Bay, Port Tampa Bay and SeaPort Manatee.

And I also provided supporting analysis for some of the other work that was completed for this work. So provided input -- sorry. Provided input to the other consultants on -- that -- that were looking at the ledger and looking at the financials for the pilots.

Q Okay. And I think I recall, but correct me if I'm wrong, the vessel traffic data was data that you compiled, but that's predominantly going to be Dr. Kemmsies, in terms of testifying about the analysis?

A I did an analysis of the existing trends and then Dr. Kemmsies further analyzed the different tranches for that vessel traffic and a forecast by tranche. I also neglected to mention, I also looked at other maritime professions and jobs in the maritime sector.

Q Regarding vessel traffic, are there only two ports at play in this dispute --

A Yes.

Q -- to your understanding?

A Yes.

Q What was the specific question that the client asked you?

A With respect to the traffic data?

Q No, I'm sorry. My initial question kind of had two parts to it. What analysis did you structure for your client's specific question? And you just listed for me the analysis, some of which we've spoken about further, and I appreciate that and got it down. But the other part of the question

is: What analysis did you structure for your client's specific question.

So what was the specific question?

A That was in our scope in Exhibit -- I'm sorry if I don't remember the --

Q Exhibit 4.

A Exhibit 4. Thank you.

So based on our scope, they asked us to -- my scope included, in response to the first bullet, to examine and to scrutinize the most recent data and sources used as part of the rationale. So looking at -- scrutinizing and analyzing the data that was provided.

Q So I would view that more as an analysis that you did.

A That is correct --

Q Okay.

A -- yeah.

Q So going back to the question. What analysis did you structure for your client's specific question?

So my question to you now, you've given me the analysis --

A Yeah.

Q -- what was the specific question?

A Is there -- is there a foundational and justified rational basis for the rate increase that was approved by the PRC? And does that rate, as part of that, conform with the -- or meet the -- or meet the criteria of being reasonable.

Q Fair, just, and reasonable?

A Fair, just, and reasonable. Thank you.

Q So you're going to be expressing an opinion on whether or not the rate increase is fair, just, and reasonable?

A I'll be specifically talking about the -- what is a fair and reasonable net income per pilot that was an input into whether or not the overall rate is fair, just, and reasonable.

Q So it goes from reasonable income back down to rates that would create reasonable income?

A That was one of the questions that I was looking at.

Q Okay. All right. You've got Exhibit 8 and 10?

A Yeah. 8 and 10, yes.

Q Great.

Let's start with paragraph 14 of Exhibit 10.

MR. MANSON: I wrote down the exhibit

number wrong. Is that the Titan Florida?

MR. PAGE: Yes, it is. That's 10, yeah. And before we jump into that, because we'll need these, I'm going to mark the Notice of Intent as Exhibit 16.

(Cohen Deposition Exhibit Numbers 16, 17, and 18 marked for identification.)

MR. PAGE: The Investigative Committee report as Exhibit 17. And the Tampa Bay Pilots Association application as Exhibit 18.

MR. MANSON: Is that included in 17? I know you want to use it differently. I just don't need copies is all I'm saying.

MR. PAGE: Yeah, I think it is.

MR. MANSON: Unless that Bates numbered -- is that Bates numbered differently?

MR. PAGE: No.

BY MR. PAGE:

Q Where is 16?

A 16? Here.

Q You've seen 16 before?

A Yes.

Q And that is, to your understanding, the decision of the PRRC that's in dispute in this case?

A Yes.

Q And have you seen 17 before?
A Yes.
Q And I'm not going to ask you to dig through the whole thing, but I'll represent to you that that is the Investigative Committee's report relating to this case. And is that a document that you've reviewed?
A Yes.
Q And then 18, you'll see here, is the Tampa Bay Pilots Association application, again, marked as Exhibit 18, also a document I assume that you've reviewed in this case?
A Yes.
Q Great.
Back to Exhibit 10, the amended complaint of the five Petitioners sans the Pilots Association, paragraph 14, the allegation -- actually, read the first sentence to yourself, please. It starts with, "the notice" and ends with "gross tonnage."
A I've read it.
Q Okay. As part of your engagement, did you review the 2010 tariff model for the Tampa Bay Pilots Association?
A I did not carefully review it.
Q Okay. Were you aware that the prior

tariff model, in terms of rates, considered draft and gross tonnage only?

A Yes.

Q Okay. So the new model is adding to that vessel length and beam; yes?

A Yes.

And just to clarify, when you say "model," there was a rate model that was submitted that was an Excel file. My understanding is you're referring to more just the language specifically on the fees that are charged or the structure of the fee from 2010. And I have seen that.

Q Okay. And so just to clarify, the 2010 rate structure used the factors of draft and gross tonnage and did not use beam and overall vessel length, right?

A Yes.

Q And then the new rate-setting model adds vessel length and beam; yes?

A Yes.

Q Okay. Do you find there to be any fault with the new formula, including all four of those factors rather than just the prior two?

A I did not form an opinion about that specifically. I have seen other -- in the case of

Puget Sound pilots in Washington State, they used those four variables.

Q Okay.

A But I didn't form an opinion about whether that was just or not.

Q Okay. So are you going to express an opinion one way or another about the content of paragraph 14?

A Only to the extent that the implications with respect to net income per pilot.

Q And where would you find in paragraph 14 implications regarding the net income of pilots?

A It is not explicitly stated.

Q Is it stated in any form or fashion in paragraph 14?

A I do not see it stated.

Q Okay. So are you going to express an opinion regarding the contents of paragraph 14?

A The way that it's been framed, I am not presenting -- providing any direct opinion about that.

Q Okay. Neither today or, to your knowledge, in the future, correct?

A Specifically on these items listed in 14, that's correct.

Q Okay. Great.

So when we go back to Exhibit 8 -- one more page, go to the third page, please --

A Oh, sorry.

Q -- and we look at that first paragraph after your name identifying paragraph 14 as a paragraph on which you will be expressing an opinion, that is not correct. Is that right?

A Well, I am contributing to an opinion about whether or not that rate is fair, just, and reasonable, but I'm not -- my analysis is an input into that determination, so I'm providing an opinion that will support an overarching opinion about that.

Q Okay. Let's go back to paragraph 14 of Exhibit 10.

A Okay.

Q I am trying to figure out if you're going to render an opinion about what's expressed in paragraph 14.

A Okay. Not specifically.

Q Okay. So you're not going to talk about it being incorrect to increase the draft charge from the current 39.27 cents a foot to a range depending on vessel size up to $82 a foot. Is that right?

A That's correct.

Q Okay. And then the same thing for the draft charges in comparison with Port Canaveral, Port Everglades, Miami, and Jacksonville, right?

A That's correct.

Q Okay. The next paragraph identified in Exhibit 8 is paragraph 15. Read that to yourself, please.

A Okay.

Q Now, the first paragraph -- the first sentence rather of paragraph 15. "In addition, the application and notice proposes a significant increase in the standard vessel fees for the Port."

Do you see that?

A Yes.

Q Are you going to be expressing an opinion regarding that statement?

MR. MANSON: Object to the form.

A Again, I'm -- I'm submitting an opinion about that is not -- that is indirectly addressing this, but not directly.

Q Okay. There's an example there about a proposed standard fee for the Neopanamax cargo vessel. Do you see that?

A Yes.

Q And there's some numbers there about what

that fee would be, the increase of that fee over the current standard fee, the percentage of that increase.

Do you see all that?

A Yes.

Q And then it relates it to various other ports, like Canaveral, Everglades, Miami, et cetera?

A Yes.

Q Is the scope of your work inclusive of doing an analysis about the change from current fee for vessels to proposed fee for vessels and how current compares to proposed?

A My analysis looks at the -- at the implications of a change and whether or not -- from the perspective of net income per pilot, whether those rates are fair, just, and reasonable.

So whether the increases that are presented here, for instance, 170 percent increase, or higher than Port Canaveral, whether from the perspective of the resulting -- or as a consequence of the resulting net income per pilot, if those rates are, in fact, fair, just, and reasonable.

Q But are you going to do work that's going to be resulting in current fees for the Tampa Bay pilots -- proposed fees for the Tampa Bay pilots and

then fees from other ports and directly how those numbers relate to each other on a comparison basis? Are you doing that?

A I am not directly comparing the rates, for instance, based on a gross tonnage or LOA between the Tampa Bay Pilots Association rates and other regions.

Q Okay. So is it fair to say that as with paragraph 14, as paragraph 15 is presented, you're not going to be expressing an opinion on paragraph 15?

A I will be not specifically rendering an opinion about these specific variables that go into the tariff or the tariff structure. My opinion will be specifically around again the net income consequences.

In working backwards, if the net income resulting -- based on what a reasonable net income is, then what would be the resulting appropriate rate that would go -- that would go into the -- the model, the rate model, that was developed by our consulting team, or other consultants.

Q Mr. Cooper and Mr. Zarate?

A Yes.

Q Okay. But from your perspective, you're

starting with what you believe to be a reasonable net income, and that's the -- correct me if I'm wrong, the conclusion of your analysis, and then to test your analysis, you might back it down into rates?

A I might or in this case it might be an input into some of the other analysis that's being done. But my analysis is looking at --

Q By you?

A No, not by me directly. I might support it, but not by me exclusively.

Q Okay. Let's take a look at paragraph 16 of Exhibit 10. And that's one that also is identified as one that you're going to be expressing an opinion regarding?

Let me know when you're done reading that one.

A Okay.

Q Are you going to express an opinion regarding whether or not it was appropriate to increase the fees and rates that are identified in paragraph 16?

A The same explanation as my contribution, it would be the same -- it's the same explanation of my contribution as 14 and 15.

Q Okay. Are you going to provide an opinion as to whether or not it's appropriate to charge a vessel shifting fee?

A I am not going to provide an opinion about that specifically.

Q Okay. How about an opinion regarding a pilot docking or undocking fee?

A Not on whether or not there should be a pilot docking or undocking fee.

Q Okay. Are you going to provide an opinion on whether or not there should be any of the other fees that are identified in paragraph 16?

A I am not, only to the extent that any of these fees are new fees, and only to the extent that from, again, a perspective of whether or not they comport with or -- with the net income, you know, would be appropriate, fair, just, and reasonable net income per pilot.

Q Are you aware whether or not the fees that are identified in paragraph 16 are, as you called them, new fees?

A I believe they are -- these are not new, but they are an increase is my recollection.

Q Okay. So would it be then your recollection that the types of fees identified in

paragraph 16 were charged under the 2010 tariff structure for the Tampa Bay pilots?

A I would have to go back and check again.

Q But I think you said that was your recollection?

A That was my understanding, but I would want to confirm that.

Q Understood.

And is your recollection that those existed and then they were increased with the proposed rate and fee model that is at issue?

A The way the language is written, it suggested -- it implies that they are existing, but they were increased.

Q Okay.

A But I would want to go back and -- I don't specifically recall, so I would want to go back and check.

Q Okay. The fees that are associated with vessel shifting and the other topics there in paragraph 16, in your experience, are those fees that ports charge on a normal basis?

A Only based on my experience with the Puget Sound pilots. I certainly -- I don't remember all of them, but I do recall that there was a

cancellation fee. There is -- there was a shifting fee, but it went by a different name.

It was the same intent, but it had a different -- there was some different language around it, not specifically shifting. It was -- they called it a zone -- I think a zone move, but they are -- they are similar.

Q Okay.

A And the same for dead ship tows, I believe, was also in that -- I believe it's in their rate structure, but I would want to double-check.

Q And in terms of looking at a pilot association's rate structure, to the point where you're able to identify fees like you just did based on Puget Sound, is the Puget Sound Pilots Association the only one that you've worked with where you can get down to that level of detail?

A It would -- the guidance and rules on the rate structure is a public government document. There is an RCW or I think it's a WAC, Washington Administrative Code, one of the two. I think it's an RCW.

But it would be public documents, so I would assume -- again, I have not looked at others, but typically the state pilotage across the country

has language -- government language explaining what the rate structure is.

Q Puget Sound is the only one in particular, though, that you've looked at?

A The only one that I've looked at.

Q Okay. And then you're saying that there is publicly available information that you could look at for particular associations, but you have not?

A Yeah.

And I should correct. Puget Sound and Grays Harbor, the other pilotage district in Washington State.

Q Thank you.

You also made a comment along the lines of state pilotage guidelines across the country. Did I hear that right?

A Yes.

Q Okay. Is it your understanding that there is a -- some sort of oversight agency or something along those lines that would dictate to state piloting associations across the country what fees they should or should not charge?

A It's my understanding that in most cases the tariff is -- or I should say the pilots and the

rate structure is regulated by the State. There are at least -- there is at least, I believe, one example, I think the Great Lakes are regulated by the Coast Guard. I'd have to go back and check that, but I believe that's the case for the Great Lakes because of the shared waterway with Canada.

But in all other instances I'm aware of, there are state regulations with respect to the tariff, but I have not specifically looked at each regulation, so I can't confirm -- I can't affirmatively say that.

Q Okay. And my question is more along the lines of was, not are there state regulations, but is there a national regulation over the top of the state regulations?

A Well, there's a U.S. Coast Guard license that all pilots must have, but they still must be licensed by the State as well.

Q Right.

And in terms of charging fees, rates, et cetera, is there a national oversight onto what fees and rates are appropriate?

A Not that I'm aware of.

Q Okay. Does it go state by state?

A Yes.

Q Okay. So paragraph 16, are you disputing -- well, let me start that again.

In paragraph 16, will it be your opinion that there should have been no increase to those fees that are identified?

A I'm not providing an opinion on any specific increase or what that increase should be or whether there should be an increase on the specific factor that goes into the rate structure. I am providing an opinion about -- with my opinion about reasonable net income per pilot, that whether or not -- based on that, whether or not there is need for an increase and what implications that would be with respect to an increase, but I'm not commenting on any specific factor that would go into the rate structure. So I'm not commenting on that.

Q So is it possible within your analysis, that's starting with a target net income, that you might look at the approved rates and fees and come to the conclusion that the fees should not be increased at all?

A It's possible. One additional, sorry, addendum to that would be that I am also looking at the escalators of 6 percent the first three years and the 3 percent escalators in the next seven --

the following seven years.

And so I am also providing an opinion about the utility -- or the appropriateness of those escalators at those rates, which are -- would then have an implication for the rates that are being presented here on each of the factors.

Q Factors, you mean the vessel shifting, anchoring, heaving anchor, and such in paragraph 16, right?

A As well as like LOA, tonnage, and so forth.

Q Okay. Paragraph 16, let's put aside for a moment the escalators, and let's just talk about year one. And you've got an increase from $100 to $150 of a particular fee. I just want to make certain I understood what you said. Your analysis of what a reasonable target income should be could result into looking at those fees and determining that that 150-dollar fee should remain at $150?

A Yes.

Q Take a look at paragraph 17, if you would.

A Okay.

Q And paragraph 17 identifies what are called additional new fees. Do you see that?

A Yes.

Q Well, actually, let me back up to paragraph 16 for, hopefully, just one more question.

As an economist, do you think it is appropriate for the Tampa Bay Pilots Association and other pilot associations to charge fees for particular services?

A For particular services?

Q Such as vessel shifting. Such as anchoring or heaving anchor.

A I don't have an opinion about whether or not any specific -- that would be a question for someone -- well, let me step back. I don't have -- I didn't look specifically at the validity of any given factor or variable that's being considered, whether they should or should not.

Q So you don't have an opinion on whether or not it's appropriate for the Tampa Bay Pilots Association, or any pilot association, to charge a fee for vessel shifting, right?

A I don't have an opinion specifically about that specific charge, only again like the target net income and then what implications that would have for the rate structure.

Q Okay. But you don't have an issue with

the concept of charging a flat fee for a particular task in the pilotage world?

A I haven't scrutinized them to have an opinion about it.

Q Okay. Are you expecting to scrutinize that to have an opinion?

A I haven't prepared to do that, but I may. I'm not -- it's possible, but I have not anticipated that.

Q Not within your current scope?

A Yes.

Q Paragraph 17, you've already read that; yes?

A Yes.

Q And the assertion there is that the additional fees are not related to vessel characteristics. Do you see that?

A Yes.

Q Within the scope of your retention as an economic expert, is that a subject that you're going to have an opinion on?

A With respect to transportation and travel to and from assignments, I will have an opinion on that.

Q Okay. You testified previously that the

Puget Sound pilots charged for transportation in certain circumstances, correct?

A Yes.

Q Specifically as to the assertion in this paragraph that the additional new fees are not related to any vessel characteristics, it implies to me that the Petitioners have a problem with that, that the additional fees are not related to any vessel characteristics.

When you read that, do you read that as implying that the Petitioners have a problem with that?

MR. MANSON: Object to form.

A I think what's implied is that regardless of vessel characteristics, these are charges that will be introduced -- or have been introduced in the new rate structure, and that because it's in the petition, they are challenging the advent of those charges.

Q Fair.

Has anybody told you that the Petitioners' view of the fees that are new to the rate structure being challenged as opposed to the prior rate structure, that the Petitioners' issue with those is that they are not related to vessel

characteristics?

A The way I read this is not because they are not related to vessel characteristics, but that is an attribute of these factors, is that they are not related to vessel characteristics, but they are not -- I view this as they're disputing it specifically because they are not tied to vessel characteristics, but it's a descriptor of these specific factors.

Q My question was whether or not anyone has told you, either someone from the Petitioners' or Petitioners' counsel, that the Petitioners have an issue with the fees identified in paragraph 17 because they are not related to vessel characteristics.

A My understanding is that -- what I've been told is it's not because -- they're -- they're challenging it not because they're not related to vessel characteristics, but they are challenging regardless of whether or not they're related to vessel characteristics.

The fact that they are not related to vessel characteristics has no bearing, in my understanding, on whether or not they agree or disagree it's a descriptor, but they are still

challenging either the advent or the scale of these different factors.

Q So you've been asked to render an opinion on whether or not the addition of new fees are inappropriate because they are related to vessel characteristics?

A I have been -- I have provided an opinion about, for instance, transportation and transportation as a -- as a factor and a fee. I have not directly provided an opinion about these other aspects.

Q Okay. I'm going to -- I'm sorry if I'm not stating it clearly.

A That's okay.

Q My question is: Are you going to provide an opinion regarding the appropriateness or the inappropriateness of the additional new fees based on the assertion that they are not related to any vessel characteristics?

A Not based on the -- not based on their lack -- not based on the fact that they're not associated with vessel characteristics.

Q Perfect.

Do you have an understanding of whether or not shifting a vessel is an act that is related

to a vessel's characteristic?

MR. MANSON: I'm going to object to form.

BY MR. PAGE:

Q I just asked if you have an understanding.

A If the vessel characteristics are related to the shift?

Q Yes.

A My understanding is that they are not related to a shift. You can -- you can do a shift for many different kinds of vessels with different characteristics.

Q And I think you said in Puget Sound, it was a zone-to-zone move?

A Yeah. They might have changed it more recently, but when I was involved in the project, it was referenced to zones.

Q Okay. And in terms of a job being canceled, do you believe that a fee associated with that would be related to a vessel's characteristics?

A No.

Q Okay. Have you looked at the pilot station capital fund fee?

A I have looked at it, but not carefully. It was not a focus of my work.

Q Do you understand what it's for?
A The capital fund fee?
Q Yes.
A Yes.
Q What is it for?
A For future capital expenditures.
Q Relating to?
MR. MANSON: Object to form.
A New infrastructure for the pilots, for the pilot station itself, construction, and so forth.
Q Okay. Are you aware of there being a statutory obligation for the Tampa Bay pilots and other pilots in Florida to provide for pilot boats?
A I do not know the specific legislative language.
Q Okay. Let's take a look at paragraph 18. Read that, please.
A Okay.
Q The first sentence there, "With the proposed new formula, vessels will see increases in their charges ranging from 38 percent to 93 percent spending on -- depending on specifications."
Do you see that?
A Yes.

Q That range, 38 percent to 93 percent, is that a range that you came up with?

A It is not.

Q Is that a range that you have reviewed?

A I have seen materials that would -- I don't remember the specific percentages that came out of that, but I do remember seeing documentation provided for by the shippers illustrating for different kinds of vessels, what the change of the delta in the rate would be for them for a single -- for a single handle.

Q And have you done any work in that regard to come up with your own sort of before and after charges and a percentage change of those?

Did my question make sense?

A Yes. I'm just thinking about it.

Q Thank you.

A I believe I -- I don't recall. I remember looking at the revenue per handle over time, but I do not -- I did not specifically look -- in the way that this is presented, I did not exactly -- I created my own numbers that are consistent with the format for this -- this response.

Q Okay. And is it within the scope of your retention in this case to do so?

A To look at the potential impacts of a rate increase, yes.

Q But in the context of comparing rates under the prior tariff and the challenged tariff to come up with a conclusion that there's going to be an increase of some range of percentages for the various customers?

A I did not do that analysis.

Q Are you going to?

A I have not planned on it, but I have the data to do it, so I could.

Q But it's not within your scope?

A It could feasibly -- I think it actually would be in my scope. It could be in my scope if I -- if I -- but I'm not definitive yet on that, but it could be in my scope.

Q Okay. Where in the engagement letter do you believe it's identified that that work from paragraph 18 could be within your scope?

A That would be Bullet 2, assess potential impacts from the Associations's requested increase.

Q All right. Let's look at paragraph 19. We'll talk about 6 percent, 3 percent, et cetera, at a later point. I'm more interested in the second half of that paragraph.

Did you verify that the result in compounded pilot rate increases for vessels shipping to the port will be of 121 percent to 260 percent or more over the period of ten years?

A The way these numbers are presented, it's a range based on vessel -- I would assume vessel characteristics, so I did not do this calculation.

Q Okay. The calculations that you did are in your report and in the documents provided with your report, right?

A Looking at projected inflation over time, but not -- I don't -- I would have to look at my report. I don't believe I included a cumulative increase based solely on the escalators.

Q Okay. In terms of the escalators, you're going to be relying on your own work and not what's expressed in paragraph 19. Is that accurate?

A Yes.

Q Take a look at paragraph 20 and just read the first sentence.

A Okay.

Q Do you know if that's true?

A I believe that is true, but I have not -- I did -- I believe it's true, but I've not dug into that in great detail.

Q Why do you believe it's true?
A Having seen documents, reviewed documents, and seen materials to that effect.
Q To this point in time, that's not been part of your retention as an expert, to render an opinion on whether or not that's true?
A I haven't looked specifically at the rates. Again, my focus was on the target net income that would impact -- that could impact the rates and then inflation and handle time.
Q Okay. So as you sit here, you cannot say with certainty, as an expert under oath, whether the existing pilotage rates in Tampa are already higher than many ports in the southeastern United States.
Is that accurate?
A Right now, without having the benefit of the materials I would need, I did not -- I do not -- I did not prepare a statement specifically about that yet.
Q Okay. And is that because you have not been asked to render that opinion as part of your scope?
A That could fall within my scope, but I just have not done that.
Q So a rate comparison, you believe,

between Tampa and other southeastern United States ports, including Florida, could fall within your scope?

A I'd have to -- let's see. Only to the extent that I would review and testify on the fair, just, and reasonable standard for harbor pilot rates, but I have not rendered an opinion about that.

Q At this point --

A At this point --

Q -- as you sit here, are you expecting to?

A -- I do not know. I'm not sure yet.

Q Have you been asked to?

A Specifically on the rates, I do -- I might have. I don't recall. I'm sorry.

Q You've not generated any work product specifically as to the rates. Is that accurate?

A That's correct.

Q Okay. Does that also mean you've not generated any work product to substantiate the second sentence, whether pilotage costs in the Port of Tampa represent a disproportionally higher percentage of total port costs than any other ports in Florida in the southeastern United States?

A I have not rendered an opinion about

that.

Q Okay. And as well, you have not analyzed or rendered an opinion about the proposed increases will significantly exacerbate the existing disparities?

A Correct.

Q Okay. So in paragraph 8, when it says that you're going to express an opinion regarding paragraph 20 -- Exhibit 8, regarding paragraph 20, at least at this point in time, as you sit here, you're not rendering an opinion regarding paragraph 20?

A My report does not include that at this point.

Q So is that a yes?

A That I have not rendered an opinion at this point, yes.

Q Let's look at 21. It's kind of carrying over from paragraph 20, "Additionally, vessels in the Port already pay a significantly higher proportion of their total port cost to pilotage fees than other ports in the state."

The same answer, as you sit here today, you haven't rendered an opinion or done work on that topic?

A I have not done work specifically on this topic.

Q And the assertions of specifics that follow with various percentages and stuff in comparing Tampa under current or proposed rates, you haven't done any work in that regard either?

A That is not my work.

Q Okay. And you're not, at this point in time, expecting to do any work similar to what is represented in paragraph 21?

A I have -- do not anticipate looking at port costs.

Q Or the degree to which pilotage fees are a proportion of port costs. Is that true?

A That's true, I have not looked at that.

Q Okay. Let's skip a whole bunch and go to 73. Read 73 to yourself, please.

It states, "Whether larger ships and an increase in port traffic will over time organically increase pilot income without the need to implement the proposed drastic rate increases."

Do you see that?

A Yes.

Q Have you done any work to determine whether or not you have an opinion on the assertion

that the rate increases are drastic?

A I have rendered an opinion about the existing changes in vessel composition -- or vessel fleet composition, and that pilots will organically make more revenue as the shift towards -- as there are more larger ships relative to smaller ships, assuming the same level of handles or more.

Q I appreciate that, and we'll get there. But my only question was whether or not you had done any work to express an opinion regarding the assertion in this paragraph that the proposed rate increases are drastic.

A I have not used the term "drastic."

Q Have you used any other term to assess the proposed rate increases?

I mean, in this paragraph it says "drastic," so are you going to render an opinion that they are drastic, or are you going to render an opinion that they are some other, you know --

A Superfluous.

Q Yes, whatever you may come up with. Is that something that you're going to be doing?

A I will describe -- I would describe whether they increase. I probably wouldn't use the term "drastic," but I would use the term -- some

descriptor to -- well, how much of an increase, the magnitude of the increase.

Q What types of descriptors might you use? And I'm not locking you down to one, I'm just trying to get in my mind --

A Yeah.

Q -- what other descriptors, you know, might fall in line with the scope of an expert economist's work on this project.

A I mean, a percentage range. A proposed 30 to 50 percent is an example hypothetical and so forth.

Q And you would call a 30 to 50 percent range, what? Not drastic, but something else?

A I would call it 30 to 50 percent.

Q Okay.

A So maybe -- sometimes I say significant.

Q Significant, insignificance, immaterial, those sort of words might work depending on the circumstances?

A Maybe, yeah.

Q Okay.

MR. MANSON: Counsel, when you get to a breaking point.

MR. PAGE: After this paragraph.

MR. MANSON: No problem.

MR. PAGE: I was thinking the same thing.

BY MR. PAGE:

Q And I'm going to apologize to you, because I asked the question about the use of the word "drastic," and you gave me an answer to a question that I haven't asked yet. So I really didn't listen to your answer, so I'm going to ask it again.

Are you going to opine on the concept that larger ships and increasing port traffic will over time organically increase pilot income?

A I am working with Dr. Kemmsies to develop a forecast that will identify whether or not larger ships will make up a larger share of future vessel traffic that the pilots handle. And based on the rate structure, it is our belief that that will yield, ceteris paribus, with respect to handles -- sorry, ceteris paribus. Holding constant, it's Latin, sorry.

I believe that if handles overall stay the same, which you have a higher share of that fleet composition that are among larger ships, that will organically lead to more income.

Q You said you're working on a forecast

with Dr. Kemmsies?

A I have been. Dr. Kemmsies has been the primary forecaster, but I've been supporting his forecast. And that's presented in our report.

Q Kemmsies?

A Kemmsies.

Q Okay. Is that forecast final?

A It is draft.

Q What is needed for that forecast to become final?

A Similar to the other components of the reports, we would like to hear other information, do depositions, and other material to further refine the forecast. There's also additional data that we're able to obtain that would also be useful.

MR. PAGE: All right. Let's take a break.

(Recess from 2:43 p.m. to 2:53 p.m.)

MR. PAGE: All right. Back on the record.

BY MR. PAGE:

Q All right. We were talking about paragraph 73. Do you recall?

A Yes.

Q I believe you said the forecast is not

complete. Is that right?
A It's draft.
Q It's draft.
A Yes, in the reports.
Q Let's actually go to Exhibit 6. And I would like for you to direct me to where in Exhibit 6, the January 8, 2024 draft report, there's information that relates to paragraph 73.
A Beginning on page 15.
Q Okay.
A And then preceding to the next page, 16. We look at the distribution -- or the different tranches that were identified.
Q Okay.
A Those are defined at the latter half of the page, so Tranches, A, B, C, and D.
Q And E on the next page?
A I'm sorry, and E.
Then we look at the container share of total import/export and tonnage between Tampa and Manatee, historic. And then additional information on handles by tranche then on page 18. It's Exhibit 12 in the report.
Q Okay. Got it.
A And then the -- that culminates in the

forecast by tranche for handles between 2028 and 2033 on page 19. That's Exhibit 13.

Q I'm with you.

So is Exhibit 13 -- does Exhibit 13 represent what you and/or Dr. Kemmsies believes to be -- will be the organic growth in the port service by the Tampa Bay pilots from 2013, and then the next years -- I'm sorry, 2023, 2028, and then 2033?

A It does.

MR. MANSON: Object to form.

A It does. The handles data does exclude shifts and cancellations. So, for instance, 2023, the second row under volumes, the total is 4,141. That's a lower number than the total number of handles, because we also -- we excluded -- we filtered out shifts and cancellations in historic data.

Q Why were shifts filtered out?

A Because we did not want to forecast the number of -- we did not want to forecast the number of shifts and cancellations, we wanted to only forecast actual movements in and out of the ports. And part of that was because of the -- one of the key inputs into the analysis was also cargo volumes.

Q So you didn't do any modeling as to

whether or not shifts have increased in the past or you believe will increase in the future, have you?

A I did not explicitly do that, but I have all the data to do that.

Q But it has not been done?

A It has not been.

Q Okay. So sticking with the number you used, 2023 totaled 4,141, right?

A Yes.

Q No shifts involved in that number, right?

A Or cancellations.

Q Or cancellations. No cancellations anywhere.

No shifts in the 2028 total or the 2033 total, right?

A That's my understanding, yes.

Q Would you agree with me that if there is going to be organic growth and there are going to be a higher number of vessels coming in and out of the ports, that it would stand to reason there would also be more shifts?

A I would agree with that.

Q Would you agree with me that the potential is that there might be a greater magnitude in the increase of shifts than there is in handles

that are just in and outs?

A That, I cannot comment on. We have not looked at that. We could look historically whether or not the percentage of total handles that are shifts increased or decreased over time in a meaningful way, but I do not recall looking at that specifically.

Q Okay. Would it make sense to you that if you had more vessels coming in and out of a port, that you would have more shifts because there's additional vessel traffic?

A I would agree with that, yes.

Q Okay. So the second half, the lower half of Exhibit 13, is annual growth rate for the various tranches and then a total. Is that right?

A Yes.

Q Is there any conclusion -- is that the end paragraph -- page 19, that's the end of the organic growth section of the report, correct?

A It is.

Q Correct me if I'm wrong, but there's no conclusions identified on paragraph -- on pages -- I keep saying that. Pages 15 through 19 of the report do not contain any inclusions -- let's start over.

Pages 15 through 19 of the report do not

contain any conclusions regarding the consequences of the alleged organic growth in terms of revenue. Is that accurate?

A That is accurate, but that is something that we could do though.

Q You have not done it?

A We have not done that though.

Q And has Dr. Kemmsies done that?

A He has not.

Q Is the intent to do that?

A The intent, I believe, that this is an input into the model that was developed by -- by Cooper and Zarate, where you could include handles over time by tranche and see what the revenue implications of that are.

Q That is not something that you and Dr. Kemmsies are expecting to do?

A We -- not to my knowledge. We would submit this into their model, is my recollection.

Q And is it your understanding that that has been done?

A I believe they have done this, yes.

Q In terms of the work in the report, the years that we've got in that first column on the left are 2016, 2023, 2028, and 2033; yes?

A Yes.
Q So were the projected handles, in terms of 2028 and 2033, only projected for those years?
A I would -- I believe -- I would have to ask Dr. Kemmsies about that. He could comment more specifically if the interim years were also modeled as well. I believe they would be, but I would defer to him.
Q They're not represented in the report though?
A They are not.
Q Okay. Would you agree with me that there are uncertainties associated with port traffic and vessels using ports?
A Yes.
Q It could be based on a variety of factors; yes?
A Yes.
Q COVID?
A Yes.
Q Or the war in Ukraine?
A Yes.
Q Oil prices?
A Only to the extent for movement of -- they could to the extent that it disrupts shipping

routes -- traditional shipping routes, yes.

Q A decline in personal disposal income?

A Yes.

Q Any other big ones that I'm missing?

A There's so many. I mean, certainly U.S.-China de-risking and movement of -- or reconfiguring of supply chains could have an impact on the shipping lanes and shipping routes that carriers go.

So if there's more -- if there's a greater movement of manufacturing to, let's say, South America or Mexico, that could result in more -- more of that cargo -- imported cargo going over land or through short-sea shipping and not through larger ports like Tampa.

Q And does the concept of organic growth to you depend both on vessel quantity and that the vessels are also of the larger, heavier variety?

A Yes.

Q So regarding vessel quantity, let's round off for 2023 and say 4,000 in and outs. Does that work for you just for the purposes of discussion?

A Yes.

Q Okay. So if that's going to go up from 2023 to 2028, from 4,000, let's call it 4,300 --

and, again, just in and outs, right?

A Yes.

Q Okay. We're dealing with 200 extra handles over the course of those five years; yes?

A Yes.

Q Is it your understanding that it would take additional pilots to handle those additional handles?

A That, I -- I mean, holding everything else constant, the more handles you have, that would create, in my opinion, nothing but upward pressure on the need for more pilots.

Q I think that was a yes?

A Yes.

Q Yes. And I appreciate you qualifying it as all other things being equal, because I think you're right in that regard.

So if there's an expansion in the number of handles that need to be taken care of, then at some point there's going to be a capacity concern and you're going to need additional pilots; yes?

A Yes.

Q Okay. What about the component when you're speaking of the concept of organic growth, that you're talking about, of the larger vessels,

okay, does it -- generally speaking, if you have a significantly larger vessel, does it take more time to complete the handle if your starting point and your finishing point are the same?

A That is something that I have not looked at specifically, but it is something we could feasibly look at based on the dispatch data, where we can compare, for instance -- we could look at -- I believe we could look at the dispatch data and look at gross tonnage and the other factors and compare the length of time it took for a job, but I have not -- we have not looked at that specifically.

Q Do you know if that -- and are you talking about from the point that the pilot gets the conn to the point that it's in a berth?

A Including not just the conn, but the time to get to the vessel if they're -- if they're taking the pilot boat out to then get to -- so pre-bridge time from getting onto the vessel, start of the job, to conn the vessel, to be able to get onboard to the bridge, bridge time, and then eventual completion of the job.

Q Are you counting time on the pilot boat?

A Yes.

Q When you're looking at that time, are you

taking into account weather?

A I am not.

Q Are you taking into account tides?

A I am not.

Q Are you taking into account visibility?

A I am not. I'm just looking at the data on job start and onboard time.

Q Okay. Do you have any information regarding the number of significant course changes that are required to bring a cruise ship from the sea buoy into Port Tampa Bay?

A I am not.

Q Do you have any understanding about what the capacities are within Port Tampa Bay for the draft of large vessels?

A I understand that there is an often-discussed limit for vessels that can pass under the Skyway Bridge, but I also -- I am not an expert on that.

Q Okay. Do you know if the waterways that the Tampa Bay pilots navigate when providing pilot services are natural channels or dredged?

A I do not -- I -- I don't know enough to say.

Q Okay. In terms of -- you mentioned the

limitations of the Skyway Bridge; yes?

A Yes.

Q What's your understanding of what the limitations are of the Skyway Bridge?

A I've heard that certain Neopanamax vessels cannot -- or it's more difficult to move them underneath because of the height limits from the bridge and the available permissible draft, but I have not -- I also -- I've heard mixed information about that. So it's not something that I'm an expert in.

Q And not something you're going to render an opinion on?

A Yes.

Q You're not going to render an opinion on it?

A I'm not going to render an opinion on it. But that would be a factor to consider in the forecast, is the natural -- barring any changes in dredging of the waterway underneath the Skyway Bridge in the future, a limit on potentially the size of vessels.

Q Okay. And in terms of -- you said dredging under the Skyway Bridge. Is it your understanding that dredging under the Skyway Bridge

is the only dredging limitation on organic growth?

A There are other factors that might shape the ability or the growth in the future.

Q I meant just regarding dredging though.

A Oh, I haven't looked carefully at that, so I can't really comment on it.

Q Okay. An opinion on -- start over.

Any opinion on whether the Skyway Bridge or the available draft within the Tampa Bay waterways creates any limitation on the size of cruise ships that can come into Tampa Bay?

A I have heard that, but I don't have an opinion about it.

Q What have you heard?

A That there is a limitation.

Q You don't know what the limitation is?

A I don't. I haven't looked into that carefully.

Q Is that part of your -- your and Dr. Kemmsies' organic growth forecast?

A That would be a question for Dr. Kemmsies and his analysis.

Q Fair enough.

Going back to paragraph 73, which states, "Whether larger ships and increasing port traffic

will over time organically increase pilot income without the need to implement the proposed drastic rate increases."

After what we've just discussed, are you going to be expressing an opinion regarding that issue?

A Dr. Kemmsies and I will both be submitting an opinion based on the -- based on the organic growth and the shift in growth across tranches, what that would yield in higher income.

Q And the growth that you're talking about, I believe you're saying that there's going to be larger and/or heavier ships using the Tampa Bay waterways; yes?

A Yes.

Q And that because of that, the rates will go up; yes?

A Yes. Or the revenues will go up.

Q Those larger, heavier ships will incur higher rates, therefore, the revenues will go up?

A Yes.

Q Will the traffic within Tampa Bay of smaller ships stay the same, go up, or decrease?

A I would have to refer back to the tranches. So Tranche A, which are vessels that are

less than 22,000 gross tons and less than 30 feet in draft, those are projected between 2023 and 2028, so they could grow about .6 percent per year. And then also projected to see more than doubling of growth per year at 1.2 percent.

However, Tranche B, which are those vessels between 22,000 and 40,000 gross tons, with a length overall of 800 -- greater than 815, but a draft of less than 39 feet -- and I can read through all these, but essentially -- and also or gross tonnage between 20,000 and less than 40,000, with a length of less than or equal to 815 feet and a draft of less than 39 feet, as well as vessel -- or vessels with a tonnage -- the same tonnage range of between 22,000 and 40,000 with a length overall of less than -- equals 815 and a draft less than 39. That group is projected, based on our draft analysis, to experience a decrease -- projected decrease in volumes, between 2023 and 2028 and between 2028 and 2033.

Q I think I see that in Exhibit 13 --

A Yes.

Q -- negative 1.4 percent and negative 1.3 percent?

A Yes.

Q On the Exhibit 13, the totals, annual growth rate between 2023 and 2028 is only .8 percent. Is that right?

A Yes.

Q And that's for those five tranches?

A That's combined, yes.

Q Okay. It is not for any types of vessels that does not fit into those tranches, correct?

A I believe those tranches should be inclusive of all types of vessels based on the definitions. So it should be -- it is inclusive of all -- of all the vessels that would be subject to a tariff.

Q Okay. Would you go back to page 16, please? And that's where we begin the description of the tranches, A, B, C, and D. And there's another one on page 17, Tranche E, right?

A Yes.

Q Tranche A is identifying vessels less than a certain gross tonnage and less than a certain draft, correct?

A Yes.

Q There's no reference there to length overall or beam, is there?

A Correct.

Q So those variables aren't being considered at all in vessels that might or might not be in Tranche A?

A Correct.

Q Tranche B speaks of vessels with gross tonnage, length overall, and draft of various degrees; yes?

A Yes.

Q So all the vessels in Tranche B are also exclusive of beam; yes?

A Yes.

Q Beam and length overall are factors that are in the pilotage rate tariff that's being challenged; yes?

A Yes.

Q Okay. Tranche C also does not include beam as a factor. Is that right?

A Yes.

Q Same with Tranche D, it does not include beam as a factor?

A Yes.

Q Same with Tranche E, it does not include beam as a factor, right?

A Yes.

Q Where did the numbers that are expressed

on pages 15 through 19 of the report that concerns organic growth -- Exhibit 9, those numbers came from Port Tampa Bay, right?

A Yes.

Q Does Port Tampa Bay, to your knowledge, have information on all the vessels that use all the ports of the Tampa Bay region?

A No.

Q What do they lack?

A SeaPort Manatee.

Q Is that all they lack?

A And St. Petersburg, I believe.

Q Anything else?

A Not to my knowledge, but we only focused on Manatee and Tampa.

Q Why?

A That was the data that -- those were the two ports that were in the dispatch data -- on the handles data that were served by the pilots.

Q You agree with me, though, that the pilots are obligated to serve Port St. Pete as well, right?

A Yes, I agree.

Q Okay. Who from Port Tampa Bay gave you the information that's exhibited in Exhibit 9?

A We received it from counsel, but I -- yeah, and they received it from the Port.

Q Do you know who from the Port?

A I think it was Charles Klug, but it might have been someone else, too. It was provided to us by -- I would have to go back and look, but it -- it was provided directly to us by counsel.

Q Did you or, to your knowledge, Dr. Kemmsies have communication directly with Charles Klug or anyone else on behalf of the Port of Tampa Bay entity?

A I believe there was one early on in the project. There was one conference -- video conference where Charles Klug was on the call. But other than that, I've had no direct communication with him.

Q What was discussed on that call?

A It was a long time ago. I think -- I don't remember the details, but it was -- in general, I think it was just a kickoff, sort of, to walk through the project.

Q Did Mr. Klug give you any direction about what he was wanting to see out of your engagement?

A I don't remember.

Q Exhibit 13. Looking at 2023, and the

total of 4,141 handles in this Exhibit 13. Are you with me?

A Yes.

Q And the annual growth rate below it for 2023 through 2028 is .0 -- 0.8 percent. Do you see that?

A Yes.

Q I just did the math here, and by my calculation 0.8 percent of 4,141 is about 331.

A Well, that's a compound annual growth rate that we're showing.

Q Explain, please.

A So that's per year.

Q Right.

So 4,141 handles in 2023, is going to have a growth rate between 2023 and 2024 of 0.8 percent, right?

A Yes.

Q Okay. So the math I just did -- get your phone out if you'd like.

A Sure.

Q -- shows that that would account for approximately 331 additional handles in 2024 than in 2023.

A Is it okay if I check my --

Q Yeah.
A Okay.
Q 4,141, right?
A Yeah.
MS. HEETER: While he tracks all that, was there a question at the end of this last statement? I thought it just ended with a statement, just before you -- I mean, I can guess what your question is as well, but I thought it was just a statement.
MR. PAGE: I would say it was more of a statement.
MS. HEETER: Okay.
MR. PAGE: I'm trying to get him onto his calculator.
THE WITNESS: It's my comfort zone.
MS. HEETER: Then wait for a question before you answer.
BY MR. PAGE:
Q Well, I'll ask the question. Based on the math that you're doing --
A Yeah.
Q -- would it be accurate to say that between -- based on Exhibit 13, between 2023 and 2024, you and Dr. Kemmsies are projecting a growth

of approximately 331 handles?

A So that calculation is correct, so it's 0.84 percent per year. So if we do that -- let me do this and then let's do -- so it would be -- actually, it looks like 35. So if the calculation is correct, the compound growth rate would be .8 percent per year.

Q And between 2023 and 2024, based on Exhibit 13, that would add how many handles?

Is that what you just said with 35?

A Yeah. Let me go back and just clean up my calculator for a sec here.

It would be about 35.

Q And then it sounds to me that the way that you just calculated that would mean that it may be a little bit more than 35 the next year, but not too much more?

A Well, it's compounded, yeah.

Q Right.

So your number is going to be -- instead of 4,134, it's going to be 4,176?

A Something like that, yeah.

Q So instead of 35 added on, maybe you get 38?

A I'd have to do the math, but yeah,

something like --

Q And then maybe the next year you get 44?

A Uh-huh.

Q And then maybe you get 52?

A Uh-huh.

Q The growth is a little bit bigger each year?

A Yeah.

Q But not --

A The --

Q -- massive?

A The net growth, yeah, but the percentage is the same, but that's right, it's compounded.

Q Okay. So is it your position that the growth of 35 handles between 2023 and 2024 will provide sufficient revenue such that there's not a need to increase the rates that are being challenged?

A This, again, I'd have to look at the implications in the rate model that was constructed by Mr. Cooper and Mr. Zarate to see what that is going forward. So if you increase the handles by tranche using that model, is my understanding, it will show you what the revenues are, as a result of the different tranches.

Q But, as you sit here today, you can't testify as to whether or not the revenue from 35 additional handles from 2023 to 2024 is going to produce a significant amount of revenue increase?

A It will produce an increase. How much it will increase, I haven't done the math to calculate to come up with an answer, but it will certainly increase the revenues.

Q Certainly?

A Well, let me take that back, correct that. I believe it will, but I'll have to look at the -- I'd have to look at the rates applied on average across these different tranches to come up with a model estimate.

Q Right.

And these tranches are also projections, correct?

A Yes.

All of these cases -- the only one that we project would have a decrease in volumes would be Tranche B.

Q Right.

But in terms of projections, you know, if in 2019 you projected vessel traffic in Port Tampa Bay for 2020, you'd be very wrong, right?

MS. HEETER: Object to form.

A I'd have to look -- yeah, I'd have to look at the data.

Q Do you think you'd be wrong?

A Can you repeat the question, the dates specifically?

Q Yeah.

If you were in the middle of 2019 and projecting, let's say, cruise ship vessel traffic for the year 2020 in Port Tampa Bay, the odds of your projections being correct would be extremely low. Is that accurate?

A If I was able to predict the pandemic, I wouldn't be here right now, yes.

Q So that's a yes?

A Yes.

Q Okay. And there are other variables that we discussed that can significantly impact vessel traffic and make projections incorrect. Would that be accurate?

A There's always uncertainties. And we always caveat forecasts as such, that no forecast is correct.

Q It's impossible, correct?

A Yes. The only thing that I can forecast

is that it will be dark tonight.

Q What if we were flying to Alaska?

A All right. Fair enough.

Q All right. Let's go back to our amended complaint in Exhibit 10 and take a look at paragraph 74.

A Okay.

Q Are you going to render an opinion on whether or not this statement in paragraph 74 is correct or incorrect?

A I did not look at the comparison of specific rates across competing ports in Florida, so that was not part of what I did, so I would not render an opinion.

Q Okay. Paragraph 75, read that one to yourself.

A Okay.

Q Are you going to be doing work within your scope as an expert regarding rate disparities relative to other ports in the region?

A I have not looked at specific rates across different ports in the region. But that question in Question 74, essentially to me, as I read it, is a reinterpretation of 74. So in both cases, I have not looked at the specific rates by

that factor across each port.

Q Okay. And you're not expecting to?

A If it is asked of me, I will look at it, but I have not planned to.

Q Okay.

A But I can, if requested.

Q 76, read that, please, to yourself.

A Okay.

Q Have you done any assessment of whether the proposed pilotage rates will place the Tampa Bay Port Authority at a competitive disadvantage with other regional ports?

A I have not done a diesel assessment, but I believe that any increase in pilotage rates will increase costs to move ships in and out of the Port. I have not done any analysis to look at the relative impact of that though, but any -- any increase in costs will reduce or erode competitive advantages.

Q All right. What if there's a competitive regional port that has its costs increasing more than the Tampa Bay costs, does that make you change your statement?

A If that was the case, then -- in relative terms, then the port would be -- that impact would be -- would be not as profound or pronounced.

Q It could actually put them in an advantageous position; yes?

A If holding everything else constant and only focusing on specifically the difference in rates, then if they have lower rates for the same vessel, everything else held constant, then that would put them at an advantage.

Q Right.

So the only way to determine that advantage or disadvantage on a competitive basis is to actually compare the competitive ports within a region, if you're going to come up with any opinion on Number 76. Is that right?

A Yes; although, if the only rate that's being increased in a given period of time is the rates charged by the Tampa Bay pilots, then that in and of itself would erode competitiveness of the ports of Tampa Bay and Manatee from moving ships in and out. It would have to happen simultaneously to say that the rates are -- that the rates are different or that it doesn't -- it would be offset by other rate increases.

Q Would you agree with me that customers, when deciding which port to use, are making the decision based on more than just pilotage rates?

A Yes.

Q So when you say that the pilotage rates in Tampa Bay increase and rates in competitive ports do not increase and all other things being equal, that puts the Tampa Bay port at a competitive disadvantage, that does not account for all of those other variables that goes into a customer's decision. Is that right?

A I would say that it erodes or it reduces their competitive advantage, but by how much, we would have to look at all the other factors and costs that go into a decision about which port to move ships in and out of. It's one of many variables.

Q And some other factor could change far enough in the other direction that an increase in pilotage rates would be mitigated or completely nullified; yes.

A Yes. And we also would have to know how much -- what's the relative share of pilotage cost out of the entire cost to move a ship in and out.

Q It's complicated?

A Yes.

Q And I think that goes back in part to your regional science; yes?

A Yes, uh-huh.
Q Okay. Have you been asked to render an opinion regarding the topic raised in paragraph 76?
A I do not recall being explicitly asked.
Q Okay. Do you anticipate rendering an opinion regarding the topic addressed in paragraph 76?
A I could feasibly, but I have not considered it yet. I don't know.
Q Okay. It has not been asked of you?
A I don't recall being asked, but I -- it's something that I certainly could do or could consider.
Q It's not represented in the report?
A It's not represented in the report.
Q And you do not have any working papers regarding that topic, correct?
A Correct.
Q Read 77 to yourself, please.
A Okay.
Q Would your answers regarding paragraph 77 be similar to your answers regarding paragraph 74, which was whether the notices of the proposed rate increases and proposed new rates will be more than double that of competitive ports in the state of

Florida?

A I have not looked specifically at this issue. I don't know how many ports, if it's the same vessel with the same dimensions, moving into -- or moving in and out of another port in Florida compared with Port Tampa Bay or Port -- SeaPort Manatee. I didn't look at that comparison of costs.

Q Okay. Have you done any assessment of what ports in Florida, if not all of them, you would consider competitive to the Tampa Bay port?

A I think all of the larger or major ports, I would consider maybe not necessarily competitors, but of similar capacity, particularly Everglades.

Q And if I said "competitor," I apologize, I meant to say comparable.

A Comparable. Yeah, I've looked at Everglades and Jacksonville and Canaveral.

Q And are those the three that you consider to be comparable?

A Those are the initial list, but we're always looking to broaden and refine that list. So we have not yet looked at Miami and possibly one or two others, so --

Q Do you know the others?

A I -- just Miami at this point actually.

Sorry.

Q Okay. So you said comparable. And, I'm sorry, I didn't get it written down. Everglades, Jacksonville, and?

A Just Everglades, Jacksonville, and Canaveral.

Q Canaveral?

A Yeah.

Q And when you say comparable, on what basis are you determining that those three ports are comparable?

A We determined that those ports -- when we decided on what comparators to look at, we resorted to having as large a list as possible of ports that could -- that have pilotage and different pilot associations.

So based on the input from Captain Bushy, from his deposition, he felt that Everglades was the closest comparator to -- in terms of length of channel and other dimensions and also types of vessels that move in and out of port, the Port of Everglades would be the closest comparator to Port Tampa Bay and SeaPort Manatee combined.

Q Did you look at the -- well, before I ask that. Is there any other basis for you to determine

that Everglades, Jacksonville, and Canaveral are ports comparable to Port Tampa Bay other than Captain Bushy's testimony?

A We also considered -- we wanted to look at southeastern U.S. ports, and the inclusion of southeastern ports, U.S. ports, Florida ports as part of those comparators.

Q Miami, the determination has not been made whether it's comparable or not?

A Miami, we did not include. But I would have to go back and review the reasoning why, which I don't recall right now.

Q And in terms of ports being comparable, was that based on them having similar net income per pilot?

A No. We wanted to -- and I suppose this kind of delves into the net income discussion. But there are so much variation across ports in the U.S. that it's really difficult to draw meaningful comparators. So our approach was to take and cast a very wide net, because of the fact that the pilots really are the pinnacle of their profession.

And so we felt that despite all the differences in topography and distance, and in most cases with one exception with respect to cargo, we

wanted to cast a very wide net for our comparisons for the purposes of net income.

So, for example, the maximum distance reported by the Tampa Bay pilots is 44 nautical miles. Other districts, other pilotage associations, Canaveral does, I think, 2 nautical miles. Puget Sound pilots oftentimes go 67 nautical miles.

I believe the Lake Charles pilots go much -- I have it written down in the report, but go a much further distance. So there's no clear correlation in our estimation, in our view, between net income and distance or other characteristics, so we opted to cast a very wide net for comparators.

Q Before you cast that wide net, did you look at vessel mix between ports to determine comparability?

A We did. And that was the reason why we decided to not include SABINE because it is most entirely petroleum. And the inherent -- in our view, the higher -- the much higher risks of a -- of a tanker accident, we thought, were a reason not to include it as a comparator.

Q Is that the sole reason that you excluded the SABINE?

A SABINE, yes. And that was further validated through the deposition of Captain Bushy. He also made that point.

Q I remember that conversation.

Did you look at the vessel characteristics of the petroleum vessels and compare them with the vessel characteristics of the vessels that call on Port Tampa Bay or other ports?

A I did not, not the vessel characteristics.

Q Are you aware that anyone did?

A I do not know. I -- the data that is available is typically by commodity and by tonnage and value, but it is not -- I did not look at data based on the vessel characteristics, like vessel traffic. To do so, it would require reaching out to all the different ports to request that information, and I'm not sure if that's available or not. We did not pursue that.

Q Okay. Did you reach out to any ports regarding vessel mix?

A We did -- I did not.

Q Do you know if anybody did?

A I do not know.

Q Okay. You mentioned topography being

different between ports. Did you or Dr. Kemmsies do any assessment of the topography of the Tampa Bay port versus the topography of other ports?

A I did not, but Dr. Kemmsies has a wealth of expertise in port characteristics.

Q Okay.

A So I believe he -- he would be able to offer more of an opinion about that.

Q Okay. I'll speak to him.

The fact that the SABINE pilots are conveying petroleum vessels in the exclusion of those pilots from your study, was that based on solely the deposition of Captain Bushy?

A No, because our report was submitted before that deposition.

Q Okay.

A But his opinion validated our reasoning for not including it.

Q Okay. So why was it -- if it wasn't -- if petroleum vessels using SABINE validated it, then what created it initially to eliminate SABINE?

A That was the reason. It was our opinion that the majority -- it was our opinion that because of the fact that almost -- there were -- almost all their traffic was based on was petroleum, that we

opted not to include it. And then that opinion not to include it was further validated by Captain Bushy's deposition.

Q Apologies if I asked, but you did not do an assessment of the characteristics of the vessels transporting the petroleum in terms of whether or not those characteristics would be similar to the characteristics of vessels not transporting petroleum?

A Correct.

Q Okay. Let's take a look at 79. Read that to yourself, please.

A Okay.

Q Are you going to express an opinion regarding the assertion in paragraph 79?

A I will -- let's see. I'm not going to express an opinion about the intent of the applicants to do that. I will not -- I'm not -- because this reads that they will -- it is the intent of the applicants, and I'm not going to render an opinion about that.

Q Are you going to render an opinion that they are trying to go back in time -- or that they are going back in time to try to recover past revenue shortfalls or past costs?

A I will render an opinion that part of the justification for the rate increase is inflation. So adjustments to their rate based on inflation or accumulated inflation.

Q And are you going to render an opinion that that adjustment is an improper adjustment?

A I am going to render an opinion about was the appropriate increase in their net income to reflect adjustments due to inflation. So what is a reasonable -- what is a reasonable income and what is a reasonable increase in net income. So I'm providing an opinion that they should have an income increase, but roughly by how much.

Q Is it your understanding that my clients presented a tariff structure that was based on rates that had a resulting income and that they did not have a target net income?

A My understanding is the way that they submit their application is -- is a rate increase, not a target net income increase. But I do believe net income was a factor in considering -- in my opinion, in considering a rate increase.

Q So do you think that they were seeking to go back in time and try to recover past revenue shortfalls or past costs?

A Well, to go back in time and recover past shortfalls would not just be increasing their net income, but also gaining the difference in what they think they should have earned five years ago or ten years ago for that given year and cumulative over that period, which could be millions of dollars per person -- or who knows.

I -- I do not think that -- I think what they were trying to -- I do not have an opinion about whether or not they were trying to go back and recover lost or unrealized income due to inflation. I think they are trying to adjust their rates and adjust their rates so that net income is increased to reflect, among other things, inflation.

Q Okay. Current conditions?

A Current conditions.

MR. PAGE: Okay. We can take a break.

(Recess from 3:45 p.m. to 3:55 p.m.)

BY MR. PAGE:

Q I want to bounce back for just a second to some of the handle-time discussion we had -- not really handle time, but projections and then the capacity to handle the additional vessel transits.

In terms of -- and I think we had said, approximately 35 new vessel transits expected

between '23 and '24, right?

A Yes.

Q And in terms of handling those in Port Tampa Bay or handling 35, let's say, the vessels are the same, additional transits in other ports, there's going to be variables that's going to change how long it takes to actually complete that handle, correct?

A Yes.

Q So if it's one of these vessels that for Tampa Bay needs to go as far out as possible, or for Canaveral and needs to go the 2 miles out, you're going to have a significant difference of time in transit; yes?

A Yes.

Q Okay. So it's possible when you're talking about larger vessels, that the impact of those on the pilot's time to conduct the pilot duties in Tampa Bay could be greater than a port like Canaveral?

A Just based on the -- not based on the size of the vessel, of course, but just based on the distance, yes.

Q Distance.

So distance could be a variable that

could make one port for a particular handle require significantly more time than another port?

A Possibly, yeah.

Q Okay. Speed of the vessel could be another one?

A Yeah.

Q Okay.

A Yeah.

Q Let's look at paragraph 81.

A Okay.

Q Read that to yourself.

A Yes.

Q Is providing an opinion regarding the assertion of paragraph 81 within the scope of your retention?

A I have not -- I have not currently provided an opinion about whether or not there's a need for a new pilot station. That's not something that I have -- that I have provided an opinion about. But I could, I just haven't done that as part of the existing report draft.

Q So you think you could render an opinion on whether the evidence supports the new pilot station fee?

A I would have to look at what the cost is

for a new pilot station and whether or not the existing infrastructure needs to be replaced. At this moment, I don't have an opinion about it.

Q So based on your skill and training, you're in a position to render an opinion on whether or not the existing infrastructure needs to be replaced?

A I don't have expertise in that, so I do not. I would not have an opinion about that specifically.

Q Okay. So going up to paragraph 80, the assertion -- or the issue whether the pilots need a new pilot station, you would not render an opinion on that?

A I would not.

Q Okay. And if you were asked, what would you need to render an opinion on whether the evidence supports the new pilot station fees?

A I would have to know what -- first what's -- what is the cost to build the new pilot station.

Q Okay. So assuming a new pilot station would be needed, you would look at the cost to build it and make a determination whether or not the evidence of the cost supports the fee?

A Yes.
Q Would that be accurate?
A Yes.
Q Okay. But you've not been asked to do that?
A I don't think I've been asked -- I don't believe I've been asked specifically to do that.
Q Okay. Since we're on the topic of a fee, just regarding fees in general, have you been asked to do any assessment or provide any expert opinion regarding the use of fees of a vehicle to pay for certain elements of pilotage services?
A I have -- that I believe was in the work that was completed by Mr. Cooper and Mr. Zarate. And I contributed and reviewed the work they had done, but I have not provided a direct opinion about that.
Q Okay. Concerning the fees for a particular infrastructure or services, is it your opinion that in the pilotage world, it's appropriate to charge fees in some instances?
A Yes.
Q Okay. Let's look at paragraph 87. Read that to yourself, please.
A Okay.

Q Have you been asked to assess whether or not the actual rate of inflation from December 2010 to 2022 was 31.67 percent?

A I looked at the -- the annual inflation average between 2010 and 2022.

Q And that's in your report?

A Yes.

Q And that's your own independent work, correct?

A Yes.

Q So you didn't look at anything regarding this 31.67 percent to verify it or dispute it?

A I -- I recall a different number that was in the rate review committee -- or the PRC reports -- or PCCR report -- P -- sorry.

Q PRRC.

A -- PRRC report, which was, I think, 34.7 or 37.5. I'm blanking on -- I'm sorry, I don't remember the exact number, but it's in the report.

Q Page 35 of Exhibit 17.

A Oh, 17. Oh, thank you. Is this the number that you're using on the lower right?

Q No, in the middle.

A In the middle?

Q I'm sorry. They're two off.

A Oh, yeah, Thanks. Yes. Okay.
Q Do you see A, B, C down there at the bottom left?
A Yes.
Q And is that 37 percent in this Exhibit 17 what you're referring to?
A Yes.
Q Okay. Back to paragraph 87 of Exhibit 10, do you know where that 31.6 comes from?
A I do not. I would assume that -- I don't know specifically where that specific number came from.
Q Okay. You did your own historic CPI analysis in the report; yes?
A Yes.
Q Page 5 of the report, please.
A Okay.
Q Is that Exhibit 2 at the top an exhibit regarding or exhibiting your conclusions?
A Yes.
Q The page before it says, "Exhibit 2 below reports common measures of historic inflation for both the U.S. and the Tampa region;" yes?
A Yes.
Q Okay. So in looking at inflation for the

Tampa Bay Pilot Association's rate increase request, and looking at the historic inflation, do you believe it's --

(Zoom froze.)

MR. PAGE: I'll try to backtrack.

BY MR. PAGE:

Q At the bottom of page 4 of your report, it says, "Exhibit 2 below reports common measures of historic inflation for both the U.S. and the Tampa region."

Are you with me?

A Yes.

Q All right. And then looking at Exhibit 2, the title is "Historic Inflation U.S. and Tampa Region;" yes?

A Yes.

Q And paragraph 87 was talking about inflation from December 2010 to 2022; yes?

A Yes.

Q And the number in the Investigative Committee report was 37; yes?

A Yes.

Q The number for the Tampa Bay region for 2010 to 2022 in your Exhibit 2 is 41.4 percent; yes?

A Yes.

Q So that exceeds what's displayed in the Investigative Committee report; yes?

A Yes.

Q So the 37 percent in the Investigative Committee report, would you consider that to be conservative?

A Well, there's two differences I would identify or discuss.

Q Okay.

A So one is their number in the PRRC report is based on U.S CPI for all urban consumers --

Q Okay.

A -- not specific to the Tampa region. And the second thing I would point out is that I disagree with how they computed CPI change, because what they did was they compared January 2010 CPI to the second half of 2022 CPI.

Because they're applying it to an annual income, in this case it would be the -- well, there's a couple of issues, but if they're applying it to annual income, they should be computing an average CPI so it's an annual average or it's an annualized CPI applied to an annual income.

So the way that I calculate CPI, since we're applying it to annual income, is I'm taking

the average CPI for 2010 and the average CPI for 2022. And I believe that's the more appropriate way to do it. And if you do that, the national CPI for all urban consumers, from 2010 to 2022, will be 34.2 percent, and it will be 41.4 percent for the Tampa Bay/St. Petersburg/Clearwater area.

Q Okay. The 34.2 percent then, as I -- does that then relate to what's in the Investigative Committee report of 37 percent?

A Yes.

Q Okay. So the difference is 34.2 to 37; yes?

A Yes.

Q And over a 12-year period, is a 3 percent variance to you -- or a 2.8 percent variance to you considered significant?

A It's meaningful. I would, yeah.

Q Not significant?

A Significant has a lot of meanings. I think it's good to be precise. So it's -- it's not a huge difference, but it is a notable difference.

Q Okay. Significant?

MR. MANSON: Objection. Asked and answered.

A Somewhat significant, yes.

Q Somewhat significant?
A Yes.
Q Is there a difference between the CPI measurement and a CPIU measurement?
A So CPIU, that is the CPI that you're seeing in -- the CPIU is the measurements, that's the second row of Exhibit 2 in the report. So CPI, Consumer Price Index, and then the "U" is for urban consumers.
Q Okay. So the "U" stands for urban?
A Yeah.
Q So the top row, "CPI Tampa Bay/St. Petersburg/Clearwater." Are you with me there?
A Yes.
Q That from 2010 to 2022 was 41.4 percent; yes?
A Yes.
Q And 2011 to 2022, 37.5 percent; yes?
A Yes.
Q Both of those figures exceed what's in the Investigative Committee report; yes?
A Yes.
Q Do you believe it would be appropriate when you're looking at the Tampa Bay Pilot

Association's application for a rate increase and the Investigative Committee is digging into it, to look at a regional CPI number rather than a national CPI number?

A I think that could be reasonable. I'd have to think a little more carefully about the application and also the margin of error that you might get from CPI from a -- from a regional versus a national, so I'd have to think about that a bit more.

Q Would a regional CPI play into your work as -- when you're applying regional science?

A For a regional CPI?

Q Yes.

A I wouldn't consider that necessarily regional science, but it would be -- there are instances where maybe differences in CPI would be compared across regions.

Q Okay. So in doing the work that you had described earlier as being regional science, you would tend to look more towards a regional CPI than you would a national CPI?

A Depending on the question that is being asked and how confident we are in the estimates that are being produced for CPI.

Q Okay. Do you know when the prior Tampa Bay pilot tariff rate structure went into effect? Not the one that we're in dispute now, but the one that existed previously.

A I believe that was 2010.

Q Do you know when in 2010?

A Was it February? February 2010, I think it was.

Q Do you know if the pilots of Tampa Bay experienced a lag in collecting rates when they -- once they start charging them?

A I do not know. I don't know.

Q Did you hear anything to that effect in the deposition of Captain Baker?

A With respect to the 2010 tariff collection?

Q With respect to the lag in collecting from customers based on invoices. Not really even in terms of, you know, a new fee, but just a lag in payment. Like it's not all returned by mail.

Do you recall his testimony regarding that?

A I would have to go back and look at my notes, but it seems reasonable to think that there would be a lag in some cases.

Q Okay. So if the fees -- prior fee structure went into effect in February of 2010, it would seem reasonable that there's going to be a lag within the year 2010, until those increased fees start to be paid; yes?

A It's possible.

Q So that would also be a lag on those new fees impacting revenue; yes?

A Yes.

Q There would also be a lag on those new fees impacting revenue, therefore, impacting net income; yes?

A Possibly. I just don't know how much of a lag there would be.

Q But it's possible?

A It's possible.

Q So would it be reasonable to assume that the first time that the prior new fees instituted back in February of 2010 had a full impact on the revenue of the Association would have been in the year 2011?

A It's possible.

Q And then also possible that the net incomes of the pilots wouldn't be fully impacted by the implementation of the new fees until the year

2011?

A Yes.

Q Below Exhibit 2 is a heading "Inflation Projections." Are you with me?

A Yes.

Q There's a comment there, "However, if we applied the historic inflation rate for the Tampa Bay/St. Petersburg/Clearwater, Florida region for 2023 of 6.8 percent."

Do you see that?

A Yes.

Q For that same region, Tampa/St. Petersburg/Clearwater, Florida, do you know what the inflation rate was for 2023?

A 6.8 percent.

Q Do you know what it was for 2022?

A I don't have it in front of me, but I have the data.

Q Would it be your recollection that it was 10.3 percent?

A It -- possibly. That sounds accurate.

Q Okay. And when did the pilots submit their application?

A I don't remember the petition date. Was it also February of 2022? I'm trying to -- I don't

remember the exact date.

Q I thought you testified earlier that it was August of 2022.

A Oh, in August. I'm sorry. That's right. The petition filing was August, yeah. I do remember that now.

Q I will hand you a document. Do you recognize that?

A Yes.

Q Does that refresh your recollection as what the Tampa/St. Petersburg/Clearwater region's CPI was for 2022?

A Yes.

Q What was it?

A 10.3 percent.

MR. PAGE: Let's mark that as Exhibit 19.

(Cohen Deposition Exhibit Number 19 marked for identification.)

BY MR. PAGE:

Q And the date on the Investigative Committee report is?

A February 17th, 2023.

Q So at the time of the Investigative Committee report, would they have had the CPI for the year 2023?

A Not for all -- I don't believe -- it was close, but I don't think they might have had CPI for all of 2023.

Q They would have had it year to year January 2022 to 2023?

A No. I think there's usually about a two-month lag. It depends. It might have been close. They might have had almost all year, but I just don't remember the exact release date for December 2023.

Q Okay. But this Investigative Committee report is February of 2023. So --

A Well, yeah.

Q -- when -- when would they get -- when would it be available, the 2023 CPI data?

It would be after the calendar year 2023, would it not?

A It's published monthly, so I think -- I don't know. I don't -- it's actually in the report -- in their report, in the PRRC's reports, a printout of the BLS CPI data that they used. So I'd have to look at that and see what was the latest month in the printout of that table that they used from BLS in the addendum.

Q Okay.

A I think it's like Appendix B in the report.

Q It couldn't be later than January or February of 2023, though, correct?

A There's usually about a one to two-month lag from when the data is released. So it's possible that they had the December 2022 data, but it's possible that it wasn't available yet.

Q Okay.

MR. MANSON: Am I hearing this right?

MR. PAGE: Yeah.

MR. MANSON: Okay. There seems to be some confusion, that's all.

MR. PAGE: No, I'm good.

BY MR. PAGE:

Q Are you good?

A I'm good.

Q Okay. So when the report is done February 17th, 2023, by the PRRC's Investigative Committee, you think that most likely the most recent CPI data that would be available to them would be December of 2022?

A I mean, it's in the report, we can confirm that.

Q Sure.

A Yeah. I think most likely they probably had the full 2022 data, but I can just confirm real quick. This would be -- I believe it was Exhibit -- let's see here. Here we go.

MR. MANSON: Counsel, do you mind if I assist him with the page number?

It's page 3.

THE WITNESS: Okay. Thank you.

A Oh, yeah. Okay. Yes, so they did have the full year 2022 data. I'm confirming that they did. So they had, yeah --

Q And you --

A -- December 2022 data.

Q Okay. And your full year 2022 data put the regional inflation at 10.3 percent, am I correct, looking at Exhibit 19?

A Yes. Although, I think they did not use -- they used national CPI for urban consumers. So they did not look at the regional CPI in the report.

Q Okay. Your regional CPI for the end of 2022, though, was the 10.3 percent; yes?

A Yes.

Q Okay. The next paragraph under inflation projections, "It is not apparent." Do you see that?

A Yes.

Q Read that first sentence to yourself, if you would.

A Okay.

Q And is that still your opinion today, that it's not apparent how the pilot association arrived at a 6 percent escalator?

A I have theories about where it came from. I believe I recall seeing other -- it might have been Canaveral's application included the same 6 percent and 3 percent. So that's one possible source.

In Executive Director Fluke's deposition, he made reference to inflation projections and inflationary window, so -- but I don't know how they specifically arrived at 6 percent. I don't know what calculations they used or what -- what sources they used to specifically arrive at 6 percent, 3 percent.

Q Regarding Executive Director Fluke, right above the heading, "Widely Accepted Inflation Projections," do you see there's a comment there that he was unable to provide authoritative position other than consumption and review of financial news?

A Yes.

Q And that's quoted down there in a footnote. And he does say that it's the Wall Street Journal, right?

A No. He says that he reads the Wall Street Journal, but he doesn't say he specifically sourced it from an article or a source in the Wall Street Journal. He said that he reads the Wall Street Journal.

Q So he wasn't specific enough for you to agree that he took information from the Wall Street Journal?

A Yes.

Q Okay. He mentioned CNBC specifically; yes?

A Yes.

Q And is it because he just said "I watch it," that you don't believe he necessarily had taken information away from CNBC?

A If he cited the specific source, whether it's an article or in a report or some interviewed speaker that said, "This is where this came from," I would have no question about this source, but if we look at authoritative sources -- highly recognized and reputable authoritative sources on inflation projections, those numbers do not comport with those

estimates.

Q Was it your understanding that they were looking at projections of inflation or that they were reviewing historic inflation?

A I believe looking back at his deposition, he referred back to historic CPI to some degree. I'd have to reread that section. But with respect to a projection, I didn't see any evidence of how he arrived at that number.

Q And is it your understanding that the 6 percent escalator is based on a view of inflation, whether historic or projected?

A Yes.

Q You attended the deposition of Captain Baker?

A Yes.

Q Did you listen to all of it?

A Yes.

Q Did you hear him talk about the 6 percent escalator?

A I also recall him talking about inflation, but I would have to look at the specific transcript to remember exactly where.

Q He was deposed Tuesday of this week, so there is no transcript yet, but I have it in my

little brain that you were on the Zoom the whole time.

A I was on the Zoom.

Q Okay. And just to make sure now that you understand who we're talking about, did you listen to the entirety of that deposition?

A Yes.

Q Do you recall testimony from Captain Baker regarding the 6 percent escalator in the first three years?

A I remember that, but, again, I would have to go back to my notes on the specifics.

Q Okay. So you don't -- you don't have a recollection of exactly what he said about that?

A Not specific. And this was produced well before his deposition.

Q Sure.

(Cohen Deposition Exhibit Number 20 marked for identification.)

BY MR. PAGE:

Q I'm handing you the first page of a transcript from the Pilotage Rate Review Committee Hearing, held Thursday, March 2nd, 2023. Do you see that?

A Yes.

Q And do you see on that first page also harbor pilot representatives Terry Fluke, Executive Director, and Captain Brett Baker?

A Yes.

Q Turn to the second page of the exhibit.

A Okay.

MR. PAGE: Is that 20, Sam?

BY MR. PAGE:

Q And do you see about halfway down there, Line 13, Captain Baker is identified as the speaker?

A Yes.

Q All right. That's page 46. Do you see in the upper right-hand corner, page 46 of the transcript?

A Yes.

Q All right. Let's flip to the next page, page 47 of the transcript. In between Captain Baker being identified on the speaker -- as the speaker on page 46 to the next page, nobody else is identified as a speaker, correct?

A Yes, correct.

Q All right. Will you please read for the record beginning on page -- excuse me, Line 12 through Line 22?

A Out loud?

Q Yes, please.
A Okay. "The requested annual increase in this application" --
Q I'm sorry. Slowly.
MR. MANSON: Do you have to have him read it instead of marking it as an exhibit?
MR. PAGE: I would like for him to read it.
A Sure.
"The requested annual increase in this application also falls" --
MR. MANSON: Slow down.
THE WITNESS: Sorry.
A "The requested annual increase in this application also follows precedence set by the Committee. We're asking for 6 percent year one to catch up with this year's record setting -- record-setting inflation. In year two and three, we are also requesting 6 percent, but this amount is based on 3 percent for annual increase and 3 percent to pay for additional pilots necessary to return our organization to the more historically appropriate manning levels needed to provide a robust piloting service."
Q Okay. Does reading that testimony from

Captain Baker at all refresh your recollection as to the testimony that he provided on Tuesday of this week regarding the 6 percent escalators?

A I remember vaguely him talking about the need to attract more pilots, and that was part of the increase, if I recall correctly. But I also have not seen a breakout -- a distinction or characterization of the rate as a composition of multiple factors. I've only seen it characterized as inflation.

Q But that's -- you would agree with me that that's what Captain Baker is doing with this testimony from back in March of 2023, is he's explaining that the 6 percent is, yes, an escalator based on this year's record-setting inflation in year one, right?

MR. MANSON: Objection to form.

A He is saying that year one is 6 percent to catch up with record-setting inflation.

Q Right.

And then he's explaining that there is a 6 percent in years two and three, but only half of that is an annual increase based on inflation and the other half is regarding additional pilots, correct?

MR. MANSON: Objection to form.

A That is what he is saying.

Q Okay. Do you have any reason to doubt that?

A I have no reason to doubt that that's what he's saying.

Q Do you have any reason to doubt that that's why my clients requested a 6 percent escalation in years two and three?

A I would have to scrutinize -- I would have to look at this more carefully and scrutinize it before forming an opinion without having seen this before, so --

Q You've never been provided this before?

A No. I've not read this before.

Q Did anybody tell you about this testimony previously?

A I do not recall. I remember a reference to it at a deposition this week. It might have been Captain Baker's deposition that was -- no, I'm sorry, it was the deposition of Brett Cooper, I think, referenced, I believe, if I remember correctly, this discussion or this hearing, public hearing. But that's the first I've been aware of this as of this transcript. So I have not read this

before.

Q Okay. And just to clarify, it was not provided to you before I put it in front of you today --

A I don't --

Q -- that you're aware of?

A I don't recall. I'd have to go back to my e-mails to look and see in the documents if it was.

Q Okay.

A I don't recall. I have not read it. Regardless, I have not read this document.

Q Got it. Thank you.

Down Lines 20 through 22, Captain Baker speaks of historically appropriate manning levels. Any of the work that you've done relates to what are appropriately historic manning levels for the Tampa Bay Pilots Association?

A I don't know what the appropriate manning levels are. What I -- what I can say is that the data that was used to argue for workload was -- had problems that I've identified. But I don't have any opinion or I have not looked at the appropriate manning levels.

Q We'll get to it later, but when you speak

of what you looked at as problems, are you talking about your conclusions about the 3.7 hours?

A Yes.

Q Okay. We'll get there.

But in terms of pilots necessary to provide a robust piloting service, that's not an analysis that you've done?

A That's not, no.

Q Have you done any analysis of what the historic handles are beyond what's in your report?

A To clarify, looking at historic trends with respect to handles?

Q I'll clarify it better than that.

Have you looked at what historically the Tampa Bay pilots take on each year, in terms of the number of handles?

A I have looked at the number of handles per year.

Q Have you looked at the number of handles per year per pilot?

A I have looked -- I did a calculation, I believe, on the number of handles per pilot. I don't remember the number, but that would be very easy to calculate based on the data that we have.

Q Do you know what year you did that

calculation for, year or years?

A I think that was -- again, I don't know if I -- I think it was like a very crude calculation, but I -- it would have been for all the years that we have information on the specific pilots.

So we have -- in the dispatch data there was -- so in the document TBPA001844, we had data on jobs from 2018 to September 30th, 2023. And in that data, there was a nomenclature for pilots, I think it was numeric. And then beginning in 2023 onwards, it changed to like acronyms or letter -- letter-based nomenclature. So I could go back.

I don't know how much -- like when a pilot retires, if that number gets reassigned to a new pilot, so I'd have to do some digging into that. But generally if we just know the number of pilots per year, like full state pilots, we could do a very kind of crude calculation to see how many handles per pilot.

Q Okay. Have you done that?

A I believe I've done that, but I don't recall -- I don't recall the numbers.

Q Okay.

A But it could be something that's easy to

do.

Q It's not in the report?

A It's not in the report.

Q Do you know if it's a particular document that was produced in conjunction with the production of the report?

A Not in conjunction with the report.

Q Okay. So it's not a document that you relied on for any of the opinions you're expressing today?

A No, but it could be, because I looked at it.

Q We'll see.

Turn to the next page, 48, of Exhibit 20.

A I'm sorry. Are you on the --

Q Sorry, 48 in the upper right-hand corner.

A Got it. Okay.

Q The last page.

A Yes.

Q Go ahead and read out loud, if you would. This will be your last out loud reading assignment, Lines 2 through 12.

A "We estimate each additional pilot cost about 3 percent per revenue. Instead of increasing the deep draft vessel fee by 6 percent annually as

the Committee has previously done and approved in other ports, we structured subsequent years with 3 percent increases across the board."

Q Keep going down to Line 12.

A "Because we have a high number of cargo customers here, we believe it's fair to increase rates for all port users by 3 percent rather than 2 and a half percent for all vessels, plus an additional 6 percent for deep draft vessels."

Q So the second part of that, the increase at 3 percent, is across the board rather than having different rate increases for different vessel types; yes?

A That's what it reads.

Q Okay. Do you have any reason to doubt that that's the reason that it was the 3 percent for the last seven years rather than different percentages for different types of vessels?

A I'd have to -- this is the first time I've read this, so it's hard for me to -- to level with an opinion, to present an opinion on this, having just never seen this before.

Q You don't have any reason to question it, though?

A I don't think they're lying or anything,

I think it's -- they're being honest in what their statement is.

Q Okay. Do you have any reason to question the estimate that each additional pilot cost about 3 percent per revenue?

A I'd have to look at their financials to be able to make a -- I don't have -- I don't have the -- I haven't looked at any data that I could refer to right now to be able to evaluate that statement.

Q Assuming that statement makes sense, assuming, right, then does that tie in with the concept of years two and three having a 6 percent increase because you're adding pilots in years two and three?

A So if they're adding pilots -- so it costs 3 percent per revenue and they're adding two pilots, is what they're implying. Is that correct?

Q Yes.

A I mean, on the face of it, that's what they're saying, so -- but I -- I don't know if that's true or not, that it actually is 3 percent per revenue. I don't know that, so --

Q I understand. And I hopefully was clear on the record that I said assuming.

A Yes.

Q I was sitting there taking notes, but I don't have a transcript of Captain Baker's testimony from Tuesday of this week, but do you recall him citing specifically any sources from which they gathered CPI information?

A Well, if they're gathering historic CPI, the source would be the U.S. Bureau of Labor Statistics.

Q Okay. And would that be a reliable source?

A Yes.

Q Okay. Do you know whether or not in submitting the application, it's incumbent upon my clients to project future inflation?

A I am not -- I would have to go back and look at the requirements. I don't -- I don't know for sure.

Q Okay. The resources cite to the 2022 Port Canaveral Pilotage Rate Change Investigative Report. That's about a little over halfway down page 20 of your report. Are you with me?

A Yes.

Q And a couple down from that there is a St. Johns Bar Pilot Association and Fernandina Pilot

application for rate change. Are you with me?

A Yes.

Q You don't believe, other than my client's application and documents pertaining to this matter, that you have as resources any other rate change applications, Investigative Committee reports, notice of intent, or final orders, do you?

A In -- with respect to the rate final orders?

Q Identified as a reference in this report.

A Not identified here.

Q Okay. When you say that they're not identified here, were there other pilotage association applications that you reviewed and gathered data from in the course of generating this report marked as Exhibit 6?

A I -- in the spreadsheet called "Wage Analysis," there are links to, and references to, other sources. And those sources should be included in the interrogatory responses. I believe 35, 36 -- 35.

Q So that would go towards -- well, tell me, what would that go towards in your report?

A Mostly the net income discussions.

Q Okay. Thank you.

So we're looking there at the bottom of Exhibit 6, where the sources are cited as the investigative report, right?

A Yes.

Q And then Washington State Utility and Transportation Commission?

A Yes.

Q So that's not a document generated by the Florida's PRRC or its Investigative Committee, right?

A Correct.

Q Marine Pilots Community, what is that?

A That's probably a typo. Let me see. No. Actually, no, that's not a typo. That's an article.

Q Okay.

A But the full list of sources is included in the spreadsheet that was submitted.

(Discussion had off the record.)

Q I'll ask you first, is that what you're referring to?

A Yes.

Q Okay. Let me have that back please so I can mark it.

(Cohen Deposition Exhibit Number 21 marked for identification.)

BY MR. PAGE:

Q I'm marking as 21, a document that I'm going to ask for you to describe for the record, because other than the upper left-hand corner, "Comparisons/Analysis," there's not much on this to identify it. So what is this?

A This is a -- I was collecting data on reported net income per pilot by comparator pilotage associations, and then I was identifying which metropolitan area that that association was based out of. And then based on that, using what's called the Regional Parity Price Index to adjust the net income to prices in Tampa.

Q So does Exhibit 21 relate to -- does Exhibit 21 to your deposition relate to Exhibit 6 in your report?

A Yes.

Q Okay. So in the first row the pilot group is Associated Branch Pilots. And if you look over at their net income per pilot, it is $521,232; yes?

A The latest data that I was able to find that was audited from a report submitted and published on the Washington State Utility Commission website for our specific case related to Puget Sound

pilots, yes.

Q I'm just trying to make sure for the record that we're looking at the same document.

The first row, the pilot group, is Associated Branch Pilots. And for those Associated Branch Pilots, the net income per pilot is $521,232; yes?

A Yes.

Q The year of that is 2021; yes?

A Yes.

Q There are 49 pilots in that association?

A At the time, yes.

Q Okay. And then the source is the Washington State UTC; yes?

A Yes.

Q Is that a publicly available document?

A Yes.

Q And the Associated Branch Pilots, where are they located?

A They are in the New Orleans region.

Q And is --

A And --

Q Go ahead.

A The link to that, there's a -- it's not apparent in the printout, but in the digital

version, there's a -- it should be a little cleaner, but there's a link to the source for that down below where it says Washington State UTC, about a little more than halfway down.

Q I see it.

A That's the same link, so --

Q Okay. So if I click on that link down below that's associated with the Mississippi River Branch Pilots, I'm also going to get the information on the Associated Branch Pilots up in the first row?

A Yes.

Q Okay. Are you aware of whether or not the Associated Branch Pilots, that's Row 1, and then the Mississippi River Branch Pilots, where you directed me to the link, are organizations that contain the same pilots?

A I would have to go back and check to verify that.

Q You don't know as you sit here today?

A It would appear -- my understanding is they -- they're different, but I can go back and check.

Q The Associated Branch Pilots has a number of pilots of 49 in this chart; yes?

A Yes.

Q The Mississippi River Branch Pilots have no number of pilots in that column; yes?
A Yeah, I did not fill out that column.
Q Why not?
A For reasons of not being able to find the numbers. And I didn't ultimately use that number anyways on the number of pilots, so I opted not to continue going on that path.
Q Okay. The net income year source for both the Associated Branch Pilots and for the Mississippi River Branch Pilots, it's the same year, 2021?
A Yes.
Q And you got the information from the same source; yes?
A They're reported from the same source, yeah.
Q Okay. Towards the bottom, about the fifth one up, Jacksonville Pilots. Do you see that?
A Yes.
Q 2018 income?
A Yes.
Q $432,500?
A Yes.
Q Three rows down, Jacksonville Pilots. Do

you see that?
A Yes.
Q Year is 2020; yes?
A Yeah. That was an error that I caught after the submission of the report.
Q So in the report you double counted the Jacksonville pilots?
A Yes. Yeah, that should have been removed.
Q And the Jacksonville Pilots, between 2018 and 2022, had their income go up from $432,500 to $518,700; yes?
A Yes.
Q So when you have, for instance, the Jacksonville Pilots, at an income of $518,700 and the year is 2020, you're adjusting based on the adjustment of Tampa Bay, I guess it's a standard-of-living adjustment, to get the $525,200. Is that right?
A Yes.
Q When you got the $518,700, from the year 2020, are you making any adjustment upward to that number based on inflation or any other factors?
A No.
Q The adjusted to Tampa Bay column, at the

bottom, has an average of $530,900 and a median of $540,100. Are you with me?

A Yes.

Q So did one or both of these numbers lead you to the 527,000-dollar target net income number that we talked about earlier that you provided to Mr. Cooper and Zarate?

A This was one instance where it did lead me to that approximate number, but that number was a much earlier version with fewer pilot associations that I was looking at. So it was a very rough number because the report was delivered before this report was -- this draft was completed.

Q Going back to the net income per pilot column. Are you with me?

A Yeah.

Q And going down to the bottom, the average is $527,881; yes?

A Yes.

Q That's basically the number that you provided Mr. Cooper and Mr. Zarate?

A I would have provided -- so this number -- this was done and completed after the report draft was submitted, so I would have increased it to 530,900; although, it would go up a

little more with some of the corrections we talked about.

Q For instance, getting rid of the 2018 Jacksonville Pilots number?

A That's right. This is a draft, so there's definitely opportunities to refine it and make corrections.

Q The number that you gave Mr. Cooper and Mr. Zarate as a target net income number was the number that used to populate what on this page is $530,900?

A That number would have been -- I believe so, but it was a much earlier number with fewer data points.

Q Right, I'm just -- but you -- you got to the number in the same way, and if we had that exhibit in front of us instead of this Exhibit 6, from the report, that's where we would look, where it currently says $530,900, it would have said 527 in the prior version?

A That's correct. The other estimate would have been inflating if we decided to take inflation from 2010 to 2022, and apply that to 2010 average income per pilot. And that yields -- I believe it's early in the report, but it also yields in that

ballpark of about -- where is it -- in the same range roughly. I can tell you in a second here if I find it, where I find it. Yeah, about -- actually 530,000 -- 531,000.

Q And that's taking 2010 net income, right?

A That took 2011 income reported -- estimated 2011 net income per pilot in the PCCR -- the PRRC report and applying inflation from -- average inflation from 2011 to 2022. So that would apply the $408,000 per pilot in 2011 from the PRRC report, inflation using a UCPI for all urban consumers, and applying that to that number to get $530,800.

Q Okay.

MR. PAGE: Just a couple more, Doug, I know you've got to run.

MR. MANSON: I'm giving you until 5:00, so I'm not going to slow you down until then.

A So that -- looking back, that actually -- I'd have to go back to -- look back at my notes, but that might have been -- it's -- it's -- it's -- I won't say serendipitous, but it's coincidental that the two numbers landed at the same rough spot, but that was also likely -- now that I look back, I think the estimate to Mr. Cooper and Mr. Zarate was

based on an early calculation of growth -- rough growth and inflation. But I'd have to go back to my notes to verify that.

Q And where is that in the report, the rough growth per inflation that you just said?

A That's -- I'm sorry. That's on page 4. And if you go to the second paragraph under historic inflation and net income adjustments --

Q Got it.

That ends up with a number of 530,800?

A Yes.

Q So the 527,000 number that you did, in fact, give Mr. Cooper and Mr. Zarate, could have come from the process that we're looking at on page 4?

A Yes, but it was a draft, so there were some adjustments.

Q I guess my question is: Do you believe, if you know, that it came from the process we're looking at on page 4 or it came from Exhibit 6, which takes average net income and adjusts to Tampa?

A It would -- I'd have to go back to my notes, but I believe it came from the CPI calculation.

Q Page 4?

A Yes.

Q The net income per pilot. I'm back on Exhibit 6. Here we go. Net income per pilot for these various pilotage associations. Do you know if that's an average of every pilot within those associations?

A That, I believe, is an average of all state-licensed pilots. But I don't -- to clarify the question, are you asking if that's an average across all pilots, including deputies or just state pilots?

Q State pilots.

A I don't -- I'd have to go back and verify the sources to determine that. I know that the number -- the average for Tampa is based on only state pilots. But I'd have to go back and verify for the other pilot associations if that's what the denominator is.

Q And do you know whether or not some of these associations include state pilots who don't actually do pilotage duties, but instead do administrative tasks?

A That I would assume possibly. I don't know. I don't know that -- I know only in -- I know that in Washington State, the president of the Puget

Sound pilots is a pilot, but there's a lot less pilotage work because of their administrative duties.

Q Okay. And the Puget Sound pilots, the Columbia River pilots, and the Columbia River Bar pilots, those are all within the state of Washington; yes?

A No. Columbia River pilots and the Columbia -- sorry, the Columbia River Pilots Association and the Columbia River Bar pilots are in Oregon.

Q Okay. Puget Sound is in Washington?

A Yes.

Q All subject to the Public Utility Commission model?

A Yes, but different. So Washington State, the Puget Sound pilots are subject -- they are regulated from just the rate. Everything else is regulated by the Board of Pilotage Commissioners, but the rate is determined through the Washington State UTC. And the Oregon pilots are also -- their rate is also determined through a Public Utility Commission model.

Q Okay. Regarding the list of pilotage associations, are any of the pilots included in any

of those associations employees of the State?

A The LA Harbor pilots, I believe, are employees of the port, but I am not certain -- I believe all of the rest are State pilots working -- you know, that are registered as a -- I believe a 1099. I'm not exactly sure of the exact classification, but they are not State employees, to my knowledge.

Q Are they employees of any other employer, to your knowledge, besides the LA Harbor pilots?

A People could have second jobs, but --

Q I just mean in terms of providing pilotage services.

A I believe that they are all independent. They're not employees.

Q Okay.

MR. PAGE: We can stop there.

MS. STERN: May I ask one question?

MR. PAGE: Yes.

MS. STERN: Is that all right?

MR. PAGE: Yes. Oh, you mean ask a question of the witness?

MR. MANSON: You got three minutes. You have until 5:00.

MS. STERN: This should be easy.

EXAMINATION

BY MS. STERN:

Q Well, not easy. But, I mean, do you have an expected date for the final version of your report?

A That, I need to consult with counsel, but I think it would depend on when the rest of the depositions are completed, so --

Q Okay.

MR. MANSON: So let's terminate the depo then.

MR. PAGE: Suspend.

MR. MANSON: Yes, I'm sorry. Terminate this deposition today.

MR. PAGE: Yeah, and just -- somebody wasn't happy with me when I said this the other day, but you do technically remain under oath. So there is an element there in terms of having discussions about the substance of your work and such that --

MR. MANSON: Well --

MR. PAGE: -- arguably --

MR. MANSON: I would say that that's not true, but, you know, it won't change the nature of the discussions that we'll have anyway. So

it doesn't matter.

MR. PAGE: And I do have one further quick question, just for the record. The notebook is what -- the binder rather?

MR. MANSON: Oh, this is the ICR report.

MR. PAGE: Okay. And that's it?

MR. MANSON: Yeah.

MR. PAGE: Okay.

MR. MANSON: It's really thick when you put all the other --

MR. PAGE: Yeah, I hadn't asked him, and I'm like he might not bring it back.

We're off the record.

(At 4:58 p.m., no further questions were propounded to this witness.)

CERTIFICATE OF OATH

I, the undersigned authority, certify that SPENCER COHEN personally appeared before me on July 26, 2024, and was duly sworn.

Witness my hand and seal August 7, 2024.

Felicia A. Newland
Notary Public - State of Florida
My Commission No. HH 1518663
Expires 4/21/28

REPORTER'S CERTIFICATE

STATE OF FLORIDA:
COUNTY OF HILLSBOROUGH:

I, Felicia A. Newland, certify that I was authorized to and did stenographically report the deposition of SPENCER COHEN; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED August 7, 2024.

Felicia A. Newland

SIGNATURE PAGE/ERRATA SHEET

WITNESS: SPENCER COHEN (7/26/24)
RE: TAMPA PORT AUTHORITY VS. PILOTAGE RATE REVIEW COMMITTEE

INSTRUCTIONS TO WITNESS

Please note any errors or amendments on this page, indicating the reason for any change you wish to make. Do not mark on the transcript itself. Please sign and date this sheet as indicated below. If additional lines are required for corrections, attach additional sheets.

PAGE	LINE	ERROR OR AMENDMENT/REASON FOR CHANGE

I have read my transcript and subscribe to its accuracy, to include the corrections or amendments noted above or hereto attached.

_____ _____
Signature of Witness Date

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA PORT AUTHORITY, TITAN FLORIDA, LLC, FLORIDA-CARIBBEAN CRUISE ASSOCIATION, PORTS AMERICA FLORIDA, INC., DEL MONTE FRESH PRODUCE COMPANY, AND NETWORK SHIPPING, LTD., INC.,

Petitioners, DOAH Case No.: 23-3937

v.

PILOTAGE RATE REVIEW COMMITTEE, AND TAMPA BAY PILOTS ASSOCIATION,

Respondents.
_____/

VOLUME 2 (pages 281 - 449)

CONTINUED
DEPOSITION OF: SPENCER COHEN

TAKEN BY: Counsel for Respondents

DATE: August 28, 2024

TIME: 1:18 p.m. to 5:30 p.m.

PLACE: Zoom Videoconference

REPORTED BY: Felicia A. Newland, CSR
Notary Public
State of Florida at Large

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Walter Kemmsies
Christopher B. Cooper
Terry Fluke
George Meros
Jack Timmel
Amanda Guci
R. Zarumba

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The continued deposition, upon oral examination, of SPENCER COHEN, on the 28th day of August 2024, taken by counsel for Respondents, via Zoom videoconference, beginning at 1:18 p.m., reported by Felicia A. Newland, Certified Shorthand Reporter, and Notary Public in and for the State of Florida at Large.

* * * * *

MR. PAGE: Just for the record here, let's make sure we have people identified. Myself, Eric Page, is here, with the court reporter. Sam Moore is with me. George Meros, who is on the legal team. Ralph Zarumba is one of our experts. The "SSM" is Sam's laptop. Leasa Gillispie is here. She's with the Pilots. And Terry Fluke is with the Pilots.

Who's next?

MR. MANSON: For Petitioners is Doug Manson. And Paria Heeter will be coming in at one part to defend the deposition when I'm not available around 2:45 and 3:30. And Brett Cooper is on, one of our experts. And let me see my list here. I have to scroll. Walter Kemmsies is also on.

MS. STERN: And for the Pilotage Rate

Review Committee, Donna McNulty and Marlene Stern are here.

MR. PAGE: All right. If we can please swear in the witness.

* * * * *

Whereupon,

SPENCER COHEN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PAGE:

Q Can you hear me okay, Mr. Cohen?

A Yes.

Q Okay. Great. I hope you're doing well. And thank you for making time to continue the deposition. A couple of points, just for clarity, were you listening to the entirety of Mr. Walter Kemmsies' deposition?

A Most of it, yes.

Q Okay. Do I need to go over the intro I did with him about, you know, when you're virtual, you really got to be sure to do this, that, and the other, or are you good with that?

A I'm good with that.

Q Okay. Saved us a couple of minutes.

So we're continuing your deposition.

MR. PAGE: And, Sam, could you put up the amended notice of the continued deposition, however exactly we worded that one?

BY MR. PAGE:

Q Did you receive a copy of a notice for today's deposition?

A Yes.

Q And does it appear to be that?

A Yes.

MR. PAGE: If you would go to the portion that lists off the request for documents.

BY MR. PAGE:

Q So there we've got a requested documents section that goes on for a couple more lines on the next page. Did you acquire and provide to counsel any additional documents in response to this request?

A I provided the updated report.

Q And when did you provide that updated report?

A Yesterday.

Q Did you provide any other documents?

A I did not.

Q Are there new sources cited in your

updated report as compared to the draft of July 8th?

A There are a couple of sources. I believe we -- I'm not -- I don't believe we cited the U.S. Army Corps data in the July 8, 2024 report. And I also, in this version, cite vessel traffic data reported on the websites of a couple of different ports. And I believe I also made reference to some of the reports -- annual reports in Louisiana as well. Those are cited in the references section of the new report.

Q Okay. The references section is about a page longer than in the July 8th report. And did you hear me going through that with Mr. Kemmsies?

A Yes.

Q He identified the Congressional Budget Office document, the two cruise line industry documents, the Federal Reserve Bank of Philadelphia document, the U.S. Army Corps of Engineers Waterborne Cargo and Trips data files, and an Army Corps' GRR1 economist report that he had reviewed and that were included as references or the last one that should have been. Are those documents that you also reviewed?

A I reviewed the U.S. Army Corps data. The other sources, I believe, excluding the GRR report,

for instance the CBO report and the Philadelphia Fed report, I did review. And those were also cited in the previous version as well, in the draft version of the report.

Q Did you remove any references from the draft version of the report in the process of creating this final report we got today?

A References, I don't believe I removed any references.

Q Is the references that I'm looking at in this -- well, let me ask this question first. Is this your final version of this report?

A Yes.

Q Were there any versions that were created between the July 8th version and this version?

A There was a draft version that I submitted to counsel and received some edits, some slight edits, that I incorporated into the final version.

Q And that was between the July 8th draft and the version that you provided to counsel yesterday?

A Yes.

Q And do you know if that document -- well -- yeah, do you know if that document has been

provided to us?

A I do not believe it has.

Q Okay. Are there any references in this final report received this morning that you have as hard copy -- well, let me back that up.

There's a lot of references in here that have a website location where it appears they were obtained. Like the very first one, Columbia River Pilots, and then there's a HTTPS, right, location. Is that where -- for instance, on that one, the Columbia River Pilots, if we clicked on that link, it would take us to that resource?

A Yes.

Q Okay. And you're going to have to forgive me, because I literally am looking at this for the first time, other than going through a little bit of it with Mr. Kemmsies.

So, for instance, let's go down -- or I am on page 19, the third one up from the bottom, Louisiana Pilotage Fee Commission, 2024, July 1, annual report by the New Orleans-Baton Rouge Steamship Pilots Association of data for tariff year 2023, Baton Rouge, Louisiana.

Are you with me?

A Yes.

Q There's no link to be clicked on to obtain that document, right?
A Correct.
Q Do you have a hard copy of that document?
A I believe I do. I'd have to look for it, but I should have a copy of it.
Q Did you provide that to counsel?
A I did not.
Q Other documents that are identified in this reference that do not have a link to be clicked on, will you have hard copies of those documents?
A Yes.
Q Did you provide any of them to counsel?
A Those -- I'd have to go back and compare which ones were submitted, which are new versus those that were already included in the last report. Anything in the last report that was a document sourced from a website would have been provided as part of our response.
Q And what if it was not one of those things? What if it was not in the last report and it's added to this one?
A Then I would have a hard copy -- I would have a copy of it, but it would not have been submitted.

Q To counsel, it would not have been submitted?

A Yes.

Q Did anyone else contribute to the references that are identified in this report received this morning besides you and Mr. Kemmsies?

A No.

Q At the bottom of page 21, it's identified Washington State Utilities and Transportation Commission, 2023, March 3rd, rebuttal testimony of David Lough, L-o-u-g-h.

Are you with me?

A Yes.

Q And it's got a "retrieved from" link there.

A Yep.

Q When did you identify that reference as a document that you reviewed?

A I don't recall the exact date that I identified that source.

Q That was not in the July 8th draft, correct?

A I'd have to go and compare -- I'd have to go and compare the two documents. It would not have -- to my recollection that information would

not be new, but I would have to go back and check my -- I would have to go back and check and compare the two.

MR. PAGE: Pull up the July 8th report, please. Go to references at the end, please. All right. That's page 20.

BY MR. PAGE:

Q What we're looking at on the screen, do you see that rebuttal testimony of David Lough identified there?

A Can you -- do you mind scrolling down?

Q Yeah, we will. Just what's on the screen at this point, then we'll scroll down. Do you see what's on the screen?

A Not on what's on the screen.

MR. PAGE: All right. Show him what's on the rest of that page, please.

BY MR. PAGE:

Q Do you see it on the rest of that page, 20?

A I do not.

MR. PAGE: Go to the first part of 21.

BY MR. PAGE:

Q Do you see it there?

A I do not.

MR. PAGE: Give him the rest, please.
BY MR. PAGE:
Q Do you see it there?
A I do not.
Q So fair to say, you didn't look at that document until after the July 8th report?
A That would be -- I believe so, although I think that the last link there -- or the last reference is the reference to the docket, TB220513 for the Washington Utilities Transportation Commission. It would have been found within that docket, I believe. So in this case, I'm just referencing the entire source, not the specific document, but I believe the document would be embedded within that.
Q Did you review or rely on the rebuttal testimony of David Lough when you were creating the July 8th report?
A I believe I did not.
MR. PAGE: Okay. Let's pull up the Lough chart, please.
BY MR. PAGE:
Q You recognize that document, I assume?
A Yes.
Q Is that the information from Mr. Lough

that you relied upon when you were making your July 8th report?

A It was a resource that I consulted with.

Q Sure. One of -- one of multiple resources, but there's data that's on this document that we're looking at that was marked, I believe, Exhibit 17 to Walter Kemmsies' deposition. And I don't believe it's been marked in yours. So we will mark that as Exhibit 22 for today for your deposition.

(Cohen Deposition Exhibit Number 22 marked for identification.)

BY MR. PAGE:

Q But that is a document that had income information on it that you used in your July 8th report, correct?

A I believe this was an updated version of it. I believe there was -- let me take a look. Yes, that is correct. I did reference this -- or I should say, I consulted with this, but looking through my document, it appears that actually in this current report, I did not cite this information in the text. It was an erroneous -- it may have been an erroneous inclusion in the references.

Q What does that mean?

A That if you go through the -- the body of the report, I'm not sure that I ultimately used these numbers, so I'm not sure I actually referenced this in the report itself.

MR. PAGE: Let's pull up Exhibit 21.

(Jack Timmel entered Zoom.)

A I think I did. Actually, correct that. I did reference it.

Q I'm just going to -- I'm going to put a chart in front of you so that maybe you can be certain on your answer, because I don't want us to continue on if we don't have the same understanding. This was Exhibit 21 to your last deposition. We're working on rotating it.

A Thank you.

Q And the column "Source," can you see that or do you need it blown up?

A I can see it.

Q Okay. The column "Source," when I'm looking at Associated Branch Pilots, I go over to "Source," it says Washington State UTC.

You with me?

A Yes.

Q And then it gives some letters, numbers, and the exhibit number, right?

A Yes.
Q And is that reference, which is repeated multiple times below for other ports, is that the reference to the Lough document that we just had up there?
A I believe it is.
Q Okay. Well, let's -- let's confirm on it. Do you see Associated Branch Pilots, a net income per pilot, $521,232?
A Yes.
Q And you see that's for 2021?
A Yes.
MR. PAGE: Okay. Let's go back to the Lough document, please.
BY MR. PAGE:
Q And do you see Associated Branch Pilots on there?
A Yes.
Q And is it the same net income and the same year?
A Yes.
Q Okay. So do you believe that you were pulling information off of this document we're looking at right now, which is now Exhibit 22, to put it into your chart that is Exhibit 21?

A I was using some information from this document, yes.

Q Such as the Associated Branch Pilot net income for the year 2021, right?

A Specifically for the -- I believe it's San Francisco Bar Pilots, was one that I might have pulled.

Q Did you pull the Associated Branch Pilots?

A The Associated Branch Pilots for the Port of New Orleans, I used, but that was a different source ultimately.

Q Did you use it in your July 8th report?

A Yes.

Q And you used it for the Associated Branch Pilots, you said?

A For the Associated Branch Pilots, yes.

Q And for the Crescent River Port Pilots as well?

A I -- yes, I believe so.

Q For the Great Lakes Pilots?

A Yes.

Q For the LA Harbor Pilots?

A I believe so, yes.

Q For the Lake Charles Pilots?

A Yes.
Q For the New Orleans-Baton Rouge Pilots?
A Yes.
Q For the Port Everglades Pilots?
A Yes, I believe that was -- that was of the source for that at the time.
Q And for the San Francisco Bar Pilots from 2018 through 2021, plus the average of those years?
A Yes.
Q Why did you change sources?
A Between the -- I'm sorry?
Q Well, let me -- let me ask it again.
MR. MANSON: I was objecting to form. That's all.
BY MR. PAGE:
Q For those pilot groups that we just went through, did you change your source of data for the report that was provided to us today?
A Yes.
Q Why?
A Because I found more recent data. And also in some cases, such as the Port Everglades Pilots, I instead referred back to the Pilotage Commission, the PRRC report, instead of using a third-party source.

Q So you did that for Port Everglades?

A I did. I also sourced for the -- the -- so for some of these other ones, for the Puget Sound Pilots, I referred -- I did not use this value, I used a value that was the final order in the fall of 2023, from the Washington UTC on their targeted distributed net income per pilot.

I also referred to the -- I referred to the originating source material for some of these as well. So, for instance, for the New Orleans-Baton Rouge Pilots, I refer to the Louisiana Commission materials. And the same for the Associated Branch Pilots for the Port of New Orleans.

Q What did you say you referred to for the Port Everglades Pilots in your chart --

A I would have --

Q I'm sorry.

A -- to look at my specific name on the source, but it was the final order, the final notice for the rate change. And that's included in the references.

Q Did that change your number for Port Everglades, your net income number?

A It did not -- I'm sorry.

Q Your net income number?

A It did not change my number.
Q Nor the year, correct?
A The year for the audit did not change, but our -- in terms of what we reported, it did not change the year or the number, the net income per pilot.
Q Okay. Did you change sources regarding the Jacksonville Pilots?
A The Jacksonville Pilots, I referred to the PRRC report and final order.
Q Did you refer to the Investigative Committee report, the final order, or both?
A Both.
Q Okay. You have new years, all 2023, and I'm going to assume new incomes, for the Associated Branch Pilots, for the Port of New Orleans, for the New Orleans-Baton Rouge Pilots, for the Crescent River Port Pilots Association, and for the Puget Sound -- I'm sorry, forget that last one.
Regarding those three, Associated Branch, the Port of New Orleans, NOBRA, and Crescent River, you're now using 2023 in this new report. What was the source of the information for those?
A So for -- let's start with Associated Branch Pilots for the Port of New Orleans, that

source, I can tell you in a moment --

Q What are you looking at to figure out what the source was?

A That would be on pages 11 and 12 of our final report. So we start with a discussion of the Crescent River Port Pilots Association, and the source for that is the Louisiana Pilotage Fee Commission from 2024.

Q Annual report?

A That would be -- one moment, please. Let me look. Yes, that would be on page 19 in the references. It would be the Louisiana Pilotage Fee Commission, published on July 1st, 2024. And it's called the Crescent River Port Pilots Association, Inc., 2023 Annual Reporting pursuant to Louisiana Pilotage Fee Commission Order Number P20-001(A).

Q So that was available when you were deposed on July 26th, correct?

A That was available, but I was not -- did not include that in the previous report.

Q I'm aware of that.

Did you know that it existed at the time you were deposed on July 26th?

A I did not.

Q How did you come to know of its

existence?

A I did more research.

Q Explain what research you did, please.

A I searched for information on pilotage fees and net income in Louisiana.

Q And is that a search --

A And I looked --

Q Sorry. Go ahead.

A Then that led me to this report, which was published at the beginning of July. So my -- most of my research for the first report was completed prior to the release of this report.

Q It was available July 1st, right?

A Correct.

Q That's almost four weeks before your first deposition?

A Well, it was -- I should -- I don't know when it was actually available. It was published -- or the date stamp on it was July 1st. I don't know when it was available online.

Q Why did you go look for that information after your deposition on July 26th?

A Because I wanted to -- the last version was a draft, and so I wanted to continue to refine our analysis. And when I discovered this report,

this was new information I thought would be relevant for this report -- for our report.

Q It's an annual report, correct?

A Correct.

Q And for Associated Branch, Crescent River, and New Orleans, you previously used the year 2021 for each of those, right?

A I believe so, yes.

Q And you got that information from the document of Mr. Lough, correct?

A Yes.

Q Do you know where he got that information?

A I do not.

Q And you did not search for or discover the New Orleans annual report for the year 2021 or the year 2022 before your deposition, July 26th?

A To my recollection, I might have searched for it, but I did not find it.

Q In your report provided today, let me just confirm. I think you answered this previously. The only thing you provided to counsel to be produced for the deposition today is this final report, correct?

A Correct.

Q Okay. In this final report, you added -- I'm looking at Exhibit 11, titled, "Net Income Per Pilot."

MR. PAGE: You can take that down actually, Sam.

BY MR. PAGE:

Q Biscayne Bay is a new entry here as compared to your July 8th report. How did it come about that Biscayne Bay got added?

A I wanted to look at other ports in Florida, and so I opted to look at the Port of Miami and see whether to include that as a comparator for net income per pilot.

Q Why had you not looked at it previously?

A I don't -- we were looking at other pilotage areas. I -- it was perhaps an oversight not to include it before, but again it was a draft report. So we had the opportunity to refine our report, and that's what we did.

Q And was it you independently or someone else that suggested looking at the Biscayne Bay pilots?

A Me independently.

Q You didn't discuss that with anyone else?

A I -- I might have discussed it with

Dr. Kemmsies, but in a broader context of ports to compare.

Q Looking at --

A I also -- I should add to my previous answer. We looked at a number of variables that we thought were worth considering, such as tonnage, such as vessel counts. And so that also helped to inform the decision to include it, the ports Miami.

Q Okay.

A Of Miami.

Q Thank you.

Tonnage and vessel counts. Did you look at any other factors or variables?

A We looked at characteristics of the types of vessels that entered and exited a given port, mostly whether or not there were tankers and what percentage of the traffic were tankers.

We also looked at whether or not there were cruise ships that were being handled at the port. And then we also referred to more qualitative information to help inform our decision about what to include.

Q I don't understand what more qualitative information means.

A It means information that's not data but

was from other expert opinion. So, for example, Captain Bushy, in his deposition, cited the Port Everglades as a good comparator with Port Tampa Bay and Port Manatee. So we -- in addition to other factors, if we came across something like that, in this case Captain Bushy's deposition and the opinions shared in that deposition, that also factored in.

Q Port Everglades was in your July 8th report already, correct?

A Yes.

Q And you didn't change the year or the net income in the final report we received today, correct?

A Correct. One, the year of the originating data source did not change. So in the case of Everglades, the year was 2019.

Q The net income amount also didn't change in your now final report, correct?

A We assumed that the net income did not change for 2023 --

Q So for --

A -- so we decided not to change it as a comparator.

Q So for Port Everglades, both in your

draft report and in your final report, we've got latest available year of 2019, and we've got net income of $549,998, right?

A Correct.

Q And there's an adjustment in your report -- your now final report, Exhibit 11, to adjust that 549,998-dollar figure to what you believe is basically Tampa dollars; yes?

A Yes.

Q But in doing that, I believe you just said that you assumed that the net income for the Port Everglades pilots in 2023 would be the same as it was in 2019, correct?

A Yes, in the -- in the approximate. We opted -- I'm sure we'll probably talk about this later, but we looked at whether or not -- we looked at other factors that contribute to net income for Everglades and decided that 2019 was still the best comparator.

Q Is a hundred bucks in 2019 worth the same as it is as we sit here today in 2024?

A It is not.

Q What's changed?

A Inflation.

Q So what's it worth, less or more?

A A hundred bucks would be worth less today.

Q So how do employers make up for inflation?

A Well, they can, under some circumstances, raise the employee salary. I guess I'm not clear what your question is. Can you restate it?

Q No. I mean, that answered it. I asked about employers, so that's an answer for sure.

They can raise other benefits as well to make it a more beneficial employment scenario, correct?

A Correct.

Q Are the Tampa Bay pilots employees?

A They are not.

Q Okay. And you own your own business, correct?

A Correct.

Q So how long has that been? It's been four years or so; yes?

A Yes.

Q Have you increased your rates at all over those four years?

A I have.

Q And would that be because, at least in

part, you're trying to keep up with inflation?

A It's a consideration.

Q Okay.

MR. PAGE: Before we forget, let's -- you already did -- Exhibit 22 was the Lough chart, previously relied on in the July 8th report. Let's mark the notice of depo as 23, please. And as 24, we're going to mark the report received this morning.

It doesn't have it on the cover page, but on each page that follows it has the date August 28, 2024. So those are in the record as exhibits.

(Cohen Deposition Exhibit Numbers 23 & 24 marked for identification.)

MR. PAGE: And just for everyone's information, I forgot to mark that as an exhibit the report of August 28, 2024, in Mr. Kemmsies' deposition. But there you go.

BY MR. PAGE:

Q I'm looking at your new report, your final report. At the bottom of Exhibit 11 it says, "For information purposes." What does that mean?

A To provide comparative and useful information considering what might be a reasonable

net income per pilot.

Q There are 11 -- I'm sorry. Do you have your final report in front of you?

A I do.

Q Okay. Do you see there are four Florida ports there; yes?

A Yes.

Q And then seven other ports, correct?

A Yes.

Q So regarding those 11 ports, did you look at the rate structure of any of those?

A I did look at the rate structure for some of these, yes.

Q Which ones?

A I would have to go back and check, but I did look at the -- mostly with respect to the rate implications, so what would be the cost. And I looked mostly at existing research. So, for instance, the ICR report, looking at the different rate impacts on the cost per vessel.

Q So which one of these specifically did you look at their rate structure of these 11 ports?

A Well, I looked -- and I don't know when I looked at them, but I did look at the notifications for several of these. So I -- I recall looking at

Everglades, Jacksonville, Tampa, both the previous rate and the new rate structure. I also recall looking at rates for Biscayne Bay. In fact, I -- I might have looked at all of these, I just didn't factor them into this report.

Q Okay.

A But I might have -- I believe I looked at at least the rates, I just don't recollect details.

Q I think you just answered my next question, which was: What does it mean by looking at them? And by looking at them, those rate structures, it did not impact the work that's in your report. Is that accurate?

A I do not talk about rate structure in this report, so yes.

Q Well, fair. I think that's a good partial answer. But in terms of the rate structures, did they influence any of the opinions that you've expressed in this report?

A Only -- I looked at the Charleston rate structure specifically, but it's not in this report, because Charleston exhibited very similar tonnage to Tampa Bay and Manatee combined.

Q Tonnage of what?

A Marine cargo tonnage.

Q And when you say "marine cargo tonnage," are you talking about the capacity of the vessels that are coming in and out carrying cargo?

A Not the capacity, but the actual cargo. So not the ability to handle cargo, but the actual reported marine cargo tonnage, both foreign and domestic, that would be handled at the port based on the Army Corps data.

Q And your understanding is that Army Corps data is measuring the actual cargo that is what, taken off the ship or put on the ship at a various location?

A Yes, both imports and exports, domestic and foreign.

Q Okay. And it is to your understanding not measuring the capacity of the ship that is going in and out of the various ports. Is that right?

A That is correct. I believe it's based on bill of ladings data, which would be a record of the actual cargo on the ship.

Q So does that mean in what you've looked at, you cannot draw a distinction between the actual cargo on the ship and the capacity of those ships to carry cargo?

A I did not look at that capacity, but it's

something one could look at if they knew the vessel composition and the details of the vessels that are moving in and out of the port, one could estimate the carrying capacity, but it's not something that I looked at.

Q Okay. Something you're intending to look at or no?

A I am not intending to look at that.

Q Okay. And that also brings me to another question I probably should have asked sooner, because it's a general umbrella-type question. Are you anticipating that at the final hearing you're going to testify and provide any opinions beyond those that are expressed in this final report?

A I do not anticipate doing any additional research for this -- on this topic. It's possible that I -- I will present -- this is my final research. It's possible that I create some exhibits that are based on what's already been submitted, but I do not anticipate other -- my -- I'm not -- let me step back.

Can you restate your question? I'm sorry. Can you state it again? I'm sorry, I got tongue-twisted.

Q That's all right.

Have you been retained to render any work product or provide any opinions that are not related to what I'm seeing in this final report?

A I will not be -- there will be no change in my opinions beyond this report.

Q Okay. And your opinions are expressed in this report; yes?

A Yes.

Q Okay. Thank you.

MR. MANSON: Eric?

MR. PAGE: Yes.

MR. MANSON: May I interject that he is leaving something out, or do you want me to be quiet? I just want you to get all the opinions.

MR. PAGE: You can do it on your time if you wish.

MR. MANSON: I just want to make sure you get what you need so we don't come back to do this again. So he has reviewed the Zarumba report.

MR. PAGE: I'm getting there. It's on the very long list.

THE WITNESS: I will be --

BY MR. PAGE:

Q I'm sorry, let me -- yeah, let me do this as we are intended to, in question-and-answer mode here.

The extent of your independent opinions are contained within this report, correct?

A Yes.

Q Okay. You may or may not have opinions regarding Mr. Zarumba's work. Is that correct?

A I will have opinions on that, yes.

Q You've been retained?

Now part of your scope is to express an opinion regarding the contents of the expert report from Mr. Zarumba?

A Yes.

Q And that is not something that you had previously been retained to do when we deposed you back on July 26th, correct?

A That's my understanding, at the time I had not read the report yet.

Q And you had not been retained for that scope, correct?

A Well, I had been retained to provide an expert opinion about this case, so to me that includes providing an opinion about any materials that are submitted for review related to net income.

Q Do you understand that there's a distinction between being an expert and a rebuttal expert?

MR. MANSON: I didn't understand the last word of your question. I'm sorry.

BY MR. PAGE:

Q Do you understand that there is a distinction between taking the stand to testify regarding your report in an expert capacity and taking the stand to testify about someone else's report in a rebuttal capacity?

A I understand those are two different things, but I don't -- is your question if I -- do I understand the difference?

Q Yes -- no. My question is: Do you understand they're two different things?

A I understand those -- the -- I don't -- I understand those are two different actions, to provide testimony and provide rebuttal testimony.

Q Thank you.

At the time that we deposed you back on July 26th, had you been retained to provide rebuttal testimony?

A I believe that my scope included providing review and rebuttal of materials that were

provided, but I would have to go back and review my scope to give you an answer on that.

Q My recollection regarding Mr. Zarumba's report was that you had been provided it and you did not know one way or the other whether you would be testifying in a rebuttal capacity. Does that sound correct?

A I don't -- I'd have to go back and -- I don't recall my response, but that -- I'd have to review my -- again, I would have to review my scope. My understanding is that in my scope, I would provide an opinion about the Nexus Economics report.

Q I understand that that's your current scope. My notes are that you were provided the Nexus report Monday of that week, which, at most, that's four days prior. I can't remember exactly what day we were doing that. I think it might have been a Friday, so four days prior. That you received it on Monday of that week, you did not do a thorough review and you were not prepared to discuss it.

Does that sound about right?

A At that time, yes.

Q Okay. And at that time, had you -- was it your understanding that you were going to be

serving as a rebuttal expert on the Nexus Economics expert report?

A I was not clear about that. I do not recollect.

Q Okay. Fair to say it was undetermined at that time?

A I would confer with counsel, counsel and them. I'm not -- I'm not certain about that at the time.

Q Well, what's your recollection? It was undetermined at that time?

A That -- undetermined at that time --

Q Okay.

A -- is my recollection, but I'd have to go back and check.

Q I'm going to read a couple of these out loud, because I've never read them before. But the first key finding on page i of the report is, "Based on port vessel traffic and tonnage handled, the ports of Everglades, Jacksonville, and Charleston, South Carolina are useful comparators to the combined operations in Port Tampa Bay and Port Manatee."

Sound right?

A Yes.

Q You used to have an Exhibit 6 in your July 8th report that identified approximately 20 pilotage associations and net income from them per pilot and a year that was then adjusted. Does that sound right to you?

A In the July 8th report you're referring to, correct?

Q Yes, I am.

A That sounds about right.

Q Okay. And now you have got an Exhibit 11 that has four Florida ports and seven outside of Florida, again with a year, a net income, and an adjustment to Florida dollars; yes?

A Yes.

Q Neither Exhibit 6 from your July draft or Exhibit 11 from your final, as far as I can tell, contain any information regarding Charleston, South Carolina. Is that true?

A In the previous draft, yes.

Q Well, I'm looking at Exhibit 11, and maybe I'm wrong, but I don't see South Carolina in Exhibit 11.

A I was not able to find net income per pilot for the Charleston Bar Pilots Association.

Q So when you say it's a useful comparator

to Tampa Bay and Port Manatee, to what extent is it a useful comparator?

A With respect to evaluating and comparing rates.

Q Okay. And did you do an evaluation of Everglades, Jacksonville, and Charleston, South Carolina rates compared to the combined operations of Port Tampa Bay and Port Manatee?

A I referred back to the PC -- the Investigative Committee report's comparisons, with respect to the rate impacts on various vessels of different sizes and dimensions.

Q Is that contained in this final report somewhere?

A It is not.

Q So why is it in your key findings?

A Because I looked at -- we looked at tonnage as a useful comparator, and Charleston was very similar to Port Tampa Bay and Port Manatee combined with respect to tonnage.

Q I understand that, but I think you just told me it's not reflected anywhere in this report, correct?

A No. It is reflected.

Q Can you please direct me --

A I think I can find it.
Q Please.
Have you been able to locate it?
A I'm sorry. I think I pressed the space button, it went on mute.
Q Okay. Yeah, we didn't hear anything.
A I was -- you didn't hear anything that I said?
Q Not a word.
A All right. Sorry about that.
Yeah, I was saying on page 8, Exhibit 9, so there is two groupings of ports. So the second grouping of ports, the first line is Tampa Port Authority Florida. And the reported marine cargo tonnage for 2022, which includes imports and exports, domestic and foreign, is 27,979,907. And I believe those are short tons. The port of Charleston, South Carolina is the next line, and that is 27,714,537 tons.
Q What's a short ton?
A It's just -- there are two ways -- two metrics of tonnage. A short ton is based on standard weight measures, I believe. And then there's metric tons. But it's just a -- it's -- a short ton is about -- it's 9 -- it's .9 metric tons,

but it's just a measure of weight.

Q Thank you.

What's the purpose of including the Port of Charleston, South Carolina in this Exhibit 9, in terms of your ultimate opinions as expressed in this report?

A So I reviewed a much larger list of ports across the country to look at ports that exhibited similar characteristics to Port Tampa Bay and Port Manatee.

Q Okay.

A And so one of the -- one of the variables that we included for consideration to draw -- identify a comparator was tonnage of marine cargo. It's not the only variable, but it is a variable. And so that's -- from the data reported by the U.S. Army Corps of Engineers, waterborne statistics, we identified Charleston as similar with respect to tonnage handle to Port Tampa -- the Tampa Port Authority.

Q Okay. But what does that lead to?

Saying that they're similar is one thing, and it's fine. I can -- I can see how when you're looking at marine cargo tonnage 2022 in this chart, yeah, they're about as close together as any of

these numbers are, but what does that lead to in terms of your report and your opinion?

A It means that we believe that the pilotage services are worth comparing and the fee structure between Charleston and Tampa --

Q Okay. And where --

A -- even though --

Q I'm sorry.

A -- we cannot find a net income per pilot, we do think that this is an indication that Charleston would be worth considering as a comparator --

Q But you would need --

A -- to determine a reasonable rate.

Q But you would need the net income per pilot at the Port of Charleston, correct?

A Based on the approach presented in this report, ideally I would have net income per pilot for Charleston.

Q What do you mean by "based on the approach presented in this report"?

A Looking at what is a fair, reasonable, and just rate based on the net -- from the perspective of the net income that that rate would yield.

Q But you're going to income in your report. You're assessing comparable income, correct, not comparable rates?

A Correct.

Q Is there any -- I mean, I'm looking at this thing for the first time. I've gone through your draft report a hundred times. Is there anything in this final report that we received today where there is a comparison of rates?

A There is not in this report.

Q Okay. So I'm going to go back for just a minute to the Port of Charleston, South Carolina. I understand why it might be in this Exhibit 9, but it doesn't do anything to influence your opinion one way or the other other than to be able to say you think Port of Charleston, South Carolina is somewhat comparable to the Tampa Bay operation in terms of tonnage. Is that right?

A I believe that is an important consideration --

Q Is there --

A -- even if we don't have the net income. The purpose of the net income per pilot is to help to arrive at what we think is a reasonable rate or rate structure.

Even if we don't have the net income, but in this case we don't have net income for Charleston, we should still look at, and evaluate, whether or not the rates are -- we should consider the rates at Charleston as well, or at least look at those rates, because we believe that there's a lot of similarities between Charleston and Tampa.

Q Where is that in this report?

A That is only stated at the beginning under "Key Findings."

Q Is it going to be stated anywhere else?

A As a comparator.

Q Are you going to testify to something about the Port of South Carolina's rates, or is the extent the one bullet that says it's a comparator port, and Exhibit 9, that has some information in it?

A I do not anticipate doing more research, but we also have already -- there has been some comparisons that have been done already that we can refer to. I believe that was -- and apologies for not remembering the specific IRR. But I think it's TBPA008350, that looked at Charleston and the implications -- looked at the rates implications for a different -- for select vessels for Charleston.

Q Okay.
A So that's already in the existing responses.
Q But that's information that for this report's purposes didn't matter to you, because you were looking at net income, correct, and you couldn't find that for Charleston?
A I'm sorry?
Q And you couldn't find that for Charleston?
A I did not find net income for Charleston. It was not available for -- I relied entirely on publicly available sources, and that was not available publicly.
Q Okay.
MR. MANSON: I can wait 10 or 15 minutes, but when you're ready for a comfort break, let me know.
MR. PAGE: Okay.
THE WITNESS: I could use some more water.
MR. PAGE: Let's just go another minute here.
BY MR. PAGE:
Q In your July 8th report, I'm looking at

the first bullet, you said that net income per pilot should be targeted between 500,000 and 530,000, deemed a reasonable average among select comparator pilotage associations across the country based on reported net income per pilot and regional price parity indices.

You do not express, as far as I can see, but I want you to direct me to it if you do, a net income per pilot target in this final report received this morning. Correct me if I'm wrong, please.

A I do not explicitly state in this report what I think is the appropriate level of net income per pilot in this report.

Q And by "appropriate," that would be a target; yes?

A Yes.

Q Do you have an opinion on what that target should be for net income?

A So I would refer you to page 10 -- I'm sorry, not page 10. I'm sorry. Let me step back. So I would take the adjusted Tampa -- I would take net income per pilot for the three other ports that we looked at -- I'm sorry, the two other ports, because -- well, actually, I don't -- I have not

finalized that, I should say, but I -- I would take the average of the Florida -- other Florida ports we've identified, adjusted to Tampa dollars, and use that as a reasonable benchmark.

Q And you have not done that yet?

A I have not stated that that is what I think is the appropriate income for a pilot in Tampa.

Q This report is final, correct?

A This is final.

Q But it does not contain that conclusion, correct?

A It does not include that specific statement.

Q Does it include a statement similar to that?

A Give me one moment, please, and I'll look.

So I do not provide -- I do not provide a specific statement in the report, but I do provide examples of what I think are reasonable considerations for net income. So it's ultimately what I -- these are various comparators that I think are worth considering in identifying a target net income.

Q So if I'm looking at page 10, carrying onto page 11, where you're talking about Port Everglades pilots. Towards the end of that last sentence, "Due to these factors and considerations, we believe that net income per pilot of $549,998 is the most appropriate comparator for the net income with the Tampa Bay Pilots Association."

Is that the kind of thing that you're talking about?

A I'm sorry. Can you point me to where exactly that is again?

Q It begins on page 10.

A Oh, 10. Okay.

Q Port Everglades pilots carries over on page 11, right above the heading "Canaveral Pilots Association," contains the sentence that I just read --

A Uh-huh. Yes.

Q -- and the number that then ends up in your Exhibit 11, associated with Port Everglades pilots. So is that the sort of thing you were talking about, where there's some other language in this report somewhere that would lead you to that conclusion?

A So the -- the specific context for that

statement is why we believe that when identifying the appropriate data point, comparators included in ultimately Exhibit 10 on -- or 11, I'm sorry, on page 13, the rationale for including 549,998 as the right data point to use as a comparator with Tampa is -- for Jacksonville is 549,998.

Q Port Everglades --

A So that's explaining why -- because we don't have complete data for 2023, we're laying out the reasons why we think that using the 2019 net -- the 2019 net income per pilot, as reported by the PRRC, is the appropriate comparator with Tampa.

And we used similar language for -- similar language for -- I'm sorry, I mean Jacksonville -- I'm sorry, Everglades, I'm sorry. We used similar language for Jacksonville, for the St. Johns Bar Pilot Association at the top of page 10, second paragraph -- first full paragraph.

Q Okay. Do you know whether the rates for Port Everglades have gone up since 2019?

A 2019 was the first year of the new rates --

Q Okay. So do you know --

A -- but not including the escalators.

Q So -- and I'm sorry. I spoke over you

because I didn't ask a great question. So let me try it again. And I'm going to wrap up here in a second.

But for the Port Everglades pilots from 2019, do you know if the rates for pilotage services for those Port Everglades pilots have gone up?

A For Everglades you're asking, correct?

Q I am.

A So the rate went into effect, the new rate, on February 1st, 2019, the new rate structure. The rate itself did increase based on the escalators that were included in the final notice for 2019.

Q Do you know --

A So the rate does go up, but the rate structure did not change since 2019.

Q Do you know if the rates went up for the Jacksonville pilots from 2020 to present?

A So the Jacksonville pilots, their rates -- the new rate, based on the final order from 2020, went into effect at the beginning of 2021. And their rate also includes built-in escalators.

Q Do you know how much?

A Well, the rates for the escalators, it looks like, 2.5 percent annually.

Q Okay. And for the Biscayne Bay pilots,

have their rates escalated since 2021, when you have their net income at $517,944?

A I believe -- let me check here. Yes. They have a 6 percent escalator for vessels with a draft at 31 feet or greater, and a 2 percent for all other rates.

MR. PAGE: Okay. Let's take a five-minute break.

(Recess from 2:28 p.m. to 2:36 p.m.)

MR. PAGE: Back on the record.

BY MR. PAGE:

Q All right. Go ahead.

A So I do have an -- just to clarify. I have an opinion about the appropriate net income per pilot, it's just not explicitly stated in this report, but I can share that opinion in this deposition.

Q Okay. Why is it not expressly stated in this report?

A It might have been an oversight, or lack of inclusion, but my analysis is just looking at doing the research to examine what those net incomes at other ports are, and other pilot associations. But I have an opinion about what the appropriate net income would be.

Q What is that number?

A That number would be -- it would be roughly around $510,000.

Q And is that expressed anywhere in this report?

A That is expressed -- and there's a missing -- a missing piece of information there, but it's the second bullet under "Key Findings." So net income per pilot among Florida -- other Florida pilot associations was estimated to be 543,900 or 508,700. And it should say based on Tampa dollars. So within a range of $510,000 I believe is reasonable.

Q I'm sorry, that --

A And I would even offer -- I would even offer a range of between 510 and upwards of 549, given what we heard about the similarities between Everglades and Tampa.

Q So, I'm sorry, it's not written anywhere near the way that you just expressed your opinions, so I'm trying to track it. I'm trying to go from Bullet 2, under "Key Findings," over to Exhibit 11. I'm trying to figure out, one, what's your number or what's your range. Do you have a -- do you have a number or do you have a range?

A I'll give you a range.
Q Okay.
A So the current -- so I give it between 500 and 550-ish. That's my range. And that's based on other ports in Tampa -- or sorry, in Florida that we identified as comparators.
Q Between 500 and 550-ish; yes?
A Yes.
(Paria Heeter joined Zoom.)
Q And that's based only on the Florida ports?
A Yes.
Q And is that number -- that range that you're providing me, is that after you've adjusted the dollar figures to Tampa dollars?
A Yes. And it's just -- it's a range.
Q I get it.
And would it be accurate to say that the closest that you come to expressing that range in this report is that second bullet under "Key Findings"?
A Yes.
Q And how do you come up with that number? Do you take the adjusted Tampa dollar amounts for the three Florida ports that you used and average

them out?

A Yes. And do some rounding, yes.

Q But those are the only three ports that you're pulling a net income amount from in Tampa dollars to give us your 500 to 550-ish range. Is that right?

A That's correct.

Q Would the -- for instance, the Biscayne Bay pilots, where they have a 6 percent rate escalator, is that escalation in rates also going to lead to an escalation in net income?

A That's unclear.

Q What part of it is unclear?

A So the net income per pilot is a function of multiple factors. It's a function of the rate, it's a function of the rate escalator. It's also a function of the characteristics of traffic. So the characteristics of the vessels, such as the size of the vessel and the dimensions of the vessel -- of the vessels that are coming in, and how many are -- how they fit within the different tranches that Dr. Kemmsies talked about earlier this morning.

It's also a function of inflation. But it's a function of inflation because -- not because we're adjusting income, but because inflation erodes

net revenue, because inflation translates into higher costs to operate pilotage services.

Q So would it be your understanding that the escalators for the various ports that we discussed previously in Florida are there to account for that inflation and to put -- put dollars into their current value rather than a historic value?

A I'm sorry. Can you repeat that question?

Q Sure.

Would it -- is it your understanding that those escalators are in place for the ports that we discussed, Port Everglades, Jacksonville, and Biscayne Bay, so that the ultimate net income of the pilots in those ports ends up being relatively the same as it has been in prior years?

A The escalators will help to offset inflation, but some years inflation might be higher than the escalators. And the escalators are also attached to different types of vessels. So it depends on the composition how much that -- you know, it depends on the vessel -- the fleet composition and the dimension characteristics of the vessels that are entering and exiting the port.

So if you have -- it could mean that you have more vessels that are subject to a 2 percent or

a 2.5 percent escalator versus a 6 percent. So it's a lot of uncertainty.

Q I get --

A Then inflation was higher the last couple of years than some of the escalators.

Q Right.

So you -- you -- a couple of things there. One is you can't necessarily predict what your vessel composition is going to be, right?

A Well, you can -- and this is the work of Dr. Kemmsies in his forecasting, is you can come up with a reasonable forecast based on available data and other sources and employing a defensible method to project out what those forecasts -- what those fleets might be in the future.

Q But those forecasts, in reality, can vary greatly; yes?

A It -- there's things that you can't anticipate, like a pandemic, so yeah.

Q Right.

And then in terms of -- you spoke of inflation versus the escalator percentages, and you spoke of inflation potentially being higher inflation. It could also be lower though, right?

A Inflation could be lower than the

escalator at times.

Q Right.

So what you got though is a situation in Port Everglades, Jacksonville, and Biscayne Bay where the rates are increasing per the tariff at a set percent and they're not tied to inflation, right?

A They are not attached to inflation.

Q And the same is true for the rate structure of the Tampa Bay Pilots Association that's being challenged, correct?

A Well, they say in Year 1 the 6 percent, if I remember correctly, is reflective of recent high inflation. And then there is a -- they say that there's a split of 3 percent and 3 percent. But I am not clear how they arrive at that 3 percent for what they describe as training and recruitment, I think is the specific reference.

So is that -- I'm sorry. Maybe you can repeat your question. I'm not sure if I answered it properly.

Q I'll ask it maybe a little better. The Year 1 6 percent rate escalator, you would agree with me the testimony has been that the pilots requested and received that 6 percent increase, and

that the pilots based their request on the very high recent inflation; yes?

MS. HEETER: Object to the form.

A I believe in -- and my understanding is that inflation was a consideration in the 6 percent.

Q Is that the testimony that you heard in the -- I handed you a hearing transcript the last time you were here from the PRRC hearing back in early 2023, where one of the pilots testified about that first year of 6 percent.

Is it your recollection that the testimony from the pilots has been that the first year escalation of 6 percent is because of historic inflation?

A I believe there was reference to high inflation being a key driver of the -- of the important factor in the 6 percent.

Q The first year of 6 percent, right?

A That is my recollection.

Q Okay. And then the next two years of the 6 percent, is it your recollection that the pilots' testimony has been half of that is associated with the expenses of bringing on a new pilot each of those years, and half of that 6 percent is associated with an expectation of historic inflation

numbers, not historic as in high, but historic as in past inflation numbers continuing into the future?

A I can't speak to the veracity of the 3 percent for recruiting and training new pilots, and I -- I --

Q I'm not asking you to speak to the veracity of it. I'm not asking you to speak to the veracity of it. All I'm asking you is whether or not that is how the pilots have explained it.

That the second and third years of 6 percent is half inflation and half expenses of bringing on a pilot. Is that your understanding?

A I believe -- from what I recollect, I believe that is what they characterized it as.

Q Thank you.

And then the subsequent seven years at 3 percent is just based on the pilots looking at past inflation and saying it's around 3 percent, so we're going to have 3 percent going forward. Has that been their testimony, to your recollection?

A I'd have to go back and look at that. That sounds correct, but I'd have to look back at their -- at the testimony, but that sounds familiar to me --

Q Okay.

A -- yes.

Q So if all of that's correct, then the escalator in the Tampa Bay Pilots scenario is -- the portion of it that's tied to inflation is based on the pilots back in 2022, when they submitted the application, looking at past inflation and saying 3 percent sounds about right. Is that fair?

A So we're asking whether or not -- we're asking about whether or not that was their stated reason for the 6 percent, correct? Not my opinion about whether that's correct --

Q It's not your --

A -- or whether that is indeed what they said?

Q -- not your opinion about whether or not that is correct.

A I believe that is what they said.

Q Okay.

A Or they stated.

Q Okay. Are you aware of any mechanism in the Florida statutes or in any of the work that you've done in looking at the Florida ports where any of the ports in Florida have a rate escalator that is tied to an actual inflation measurement, in terms of a formula?

You know, inflation goes up this amount, therefore rates will escalate this amount?

A I believe --

MS. HEETER: Object to the form.

A I believe in Florida there is no cost-of-living adjustment, COLA, built into the rates.

Q When you call it a cost-of-living adjustment, are you saying that it is an adjustment based on a formula that ties back to something like inflation?

A Yes.

Q Okay. So is it possible that in Florida, the rate -- the flat percent rate escalators are viewed as a cost-of-living adjustment, they just don't tie back formulaically to something like inflation?

A So they do not -- they are not explicitly tied to -- because I think of a COLA as specifically explicitly tied to inflation. The 6 percent and 3 percent, which I believe has been used in other applications as well in prior years, references inflation. But I'm not sure I'm answering. I'm sorry. Can you repeat your question? Maybe I didn't understand your question correctly.

Q Sure.

I believe that you are associating a, quote, cost-of-living adjustment, unquote, with it being tied to actual inflation numbers. Is that true?

A That's correct, the COLA, or cost-of-living adjustments, is tied to a measure of inflation.

Q Okay. So as an economist, that's how you view a COLA, right?

A Yes.

Q Okay. If you got flat percent rate escalators going on into the future in a tariff, like we do for all of the Florida ports that are in your Exhibit 11, is it possible that that flat percentage rate increase is viewed as a form of a COLA, it's just not tied to inflation?

MS. HEETER: Object to the form.

A I believe that the rates consider inflation. The stated purpose they claim as stated is also to consider adjustment or cost for training. So that is their stated -- or that's what's been stated, not what I believe is the actual -- whether it's correct or not, but that is what the stated -- that is what is stated, if that's what you're

asking.

Q That's not what I'm asking.

A Maybe state it one more time.

Q Sure.

There are other states that, through a formula, have COLA increases to rates. And that formula takes into account inflation; yes?

A Yes.

Q Does Florida do that?

A Florida does not do that, to my knowledge. There is no COLA for Florida.

Q In place of that, do they do flat percent rate increases?

A Yes.

Q Okay. Thank you.

Let's take a look at the engagement letter we spent some time on at the last go-around. It was Exhibit 4. Has the scope of your engagement changed at all from what's expressed in this letter and what we discussed when you were deposed back on July 26th?

I can't hear you if you're speaking.

A I'm sorry. I am reading it to myself.

Q Sure.

A Let's see. I believe, in broad terms, my

scope is consistent. So yes, I believe this is still my scope of work.

MR. PAGE: Let's pull up the old July 8th draft, please. Go to the introduction, page 3 maybe.

BY MR. PAGE:

Q So here's the introduction from the prior version of your report, the July 8th draft. And I basically haven't gotten any deeper into your new report than the introduction in Exhibit 11. But I did note that there are a couple of bullets missing under the introduction in the new report that existed under the July 8th report. The first bullet that's missing is, "Assess potential impacts from the Association's requested increase."

What's the reason for that being in the July 8th report but not in this final report received today?

A Sorry. Well, let me amend that. I'm sorry. Let me amend my statement. It has -- my scope has been a little bit more narrowed since then.

Q Explain that, please.

A So my -- my scope has been narrowed to look at -- to examine the most recent rate increase,

including data and sources used to form the Association's rationale for the requested increase, a forecast of carbon volumes increases within the Tampa Bay area ports, and review existing studies and compensation rates benchmarking.

Q Okay. So you just basically read the three bullets that are under the introduction heading in your new report, right?

A That's correct.

Q All right. That wasn't my question. My question was: Why is there no longer the bullet "Assess the potential impact from the Association's requested increase"?

A I would say that our scope just became more narrow for the work that we're doing.

Q Okay. So you're not going to be expressing any opinion regarding the potential impact of the Association's requested increase. Is that right?

A Well, I believe there's already research that has been done by the Investigative Committee that does look at the impact of the rate increase overall with respect to specific types of vessels.

Q Okay. I'm going to -- I'm going to just ask that you listen to my question and try to answer

my question as best you can. If you don't understand it, by all means tell me you don't understand it.

My question for the third time is this: In your prior report, it said that you were going to assess potential impacts from the Association's requested increase. In your current report, it does not say that. You have said that your scope is narrowed. So are you not going to be providing an opinion that assesses potential impacts from the Association's requested increase; yes or no?

A I would say no at this point.

Q What does "at this point" mean?

A I want to review my scope, but -- because this report does not cover that, but I would still be able to have an opinion about the rates. But in terms of speaking specifically to the impacts outside of this report, I'll still be able to speak to -- refer to existing research, but I'd say yes -- no, I'm sorry, no, I would not at this point be talking about that.

My scope of work and my scope of research services is narrowed to those types of things that have been delineated in the new report, but I may still have an opinion about the impacts. This is

only specific to the research services that I'll be doing.

Q Okay.

A I hope that answers your question.

Q So you're not doing any research regarding the potential impact from the Association's requested increase. Is that right?

A Well, I am looking at, based on existing research, what the impacts -- I will refer to, and have an opinion, based on -- based on existing research done by the impacts on a vessel -- vessel-example basis, but my research services are narrowed to just the three bullets in the current report.

Q So what opinions do you have regarding potential impacts from the Association's requested increase?

A Well, only in reference to the work that's already been done by the PRRC, illustrating the impacts of the rates on specific vessels as examples of how it would raise -- it would raise costs and by how much for shipping companies.

Q Well, that data is just going to say what it says, right?

A Yes.

Q So you would just be reading off of the Investigative Committee's work product. Would that be the extent of your opinion?

MS. HEETER: Object to the form.

A I'm not sure that -- how that would -- I'm not sure how that would -- I'm not sure yet how that would play out, per se, or how that would -- how that form would be presented.

Q Do you have an independent --

A Presented.

Q Do you have an independent expert opinion that assesses the potential impacts from the Association's requested increase in rates?

A I do not have an independent -- I'm not doing any independent research on the rates -- the impact of the rates.

Q I didn't ask about research, I asked about an independent opinion.

A So do I have an independent opinion about the impact of the rates?

MR. PAGE: Would you please read back the question.

(The reporter read as requested.)

THE WITNESS: Not in -- the way that's confirmed, I will not have an independent

opinion. I will just refer to the PRRC's findings.

Does that answer your -- I'm sorry if that doesn't -- does that answer your question? The answer would be no.

BY MR. PAGE:

Q Yeah. Okay.

I mean, the PRRC, or the Investigative Committee, made their own independent findings, right?

A Yes.

Q And you can read the PRRC's in the notice of intent and you can read the Investigative Committee's in their report, right?

A Yes.

Q So other than being able to read those, like I could also do, are you going to be expressing any opinion regarding what those documents say in terms of potential impacts from the Association's requested increase in pilotage rates?

A With respect to the impacts to vessels and the -- I will -- I will refer to their findings.

Q So you will not have an independent expert opinion in that regard?

A Correct.

Q Hopefully this one will be a little bit easier.

Your prior report regarding research services referenced review and prepare a commentary on the, quote, fair, just, and reasonable, closed quote, criteria within Section 310.1513 Florida Statutes. You are no longer doing research services in that area. Is that correct?

A Not specifically. I will be providing an opinion about how rates -- what is a fair and reasonable rate from the perspective of the net income per pilot.

Q How does that work?

A The net income per pilot is not the only criteria used to determine a rate.

Q Say that again, please.

A So I will be providing commentary on fair, just -- actually, let me read the question, sorry. Or read the statement.

I will not be providing an opinion about this.

Q Okay. Thank you.

Do you have any documents with you today?

A I have my report, and I have a printout of the Nexus Economics report that was provided at

the last -- the July deposition.

Q That was provided to you by counsel; yes?

A Provided by, yes.

Q Not by me, by the attorneys for the Petitioners, right?

A No. This version, I believe, was -- maybe it was actually. I don't remember who gave it to me, but I remember receiving it at the deposition.

Q Okay. You had received it before then, correct?

A Yes.

Q From counsel for the Petitioners; yes?

A I have an electronic version, yes.

Q When were you retained to be a rebuttal expert regarding the Nexus Economics report?

A I do not recall the specific timing. I believe it was in the overall conditions of my work -- the overall services that I was providing for this -- this case on behalf of the Petitioners.

Q Well --

A I don't have a specific timing.

Q When you executed your engagement agreement back in February 21st of 2024, you didn't even know that Nexus Economics was going to be

rendering an expert report, right?
A Correct.
Q And you didn't get that report until the week of your deposition on July 26th, correct?
A Correct.
Q Were you retained -- or did part of your scope in your retention as an expert include providing rebuttal expert work as to the Nexus Economics report before or after your July 26 deposition?
A There was no amendment to my contract, so there's no explicit reference to Nexus Economics in review of that report --
Q When were you asked --
A -- per my request.
Q When were you asked to testify as a rebuttal expert as to the Nexus Economics report?
A I don't remember the exact date, but I was verbally asked to provide an opinion about that report.
Q Give me an idea of the date, please.
A Within probably around the time that I received the report.
Q Okay.
A In fact, probably -- when I received the

report, in fact, give or take.

Q Okay. Which I believe was the Monday before your July 26th deposition, right?

A Yes.

Q Okay. And just to clarify, because I thought I heard you say this -- well, never mind, that's fine.

MR. PAGE: Pull up 310.151, please. The first page of it towards the bottom.

BY MR. PAGE:

Q So what you -- a minute ago you said what you would not be expressing an opinion regarding was the fair, just, and reasonable criteria within Section 310.151(3) Florida Statutes, correct?

MS. HEETER: Object to the form.

BY MR. PAGE:

Q Did I restate your testimony correctly?

A I -- that I explicitly -- that -- can you -- that specific language, yes, I confirm, but I will still provide, just to clarify, an opinion about whether or not the rate is fair, just, and reasonable from the perspective of net income. I just want to clarify that.

Q Is that the only perspective?

A That's the main perspective I'm offering,

is with respect to net income.

Q Well, I need to know if there's more than that one. So is it -- you know, if there's some minor ones in addition to that main one, I need to know what they are.

So are there any other perspectives that you're going to be providing an opinion on as to the rates being fair, just, and reasonable, other than the perspective of net income?

A I also comment on the workload, and that's provided in the report as well, but that all is used to -- well, I should say that I'm also commenting on the workload as well. I don't recall if that's an explicit criteria in the -- in the statute. I believe it is, but I will speak on it.

Q Okay.

MS. HEETER: Do you mind maybe scrolling down a little bit past the part of the --

MR. PAGE: I will. One, I'm getting there; and, two, this is what was in his draft report, so I'm going to ask him in the order that I need to ask him. And this is what was in that bullet that we just talked about, so that's why we're here.

MS. HEETER: Okay.

MR. PAGE: Sam, will you please go to the bottom of page 2?

BY MR. PAGE:

Q So I need to clarify some things and make sure that your testimony previously is the same as the circumstances now.

Previously we looked at some interrogatories. And you were disclosed as someone who may express an opinion regarding Factors C, which is the discretionary consideration by the PRRC of CPI. Do you recall that?

A Can you scroll down because --

Q Yeah.

A -- I only see A and B right now. Or is this not the same document?

Q No, it's the same document, I just thought you might remember that C is the discretionary one about CPI.

A Yes.

Q So are you still going to provide any opinions regarding C?

A Yes.

Q Okay.

MR. PAGE: Let's go back up to B4, 5, 6, 7, 8. Keeping scrolling down. That's good.

BY MR. PAGE:

Q Are you going to be giving any opinions regarding pilotage rates in other ports?

A I will compare -- I will reference, again, existing research and available resources on pilotage rates in other ports as a reference. Is that -- so with respect to the actual rates, I'm providing an opinion about rates at Tampa, not an opinion about rates at other ports.

Q Okay. And you're providing that opinion regarding rates at Tampa based on what -- from the perspective of net income and potentially your comments on workload. Is that right?

A Yes.

Q Okay. No. 5 there, are you expressing an opinion on that pursuant to your comment about workload?

A Yes.

Q Do you have an opinion on what qualifies as an essential support service for a pilot?

A Under essential support services? I have an opinion about the time spent in total -- the actual amount of time on other essential support services.

Q I'll ask it again. Do you have an

opinion regarding what qualifies as an essential support service for a pilot?

A I have an opinion about some of the things that are considered part of the pilotage workload, but there are other things that I will not have an opinion about.

Q Fair enough.

A And I would have to see what those specific support services are in reference to first.

Q Six, you're going to provide an opinion regarding that, correct?

A Yes.

Q Seven, are you going to have an opinion regarding that?

A Yes.

Q How can you have an opinion regarding individual pilot compensation when you're not building up a model through use of the rates?

A So, I'm sorry, I was thinking about my average. I'm sorry. Let me read it one more time.

I will not have an opinion about any given individual pilot's compensation.

Q I'm going to ask the question again. Again, are you going to have an -- how can you have an opinion regarding the impact the rate change may

have on individual pilot compensation -- actually, let me rephrase it.

Are you going to have an opinion on the impact the rate change may have on average pilot net income?

A Let me amend that now that I understand the question. I believe that would be in the domain of RG, and the -- Mr. Cooper and Mr. Zarate, looking at it, using the model based on the assumptions that are provided to look at what the implications are. So that would be an output of their model, so I will not have an opinion about that.

Q Okay. So do you have an opinion on any of Factor No. 7 there?

A Only that -- I will not have an opinion. I will defer to the results of their modeling for that one to see what the implications are -- based on a rate what the implications are for net income per pilot.

Q So is that a no, you will not have an opinion on that Factor No. 7?

A That is -- only to the extent that I will look at the results that are provided from the modeling and provide review and input into the model, but I will not -- the end results will be an

output of their model, so the answer is no.

Q Thank you.

Are you going to have an opinion regarding projected changes in vessel traffic?

A That would be Dr. Kemmsies. So I will -- I will -- I support his work, but that will be his opinion.

Q Are you going to have an opinion regarding special characteristics, dangers, and risks of the particular port here, being Tampa Bay?

A No.

Q Okay.

A Let me refine that. I do compare Tampa Bay with other ports with respect to vessel traffic and tonnage and other -- whether or not, for instance, they -- other ports -- you know, the types of activities at the port. So I will speak to the characteristics of Tampa. I will not speak to the dangers and risks of a particular port.

Q Okay. Any of the other factors of these 12 that you're going to be rendering an opinion on? We'll scroll up if you need us to.

A No. No.

MR. PAGE: Scroll up and show him No. 1 and No. 2, please.

BY MR. PAGE:

Q Okay.

A So I will not have an opinion about No. 1. Is it -- I'm sorry, maybe I'm jumping ahead here.

Q No, no. I asked you about all the factors, and I just asked Sam to scroll up so you can see No. 1 and No. 2, because when you previously answered no, you weren't going to have an opinion on any of the other factors, I wanted to make sure we showed you all 12.

A Uh-huh. Okay.

Q So are you going to have an opinion on either No. 1 or No. 2?

A No.

Q Okay. Thank you.

MR. PAGE: You can take that down.

BY MR. PAGE:

Q Have you created any work product regarding your retention as a rebuttal expert as to the Nexus Economics report?

A Not any work products. I've taken notes.

Q Okay. And when you take notes, are you talking about taking them electronically or writing them down?

A I just write them down or -- actually, I -- I do write them down. I type them electronically as well.

Q Have you provided those to counsel for the Petitioners?

A No.

Q Do you have any other work product besides those notes that you've typed up as to the Nexus Economics work as a rebuttal expert?

A I submitted questions to counsel for the deposition.

Q And were those questions based upon your review of the Nexus Economics report?

A Yes.

Q Are you going to be providing a written report as a rebuttal expert to the Nexus Economics report?

A No.

Q Are you certain of that?

A That's my understanding, is I will not be submitting a report.

Q So what is your understanding of the capacity in which you're going to be serving as a rebuttal expert to the Nexus Economics report?

A When asked a question during deposition

or at trial to relate it to that report to provide an answer verbally.

Q Have you completed your review and analysis of the Nexus report?

A I have reviewed the main report, yes. I have not -- I have not -- most of my commentary, which I mean the body of the report, not the technical addendum, so yes.

Q So you have completed your review and analysis of the report as we sit here today?

A Yes.

Q When did you complete your review and analysis of the Nexus Economics report as a rebuttal expert?

A Probably -- I reviewed it and then I reviewed it some more after his deposition -- Mr. Zarumba's deposition. So within, I'd say -- I reviewed it and probably finished it like about a week ago.

Q So at that point about a week --

A I started to review it --

Q Sorry.

A -- before his deposition.

Q And then at that point about a week ago, you finalized your opinion in that regard?

A Yes.
Q Okay.
A That's just a guess, but roughly.
Q Okay. Thank you.
Since your prior time as a deponent on July 26th, have you spoken with anyone specifically about either that deposition session or this deposition session?
A Only with Petitioners' counsel and Dr. Kemmsies, and also Mr. Zarate.
Q And what did you speak with Mr. Zarate about?
A Well, let me -- sorry. To clarify, are you asking specifically about Nexus Economics -- the Nexus Economics report or just in general terms, or anything related to this -- to this case?
Q Okay. Thank you for asking me to clarify.
I'm asking whether you had conversations with anyone regarding either the outcome of your July 26th deposition session or today's deposition session.
A We debriefed on -- or we talked about, I should say, the last -- about the Zarumba deposition.

Q I was asking you about your deposition.
A We did talk about my deposition, just a debrief and next steps.
Q Who is "we"?
A So like the -- with counsel.
Q Ms. Heeter, Mr. Manson. Is that correct?
A Yes.
Q Anyone else involved in that discussion?
A Dr. Kemmsies would have been part of those conversations, too.
Q What did you all discuss?
A The need to finish the report and the preparation, just planning for this deposition, as well as we do like a weekly check-in just to talk about anything that needs to be talked about. So as I mentioned, I submitted questions for the deposition.
Q So what preparations and planning did you do for today's deposition?
A I finished the reports. So I finished the report yesterday. That was most of my time, was preparing to finish the report. And then to make sure that I'm up to speed, you know, on all of the aspects of the report.
Q Were you given a deadline for completing

the report?

A Yesterday.

Q Between your last depo session on July 26th and completing the report yesterday, how many hours did you spend on this matter?

A I would have to look back at my time sheets to give you an answer. I don't recall right now.

Q Do you have an estimate?

A I would prefer not to speculate or guess, I would rather just give you an actual number -- or a closer number based on my time sheets.

Q When we take a break, can you find those time sheets and give us that number?

A I think so, yes.

Q Okay. I would like to have a total number. And if possible, I would also like to have a number affiliated with your completion of this report as compared to the time that you spent working as a rebuttal expert on the Nexus Economics report. Will your time sheets allow you to do that?

A I'm not sure my time sheets would allow me to do that.

Q Okay. Well, we'll see what we get. How about that?

A I'd have to go look and see if the information included in my notes helps to differentiate that.

Q Fair enough. We will see what we get.

Did you have any sort of aha moments after your last deposition where you thought, "Oh, I should have said this or thought about that or answered in this way or that way," that would significantly change the testimony that you provided previously?

A I'm not sure about an aha moment, but certainly, because that was a draft product, there were things that I wanted to improve and correct from the last study. But I'm not sure there was a -- what you described as an aha moment. I'm not sure -- I don't believe I had that -- that -- any sort of revelation or aha moment, as you describe it.

Q And what did you want to -- you said improve and something else. I'm sorry, I don't remember the second word. But what about the draft report did you want to spend more time on and change?

A Well, I wanted to get -- I wanted to get more recent numbers and improve the accuracy of net

income per pilot for different pilotage districts. I also wanted to provide more detail on the characteristics of different ports to help provide some understanding of how we opted to choose or focus on other ports -- some ports and not others for the purposes of comparing net income.

So data on tonnage, data on vessels and vessel characteristics, to the extent that we could procure that information from existing sources, such as the Army Corps data, as well as the international cargo data as well from the Census Bureau.

And then going back and, as I mentioned, refining our estimates of the right comparators for net income based on not just the latest reported net income, but also any information available on vessel traffic and other activities that would impact net income per pilot at the given -- at the ports that we looked at.

We also -- I should say, we also removed a table that was a -- just a direct reference to one of the interrogatory responses that showed hours per handle broken out by type of activity, because that was for the purposes of looking at the -- whether or not the 7.5 hours listed per handle included travel time.

And Mr. Law's deposition yesterday clarified that the PRRC does, in fact, view travel time as part of that 7.5-hour number. So we removed, I believe it was, Exhibit 7 in the old report. And, unfortunately, I don't have the old report in front of me, but I believe it was Exhibit 7.

Q And that was Richard Law's deposition yesterday, that was the first time that you had heard that handle time did include that -- the travel components?

A We heard it elsewhere as well. Mr. Fluke's deposition, I believe, also referenced that. It felt like it was unnecessary to include it in the report, particularly after it was reiterated by Mr. Law.

Q And did you hear it from the captains as well?

A I would have to go back and look at the depositions from Captain Rose and Captain Baker to confirm that.

MR. PAGE: Pull up Rose's transcript, please.

BY MR. PAGE:

Q You attended Captain Rose's deposition;

yes?

A I did.

MR. PAGE: Go to page 18.

A Page 18, I'm sorry, of my report?

Q No, no. I'm sorry. I was telling Sam.

A Oh.

Q Go to line 11. All right. Do you see line 11 there?

A Yes.

Q Just read that down through to the bottom. Let us know when you're done and we'll go to the next page.

A "Question: So do you recall" --

Q No, no. I'm sorry. Read it to yourself.

A Okay.

MR. PAGE: Go to the next page, please.

BY MR. PAGE:

Q I'm going to have you read down to 21. So when you get down to 15, let us know and we'll give you the rest.

A Okay.

Q All right. So does that comport with what you heard from Mr. Law?

A I did not -- that's what I -- what I -- what I heard. I did not attend all of Mr. Law's

deposition, but that is what -- in conversations with counsel is what was reiterated in the Law deposition.

Q Okay. So what I just had you read comports with what you heard that Mr. Law stated in his deposition; yes?

A That -- including -- okay. That including travel time to and from one's home is included in the 7.5?

Q Yes.

A Yes.

MR. PAGE: We'll mark that as Exhibit 25.

(Cohen Deposition Exhibit Number 25 marked for identification.)

MR. PAGE: Go to page 4, please. Go to page 4, please. Oh, you're there. Sorry.

BY MR. PAGE:

Q Do you see that this deposition was done on June 12th, 2024?

A Yes.

Q Your draft report is dated July 8th, 2024?

A Yes.

Q So was it just a situation where you didn't trust what Captain Rose was saying and you

had to hear it from Richard Law?

MS. HEETER: Object to the form.

A It was part of the overall revisions to the report. It wasn't a matter of who I trusted, it was the cumulative amount of statements that it became unnecessary to include it in the report.

Q So it wasn't --

A In the draft.

Q It was not sufficient, it wasn't cumulative enough for you to have heard it from just Captain Rose. Is that right?

A It was reported verbatim from the interrogatory response. And I don't recall the exact one, but it's listed in the draft report, I believe, which specific interrogatory response that is sourced from. But it was -- it was unnecessary to include it. It was just context. So it was deemed unnecessary to include it in the final report.

Q Why was it deemed necessary to include it in the draft report of July 8th?

A It was a draft report, and it was -- we included information that maybe that we deemed unnecessary to include in a final report, but that's why we put "draft" on it.

Q So will you agree with me then that the time that we spent during your prior deposition or the time that I spent preparing for your prior deposition or this deposition, that concern for that topic was pointless?

MS. HEETER: Object to the form.

A I don't recall that we spent time specifically on that table.

Q Okay. Taking --

A I could be wrong, but I don't recall.

Q You could be right.

But taking that as true, as we sit here today, there's no reason for us to discuss that table. Is that right?

A That's right. We still discussed the 7.5 hours, but that table shows 9.5 hours, and so we deemed it unnecessary for inclusion. So we do not need to talk about that, in my opinion.

Q Okay. Based on the work that you've done, is it your opinion that the Tampa Bay pilots have been overpaid for the last few years?

A I don't have an opinion about whether or not they've been overpaid.

Q Your prior report said that the Tampa Bay region has a much lower cost of living compared to

other pilotage districts, such as San Francisco, Los Angeles, and Seattle, using a regional price parity index published by the U.S. Bureau of Economic Analysis.

The current target net income per pilot for the Puget Sound pilots of $475,733 would be equivalent to $417,200 in the Tampa region. Nearly 10 percent less than what the Tampa Bay pilots earned per pilot in 2021.

When I read that, I think that you are saying that the Tampa Bay pilots were overpaid by 10 percent. Am I wrong in my takeaway from what I just read?

A So that statement is to illustrate differences in prices and the cost of living and what it means to make a certain amount across different regions. But there are a lot of other factors that play into the appropriate income in determining what is an appropriate income for pilotage.

And there are no -- there are lots of variables that have to be considered. So that was just one example. I'm not making a statement about whether or not they are overpaid.

Q Well, you adjusted the Puget Sound number

to Tampa based on a regional price parity index, correct?

A Correct.

Q And then you said that that is nearly 10 percent less than what the pilots earned per pilot in 2021, right?

A Yes.

Q That leads me to believe that you think they were overpaid in 2021. Am I wrong?

MS. HEETER: Object to the form. And asked and answered.

BY MR. PAGE:

Q Am I wrong?

A I think that's -- that's a way to interpret that statement.

Q How else would you interpret it?

A I interpret it as that's one example or one reference point to look at income and look at net income per pilot.

Q Besides --

A And the nature -- pilotage might be different, but we know the nature of pilotage is complex and different across different regions.

Q So --

A So --

Q I'm sorry.
A I'm sorry. Go ahead.
Q Is it correct to say that the only variable that you took into consideration was the regional price parity index?
A With respect to determining the difference in prices or in terms of determining what's an appropriate income per pilot for Tampa?
Q The latter.
A We also considered -- well, you first have to consider what are the appropriate comparators?
Q Once you got those comparators, and once you got net income numbers from those comparators that you considered to be reliable, your only adjustment was to apply a regional price parity index. Is that right?
A That's correct. That is correct.
Q So --
A Once we applied the other variables and criteria that helped us to identify what are the appropriate comparators for net income -- for the purposes of net income comparison.
Q And what was your basis to determine that particular ports, as expressed in your final report,

that -- what were the variables that you relied on to determine that they were comparable?

A We looked at marine cargo -- so these are the variables that were stated before, so marine cargo --

Q Okay. You don't need to do it again. I gotcha. I remember that testimony.

A Uh-huh.

Q Thank you.

A Uh-huh.

Q Once you did that, though, and you had a net income figure that you deemed to be reliable, the only variable from that point was the regional price parity index; yes?

A Yes.

Q Okay. Is that Puget Sound pilots' number of $475,733 actual net income?

A That's targeted distributed net income, determined by the Washington State UTC in the fall of 2023.

Q And correct me if I'm wrong, but that UTC identifies a target net income, they do not identify fair, just, and reasonable rates, correct?

A I'm sorry. There was some noise. I didn't hear the last part of your question.

Q Correct me if I'm wrong, but the Washington UTC considers target net income, but they do not consider fair, just, and reasonable rates. Is that correct?

MS. HEETER: Object to the form.

A I believe that language is actually in the legislation for setting pilotage fees for Washington State, but I would have to go back and refer to that legislation to --

Q Let me ask it differently.

A Sure.

Q You're familiar with the process in Washington for setting pilotage rates; yes?

A Yes.

Q You actually did a fair bit of analysis in the 2018 report as to the method that existed at that time, correct?

A Yes.

Q You suggested an alternative method that, in fact, has now become the law of the State of Washington, right?

A Yes.

Q And that's expressed in the statutes of the State of Washington; yes?

A Yes.

Q The direction to the rate-setting entity, the UTC, is that the rate-setting entity sets a targeted distributed net income, right?

A Yes.

Q They do not set fair, just, and reasonable rates, correct?

A I -- and, again, I'd have to go back and read the legislation, but I believe that the targeted distributed net income per pilot is a consideration, it's an input they then used to determine the appropriate rates.

The UTC ultimately decides what the rates should be. And those rates should be fair, just, and reasonable, I believe is the specific language, but I'd have to go back and check.

Q That's fair --

A So target income is a consideration that they determine, and then is then used as an input into setting the rates.

Q Fair. And I think you are correct.

My point is they identify a targeted distributed net income, and from that rates result. Is that right?

A That is a -- yeah. I believe there might be other factors as well, but that is a factor in

their -- in their decision-making process.

Q The targeted net income comes before the determination of what the rates will be; yes?

A That is my understanding, but, again, I'd have to refresh on specific law in Washington.

MS. HEETER: Are you guys at a good breaking point for five minutes? I know I came in, so I don't know how long you guys have been going, but I think it's been about an hour.

MR. PAGE: We can wait five, yeah.

THE WITNESS: Okay.

(Recess from 3:44 p.m. to 3:51 p.m.)

MR. PAGE: Back on the record.

BY MR. PAGE:

Q Did you have an opportunity to look at your hours in terms of work spent on this project?

A Oh, maybe the next break. I'm sorry, I went to use the bathroom.

Q Okay.

A And I neglected to do that. But please remind me at the next break to do that.

Q All right.

A Or is it possible to send it afterwards because it might take some time?

Q Let's see if we can get it while you're

under oath. So we'll look for it during a break.

You have in your --

MR. PAGE: Put up the July 8 report, please.

BY MR. PAGE:

Q I am going to have to work off this because this is the one that I've been working on since your July 26th deposition, and I just got your final report this morning.

So go to page 3, the bottom. All right. Do you see that comparison of other maritime industries and professions there?

A Yes.

MR. PAGE: And please show him Exhibit 1, Sam, on the next page.

BY MR. PAGE:

Q And were you looking at these wages from workers in connection with the statutory factor regarding prevailing compensation available to other individuals?

A Yes.

Q Okay. Anybody on that list that we're looking at in Exhibit 1 have comparable professional skill and standing as that sought in pilots, any of those categories of people?

A So before I answer, can I provide a clarification?

Q I would rather have an answer and then a clarification.

A Okay. Well, the answer is reflected -- I don't believe -- I want to make sure that we're talking about the same thing with respect to people. So there are two ways that employment is reported. There's employment reported by industry and employment reported -- I'm speaking specifically about federal public data sources. So there's employment reported and wages reported by industry and employment and wages reported by occupation.

So in this chart, or table, this is by industry, so the NAICS code there stands for North American Industry Classification System. So these are all the workers employed in that industry and with the wages in Florida.

So if you look at the top row, deep sea freight transportation, that includes people, let's say, who are captains and first, second, and third mates, as well as, you know, people who might work like -- you know, chief engineers, first, second, and third assistant engineers, wipers, boilers, all those kinds of occupations that are involved in deep

sea freight transportation, but it also includes people who might be accountants for the company that does that work or the custodian at the headquarters. So that's what -- I want to be clear about what this -- what this shows.

So with deep sea transportation, that is indeed a comparable industry to pilotage. In fact, pilotage might technically be classified among one of these industries as well, but I do believe these are comparable maritime activities.

The ones that are most comparable would be the first one, so deep sea freight transportation. Also deep sea passenger transportation, which would include cruise ships, Coastal and Great Lakes freight transportation, which would include tug and barge operations, as well as some non-type of barge, containerized Jones Act shipping activities. Also Coastal and Great Lakes passenger transportation, so any sort of coastal, like, ferry operations, for instance.

Inland water freight transportation would include barges going up the river. And then it's possible that we don't have a lot of visibility in -- we don't have visibility into the specific companies, only the aggregations. But it's possible

that some cruise ships might also be classified as scenic and sightseeing transportation for water.

And then navigational services to shipping might include pilotage associations as part of that, but there's other activities as well like tug and tow operations.

Q Can you --

A The second difference is that these are covered jobs. And what I mean by that is these are jobs among employers. So the pilotage association staff might be counted here, but the pilots are not captured in this data because they're independent contractors. So that's the -- I just want to be clear about that distinction to your question and clarification.

Q Are the -- so you said pilots would not be included, correct?

A Right, because this is based on what we call covered employment --

Q I --

A -- so it's only people who are employees.

Q I understand. I'm really trying to be as expedient as I can be. So if you could just let me ask the question and just answer the question, that would be perfect.

But you did say that staff of the pilots association could be included in one of these categories potentially, right?

A Yes.

Q Do you consider that staff to be of comparable professional skill and standing as that sought in a pilot?

A No.

Q Do you consider accountants to have comparable professional skill and standing as that sought in pilots?

A No.

Q What positions specifically within what we're looking at in Exhibit 1, that I believe is inclusive of something like 35,000 employees, what positions would you consider to be of comparable professional skill and standing as that sought in pilots?

A So, again, to clarify, these are not positions, these are total employment. So someone does not have the position of deep sea freight transportation, that's the industry that they're in.

Q I --

A So the average wage in 2022 for deep sea freight transportation, which would include captains

and mates, is $107,306. So this is not based on professions, this is based on comparable industries.

In the new report, there is additional information broken out. And like you have it up here, thank you, for the occupation of captains, mates, and pilots of water vessels, and that's also in the new report on page 2.

Q Okay. Well, I haven't looked at it, so this is what I got. And this I got from your prior testimony regarding your July 8th report.

MR. PAGE: So let's mark this as Exhibit 26, please.

(Cohen Deposition Exhibit Number 26 marked for identification.)

BY MR. PAGE:

Q And this is a U.S. Bureau of Labor Statistics document regarding occupational employment and wage statistics for the captains, mates, and pilots of water vessels. And that's what you referenced in your July 8 report, correct?

A This is the other way to look at the data based on actual occupations irrespective of what industry they're in.

Q Okay. But it is the same captains, mates, and pilots of water vessels data, just looked

at from a different perspective. Is that right?

A I don't follow your question. As compared to what?

Q In your July 8 report, you refer to the occupational category of captains, mates, and pilots of water vessels, correct?

A Yes.

Q So we went to the U.S. Bureau of Labor Statistics and we pulled up what you are looking at right here --

A Yes.

Q -- which concerns captains, mates, and pilots of water vessels --

A Yes.

Q -- from May of 2023, right?

A I believe my report might have had -- I don't recall if I used 2022 or 2023. The new report uses the latest data for 2023, so it --

Q I will represent to you that in your July 8 report you used 2023.

A Okay.

Q Based on that --

A Then that would be this data.

Q So based on that, the data that we're going to see in this document that we have up on the

screen is going to be reflective of what was contained in Exhibit 1 of your July 8 report, to some degree; yes?

A Not exactly, because again, these are two different ways to look at employment. If you're a captain of a -- I'm just making an illustrative example of whether this is accurate or not. But if you're a captain of an oil tanker or a vessel that's owned by an oil company, then that job will not show up in this data -- or sorry, in the employment data.

So it's possible that there's certain types. In the same way, if you're a captain of a ferry, but that ferry is a public ferry run by the state government, that state government industry is not captured in the industry.

So, again, these are two different ways to look at employment and wages, and they don't exactly speak to each other. You cannot assume that all the captains, mates, and pilots are captured in the industries that are presented in that table.

Q Okay.

A It's mostly likely for those in Florida, that they are represented, but there's possibly others that are not.

Q Okay. That employment number down there,

34,520, do you see that?
A Yes.
Q That's how many people are in this captains, mates, and pilots of water vessels compilation of information, right?
A That's how many people are employed in the occupation of captains, mates, and pilots.
Q Right. Got it.
A Which is different from the industry.
Q I understand.
MR. PAGE: Let's go down to this box here.
BY MR. PAGE:
Q So here we're looking at a variety of industries, under the heading, "Industries with the Highest Levels of Employment and Captains, Mates, and Pilots of Water Vessels." Do you see that?
A Yes.
Q And, "Support Activities of Water Transportation" is the first industry identified; yes?
A Yes.
Q And there are 8,540 employees in that industry; yes?
A Yes.

Q And an annual mean wage of people in that industry, those 8,540, is 103,690; yes?

A Yes.

Q Can you tell me whether that support activities for water transportation industry contains a single state-licensed pilot?

A Well --

Q Yes or no?

A I -- I'd have to make sure I understand your question. So let me restate to make sure I understand it.

So you're asking me if that category of support activities for water transportation includes people who might be a state-licensed pilot?

Q I'm asking you if the 8,540 employees identified in this support activities for water transportation, if you can tell me one way or the other if they contain any state-licensed pilots.

A They should not contain state-licensed pilots, because this data is also based on covered employment.

Q Thank you.

MR. PAGE: Let's look at this one. Scroll down, please, to the bottom of the first page, bottom of the first page and beginning at

the second. Keep going. Keep going. A little bit lower.

BY MR. PAGE:

Q You see it listed there under occupations, we've got top executives, we've got marketing managers, we've got operations specialties managers. Do you see those?

A Yes.

Q That last one, operations specialties managers, 2,224 folks in that category; yes?

A Yes.

MR. PAGE: Go to the next page.

BY MR. PAGE:

Q Do you see we've got transportation, storage, and distribution managers?

A Yes.

Q Business operations specialists?

A Yes.

Q I could go on for a long time and I could pull up a whole bunch more of these links from that prior document. But do any of those people that we've just identified, which constitutes thousands of employees, have in your opinion comparable professional skill and training that is sought in a pilot?

A I would say that the ones that do would be those that have the occupation of captains, mates, and pilots.

Q And where are they identified in these documents? Can you point me to a place where I'm going to have a document like the one that's in front of you up on the screen and you're going to be able to show me where there is an occupation identified that would include state-licensed pilots?

A Well, these, no, none of these would include state-licensed pilots.

Q None of them in any of these industries, in any of these U.S. Bureau of Labor Statistics, correct?

A The only state-licensed pilots that would be captured would be those who are employees. And there are only a few pilotage districts across the country that include pilots who are actual employees, so, for instance, like Los Angeles, Grays Harbor, I believe the Great Lakes.

So there is no -- they have to be an employee to be represented in this data. So state-licensed pilots are technically 1099 independent contractors, from my understanding, so they would not be captured in this data.

Q So none of the Florida state-licensed pilots, correct?

A Correct.

Q None of the state-licensed pilots for the states of the Gulf of Mexico?

A I would have to look. My understanding is that they would not be included in this data.

Q Okay.

MR. PAGE: We're going to mark -- the prior document that was the captains, mates, and pilots on water vessels document, we're going to mark that one 26. And we're going to mark this one, Support Activities for Water Transportation, as 27.

(Cohen Deposition Exhibit Number 27 marked for identification.)

MR. PAGE: Unless somebody tells me I'm getting my numbers wrong. Sam gave me the thumbs up, so I'm going with it.

BY MR. PAGE:

Q Do you agree that pilots represent one of the highest echelons of mariners, requiring years of training and a rigorous selection process?

A Yes.

MR. PAGE: Let's go to that portion of

the July 8 report.

BY MR. PAGE:

Q In this section of your July 8 report, regarding historic inflation and net income adjustments, you expressed an opinion that when comparing annual changes to CPI, one should use annual averages to compute this change between the years 2010 and 2022 since the last rate increase went into effect in 2010.

Do you see that?

A Yes.

Q Is that still your opinion?

A To use an annual, yes.

Q So if I understand that correctly, what you do -- in your opinion, what is the best thing to do is to average the annual CPI changes and then use that average for all the years from the starting year to the end year. Is that right?

A In the comparison of the two years you're comparing, you should use an annual average for each.

Q Let me put it in context. If you're doing CPI calculations for changes from 2010 to 2022, rather than just looking at 2010 and just looking at '22, and seeing what the percentage

change is and applying that percentage, I believe what you are alluding to here is you should take the change from every single year, average those up, and use that average. Is that right?

A No, that's not right.

Q Explain it to me then, because I worked hard on figuring this out and I could not.

A So the -- so if you see the beginning of this paragraph, it says in the Pilotage Rate Review Committee Investigative report, it computed the CPI between January 2010 and the second half of 2022. So you're taking two -- the two data points to compute the change in CPI were from January 2010 to the second half of 2022.

Q Okay.

A And then they applied it to an annual net income per pilot, but we received income throughout the year. We don't just get it in, you know, one lump sum in January of 2010. So one should take the -- if you're applying inflation to an annual income, you should also come up having an annual average for that year, not just January 2010. It should be the average of all 12 months. So January 2010 to December 2010, as an average of the CPI, and compare that with the annual average for 2022.

Does that explain it for you?

Q I believe so.

What you're saying is that you should assess every month within the year to come up with a CPI that you're then going to apply to that dollar amount going forward. Is that right?

A Yeah, you should use an annual average. If you're using an annual average for income, you should use an annual average for the year of that income.

Q This would be much easier if we were in person because I would give you a pen and paper and make you write it down for me.

You make a comment in here --

MR. PAGE: Where is, "It would be more appropriate"? Can you find that and highlight it, find that sentence? There we go.

BY MR. PAGE:

Q Do you see that?

A Yes.

Q So there is a 36,000-dollar difference between 2010 net income per pilot and 2011 net income per pilot; yes?

A Yes.

Q And would you agree with me that if you

start with the 2011 income of $408,000 rather than the 2010 income of $372,000 and you carry it forward for a significant point of time, here to 2022, that that 36,000-dollar difference is probably going to be very substantial once you get to 2022?

A Yes, except for the fact that -- yes, if everything else is to -- if you held everything else constant and you just looked at income for one year and grew it by comparing it with inflation of that period. But we know that income does fluctuate, so we know that the last audited income -- net income per pilot for 2021 was 462. So it's not as if $408,000 versus 372 didn't change.

Q Yeah, but that's not my question. My question is: If your starting point is $36,000 higher and you're carrying it forward for 12 years -- let's just call it ten years so that's a little easier. If you're carrying something forward for ten years, if your starting point is $36,000 higher, it's going to be exponentially larger at the conclusion of the ten years, correct?

A If you choose a different base year that has a higher income and you apply a growth rate to that income, then you will have a bigger income, yes.

Q And if you choose a year that has a lower net income, it will depress that conclusion after ten years; yes?

A If you choose a lower income as your base year and you apply the same growth rate, yes, you'll have a lower income after ten years.

Q And then --

A Assuming nothing else changes.

Q Right, the farther out you carry it, the more significant that gap becomes because it's compounded; yes?

A The further out you go with it -- with a lower base year, you'll have a bigger difference, again, assuming that nothing else changes to influence your net income. So if you held everything else constant, if you had, in this instance, the same rate, the same vessel traffic, the same characteristics, the same number of pilots, and the same inflation, and the same level of -- the same costs over time, then yes, you would see that compounded under that scenario.

Q Right.

And all we're talking about here is taking a net income and carrying it forward to 2022. And in doing that, we're assuming everything else

remains the same, right?

A That's correct. It's just a hypothetical, yes.

Q I understand that.

But I'm just wanting to stick to what we're looking at right here. And what we're looking at is carrying out to 2022, and starting with a net income from 2010 or starting with a net income from 2011, right?

A Yes. So that the --

Q That's --

A -- comments --

Q That's all I needed --

A Okay.

Q -- that I'm correct on that point.

And then I will grant you that there may be some difference that the math would show us in that one year of maybe growth, maybe restriction, we don't know, between 2010 and 2011, right, that could be a variable?

But assuming it's not, when you carry it forward ten years, that difference, that 36,000-dollar difference, is going to be more and more impactful the further out you carry it forward, right?

A And, again, if nothing else changes. But I do think that this -- just to be -- this highlighted statement is a little bit out of context the way it's being framed. So the comment is that the CPI growth rate was used for -- was computed in the PRRC IR, Investigative report, between 2010 and 2022, but it was applied to the 2011 annual income. So that was the reason for the comment here, just to clarify that. It should have been applied to the 2010 income.

Q That's your opinion, and you're entitled to it. But I'm going to -- I am really going to ask you to try to stick with my questions. I mean, we're a mile from done, and all I asked you was, I think, a pretty simple question, where I allowed you to take all of your assumptions. And I appreciate you answering it, but let's just try to stick with answering it rather than giving me a lot of other things that I'm not asking you.

And if I've asked a question that you don't understand, please ask me to clarify it. I understand that you have an issue with it being -- the 2010 number not being used rather than 2011. I have an issue with the fact that the rate didn't go into effect until February of 2010.

So there's no way on earth that the 2010 number is reflective of the new rates that were instituted in February of 2010, but we already talked about that in your last deposition, so I was just following up on the other point.

You testified previously that you believed the 527,000-dollar figure for target net income that you gave to the Petitioners' CPA experts came from this work regarding application of CPI. Is that accurate?

A It came from the -- yeah, it came from not -- the preliminary analysis that went into this report, so yes.

Q And did it come from that preliminary analysis and not the analysis of net income?

A It came from using CPI to look at what would be -- let me correct myself. It came through two directions -- or approaches. It came through comparison of rates -- or I'm sorry, comparison of net income per pilot and using -- growing the 2011 number, which was $408,000 per pilot, growing that based on inflation. And as it happens, those two numbers coincided at about $530,000.

Q Can the PRRC base its determination of fair, just, and reasonable rates on an application

of CPI?

A I do not -- I believe it's a consideration, but it's not a determinant. I'd have to go back and review the language.

Q I will represent to you that at the conclusion of 310.151(5)(c), it states that the committee shall not use it, being the Consumer Price Index or other comparable economic indicators, the committee shall not use it as the sole factor in fixing rates of pilotage.

Does that sound familiar?

A Yes.

Q Okay. In terms of this 530,000-dollar figure that we're seeing here, however you derived that number solely through application of CPI to a historic net income number, correct?

A Correct.

Q Have you given the Petitioners' CPA experts a number besides the 527,000-dollar figure we discussed the last time you were deposed?

A I have not.

Q Are you going to?

A Once I -- I can provide them with a range of possible inputs, so that would be one, yes.

Q Do you have an opinion regarding whether

it is appropriate in applying CPI in this proceeding to use a regional CPI or a national CPI?

I believe in your last deposition you said you would have to think about it.

A I think it's --

MR. MANSON: This is Doug. We've been off the depo. The power died here at the office. So we -- if you could just give us a minute. The power just snapped back on. I don't know what transpired in the depo, but we were trying to call you and text. We couldn't get through. We couldn't even get through to your office. We thought maybe your power was off, but apparently not.

MR. PAGE: I apologize. I was looking at documents and listening to Mr. Cohen.

MR. MANSON: No problem. I figured you were in the midst of -- you know, I would be the same way focused. Give us five minutes, take a five-minute break and we'll be back up.

MR. PAGE: Okay.

(Recess from 4:23 p.m. to 4:32 p.m.)

BY MR. PAGE:

Q Okay. There was a question pending whether or not in your opinion it's appropriate to

apply regional CPI or national CPI in this proceeding. That was something that I believe last time you testified that you would have to give some thought to. Do you have an opinion on that, Mr. Cohen?

A Yeah, I think it would be fine to apply regional CPI.

Q Okay. The question asked previously that we've come back from a break once or twice and followed up on was the hours that you've worked on this project since your deposition session of July 26 and today. Do you have a figure for that?

A So I don't have an exact figure, but I can give you -- I'd have to go back -- well, if you're looking for total hours, I will have to spend some time going through my time sheets, which I can't do quickly over a break because I -- a lot of my entries -- well, I take it back.

I can go through and give you a total number of the hours I worked since that last deposition. I'll have to go through the timestamps for my entries. So I can give you that, but I just need a little bit of time to do that.

Q Okay. If you would, please, get that information and pass it on to me through your

counsel, I would appreciate it.

A Yes.

MR. PAGE: All right. Let's pull up 19.

BY MR. PAGE:

Q Sorry, I'm having to move things around.

So around the time my clients submitted the application in the second half of 2022, the regional CPI in the Tampa Bay region was 10.3 percent. Is that right?

A Yeah. Annually, yes.

Q Okay. And the projection -- or I guess actually this is historic information from your document. So the actual from 2022 to 2023 in the Tampa Bay region is 6.8 percent, right?

A Yes.

Q So with those two numbers in mind as being the inflation that was being experienced in the Tampa Bay region at the time, would you consider it to be reasonable to have a first-year rate escalator of 6 percent?

A At the time, for the first year, I think it would be -- for the first year, I think it would be reasonable.

Q Okay. And then when you look at the regional CPI from 2011 through 2022, you're looking

at 2.9 percent on your document here; yes?

A Well, let me -- I'm sorry. Let me correct that statement. So that's assuming that the rate doesn't -- the rate structure doesn't change, but if the rate structure itself already increases revenues significantly, then I don't think it's -- it's certain that it would be appropriate to apply an inflation adjustor -- or an inflation adjustment.

Q If the rate structure increases rates to a point where they're compatible with other rates for professional services in 2022 versus 2011, then wouldn't an inflator -- or an escalator based on inflation make sense?

A If -- if you had the same rate structure and you did not change the rate structure and you simply applied an escalator, then that would be appropriate, or it could be defensible, to do that to capture inflation. But you're also changing the rate structure itself, so it's not easy to say that it would be appropriate in that year to apply an inflation adjuster.

Q If the new rate structure does not account for inflation, would it be appropriate to have an escalator based on this regional inflation data?

A I think it would be appropriate in the future potentially to have some sort of adjuster that reflects inflation. But, again, just to be clear, the revenues that are earned are a function of many things, not just -- inflation is one.

Q Well, the only thing that's getting escalated here are the rates, correct?

The only thing that like directly gets escalated are the rates in the tariff structure that's being challenged, right?

A The only thing being escalated here is the rates.

Q Okay. And if the -- if the rate escalation in setting the new rates does not account for inflation, then would it be appropriate to have an adjustment of 6 percent in the first year based on this regional CPI data that we're seeing for 2021/2022 and 2022/2023?

A You know, I think that -- if -- again, because you're changing the rate, the changing the rate is already increasing the revenues by a significant amount compared to 2010, potentially more than what was lost due to inflation. But for the future, I think it would be defensible to include some sort of projection of inflation and

potentially an escalator to reflect that projection.

Q So if the new rate structure goes into effect, it does not account for inflation, and there is an inflation-based escalator, you think that is indefensible?

A I think that --

MR. MANSON: Object to form.

THE WITNESS: I'm sorry.

MR. MANSON: Go ahead.

A I think that if the rate structure did not change, then it would be defensible given to adjust the rates based on inflation. But the rate itself is changing significantly because of the new rate structure and resulting revenues from that new rate structure, that I would wait a year after the rate goes into effect and then I would potentially make an adjustment based on inflation.

Q If the new rate structure does not take into account inflation in setting the new rates, is it appropriate to have a new rate structure and an escalator based on inflation given the data that we're looking at on the screen?

A I think that, again, there are a lot of factors that go into the revenues. So if you held everything constant, it would be potentially

defensible to include an escalator to reflect increased costs to perform pilotage services in the future. So not the first year, but subsequent years.

Is that -- I'm sorry I'm being -- I'm not trying to be evasive, I'm trying to give you what I believe is a defensible answer.

Q Did you understand my question?

A I believe I do understand your question.

Q What do you think my question is?

A You're asking if -- well, why don't you state it back for me.

Q No, I need to know what you think my question is.

MR. MANSON: Object to form.

Answer if you can.

A I believe you're asking me if it's appropriate if there is inflation, to include an inflation adjuster, some kind of adjuster to reflect future inflation.

Q Okay. Thank you. Because that's not what I'm asking.

What I'm asking is: If a new rate structure is put into place that does not account for inflation, based on the CPIs that we're looking

at here on the board, is it reasonable to have an escalator based on inflation in Year 1?

A I believe it would not be necessary in Year 1.

Q Do you --

A In Year 2, after you've had a year go by of inflation then in projecting it forward, so Year 2 would be appropriate.

Q Do you understand -- do you understand that my question is premised upon the new rate structure not taking into account inflation?

A I do understand that.

Q So if the new rate structure does not take into account inflation in the CPIs that we're looking at here up on the board, you think that it is not defensible to have an escalator in Year 1?

A I think the escalator should start in Year 2.

Q Is that a yes?

A That's my answer, it should start in Year 2.

Q You think it's not defensible to have it in Year 1?

A Well, no, it should start in Year 2.

Q So you think it's not defensible to have

it in Year 1?

MR. MANSON: Asked and answered.

A Year 1 is the --

MR. PAGE: No, he's not answered it, Doug.

MR. MANSON: Yes, he has. He said no.

MR. PAGE: No, he didn't. No, he didn't.

MR. MANSON: That's what he said.

MR. PAGE: No, he didn't. And you don't need to testify.

MR. MANSON: I'm not testifying. I'm telling you what he said. The word --

MR. PAGE: No, you're testifying.

MR. MANSON: -- was no and then he explained his answer. That's exactly what happened.

MR. PAGE: No, he didn't.

MR. MANSON: Go through the record. Have her read it back.

MR. PAGE: No, I'm good. Thank you.

BY MR. PAGE:

Q Okay. So you believe that if there's going to be a rate escalator tied to the CPI numbers that we're looking at here on the screen, it should not be in Year 1, correct?

A Correct, it should be in Year 2.
Q Okay. And --
A Beginning in Year 2.
Q Is it defensible to have a rate escalator in Year 1?
A I feel like I've already answered this. The answer is no, it should start in Year 2.
Q Thank you.
MR. PAGE: Pull up Baker's testimony transcript, page 4. Actually, before you share that, go back to the July 8th report, the middle of page 5.
BY MR. PAGE:
Q Do you see that paragraph that starts with, "It is not apparent," Mr. Cohen?
A Yes.
Q Okay. "Not apparent how the pilots arrived at a 6 percent escalator, nor the subsequent 3 percent increase for the following seven years. Firstly, it is unclear exactly what the 6 percent specifically refers to." Do you see that?
A Yes.
Q Is that still your opinion?
A After seeing the public testimony and the deposition, my understanding is the -- the pilots

have stated that the 6 percent is inflation the first year and then the next two years is 3 percent inflation, 3 percent recruitment and training of new pilots.

That is what I -- that is what they have said, but it is not apparent -- I have not seen any data that illustrates where the 3 percent came from for training, how they arrived at that number, nor why it needs to be compounded every year.

Q What do you mean compounded every year?

A Well, because it's a -- it's a -- you're applying 3 percent on top of the previous year, so you're compounding it. So it's not just 3 percent on a constant base. The base that you're applying 3 percent to is growing every year based on the escalator.

Q Understood.

MR. PAGE: Let's pull up Baker, page 31, starting on Line 4.

BY MR. PAGE:

Q I'd like you to read this page to yourself, starting on Line 4. And once you get done with what's on the screen, we'll scroll down so you can see the first line on page 32.

A Okay.

MR. PAGE: Scroll down, please.

BY MR. PAGE:

Q So I believe your testimony was you had seen data or analysis to support in your mind the 3 percent affiliated with adding a pilot. Is that right?

A Yes.

Q But does this testimony make it clear to you that the first year 6 percent increase was based on very high inflation that was being experienced at the time?

A That is what they're saying here, yes.

Q Okay. And then the 3 percent, not the adding a pilot 3 percent, but the 3 percent that is the escalation going forward in time, that, from the pilots' perspective, was looking back at historic inflation in the area, right?

A That is what he's saying, yes.

Q Okay. And per your document, the historic inflation in the area from 2011 to 2022 was 2.9 percent, right?

A Yes.

Q Okay.

MR. PAGE: Take that down.

BY MR. PAGE:

Q Does the Congressional Budget Office come out with an economic outlook for a ten-year period every ten years?

A It's updated every year.

Q The one that I was looking at is the budget outlook 2024 to 2034, that I believe is cited in your materials. Are you familiar with that?

A Yes.

Q Have you looked at any other projections from the Congressional Budget Office from the past?

A I have.

Q What have you looked at from the past?

A I -- just to clarify, are you asking specifically in this case or just in general from my other work?

Q Let's start with on this case.

A For this case only the CPI projections.

Q Okay. From 2024 to 2034?

A Yes.

MR. PAGE: Let's pull this guy up.

We need to mark Captain Baker's testimony as Exhibit 28.

(Cohen Deposition Exhibit Number 28 marked for identification.)

MR. PAGE: This is a document we're

marking as 29, another CBO document, the Budget and Economic Outlook 2014 to 2024.

(Cohen Deposition Exhibit Number 29 marked for identification.)

BY MR. PAGE:

Q Are you with me?

A Yes.

Q Let's go to page -- it's 152 of the document, upper left-hand corner. That's the best I can do. Do you see the "Consumer Price Index" row underneath the "Inflation" heading?

A Yes.

Q And these were projections for what the CBO thought would be inflation for 2013 through 2024; yes?

A Yes.

Q And these are projections by calendar year; yes?

A Yes.

Q Did those 2021, '22, '23 or '24 projections of 2.4 percent reflect at all what was the reality in those years?

A No.

Q They were exceedingly below what was reality in those years; yes?

A They were well below, yes, for certain periods.

Q I believe that in your Document No. 17 -- well, let me ask you this: These are not regional CPI projections from the CBO, these would be national; yes?

A Yes.

MR. PAGE: Pull up 17, please.

Exhibit 17 to his depo. It's the chart.

MR. MOORE: You mean 19?

MR. PAGE: Exhibit 17 to his depo, it's the chart.

MR. MOORE: Oh, yeah.

BY MR. PAGE:

Q Okay. So can you tell me, from this chart, what the national CPI was for -- I can barely see that, for 2021, can you tell me from this chart?

A I can tell you that the change, what would be the -- well, not for -- I can tell you for 2022.

Q And what was that?

A Actually, can you -- do you mind just shrinking it a little bit so I can see the left.

Q Good?

A Thank you. Yeah.

So 2022 was 8 percent.

Q 2023?

A '23 was 4.1 percent.

Q And 2024 is not on here, correct?

A It's -- right, it's just a projection.

Q Okay. So do you have any opinion as to the accuracy of the CBO's Consumer Price Index projections over a ten-year time period?

A So CBO is a variable source that was not good at predicting a pandemic. And I believe that is what we're seeing here.

Q Do you know if the numbers that they put out there for projections for 2014, '15, '16, '17, '18, '19, '20, and '21 were accurate in terms of what the real CPI was?

A I think they might have been a little high.

Q High in their projections?

A Yeah. I'd have to go back and look or we can -- yeah, I'd have to go back and look and compare.

Q Okay.

A But probably within reason or with -- at least up until 2021 -- or 2020, actually.

Q But you haven't looked at that, correct?

A I have not compared it lately, no.
Q Actually take a look at the first page here. Have you ever seen this document before?
A I have not seen this document.
Q Okay. You note there on the top, though, it does refer to itself as coming from the Congressional Budget Office?
A Yes.
MR. PAGE: All right. We're going to mark this 30.
(Cohen Deposition Exhibit Number 30 marked for identification.)
MR. PAGE: And go to page 5. There we go.
BY MR. PAGE:
Q The bottom left there, "Forecast for CPI-U Inflation from May 2022." Are you with me?
A Yes.
Q And you see how we've got a sort of diamond that is CBO's forecast, and then a solid line that is actual?
A Yes.
Q So this document regarding Q2 of 2022 is indicating that, from my opinion, but correct me if I'm wrong, there is a significant -- significantly

lower estimation of what CPI would be for Quarter 2 of 2022 than what it actually was. Would that be accurate?

A It would be accurate that -- yes, that they were -- they under projected in the same way that they over projected on the right, yes.

Q Understood.

So if they're making this forecast in May of 2022, and they're significantly off as to Quarter 2 of 2022; yes?

A They are off in Quarter 2, 2022.

MR. PAGE: Did I say something funny?

MR. MANSON: Oh, no. I'm sorry. I saw something on my phone. I apologize.

MR. PAGE: No, no worries.

BY MR. PAGE:

Q Fair to say that projecting CPI is not a very accurate business?

A Again, I would -- I would want to look at the comparison of the CBO projections before the pandemic. The pandemic caused a lot of -- as you can imagine, a lot of disruption, especially with respect to forecasting, because it introduced a lot of uncertainties that people were not prepared to project and model and estimate on. But it's --

forecasting is not easy. I think that's a pretty straightforward, agreeable comment.

But that's why when I presented the forecast -- or sorry, presented a different -- I presented information on projected inflation, I included multiple sources, not just one. So I also included the International Monetary Fund's economic outlook, and then also two different measures of inflation at the national level published by the CBO.

So not just CPI, but also the Personal Consumption Expenditures Index, which is usually -- that's the -- and that is actually the index that the Federal Reserve uses to determine interest rates, interest rate policy.

Q Did you have anything to do with the vessel characteristics that were used to determine the various tranches of vessels used in Mr. Kemmsies' work?

A I helped him with some of the data, yes.

Q Did you have any decision-making in terms of what vessel characteristics would comprise which tranche?

A No. That was purely based on the -- the -- that was based on the categories that were

presented in the Investigative Committee report.

Q You heard Mr. Kemmsies testify regarding that this morning; yes?

A Yes.

Q And did you -- were you in attendance in looking at the screen when I put up the chart that he said he believed had the vessel characteristics from that Investigative Committee report?

A You mean the table, correct?

Q The table.

A The table and not the ICR report?

Q Fair to call it a table, not a chart.

A Okay. Yes.

Q Okay. And do you recall any other source of information that specifically identified those five tranches and the vessel characteristics that would comprise those tranches?

A Those were the only categories or criteria that I'm familiar with that was used to develop those tranches. And it should be clear that the tranches are -- that's a term that was not in the report -- or not in the Investigative Committee report. That's a term that we used.

Q Okay.

A But it's described as different

categories.

Q Okay. And that's -- that's kind of where I was trying to get. So the tranche concept and the characteristics that cause a vessel to fall into a various tranche is something that you have come up with or you and your team have come up with?

A That was a concept that was developed by RG, so by Mr. Cooper or Mr. Zarate.

Q Okay.

A And then we used that to take the data and group it into those different tranches.

Q Okay. So you or -- Mr. Cooper, Mr. Zarate, being the CPAs that are the experts for the Petitioners here, right?

A Yes.

Q So they came up with the concept of tranches, they came up with the vessel characteristics for each of those tranches, and then they directed you to use those tranches. Is that right?

A Well, yes, but just to be clear, I think we're -- this might be unnecessary to say, but yes, the tranche definitions came strictly from the breakouts presented in the Investigative Committee report.

Q And are those -- the reference that you just made to breakouts, is that the table that I was looking at with Mr. Kemmsies?

A Yes. It has the tranches defined based on length overall, draft, and gross tonnage.

Q Right.

That table doesn't talk about Tranches A, B, C, D, and E, though, right?

A Correct, but it -- it utilizes those breaks that are in that table.

Q Okay. But in terms of taking those breaks, as you called them, which are based on vessel characteristics, and converting those into tranches, that's something that the CPAs -- the CPA experts for the Petitioners did; yes?

A They provided that criteria, yes, based on the -- that table, yes.

Q Right.

But there's nowhere in the Investigative Committee report, that you know of, where the Investigative Committee created those five tranches. Is that accurate?

A Well, I don't -- I mean, the -- the tranche definitions we used are strictly based on those categories and those splits or breaks that are

presented in that table. So, for instance --

Q Okay.

A -- you know --

Q No, I get that.

That was the source of your -- that was the source of your data, correct?

A Not the data, but the source of the criteria --

Q The criteria.

A -- that defined the tranches.

Q Fair. Fair.

So that's the -- the data to provide the criteria for the tranches, but the Investigative Committee itself did not create these as tranches, they just have the data in that table. Is that right?

A They have the criteria presented in the table. I do not recall them actually grouping or organizing, presenting data based on those categories, those criteria. That's what we did.

Q Okay. And by "we," do you mean the CPAs?

A CPAs. But also they gave the criteria, but then we also took the handles data, Dr. Kemmsies and I took the handles data, and reported out the handles data based on those tranches.

Q Okay. And were those tranches ever changed, or once they were created with those various characteristics, they stayed that way?

A I believe they stayed consistent.

Q Okay. So the data comes from the Investigative Committee report, but the concept of identifying these five tranches comes from the CPAs and/or maybe some involvement from you and Mr. Kemmsies. Is that right?

A The criteria came from the report. The application of the criteria to develop tranches was developed by the CPAs. And then the data was organized -- the actual handles data was organized based on that criteria.

Q Thank you. I understand now.

Are you going to render any opinion that disputes that the appropriate handle time to be applied for Tampa Bay is 7.5 hours?

A Yes.

Q What are you going to base that on?

A The data that was provided to us on handles going back to 2016, as part of the pilots' -- Tampa Bay Pilots Association's interrogatory response.

Q Is that your 3.7 number?

A Yes.

Q We spoke earlier about the composition of handle time and you having had it relayed to you what Richard Law testified to regarding the composition of handle time; yes?

A Yes.

Q And we looked at the testimony of Captain Rose, whose testimony comported with what you heard Richard Law's testimony would be regarding the components of handle time; yes?

A So what we heard was that a handle begins with the start of a job. And so that was also Mr. Fluke's deposition, was that a handle is a job, those are interchangeable.

MR. PAGE: Pull up Fluke's, please.

BY MR. PAGE:

Q Did you read the entirety of Terry Fluke's transcript?

A I did.

MR. PAGE: I'm going to mark his transcript as Exhibit 31.

(Cohen Deposition Exhibit Number 31 marked for identification.)

MR. PAGE: Let's go to -- and you're going to have to zoom in a bit, and go to

page 71.

BY MR. PAGE:

Q Do you see Line 15, I believe Mr. Manson was taking this deposition, about asking Mr. Fluke if he knows what the 7.5 hours of handle time includes?

A Yes.

Q And do you see his response below my objection?

A Yes.

Q And his response is that you would have to specifically get that information from one of the pilots, right?

A Yes, I see that.

Q Okay. That's page 71 of his deposition transcript. When you cite his deposition transcript and find error with Mr. Fluke's discussion regarding handle time, I believe you cite page 72, don't you?

A I quote him on page 72, yeah.

Q Okay. So just the page before that he was saying you need to specifically get that information from one of the pilots, right?

A That is what he's saying.

Q Okay. Let's go down to page 72, look at 14 through 20. Do you see the question, "The handle

time is the time that they're actually on the bridge of the ship piloting"?

And the response from Mr. Fluke is, "Let me back up. And the 7.5-hour handle time in the document includes all time on both ends."

Do you see that?

A Can you scroll up a little bit, please? I see that, yes. And then I also see beginning on Line 12, "And handle time is what?" And he answers, "Bridge time."

Q I understand. I'm sure that Mr. Manson will do a very good job of addressing the topic with you when you're on the stand. But you would agree with me that the testimony I directed you to, Mr. Fluke said that the 7.5 hours of handle time includes all time on both ends; yes?

A He says handle time -- he says on both ends, yes.

Q Okay. And we already looked at the testimony from Captain Rose, that similarly to what is stated down there on Lines 14 through 20, where Captain Rose was testifying that the 7.5 hours of handle time includes all time on both ends; yes?

A I believe. I don't remember looking during this discussion. I -- I'd have to go back

and look at that. I know you brought it up, but --

MR. PAGE: Would you pull up Rose, please, page 19. You are going to have to zoom in a bit. There we go.

BY MR. PAGE:

Q And do you see Captain Rose's response regarding the composition of the 7.5 hours of handle time on average?

A Yes.

Q And would you agree that his testimony, as a representative of the Tampa Bay Pilots Association, was the 7.5 hours of handle time includes all of the time on both ends, same as what Mr. Fluke said?

A So I would have to go back and review both deposition transcripts, but I do recall that there was on at least one occasion, if not more, a reference to job time or job and handle being synonymous.

Q And, again, Mr. Manson will have an opportunity at the final hearing to address that with you. But my question to you is what we're looking at up on the screen, the testimony from Captain Rose is consistent with what Terry Fluke said, in terms of the 7.5 hours of handle time,

includes all time on both ends of a job. Am I correct?

A Well, Terry Fluke said two things. He said that a handle time is bridge time, and then he said afterwards that it includes point to point beginning leaving your home. So those are two different definitions of handle time or a handle.

Q I --

A His second statement is consistent with this statement in this one section of Captain Rose's deposition. I would want to go back and review though the rest of his deposition transcript to see, because I do recall that there was reference to handle time and job time being synonymous.

Q The rest of Captain Rose's deposition or the rest of Captain Fluke's -- I'm sorry, Mr. Fluke's?

A Mr. Fluke's and Captain Rose's.

Q All right. But what I've put up here on the screen for you is consistent with the second thing that Mr. Fluke testified to, correct?

MR. MANSON: Objection to form.

You can answer.

A Those are two definitions of -- I'm sorry.

MR. MANSON: No, I said objection to form. You can answer.

A Okay. The two definitions of handle time or handle presented by Mr. Fluke, this statement in this one section of Captain Rose's transcript -- or deposition transcript is consistent with Mr. Fluke's second definition of a handle.

Q And Mr. Fluke said that specifically to get an answer to what the 7.5 hours of handle time includes, that that would have to be information from one of the pilots, right?

A That is what he said.

Q And Captain Rose is one of the pilots, right?

A Yes.

Q Are you going to express any opinion to contest the position that the 7.5 hours of handle time for Tampa Bay has historically been the handle time for Tampa Bay?

A I'm going to contest the veracity of that estimate, yes.

Q Are you going to contest that that has historically been the estimate though?

A I am going to present, based on the data that was provided to us on handles by the pilots,

the interrogatory responses, what the estimated handle time is based on that data, which includes a start time and a finish time for a handle. So yes.

Q Okay. That wasn't my question. My question was whether or not you're going to dispute that historically Tampa has had a 7.5-hour handle time associated with it.

I understand that you are going to use data to do a different calculation and assert an opinion about a different number. I'm not asking you about that. I know where it came from, I know what it is. I have my opinions on it that we don't need to get into.

What I'm asking you, and all I'm asking you, is whether or not you are going to dispute that historically the PRRC has applied a 7.5-hour handle time to Tampa Bay.

A I'm going to dispute that based on the extent of the data that I have, which goes back to 2016.

Q Okay.

A So I know that the -- if I recall correctly, the 7.5 hours has been used in previous -- has been used previously. So I will use -- I will -- I will dispute it based on the data that I

have back to 2016.

Q I understand that, but I'm not asking about what you're going to dispute based on the data. I'm asking whether or not you're going to dispute that a 7.5-hour handle time has historically been applied to Tampa Bay by the PRRC.

A So you're asking -- so let me make sure I understand. You're asking whether or not they have used that number in the past?

Q Whether or not historically that is the number that they have used for Tampa Bay, yes.

A I am not going to dispute that.

Q Thank you.

A I'm not going to dispute that they have used that number before.

Q Thank you.

MR. PAGE: I don't think -- did we mark Rose already? Yeah. Okay.

BY MR. PAGE:

Q Do you know how many hours you've worked to date on this case?

A I could look it up for you. I'm guessing like in the 150 range.

Q Okay.

A I'd have to -- I'd have to look it up. I

can include that in my follow-up e-mail with counsel.

Q Okay. Thank you.

The data that you used to compile your 3.7 number -- do you know what I'm referring to?

A Yes.

Q -- do you know if that data included all of the components that go into handle time?

A That data included job start time and job finish time. My understanding is that it does not include travel time from the home to the pilot station, the pilot boat, but I don't know -- that data does not make it explicitly clear.

Q Does it include the average time on the pilot boat to get to the vessel or to get back from the vessel?

A Again, it includes the start time and finish time, including onboard time after the start of the job, which the way I interpret that was from the pilot boat to the vessel that would be piloted.

Q So you would -- you believe that that 3.7-hour number is inclusive of the time that the pilots spend on the pilot boat?

A That is the way that I interpreted the data.

Q And on what basis did you interpret the data in that way?

A So based on the fields that were included in the data.

Q Okay. So you read those fields, and the ones that you cited -- and we don't need to get into all of the details, but the specific fields that you quoted in your report that comes from the pilots' data, you believe are fields that are inclusive of times that the pilots -- time that the pilots spend on the pilot boat. Is that right?

A Yeah. So in the -- I believe it was TBPA, for example, 000 -- and I think this was -- I forget which one it was for, the last three months of 2023, but I think it was 2676 or 1844, I think maybe it was 1844, includes a job start time and a job end time, as well as fields for, I believe, they had either onboard time or bridge time.

Q Did you review --

A It was onboard dates, onboard time, alongside time, and then finish time.

Q Did you review the deposition transcript of Captain Rose regarding the components of handle time, and specifically regarding the documents that you're referring to and relying on?

A I do -- I just don't remember the details. I'm sorry. I did review his transcript, but I don't remember the details.

Q In terms of the indicators that you were looking at, alongside time, onboard time, things along those lines, did you review his deposition in terms of what he said those things mean?

A I would have to go back and look.

Q So you did or not review the deposition?

A I reviewed the deposition -- I'm sorry, my mouth is dry now. I need some water. I do remember reviewing it, I just do not remember the details. I'm sorry.

Q His testimony didn't change your opinion regarding the contents of the documents that you relied on to get that 3.7-hour number. Is that accurate?

A That's accurate.

Q To your knowledge, is the 7.5-hour handle time that's historically been applied to Tampa Bay, is that a number that is derived by the pilots or by the Investigative Committee and/or PRRC?

A I am -- my understanding is it's from the pilots, but I believe it was either the testimony of Captain Baker or Captain Rose that said that the way

they arrived at it was essentially canvassing the pilots and asking them what was the average handle time.

Q And when was that done? When was that canvassing, as you referred to it, done?

A I don't recall, but I do know that that number has been used for several years. So I would assume it was either done once or it was repeated and the same result came back, but I don't know.

Q And did you review Captain Rose's deposition on that topic?

A I reviewed his entire transcript, but I just do not remember the details.

Q So if he were to have testified that the 7.5-hour handle time goes back to their 2008 application, and it's something that comes from the PRRC, and that the pilots do not create, would that surprise you if that was his testimony?

A That sounds familiar, except that I think I recall that the -- I'd have to go back and look, but I believe the 2008 application referenced 7.5 as coming from the pilots. I'd have to go back and look at that.

Q Do you recall reading his testimony that the 9.5-hour handle time that they came up with was

arrived at after the filing of the application for this rate increase?

A I don't remember that detail. I'm sorry.

MR. MANSON: Eric, is there a good time where he could get some water?

MR. PAGE: Yeah, we're -- yeah. And we should discuss where we're at, because we're not where we need to be at 5:20.

MR. MANSON: By the way, it was a granddaughter picture that was sent to me of her first smile, that's why I was laughing.

MR. PAGE: Good.

MR. MANSON: And so I apologize. It just popped up on my phone.

MR. PAGE: No, no, no, good. Good. I'm happy that --

MR. MANSON: So he's in a different time zone. How much more time do you have?

MR. PAGE: I've got a lot, to be honest with you. I've got a lot. And I have a report I got today that, you know, I've had 20 minutes to look at. And now I think I also have a rebuttal expert that I didn't know I had.

MR. MANSON: A what expert?

MR. PAGE: A rebuttal expert.

MR. MANSON: Oh. I'm sorry, this also should be DOAH. Do you think there's a difference between an expert witness that rebuts other reports than normal? We don't make that distinction typically at DOAH.

We just have experts that look at each other's reports and write their own reports. So I don't really understand that distinction but just trying to make sure.

MR. PAGE: Well, anyway, I think we can move on from that. But no, I got -- I mean, I've got a ways to go. There's not a chance that this finishes within a reasonable amount of time.

MR. MANSON: How much longer do you want to go?

MR. PAGE: Candidly I don't, because it's almost 5:30. And I'm about to jump into an area that is going to take a while. It's basically the comparable ports. And, candidly, I now have a bunch of ports that are no longer included in his report, and I don't know how to deal with that because I haven't had time to figure out how to deal with that. And rather than going through every one of them, I might

want to pare that down. So I don't -- I would prefer to --

MR. MANSON: Our difficulty is that we're running out of time. And not that we can't extend the date unilaterally, you know, the parties, but for depositions, next week is pretty jammed up. So that's the difficulty. I'll work with you if you just tell me what you -- tell me -- ask me what you want to ask me about his depo, and then we'll see if we can go from there.

MR. PAGE: Well, I mean, I need to continue it. I can't possibly get it done today. And on top of that, while he hasn't been going all day, you and I have.

MR. MANSON: Yeah.

MR. PAGE: But let me ask this, Mr. Cohen, do have any dates on your calendar that are an absolute no for you in terms of being able to sit for a continuation of this?

THE WITNESS: I don't know. Let me check real quick.

MR. MANSON: My schedule is also one that has to be looked at, but yes, go ahead and --

MR. PAGE: Yes, I just started with him

since he's our most important.

MR. MANSON: The issue that we have is next week basically. I'm assuming that I can't get it done this week. When would you like to do the depo, Eric? Let's just start from there.

THE WITNESS: Yeah.

MR. PAGE: How do we feel about weekend depos?

MR. MANSON: I don't. I don't do weekend depos.

THE WITNESS: What's a weekend?

MR. PAGE: I couldn't tell you.

MS. STERN: It sounds like Dr. Cohen does weekend depos.

MR. MANSON: We use weekends to get caught up on the work that we didn't get done during the week while we were in depos.

THE WITNESS: Yeah, exactly.

MR. PAGE: Tuesday, the 3rd?

THE WITNESS: Yeah, I can do Tuesday, the 3rd.

MR. MANSON: I can do --

MR. PAGE: You can do that, Doug?

MR. MANSON: Well, I've got mine on

airplane mode, I don't have that flight schedule on my phone.

MR. PAGE: What about the 4th?

MR. MANSON: So how about we did -- we started at -- how many more hours do you think you have?

MR. PAGE: A few.

MR. MANSON: Instead of all day?

MR. PAGE: A few. A few.

MR. MANSON: So maybe if we did like three hours, like 10:00 to 2:00, or something like that.

MR. PAGE: Which day?

MR. MANSON: Tuesday. That's what you wanted, right?

THE WITNESS: Keep in mind west coast time.

MR. MANSON: Oh, I'm sorry. Could we do -- then we could do -- do you want to do 1:00 to 4:00?

MR. PAGE: Does that work for you, Mr. Cohen?

THE WITNESS: Yeah, 1:00 to 4:00 your time, right?

MR. PAGE: Yes.

THE WITNESS: So 10:00 to -- yeah, okay. 10:00 to 1:00. Okay.

MS. STERN: Is it Tuesday, the 3rd?

MR. PAGE: Yeah. Does that work for PRRC?

MS. STERN: Yeah. We have a few questions, nothing that will take 30 -- it'll be 30 minutes at the most.

MR. MANSON: Well, we're going to end the depo at 5:30. If we have to extend it, but I want to go home. I'm ready to head back. Do you just want to do that when we come back?

MS. STERN: Oh, no, I don't mean I should ask them now, I just want to let you know that in addition to the time that Eric --

MR. MANSON: Oh, I see. Okay. All right.

MS. STERN: We will have to tack on some more time for the PRRC.

MR. MANSON: Why don't we do 12:30 to 4:00 then. Will that work?

MS. STERN: Works for me on Tuesday, yeah.

THE WITNESS: 12:30 to 4:00?

MR. MANSON: 12:30 to 4:00.

THE WITNESS: Okay.

MR. MANSON: And, Eric, this is almost going on 12 and a half hours deposing him. I understand what you're saying. You know, I obviously sympathize. I got Mr. Zarate's report an hour before the depo started.

But that will be the last deposition for Mr. Spencer -- for Spencer. Okay? The last four hours -- four and a half hours, or three and a half hours, 12:30 to 4:00 on Tuesday.

MR. PAGE: We'll see you at 12:30 on Tuesday, the 3rd.

THE WITNESS: All right.

MR. PAGE: I appreciate your time. Enjoy the rest of your day.

THE WITNESS: Thank you.

MR. PAGE: Thank you.

MR. MANSON: Thank you.

MS. STERN: All right. Thank you all. Bye.

(At 5:30 p.m., no further questions were propounded to this witness.)

CERTIFICATE OF OATH

I, the undersigned authority, certify that SPENCER COHEN remotely appeared before me on August 28, 2024, and was duly sworn.

Witness my hand and seal September 10, 2024.

Felicia A. Newland
Notary Public - State of Florida
My Commission No. HH 1518663
Expires 4/21/28

REPORTER'S CERTIFICATE

STATE OF FLORIDA:
COUNTY OF HILLSBOROUGH:

I, Felicia A. Newland, certify that I was authorized to and did stenographically report the deposition of SPENCER COHEN; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED September 10, 2024.

Felicia A. Newland

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SIGNATURE PAGE/ERRATA SHEET

WITNESS: SPENCER COHEN (8/28/24)
RE: TAMPA PORT AUTHORITY VS. PILOTAGE RATE REVIEW COMMITTEE

INSTRUCTIONS TO WITNESS

Please note any errors or amendments on this page, indicating the reason for any change you wish to make. Do not mark on the transcript itself. Please sign and date this sheet as indicated below. If additional lines are required for corrections, attach additional sheets.

PAGE	LINE	ERROR OR AMENDMENT/REASON FOR CHANGE

I have read my transcript and subscribe to its accuracy, to include the corrections or amendments noted above or hereto attached.

_____ _____
Signature of Witness Date

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA PORT AUTHORITY, TITAN FLORIDA, LLC, FLORIDA-CARIBBEAN CRUISE ASSOCIATION, PORTS AMERICA FLORIDA, INC., DEL MONTE FRESH PRODUCE COMPANY, AND NETWORK SHIPPING, LTD., INC.,

Petitioners, DOAH Case No.: 23-3937

v.

PILOTAGE RATE REVIEW COMMITTEE, AND TAMPA BAY PILOTS ASSOCIATION,

Respondents.
_____/

VOLUME 3 (pp. 450 - 654)

CONTINUED
DEPOSITION OF: SPENCER COHEN

TAKEN BY: Counsel for Respondents

DATE: September 3, 2024

TIME: 12:33 p.m. to 6:00 p.m.

PLACE: Zoom Videoconference

REPORTED BY: Felicia A. Newland, CSR
Notary Public
State of Florida at Large

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Appeared for Respondent Pilotage Rate Review Committee

ALSO PRESENT:

Walter Kemmsies
Richard Law
Aaron Zarate
George Meros
Captain Thomas Bushy

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The continued deposition, upon oral examination, of SPENCER COHEN, on the 3rd day of September 2024, taken by counsel for Respondents, beginning at 12:33 p.m., reported by Felicia A. Newland, Certified Shorthand Reporter, and Notary Public in and for the State of Florida at Large.

* * * * *

MR. PAGE: Let's go ahead and go on the record. Eric Page here on behalf of Respondent, Tampa Bay Pilots Association, flying solo as of now. I'm not sure if I will have others joining me.

Donna, why don't you go ahead.

MS. MCNULTY: Thank you. This is Donna McNulty on behalf of the Pilotage Rate Review Committee.

MR. MANSON: This is Doug Manson on behalf of the Petitioners.

MR. PAGE: And I believe Mr. Bushy is with your side of things, Donna.

MS. MCNULTY: Yes, that is correct.

MR. PAGE: The EEP screen that you see up there is me. And of course our Class Action Court Reporters' screen is up there as well.

So if everyone is ready, if the court

reporter would please swear in Mr. Cohen, we will get started.

* * * * *

Whereupon,

SPENCER COHEN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PAGE:

Q Good morning to you, Mr. Cohen.

A Good morning.

Q I am going to put up here a notice of deposition.

MR. PAGE: And you all are going to have to bear with me today because my trusty co-pilot, Sam, is not here. So this is not going to be as smooth as it sometimes is, including right off the bat, so hold on. Hopefully you can see this.

MR. MANSON: We see it.

MR. PAGE: Awesome. Success.

THE WITNESS: Yes.

BY MR. PAGE:

Q So this is a Notice of Taking Continued Deposition Duces Tecum. Do you see today's date on

there, Mr. Cohen?

A Yes.

Q Filed back in August; yes?

A Yes.

Q And have you seen this before?

A Yes.

MR. PAGE: We're going to mark this Exhibit 32.

(Cohen Deposition Exhibit Number 32 marked for identification.)

BY MR. PAGE:

Q You understand that's the purpose of you being here today is for this continued deposition and scope of you being retained as an expert for the Petitioners in this case?

A Yes.

Q All right. There is attached to this notice, as there was to the two prior notices, a request for documents section, which we'll get to eventually here. There we go. Have you reviewed this before today?

A I had reviewed it this morning.

Q Okay. Did you produce documents to your counsel to provide to me in advance of today's deposition?

A I did this morning.

Q Okay. Those were not produced to your counsel until this morning?

A I did not read this notice this morning. So, yes, this morning.

Q So yes, this morning in terms of the documents were provided to your counsel this morning?

A Yes, west coast.

Q West coast time. Got it.

And the documents that you provided, were those documents responsive to the requested documents from the session that we had back around August 28th as well?

A Yes.

Q Okay. I got documents, something like within the last hour from your counsel. This appears to be a full-print deposition transcript of Thomas Bushy. Is that something that you provided to your counsel?

A Yes.

Q It's not sharing, though, is it? Hold on. There we go. So this full-print deposition transcript of Thomas Bushy, that's something that you provided to counsel?

A Yes.
Q Is that something that you reviewed in its entirety?
A Yes.
Q And is that something that influenced your opinions in this matter?
A Yes.
Q Generally speaking, in what regard?
A Identification of potential comparator ports.
Q And what potential comparator ports did you draw from Captain Bushy's testimony?
A Everglade -- Everglades.
Q Is that the only one?
A That was, yes.
Q Okay. And anything else from his testimony that influenced your opinions or your report?
A Not that I recall.
Q All right. Well, let me know, as we go through this questioning, if there's anything else that pops into your head. Okay?
A Okay.
Q Do you know if this is the St. Johns Bar Pilot Association?

A Yes.
Q And what is a CIRP document, do you know?
A I -- I don't recall what that stands for.
Q Maybe change in rates of pilotage, CIRP?
A Yes, that's it.
Q All right. I have not used that acronym, so I wasn't ready for that either.
You reviewed this in its entirety?
A Yes.
Q Generally speaking, is there anything you can state from this -- we'll call it the Jacksonville rate application -- from this Jacksonville rate application that influenced your report or your opinions?
A Yes.
Q What was that?
A The timing of the new rates and then target net income per pilot.
Q Are you saying that there is expressed in this application a target net income per pilot for Jacksonville?
A I believe it was in this document. I'd have to go back and check. I believe it -- I'd have to go -- one of the documents included it. It's in my references in my reports. I'd have to go back

and check specifically which document referenced the 549,998 net income projected for 2019. I don't remember if it was this document or if it was in the Investigative Committee report.

Q And is it your understanding that that is a calculation of potential income, or is that an actual target net income?

A And I -- just -- sorry, to correct my statement. I was referencing the wrong number. It was the 563,700, that I was referring to for net income. It was when the -- I believe this document was for when the rate went into effect. That's what this document was used for.

Q So would it be correct to say that in this document, that number is expressed as the potential outcome of application of new rates?

A I believe so; although, may I -- I'm sorry. I have to go back and look at my notes which specific reference this was for, because there's another document. There should be the -- whether it's the 2020 Investigative Committee report.

Q Is this --

A I'd have to go back and look where specific -- what specific information I pulled from this specific document.

Q So is this your highlighting in this document?

A I believe it is, yes.

Q Is that your highlighting that we're looking at right there under the No. 4, "Pilotage Rates in Other Ports"?

A It looks to be.

Q Any reason to doubt that it is not your highlighting?

A Just sometimes I downloaded reports that had highlighting already in the report.

Q So the number 563,700, you're not sure if you got that from this application or from elsewhere?

A I actually believe I got that -- if you'll give me one moment, I can tell you where that specifically came from. State of Florida 2020. One moment, please. Let's see. I can tell you in a brief moment here.

So the net income per pilot, including retirement for the St. Johns Bar Pilot Association, Fernandina Pilot, Inc., was -- that would have been from the Investigative Committee reports from the Pilotage Review Committee for a change in rates, the pilotage reports of Jacksonville and Fernandina from

January 9th, 2020.

Q Okay. And is it your understanding that that Investigative Committee report included that number of $563,700 as a target net income or as a projected net income?

A I believe that was -- that would be a projected net income.

Q I draw the distinction between the two of those, projected versus target. Do you?

A I do.

Q What distinction do you draw?

A Target is a normative statement that -- about a future objective; whereas projected is purely a projected analysis of what they believe to be the rate, or I should say the revenue to be per pilot.

Q And would it be correct to say that you arrived at a number, like 563,700, if you were doing a projection by the application of rates to expected vessel traffic and volume and such?

A It should be the case, yes, based on costs, revenues, gross revenues, net revenues, volumes, and so forth.

Q Okay. And then as opposed to target, where you start with that number and you work

backwards to what the rate should be or might get you to that number. Would that be accurate?

A I'm not sure about the direction, per se, but that would be the goal, would be this is the whatever. Yeah, I would agree with that, to build the rate in such a way to achieve a certain net income per pilot.

Q Okay. 1/9/2020 Investigative Committee, do you know which port this applies to?

A I believe that's for Jacksonville, but if you open it up, I --

Q Yeah, let's just confirm. This is going -- the cursor goes too fast.

A Yes.

Q Okay. And that would be the document that you just referred to that you believe has the 563,700 number in it?

A Yes.

Q Okay. And just to satisfy everyone's curiosity, do you see this number here?

A Yes.

Q Hold on a second. That's blocking some of this, isn't it?

Projected with rate 2020; yes?

A Yes.

Q And there's the number you're referring to; yes?
A Yes.
Q Great. Thank you.
I think there's about 15 documents here that were provided to me, so just bear with me as we work through them. We're now on 2020, July 1st, filed final order, St. Johns, which is Jacksonville; yes?
A Yes.
Q Anything in particular you relied on this document for?
A I believe in this case, it was about when the actual rate would have ultimately gone into effect. So the final order indicated that that rate would not -- the modified rates would not go into effect until January 2021.
Q I believe -- we'll look at your final report here in a bit, but I believe that's noted in your final report somewhere, correct?
A Correct.
Q All right. We'll get to that then.
I don't believe I have seen this document before titled "Army Corps' Waterborne Trips and Cargo Data 1.0." Are you with me?

A Yes.
Q So I believe what we're looking at here in this chart is expressed in your report. Is that right?
A Yes.
Q And we'll get to that and you can clarify if I misstate anything here.
Do you see that that's Exhibit A that we're looking at?
A Yes.
Q Inclusive of Florida ports and other gulf ports as the heading; yes?
A Yes.
Q All right. Let's take a look at Exhibit B. This appears to be another exhibit in your report. Is that right?
A Yes.
Q Maybe Exhibit 9, "Comparison of Gulf and the Southeast Atlantic Coast Ports by Tonnage, 2022"?
A Yes.
Q Where are these figures all coming from?
A This is from the waterborne commerce data from the Army Corps of Engineers.
Q Okay. And how are you deriving these

percentages, tankers as share of total trips? Is that just the difference in these two?

A Yes, that's correct.

Q Okay. The 13131 and the 7834. Okay. Got it.

And these are numbers that are taken directly from that Army Corps information?

A Correct, but in the data is -- it's pulling from the data in the file, the raw data.

Q Okay. So there's no real analysis going on here, there's just pick a port and pull the numbers from the Army Corps' database; yes?

A Well, there's an analysis to determine -- I mean, it depends -- any manipulation of data, I would consider -- or use of data to come up with a new estimate, I would consider analysis. So --

Q Let me --

A -- for instance --

Q Let me --

A -- percentage of the number of tankers, the percentage of tankers, the vessel above 14 feet of draft, and so forth.

Q Would you agree with me that there's analysis in determining what ports are included in this chart, but after that, it is the input of data

and mathematical equations?

A I would agree there's some analysis that went into that -- or determination into which ports to include.

Q And then after that, it's mathematical inputs, yes, and a calculation?

A Yes.

Q Okay. Same with this Exhibit A?

A Yes.

Q Where did you get your information on cruise ships, the "yes or no" column here?

A That was through just quality of research and conversations with Dr. Kemmsies.

Q Do you know where he got his knowledge on the yes or nos of cruise ships at these various ports?

A Just his expertise. But I also would check online to see just based on websites to determine if there are cruise ships at those ports.

Q All right. We're looking at the trips all regions 2022 tab; yes?

A Yes.

Q What is the Port of South Louisiana LA?

A That is a port in that -- it's a large -- it's a very large port in Louisiana.

Q Which pilotage organization services that port?

A I believe a couple service them.

Q Do you know which ones?

A I believe -- I believe -- I'd have to go back and check which ones, but I believe Associated Branch Pilots, I believe, service some of the traffic. It's a very -- it's a -- I'm not sure. I'd have to go back and check which ones. Some of the data the port -- the ports or waterways that are reported do not exactly match pilotage districts.

Q So are you saying that the Army Corps' data regarding marine cargo tonnage for the Port of South Louisiana, Louisiana, is not divided by pilotage districts?

A It does not match to pilotage districts.

Q And as you sit here today, you cannot tell me with certainty which pilotage districts serve the Port of South Louisiana as identified by the Army Corps?

A I believe possibly Associated Branch, but I'd have to go back and check. And a few others.

Q So multiple pilotage districts?

A It's possible that multiple pilotage districts serve that.

Q And you don't know among those -- assuming there are multiple pilotage districts, you do not know among those pilotage districts, which district serves which percentage of that marine cargo tonnage. Is that right?

A That's right, I don't know the exact percentages.

Q We're now looking at Analysis A. Do you see that tab that I've got my cursor over?

A Yes.

Q I don't believe this is in your report. Is it in your report?

A It is not.

Q Does this influence your opinion in any way, this document, did --

A I -- I'm sorry?

Q Did this document, this Analysis A, influence your opinion in this case in any way?

A It may have, but this is usually interim stuff, just to kind of explore some of the data. So that's why I call it analysis, just because it's -- it's really just exploring what the data that it shows or what I can do with the data.

Q Did you pull anything from this tab that we're looking at that you then used in your report

in making your opinions?

A I don't believe so, not directly.

Q Okay. Same question here with Analysis B regarding cargo, did you pull anything from this tab that went into your report or in forming your opinions?

A Nothing directly.

Q What does that mean?

A That means that this was a way for me to explore the data and to look at some initial cuts, but this did not directly map to an exhibit in the report.

Q What do you mean by initial cuts?

A The -- whenever we have a large dataset, we want to begin to at least look at how that data is distributed; what are the break points; what does the data look like; what we can do with the data. So that's why these are all listed as analyses.

Q Okay. There's a number of them here, C, D, E, F. Well, I guess we've got to look at all of them. What about this one, did this one go into your analysis, your report, your opinion?

A I did talk about international cargo. It was exhibit -- okay, it would be from Exhibit 8 in the report, but that might be the next tab. So

there's two international cargo tabs in the data file, so Analysis D. This is -- this breakout is not used directly in the report.

Q The tabs that we've looked at in this document, Army Corps' Waterborne Trips and Cargo Data 1, when did you create this document?

A I would say probably in the last -- I don't know the exact date it was created, it would have been within the last few weeks perhaps.

Q So more than two weeks ago?

A I think so.

Q Okay. Going to the "Ports By Tons" tab. This looks like it's got some information that ended up in your report regarding tonnage on some of these ports. Is that right?

A Yes.

Q Did you alone create this document and all of these tabs?

A Yes.

Q Does that appear to you to be what ended up being Exhibit 8, which is tabs -- or, sheet rather -- well, the tab that says Sheet 17?

A Yes.

Q All right. The tab TBPA 011585, did you use the information on this tab in any way in your

report or in forming your opinions?

A No, just for reference.

Q What do you mean "for reference"?

A To look at the numbers and see -- just to compare. Not everything in this file is something that I would actually -- that I actually used, but I like to include as much information that's available as possible.

Q And I recall you using some nautical mile distances in your report. Are you with me on that?

A Yes.

Q Did you pull those distances from this TBPA 011585?

A I might have pulled, but I also went to other sources as well. But I might have pulled, come to think of it, some from here. Give me one moment.

Q That's all right. We can talk about it when we get to that point of your report.

A Yeah. It looks like I might have pulled some from here, among other sources.

Q All right. Well, when we get there, let's try to nail that down.

This appears to be a Tampa Bay only tab, "International Trade Data." Do you know if that's

true?

A It might not be appearing on the Dropbox, but it -- there's probably a filter. So there should be more than Tampa, but it just doesn't appear so being you're in Dropbox. But it should be all data from all ports that are reported in the -- by the Census Bureau. It's just that there might be a -- it looks like there's a filter just on Tampa.

Q Do you see where on this page there is a filter that I could apply to move it off of just Tampa?

A It's hard for me to tell in your version, but let me take a fast look. Give me one moment here.

In Excel, if you scroll to the very top there -- maybe if you -- let's see. You know, for some reason the filter is not shown, in part probably because you're just viewing it through Dropbox and not Excel. If you download the file, there should be a filter that appears in the first row. And right now the filter is just used to filter just Tampa, but all ports -- all customs, ports that handle customs data or report customs data would be reported. So it's actually really a very large file.

Q Might that be this instead, this, "2022 Cargo All Regions" that you're referring to?

A No. It would be that International Trade Data that you were on before.

Q All right. Is this the Louisiana annual report for all Louisiana ports or is it just for one?

A Just for one.

Q Which --

A Well, just for one -- just for one pilotage association.

Q Associated Branch Pilots; yes?

A Yes.

Q Dated July 1, 2024, right?

A Yes.

Q Do you know what this is, CRPPA UFR?

A I believe that's for the Crescent River Pilots.

Q Well, let's take a look. You appear to be correct; yes?

A Yes.

Q CUURA320SA0, do you know what that is?

A I believe that's possibly CPI for Miami. Yeah.

Q Is it?

A It is.
Q When did you pull this information?
A It might say at the top, if you scroll up. Let's see. I guess it doesn't. It would have been a few weeks ago. I actually didn't ultimately use this to my knowledge. Oh, no, I take it back. I take it back. I did look at this. I did look at this in my -- when I looked at the Biscayne Bay pilots.
Q You did not apply CPI to any income figures for the Biscayne Bay pilots though, correct?
A I did not apply it for the actual -- for -- I believe it was Table 11, Exhibit 11, I did not apply it. But I did look at it in the context of looking at -- I did -- I did -- I did look at it, but I did not use it.
Q Okay. So no adjustment to any figures based on the Biscayne Bay CPI, correct?
A That's correct.
Q We've got the Port Canaveral application; yes -- no, we've got the Port Canaveral notice of intent; yes?
A This is the -- yeah, the notice of intent to modify the rates.
Q When did you first review this document?

A It would have been within the last month. I don't remember the exact date.

Q Did it influence your opinions or the final report that's been generated?

A It did influence the report.

Q How so?

A It influenced looking at the -- my discussion on the Canaveral Pilots Association on page 11.

Q Okay. Did it influence your opinions?

A It ultimately did not have a big influence on my opinion because we opted not -- or I opted not to use this as a comparator.

Q Well, did it not have a big influence on your opinion, or did it have no influence on your opinion?

A It had no influence directly on my choice of whether or not to use Canaveral as a comparator, but it did inform my discussion about Canaveral in the report.

Q Ultimately, though, this notice of intent for Canaveral and any other data or circumstances regarding Canaveral, am I correct to say that it did not have an impact on your ultimate opinion in this case?

A The other -- some of the other data had an influence on my opinion about whether to include Canaveral, such as the waterborne statistics.

Q Okay. Other than the exclusion of Canaveral, did the data that you got regarding Canaveral have any impact on your conclusions in this case?

A No.

Q Okay. I think this is a new one. "Net Income Analysis August 2024"; yes?

A Yes.

Q What are we looking at here?

Is this what ends up in your report as Exhibit 11?

A Yes.

Q Do you have your report in front of you?

A Yes.

Q Can you turn to Exhibit 11?

A Okay.

Q Does this look like Exhibit 11, what we have up here on the screen?

I mean, it kind of looks like it, but it doesn't have the same numerical conclusions and such, does it?

A Let's see here. It looks very similar;

although it's not the exact data, yeah. There's also the -- yeah, it looks very similar.

Q Your numbers aren't the same though, are they?

This 555 number is not the same as Exhibit 11. This 519 is not the same as Exhibit 11.

A It looks like -- just give me one moment. Sorry. There might have been a typo in that. I'm not sure why it's -- I'm not sure why it's different. Let's see. Everglades, Jacksonville, Tampa. Yeah, that's strange, I don't know why it's different. I'm sorry. I have no answer for that.

Q And this is not what you ended up with in Exhibit 11, correct?

Because you only got these three other ports included here versus Exhibit 11, you've got four ports, right?

A Let's see --

Q Or 11. It looks like here your other ones maybe.

A You want to go to -- I'm sorry. You want to go to the next tab, which is final list.

Q But as you sit here, you're not able to explain to me the discrepancies I'm looking at here for the Florida -- the four Florida ports and the

average of those from what ended up in your final report, correct?

A Oh, I can explain it. So there's a row that's hidden, Port Canaveral. That's why. You can't tell with a Dropbox, but in the actual Excel file, there's a row that's hidden for Canaveral. So the average is including Canaveral, but if you go to the final list tab, Canaveral has been removed, and these numbers are what's in the report.

Q Okay. So even though we can't see it on the screen right now, what you're telling me is that if I downloaded this document and I opened up this summary tab, that I could see Canaveral, and that the inclusion of Canaveral is what influences this 555 number and this 519 number versus what's in your Exhibit 11. Is that right?

A That's correct. So if you go to the -- that's right, because you're looking at the Dropbox, which doesn't allow you to un-hide rows, but if you go to the next tab over, which is the final list, it's called final list, that is the exhibit that then shows the correct values or averages.

Q This comment up here about notable difference with Tampa regarding Port Everglades pilots, this statement is, "Made five-mile run from

buoy to port compared to 22 miles at Tampa."

Do you see that?

A Yes.

Q Where does your -- that five-mile run comment come from? What was the source of your information for that?

A You know, honestly, I didn't use that. You can tell I didn't end up completing this column, so I don't recall where that came from. I ended up not using that column anyways.

Q Do you know if that's true, that it's a five-mile run from buoy to port?

A I don't know if that's true or not. I would assume. I pulled it from a source, but I don't recall a specific source, and I ultimately decided not to use that information anyways, so it's a bit excessive and unnecessary.

Q This other statement here, "Compared with 22 miles at Tampa," do you know where you got that information?

A I don't.

Q Do you know if that's --

A I don't.

Q Do you know if that's an accurate number, those 22 miles from buoy to port?

A You know what, it's information that I did not complete this column. And it probably creates confusion by having it in there, so I probably should have cleaned this more to not include extra information that I didn't use.

Q I understand your self-assessment of your work. We all do it. But my question was whether or not you know that the 22 miles at Tampa from buoy to port is an accurate number.

A I don't know. Because I don't know what source that's from, so I don't know.

Q Okay. And then this MSA is Miami-Fort Lauderdale, that's the same MSA down there for Miami, in the fourth row, where in the first row is for Port Everglades; yes?

A Yes.

Q And so that same comment in there about the five-mile run compared to 22 miles at Tampa, that would apply down here in this Miami-Fort Lauderdale as well. Is that right?

A No, that's for the MSA column. It's a different column. It's the -- it's not wrapping the text, it's just continuing on on the next -- over through the next column, but it's -- that would be for the MSA tab -- or MSA column.

Q So do you know what the buoy-to-port run is for the Biscayne Bay pilots?

A I'd have to go back and check. I don't have it in front of me.

Q Did it influence your opinions, report or conclusions?

A I don't -- I do not believe it did.

Q Okay. This appears to be what ended up in your report where you were comparing cost of living in various metro areas versus Tampa Bay. Is that right?

A That's correct.

Q Looking at the RPP index and the RPP data tabs is what we were just referring to, correct?

A Correct.

Q This BEA regional price parities, did that influence your report or your opinions or your conclusions?

A Yes.

Q Tell me what this is.

A This is an adjustment to reflect -- or it's an index of cost of living for different metropolitan regions across the U.S. and for the U.S. overall.

Q So the source of this data is?

A That's the U.S. Bureau of Economic Analysis.

Q And the U.S. Bureau of Economic Analysis identifies all of these metropolitan areas and then assigns these various figures to them based on analysis of cost of living and things along those lines. Is that right?

A Yes.

Q Did they do one for Jacksonville?

A No. Jacksonville uses, I believe they call it, Southern Region -- I'm sorry, Jacksonville, Florida, there we go. I'm sorry. Yeah, I was thinking CPI. Yes, you found it.

Q Okay. Do you know which one we were just looking at, would it be this one?

A That's right.

Q All right. Is this another annual report, the NOBRA annual report, from which you pulled the reported net income of the NOBRA pilots?

A Yes.

Q Port of Miami application for increase in rates. Is that right?

A Yes.

Q May 1st, 2017; yes?

A Yes.

Q And this appears to actually be the Investigative Committee report, correct?

A Correct.

Q All right. And when did you first look at this document?

A It would have been the last four weeks, but I don't remember the exact date.

Q Was it after your first deposition session?

A Yes.

Q Why were you inclined to look at the Miami Investigative Committee report after your first deposition session?

A Because I looked back at the waterborne statistics and saw that Miami might be worth evaluating based on the tonnage and the fact that they do cruise ships. So I wanted to -- I wanted to look at what -- I wanted to be able to look at what incomes the Biscayne Bay pilots are on a net basis per pilot.

Q What statistics did you look back at?

A I looked at the waterborne statistics that we previously looked at from the U.S. Army Corps of Engineers.

Q And did you have those statistics prior

to your first deposition session?

A I would have seen them, but I didn't look more carefully at it until after that first session or more in-depth.

Q So is it fair to say that they did not influence your draft report of July 8th?

A Yes.

Q But I know there's a good bit of data and analysis in your final report now that incorporates those statistics. So fair to say that they have influenced that final report, correct?

A Yes.

Q Consumer Price Index for all urban consumers, CPI-U 2014 to 2024; yes?

A Yes.

Q When did you first look at this document?

A It would have been in the last four weeks. I don't remember the exact date.

Q So you did not look at this in preparing your draft report of July 8th?

A Correct.

Q Why did you go back and look at this after your first deposition session then?

A Because I wanted to look more carefully at the Jacksonville pilotage rates and -- I'm sorry,

actually, the Jacksonville -- I should say the St. Johns Bar Association and Fernandina, Inc. net income per pilot. And I wanted to have more context to speak to the net income per pilot for that region.

Q So that -- this area identifying the area as south, that's what you're relying on for CPI related to Jacksonville?

A Yes. Jacksonville doesn't have a -- the U.S. Bureau of Labor Statistics did not report Jacksonville in the same way that they report other metro districts or metropolitan regions or CPI. So instead I looked at the south region.

Q And forgive me, I'm looking at these mostly -- not entirely, but mostly for the first time. What was the prior document that we looked at that did have data for Jacksonville? What was it representing?

A That was the net income analysis August 2024 or RPP, Regional Price Parity Index.

Q So RPP, you're using that to make an adjustment between some other metropolitan area and Tampa; yes?

A Yes. And that does include a breakout for Jacksonville, but for CPI, there was -- there is

not a specific breakout for Jacksonville.

Q Wage analysis comparison with other industries and professions. Are you with me?

A Yes.

Q It appears that this graphic on the right is what ends up in your report. Is that right?

A Yes.

Q Where did this information come from?

A This would be from the U.S. Bureau of Labor Statistics.

Q Do you have a document that shows this data on it besides what we're looking at?

A Do you mean in the report?

Q I mean in the report. I mean in anything that you've produced to counsel that they provided to us.

A This is the Exhibit 10 in the report, but the raw data is also included here. That's -- I guess I'm not sure. Maybe you could explain the question again.

Q If I wanted to recreate this document, where would I go to get the information?

A So for this data, you would go to the tab, which would be the three right-most tabs, which are the raw data. So National_M2023_DL,

State_M2023_DL, and then MSA_M2023_DL.

Q So somewhere in the one that we're looking at, National_M2023_DL, I should find one of the professions represented in Exhibit 10 to your report. Is that right?

A That's right. If you -- if you were to go back to that exhibit we just looked at, that bar chart -- and again, it's hard to tell in the Dropbox. It might not appear, but the -- the graph -- the bar chart, horizontal bar chart is pulling data from the numbers on the left, and those numbers are using a formula to pull that data directly from those three tabs.

Q Where is the formula? Is it represented in the Excel if I download it?

A Yeah, that's correct.

Q You created all the tabs in this document?

A Yes.

Q Other than this resulting tab here that includes what ended up being Exhibit 10 to your final report, do any of these other tabs contain data that influenced your report, your opinions or your conclusions?

A So if you go to, I believe it would be,

Analysis B, NAICS. So this is in -- this is Exhibit 2 in the report.

Q And is that again information that you would pull from one of these tabs, National M2023, State M2023, or MSA M2023?

A No. This data was pulled from the next two tabs, which are QCEWFL 2010 and QCEWFL 2023.

Q So when I look at this, I see these coded industries, right?

A Yes.

Q When I look at QCEW Florida 2010, are there codes on this for the industries that end up in your Exhibit 2 to your report?

A Yes.

Q Is that -- is that here starting with 10, 10, 101, 1011?

A Correct.

Q Okay. And then how do you know which coded industry to go to to create your Exhibit 2?

A There's a description. If you go back to the QCEW tabs, or one of the two tabs, and if you go to -- there's a column called "Industry."

Q Here?

A Yes.

Q Okay. So did you use -- what we're

looking at here, QCEWFL 2010, did you already know the industries that you were looking for when you went to this data?

A I did.

Q So Exhibit 2 to your report, you picked -- there are about ten industries identified there. You would have already picked those industries before you went to this data. Is that right?

A That's correct.

Q How did you pick those industries?

Because looking at this -- I don't know how many we got here. We've got to have like a lot. Thousands upon thousands. Would that be fair?

A Yes. A large file, yeah.

Q So how did you pick the ones that are in Exhibit 2, you know, to the exclusion of others?

A Just based on my previous work in the maritime sector to know which industries would include people engaged in captain and boat -- vessel-related activities. So based on previous studies.

Q This QCEWFL 2010, there's not going to be any industries identified in here that's going to contain state-licensed pilots. Is that right?

A That's correct.

Q Looking at something, all caps, WATERB, squiggly line, 1. What am I looking at?

A This is an annual report published by the Port Everglades.

Q And did it have any influence on your report, your opinions or your conclusions?

A It did.

Q It did or it did not?

A It did.

Q And what were those?

A Determining trends -- identifying trends at the Port Everglades in deciding what would be an appropriate comparator net income to use Port Everglades on a per pilot net income basis. And the -- the parts that discuss that are on page -- I can tell you momentarily here.

Q Ten?

A Yeah, that's right, 10, 11.

Q So the number that you used for Port Everglades, ultimately in Exhibit 11, was the 2019 number of $549,998, correct?

A Correct.

Q And that's the number that you adjusted to Tampa dollars through your RPP analysis, right?

A Correct.

Q And that number comes from the final order that attributes it to the Port Everglades pilots as of the year of 2019, correct?

A Correct.

Q So you made no adjustments to that 2019 number for Port Everglades other than to reduce it to make it, in your mind, comparable to Tampa dollars, right?

A Correct, I used the 549,998 projected net income per pilot for 2019.

Q So what we're looking at here on the screen right now, this WATERB, didn't actually --

A Uh-huh.

Q -- have an impact on that 2019 number. Is that accurate?

A It did not impact the 2019 number, but it impacted my decision about whether or not to use that 2019 number or to make a modification to that number.

Q And your ultimate conclusion was to use the 2019 number and not modify it, correct?

A Correct, based on -- in part, based on this data.

Q Based on any other data?

A It's based also on the inflation data

that we also previously looked at for the Miami region, which includes Port Everglades.

Q You last sat for a deposition, a partial day, on August 28th. Since then in preparing for today, did you have any meetings with anybody?

A No.

Q No conversations with anyone regarding your testimony previously or for today?

A I had a debrief call with counsel after just to -- just to debrief on the testimony -- on the deposition that we -- that I had on the 28th.

Q And --

A That was right after -- that was right after the deposition.

Q What topics were discussed?

A Just kind of a run-through of what was discussed. I don't recall specifics. It was just a phone call.

Q How long did the phone --

A It was just --

Q -- call last?

A Oh, maybe 15 minutes. It was pretty brief.

Q Were you instructed to do anything specific between then and now to prepare for today?

A No.
Q You don't have any recollection of any of the topics that were discussed?
A It was just a conversation with myself, Dr. Kemmsies, and Mr. Manson. And we just talked verbally about just kind of -- you know, just honestly the specifics. It wasn't very specific, it was just, you know, "How did it go? What were the" -- you know, just kind of a debrief.
Q So my question was: You do not have any recollection of specific topics that were discussed. Is that correct?
A That's correct.
Q Did you review any additional documents to prepare for today?
A I did not.
Q Have you further reviewed the Nexus Economics report since August 28th?
A I did not.
Q So have you been retained, and will you be providing an opinion, regarding the Nexus Economics report in this case?
A Yes.
MR. MANSON: Object to the form.
THE WITNESS: Sorry.

A Yes.
Q It's your understanding that you've been retained to do that?
A That is my understanding.
Q And have you had any discussions with anybody regarding that report and its contents?
A I have spoken verbally with counsel about some of my takeaways from that report and opinions.
Q Are you going to be expressing opinions regarding the entirety of that report or just portions of that report?
A My understanding is we'll ultimately be presenting opinions about the report in its entirety.
Q Okay. Last time, on August 28th, you spoke of your scope having been restricted, to a degree, since your prior deposition. Has your scope changed at all since August 28th?
A My scope has not changed.
Q Is there any information that you're still waiting to receive to form any final opinions in this case?
A No.
Q Since August 28th, did you go back and look at any deposition transcripts in this case?

A I did not.

Q Did you go -- by chance go back and look at your billing invoices to answer some of the questions that I had last time about time spent on this case and specific elements of it?

A I did.

Q Can you tell me how many total hours you've spent on this case as an expert?

A I spent -- and this would be through Thursday -- or I'm sorry, Wednesday, the 28th. I have spent 278 hours.

Q And do you have a breakdown of the hours leading up to July 26th, and since July 26th? That was one of the things that we talked about.

A I might have misunderstood your request. So I -- I pulled the number of hours I spent updating the report, which were 40, from July 26th to now. I have done more hours, not directly related to the report, but just specifically on the report, I've done 40 hours.

Q So is that 40 hours since you were retained until you're sitting here today?

A No. Forty hours since July 26th until August 28th.

Q And do you know how many hours prior to

July 26th you spent on the report?

A That part, I'd have to go back and check again, because I think I might have misunderstood what you were asking for before. I have total number of hours I've worked since being retained for this case of 278 hours, and then total time I've worked on the report and update -- and revising and updating the draft report to the final report between July 26th and August 28th, 40 hours.

Q But you don't know how much time -- you don't know the extent of your time prior to July 26th, on creating the report you were deposed about that day, right?

A No, but I -- I could go back and find that out.

Q Is the Charleston Port an influence on your opinions, conclusions -- let me start that again.

Are the Charleston rates and traffic in and out of Charleston, and such, influential on your report or your conclusions or your opinions in this case?

A My -- so my report is mostly focused on net income per pilot as a reference point for determining rates, and as well I believe that

Charleston -- and I state this in the report -- is a useful comparator with respect to rates.

I am not able to find the data -- available data on the actual net income per pilot in Charleston. But I still believe that it is worth looking at the rates as a consideration for this case. I just simply am not able to find net income per pilot for Charleston.

Q And did you indeed look at the rates in Charleston?

A I did.

Q Can you see that document up on the screen?

A Yes.

Q So the document, is that a document that you recognize?

A I do recognize this.

Q Is this a document that you used to look at the rates in Charleston?

A This was a document that I looked at. I also looked -- and it did not inform my report, because I did not talk specifically to rates, but there was another document that I also looked at. It was a public document on rates in Charleston.

Q Did you provide that document to your

counsel?

A I did not.

Q Can you?

A Yes.

Q Fair to say that your opinions in this case are directed towards the issue of net income per pilot and the issue of workload per pilot?

A Well, my opinions ultimately are about the rate, but my approach is to look at this from the perspective of net income per pilot and workload, but primarily net income per pilot.

Q And data from Charleston did not influence your opinion regarding net income per pilot or workload per pilot. Is that true?

A That's correct.

Q Okay. When we spoke last time, there was a bullet removed from your report regarding potential impact from the Association's requested rate increase. Do you recall talking about that?

A I do.

Q So are you going to be providing any type of opinion regarding a claim of a competitive disadvantage after the implementation of the Tampa Bay Pilots Association's new rates?

A I can speak -- I can -- I can speak about

the impact of rising costs, or rather competitiveness, of the Port Tampa Bay and Port Manatee, vis-a-vis other ports.

Q And are you only going to be qualified to do that based on your comparison of net income from ports?

A In that case, looking at the cost from the -- if I understand your question correctly -- maybe I misunderstood your question. I'm sorry. Are you asking about the competitiveness of the ports from rising costs --

Q Yes.

A -- pilotage fees?

Q Yes.

A Okay. In that case, I would refer to the existing work that's been done by the Rate Review Committee in that regard, comparing the rates for different vessels that would call on the Port Tampa Bay and Port Manatee versus other ports.

Q So are you going to express an opinion about whether or not those rates create a competitive disadvantage for Port Tampa Bay?

A Yes. In that context, yes.

Q Okay. But in doing that, you're going to rely on work that's been done by the Investigative

Committee and the Pilotage Rate Review Commission, correct?

A That's correct.

Q And is that opinion contained anywhere in your report?

A It is not.

Q What is your opinion in that regard?

A Well, any increase in cost will erode competitiveness, particularly raising costs, vis-a-vis in comparison to other ports.

Q So are you telling me that there are no other variables that influence competitive disadvantage other than rates?

A Well, if you -- there are lots of variables that could potentially affect competitiveness, but because we're only speaking specifically on the rates, we're holding everything else constant. So if you just isolate for the rates, an increase inevitably will lead to -- or just by the nature of the higher cost will result in eroding of competitiveness of the port, vis-a-vis other ports.

Q And you believe that's inevitable?

A I believe it's just -- it's just a -- it's a -- it's a fact that when you raise rates,

you're increasing costs. I think the question is more how much, or, by what extent would it erode competitiveness.

But just on its own, any increasing costs, holding everything else constant, will, by definition, reduce the economic competitiveness of the port, vis-a-vis the other ports.

Q But your opinion in that regard on competitive disadvantage and the potential of increased costs will not go beyond what you just stated. Is that right?

A I would have to -- at this point, it's not in my report, but I might elaborate that opinion further.

Q Please do.

A Oh, not at this specific moment, I wouldn't -- I'm not going to elaborate now more than what I just said.

Q Okay. So what you're telling me today is that your opinion would be all other variables remaining constant, that an increase in rates would be a -- a detriment to the competitive status of Port Tampa Bay?

Is that a pretty accurate summary?

A It will reduce the competitiveness of the

Port Tampa Bay and Port Manatee, holding all other variables constant.

Q And would you agree with me that there are numerous other variables?

A That affects port competitiveness?

Q Yes.

A Yes.

Q Have you done any analysis as to whether costs are being increased in other ports whether through pilotage rates or otherwise?

A I have -- I know that costs are likely increasing, but I have not done an analysis of that.

Q So that's not something that you're going to render an opinion on?

A Correct.

Q And you have done no independent research or analysis of the rates that have been paid or would be paid under the new structure to the Tampa Bay Pilots Association versus the rates of other associations. Is that right?

A I -- I've only relied on the work that's been done by the Rate Review Committee, so that's correct.

MR. PAGE: Okay. Let's take a five-minute break.

(Recess from 1:50 p.m. to 1:57 p.m.)

BY MR. PAGE:

Q Mr. Cohen, you mentioned a few moments ago that there were documents related to the Charleston rates that you had reviewed but not provided. Please provide those. All right?

A Uh-huh. Okay.

Q In our conversation so far, have there been any other documents that you recall that you haven't provided to date?

A Not that I recall.

Q You mentioned last time, I believe, that you could not recall if you had looked at the rate structures in other ports or not. Other than Charleston, do you recall if you have looked at rate structures in other ports or not?

A I have looked at the documents, but it didn't -- it was not something that I analyzed.

Q Okay. So the rate structures in Charleston and otherwise didn't influence any of your opinions. Is that correct?

A Not in this report, correct.

Q Any of your opinions for this case outside of what's expressed in the report?

A I'm only just looking at -- again,

looking at the overall cost to shippers, not a one-for-one comparison across for rates.

Q I'm afraid I don't follow.

A I looked at rates, but it's -- I did not -- I looked, again, mostly relying on -- or relying on the rates as they materialized in the form of costs for shippers.

Q And that's the Investigative Committee work that you reviewed?

A Yes.

Q Do you believe you'll be expressing any opinion regarding this paragraph 90 I've shared up on the screen, from the five Petitioners' amended petition?

A I'm just reading through this.

I will be able to share an opinion about this.

Q You will or will not?

A I will.

Q What's your opinion?

A I mean, are you asking me will I have an opinion or do I have an opinion right now? Because I'd have to -- I haven't -- I'd have to look at the data to tell you specifically, which I don't have in front of me, whether inflation has indeed been

fluctuating between 2.48 or 2.75 percent, for instance.

Q So there's an interrogatory that we used last time to go -- or the first time to go through a bunch of allegations in this amended petition. And we talked about whether or not you would be rendering an opinion on them, because that interrogatory, which you verified, said that you might be. So all of these instances where you've been under oath is my opportunity to find out what you may or may not have opinions on, and if you do, what those might be.

So this paragraph 90 was one of the paragraphs that you were identified as potentially having an opinion on. So my question to you is whether or not you believe that at the final hearing you will be rendering an opinion as an expert regarding paragraph 90.

A Okay. I'm sorry. I thought you were referring to 88, 89, and 90 on the screen. So you're referring specifically to whether the Federal Reserve is aiming to drive down inflation at two percent or put the economy in a recession curbing the inflation. Is that correct?

Q Correct, paragraph 90 only.

A That is my opinion. Yeah, I have an opinion that indeed the Federal Reserve does target roughly around two percent for inflation.

Q Where is that in your report?

A I don't believe I reference it in the report. I would have to go back. Let me take a fast look here and check.

Q And while you're doing that --

A And I might -- I'm sorry.

Q While you're doing that, maybe you could give some thought to what you base your analysis on to have an opinion on that.

A Let me see. So for that, for Federal Reserve, without -- I don't believe it's in my report, but the Federal Reserve's two aims are to keep and maintain low inflation and high employment or low unemployment.

So in practical terms, in recent decades that's meant keeping inflation at two percent. And that's been -- without -- that's -- in general and practical terms, roughly the Fed's policy is to maintain two percent -- to maintain inflation at about two percent.

Q Have they been successful in that regard?

A Sometimes. Usually. Not always. It's a

target, but it doesn't mean that they hit that target. And they certainly weren't able to hit that target in the last few years.

Q So am I correct that you're saying that that is basically the standing policy of the Federal Reserve?

A That is effectively the policy of the Federal Reserve.

Q And their success in that regard fluctuates?

A I believe the Fed has been fairly consistent. Again, I'd have to look at the data, but the Fed has been fairly consistent for a long time now, up until the recent surge in inflation during the pandemic.

Q Which is now about four years old, right?

A The recent -- the uptick, I believe, began in 2021. I'd have to go look. It came after the start of the pandemic.

Q Does your opinion regarding this paragraph 90 have any impact on your other opinions in this case?

A It does affect my opinion about long-term inflation projections.

Q Just based upon your understanding that

the Federal Reserve's goal is what you testified to previously, right?

A That's correct. There are lots of things that are not -- that are very difficult, if not impossible, to predict, like a pandemic. But barring another pandemic, I believe the Fed will be able to continue to target that two percent -- roughly two percent inflation and be able to hit that target within reason in the future.

Q Fair to say, they failed in that regard during the pandemic?

A They did fail to predict a pandemic and its impact on inflation, yes.

Q Fair to say they failed in that regard during the Great Recession?

A It's fair to say that they may have missed it. I wasn't sure we were going to talk about that policy, but yes, they did not -- certainly, we had deflation for a period of time following the Great Recession.

Q Read paragraph 100 please, not out loud, just to yourself.

You got it?

A Yes.

Q Do you believe that your scope as an

expert in this case includes you expressing any opinion regarding paragraph 100?

A I do not have an opinion about this.

Q Read paragraph 101, please.

A I would --

Q Are you able --

A I would have to read it one more time. Okay. I've read it.

Q Are you going to be expressing an opinion regarding paragraph 101?

A I -- I am not going to express an opinion, because I believe that the Committee does state that maintaining and promoting an efficient, reliable, and safe piloting services is part of their consideration. So I'm not going to -- that is one of the stated -- to my knowledge, my recollection, is a stated consideration by the Committee.

Q And are you going to give any opinion as to whether or not the Committee actually did that?

A Well, I recall from the document -- I recall that the Committee does consider it. I think the question is whether or not to what -- how they considered it, and to what extent rates do influence the promoting and maintaining of efficient,

reliable, and safe piloting services.

Q I'm just trying to figure out if you're going to give an opinion regarding paragraph 101.

A So the way it's strictly written --

Q Yes.

A -- whether or not -- whether or not they've -- the Committee decision gives consideration -- primary consideration, I would say that they do indeed consider that as a primary consideration. So I will not be providing an opinion specifically on whether or not they included -- whether or not they gave consideration.

Q Okay. Thank you.

Read paragraph 115, please. And once you're done, same question: Are you going to be issuing an opinion on that paragraph?

A I will provide an opinion on 115.

Q What will it be?

A It will be that the rates do create -- do not create fair, just, and reasonable costs for customers.

Q And you're basing that, if I'm correct, on a comparison of the net income of the Tampa Bay Pilots Association compared to the net income of other ports. Is that right?

A No. I'm basing this on the increase in rates for different types of vessels based on the analysis of the Rate Review Committee and the -- Rate Review Committee.

Q Okay. And taking into consideration any other variables besides just the rates as expressed by the Investigative Committee and the PRRC?

A Well, with respect to net income, I use net income to determine what would be a reasonable rate. So in that case, I would say I'm also using my -- basing it off of my analysis of net income per pilot association.

Q Correct me if I'm wrong, but you did not determine what you believe to be what would be a reasonable rate, you determined what would be a reasonable target net income, and you provided that number to the Petitioners' CPAs, who then determined a rate. Is that correct?

A That's correct.

Q Okay. Please read paragraph 116 to yourself. And when you're done, let me know if you're going to be rendering an opinion regarding that.

A Yes.

Q I'm sorry?

A I'm just reading out loud to myself.
Q Okay.
A Again, I do have an opinion that it does create an adverse impact on customers by the increased costs to shippers over the duration of the new rates.
Q I thought when we spoke last time that you said your scope had been restricted so that you weren't going to be talking about the impacts of the rates.
A Well, my report is limited in scope to the discussion around net income, but I can still share an opinion based on existing research on the impact to customers.
Q So your opinion in that regard will be based on the research of others?
A Correct.
Q Please read 17 to yourself, and let me know if you are going to be expressing an opinion on that.
A Okay.
Q Are you going to express an opinion on that?
A I will not specifically address an opinion -- well, let me correct that. To me, this

statement, and what's -- the one that we just read seem very similar, because commerce at the port is indeed the cost to -- is to the customer at the port.

So I'm just having some difficulty differentiating between these two. One seems to be a subset of the other. So 116 is -- when I read it was impact to customers. Those customers are what drive commerce at the port. So from that perspective, yes, I will provide an opinion about this.

Q Your opinion will be based upon research and conclusions drawn by the Investigative Committee and the PRRC. Is that right?

A That's correct.

Q So you have not gone outside of the data available from those sources to otherwise assess any impact on the commerce of the Tampa Port Authority Port District. Is that right?

A That's correct.

Q Read 119, please, and let me know if you are going to be expressing an opinion on that.

A I'm sorry, but I'm having a hard time differentiating this one from one of the previous ones we read. So this one says where the

application notice failed to adequately address the proposed pilotage rates and new proposed fees, which will compare to reasonable rates.

I will have an opinion about this because I will talk -- and again based on existing research what the impact will be on customers, as well as from the perspective of net income per pilot using the model developed by the CPAs what the appropriate fair, just, and reasonable rate should be based on what I believe is the fair, just, and reasonable net income per pilot.

Q Do you know what the phrase capital N New, capital P Proposed, capital F Fees means?

A You're asking me what the phrase proposed fees mean?

Q New Proposed Fees, capital N, capital P --

A Oh, I'm sorry.

Q -- capital F.

A Proposed rates. And new proposed fees, I will not have a specific opinion about the new proposed fees.

Q Do you know what that phrase means?

A Those are charges -- surcharges, for instance, outside of the rates, so I don't -- I will

not have a specific opinion about that.

Q Are you going to have an opinion regarding paragraph 122?

Do you understand paragraph 122?

A I am just reading it right now, making sure I understand this.

I will not have an opinion about this.

Q What about -- thank you.

What about 127?

A I will have an opinion about this.

Q So you're going to render an opinion on whether or not the pilots have met a preponderance of the evidence standard?

A As to my understanding, a preponderance of evidence, I will -- I will have an opinion about the evidence that's been provided and whether or not that evidence is sufficient for them to further request for a rate increase.

Q Is it your understanding that the phrase preponderance of the evidence is a legal term?

A It appears to be a legal term to me, yes.

Q Is it your understanding that preponderance of the evidence is a legal term that relates to a burden of proof?

A Yes.

Q Are you going to be issuing an opinion regarding whether or not the pilots met the preponderance of the evidence burden of proof?

A I will be scrutinizing the evidence that's been provided by the pilots.

Q That wasn't really my question.

Are you going to provide an opinion on whether or not the pilots met a preponderance of evidence burden of proof?

A So I don't -- I'd have to review this question to give you an answer because I don't -- it's a legal term that I'm not entirely --

Q Let me ask you a slightly different way. Are you qualified to render a legal opinion?

A I am not qualified to render a legal opinion.

Q Read 128 for me, please, and let me know if you're going to render an opinion on that.

A I do not believe I would -- I believe I will not be providing an opinion about this, but -- yeah.

Q Do you have any knowledge or opinion regarding this comment that, "Such an analysis is required as part of the application"?

A I do not recall specifically.

Q So as you sit here today, no?
A As I sit here today, no, but I might need to amend my comment after careful consideration.
Q Well, your counsel wants me to be done with you today, so if we get to the final hearing, are you anticipating that you're suddenly going to have an opinion regarding paragraph 128?
A I do not believe I would have an opinion about 128.
Q Okay. Regarding paragraph 129, would any opinion that you would have in that regard be based on data and analysis provided by the Investigative Committee and the PRRC?
A I will have an opinion about this, 129.
Q The question was whether or not an opinion that you would have would be based on the data and analysis of the Investigative Committee and the PRRC.
A Yes.
Q It's a long shot that we get done today if you won't answer the question that I actually ask. Just to put that out there.
MR. MANSON: I'm going to object to form. He's doing a very good job answering your questions. The questions are complicated.

MR. PAGE: These are not my allegations.

MR. MANSON: It is your deposition, Eric.

MR. PAGE: I'm trying to make it that.

BY MR. PAGE:

Q Are you going to be expressing any opinion on whether or not the proposed new fees are not relevant to vessel characteristics?

A Is this -- I'm sorry. Can you repeat that question again? Or is there a -- maybe you could repeat that. I'm sorry.

Q The third sentence of paragraph 134 is, "The proposed new fees are not specifically listed in Section 310.151 Florida Statutes and are not relevant to vessel characteristics."

So my question is whether or not you're going to be expressing an opinion on whether or not the proposed new fees relates to vessel characteristics.

A I am not going to provide an opinion about that.

Q Are you going to be expressing an opinion on whether or not the proposed new fees are authorized under Florida Law?

A No.

Q Are you going to be providing any opinion

on whether or not the PRRC has the authority to impose the proposed new fees?

A No.

Q Paragraph 136, I believe we probably covered this in a prior paragraph, but are you going to be providing any opinion on whether or not the increase in my clients' pilotage rates is supported by competent substantial evidence?

A This is a legal term that I'm not familiar with, so to the extent it's specific to legal terminology, I would say no.

Q Okay. And as well, are you going to be expressing an opinion on whether or not the increased pilotage rates comports with the statutory mandate of Section 310.151(3)?

A I don't recall what that section is, so I would say no.

Q This is the Excel we looked at previously, I believe, and you commented that you had looked at this, and at least one other document, regarding rates for Charleston, South Carolina. Is that right?

A Yes.

MR. PAGE: Let's mark that as Exhibit 33. It is TBPA008350.

(Cohen Deposition Exhibit Number 33 marked for identification.)

MR. PAGE: And just for the record, the amended complaint that we were just looking at is -- was previously an exhibit to Mr. Cohen's deposition, it was Exhibit 10.

BY MR. PAGE:

Q I'm doing better at this share thing than I thought I was going to.

Do you recognize what I've put up previously marked in your deposition as Exhibit 21?

A Yes.

Q And my recollection of your testimony is that this Exhibit 21 contained information, including the source of that information, that ultimately went into what was Exhibit 6 to your July 8th draft report. Is that right?

A Yes, that sounds correct.

Q So that Exhibit 6 to your July 8th draft report contained somewhere in the vicinity of 20 different ports. Does that sound about right?

A Yes.

Q And it was a comparison of net income from those ports; yes?

A Yes.

Q And it took net income numbers adjusted to Tampa dollars and came up with a calculated amount in the vicinity of $530,000, right?

A Yes.

Q So my question for you is: You got a final report now that has Exhibit 11 in it that has four Florida ports inclusive of Tampa and seven other ports, so 11 ports total.

Do you have a document like this Exhibit 21 for Exhibit 11 in your final report like you had --

MR. MANSON: Object to the form.

Go ahead and answer.

BY MR. PAGE:

Q -- like you had this document that related to your draft report of July 8th?

MR. MANSON: Objection to form.

A The net income per pilot itself that you had previously shown would have been the document -- the closest document to this.

Q And did that net income per pilot document -- I know what you're talking about now that we looked at it -- did that include in it a link or other information to the source of the data?

A I do not believe it did. Yeah, I do

not -- I believe it did not, no.

Q Do you have a document that would be inclusive of the source of the data similar to what we were looking at previously for net income that ended up in your final report?

A No. There were -- the -- they would not have been included. But the discussion -- I believe I included the sources in the report itself in the discussion. So, for instance --

Q I think you did. I -- I agree that you did. I was just trying to find out if there was a handy document, like this Exhibit 21 was for your draft report for your final report. And I think you've answered my question, so we're good there.

A Okay.

Q Do you have a copy of your final report in front of you?

A I do.

Q So give me a moment to find what I want to share with you. We did our best to take your old report and your new report, convert them into a Word document, and do a redline. You can see all of this data down here about redline stuff.

A Uh-huh.

Q And I'm going to refer to this a little

bit here and there as we continue on. So I'm going to mark that as Exhibit 34.

(Cohen Deposition Exhibit Number 34 marked for identification.)

MR. PAGE: Obviously a document that I'm going to have to circulate to folks. But just to get it marked and in the record before we got to the point of discussing things.

BY MR. PAGE:

Q All right. Looking at your final report, and I'm on the key findings page under Roman numeral I. And I'm looking down at the last bullet, "Total Handles." It starts with those two words. Are you with me?

A Yes.

Q Does that -- does the information in that bullet regarding total handles have any impact on your opinion expressed in your last deposition session regarding a target net income for the Tampa Bay pilots?

A No.

Q Does that influence any other part of your report or your opinion?

A It influences the -- just that -- not in this report, but the opinion about the necessity of

a rate increase because we believe that -- and this again would be fed into the CPAs' model, but how much income would be -- how much would net income increase just purely based on the organic growth in vessel traffic and the characteristics of vessel traffic in the future.

Q And is that something that you would render an opinion on, or is that something that you're going to leave to the CPAs to render an opinion on?

A That, I can render an opinion on, but I'm not sure it -- it could be something that the CPAs have an opinion on, but I could also express that opinion, that the net income per pilot is a function of many variables, including vessel traffic. And so -- and volume. So as the total volume and the characteristics of that volume increase, that may also have an impact and help to increase income even without other changes in the rate structure.

Q So you said it may also have an influence in that regard. Have you done any research analysis or come to any conclusions regarding what impact that organic growth might have?

A That would be fed through the model that was developed by the CPAs that would illustrate,

based on those projections, what the net income would be without any change in the rate.

Q So in terms of actual dollars and cents, it's a CPA issue. Is that accurate?

A That's my understanding, but I would be able to speak about it as well at the hearing.

Q Would it be fair to say --

A And --

Q Would it be fair to say you would speak about it as a theory rather than hard numbers?

A No. I could -- I would make -- be able to speak to the -- based on the model that was developed, what the -- based on the output of that model, what the results would be.

Q As you sit here today, do you have any opinion in that regard?

A Based on some initial runs of the model -- well, actually let me correct myself. Because this is a new forecast, or revised forecast, at this moment, those numbers have not yet been run through the model, so I don't, at this moment, have an opinion about that.

Q When you say --

A I don't have the numbers that I could share based on the model output at this moment.

Q So when you say "those numbers," you're talking about the percentages expressed in that last bullet. Is that right?

A The actual projected. So the percentages reflect those total volumes, but the actual projections that are reported later in this report under the forecast, we would take those numbers and we would put them into the model developed by the CPAs and then see what the resulting net -- overall gross income and net income would be.

Q And the actual numbers you're talking about are at the end of the report in the portion that Dr. Kemmsies is responsible for?

A Correct.

Q Okay. And then I believe you said those actual numbers have not been put into the CPAs' model. Is that right?

A That's right, those have not been processed through the model yet.

Q So no conclusions have been based -- no conclusions have been reached based on those actual numbers that appear later in the report, correct?

A Correct; although I can speak in general terms, that I believe that holding everything else constant, this would have a positive impact on net

income per pilot.

Q Can you speak to whether or not it would have an impact if you do not hold other variables constant?

A Not at this moment. I'd have to go look at projections for inflation and other factors as well. So there are other variables in the model for consideration.

Q And those are variables that you have not looked at as you sit here today?

A I have not looked at the model with these new numbers inputted, with these new projections inputted.

Q Nor --

A So I haven't done the model without manipulating the different forecasted projections, but we will do runs. We will look at that.

Q So you -- you and the CPAs, as you sit here today, you're telling me you have not inputted the actual numbers that are later in this final report into the CPA model, right?

A The latest updated forecast has not yet been inputted into the model --

Q Does this --

A -- that's correct.

Q Does this report contain the latest updated forecast?

A Yes, this is the final forecast in this report.

Q Okay. Thank you.

And then with those final forecast numbers having not been put into the CPA model, is it also fair to say that you have not looked at the other variables that could have an impact and made any sort of judgment in terms of what that impact might be? Is that right?

A I have looked at the model, and I have examined the model and also provided feedback on the models. I have looked at those variables.

Q You have not looked at those variables after the application of the final projection numbers, correct?

A After the final -- I have not yet after the input of the final projection numbers, that's correct.

Q The bullet above that, that speaks of cost of living and pilotage districts. Are you with me there?

A Yes.

Q Are you aware of the Investigative

Committee, the PRRC, or any of Florida's pilotage associations, ever looking at the west coast for comparator ports?

A I am not aware.

Q Did you do any type of comparison between the type of vessels going in and out of those west coast ports versus the type of vessels going out of Florida ports?

A I did.

Q Is that in your report exclusively?

A That would be -- let's see here --

Q You don't need to tell me where. Is that in your report --

A Yes, I did --

Q -- and only --

A -- look at that, yeah.

Q Okay. And the only information of that type that you're going to rely upon is in your report. Is that right?

A Yes, everything should be, that's correct, in the report.

Q Okay. So is it fair to say that in terms of looking at those west coast ports versus other ports included in your report, that you are not looking at vessel origins or destinations?

A I was not looking at vessel origins and destinations, that's correct.

Q Were you ever analyzing any similarities between the labor force at the various ports, such as unionized and not unionized?

A I did not look at those characteristics.

Q Did you look at actual waterway characteristics, like channel depth, channel width, necessary turns, those sort of things?

A I looked at examples of nautical mileage distances, but not the specific characteristics that you're describing.

Q So nothing beyond nautical mileage?

A Correct.

Q Okay. So your draft report of July 8th concluded that the target net income for the Tampa Bay pilots should be $527,500. Is that right?

A Yes.

Q And that is the number that you provided to the Petitioners' CPAs. Is that right?

A Correct.

Q Is a different number going to be used by the Petitioners' CPAs in preparation of their opinion at the final hearing?

A We will likely do what we call a

sensitivity analysis. We will look at different potential net incomes per pilot, so the -- the average might be in the range -- we mentioned last time between five -- we would test averages between 500 and 550, 500,000, 550,000 per pilot, as well as to include the midpoint of 525, as well as 530, which would be the average of select pilotage associations in Florida, with adjustments -- based on adjustments for regional price parity differences, cost of living differences.

Q So I've pulled up the redline, Exhibit 34. The second bullet here in red, do you see that it's struck through?

A Yes.

Q It states there, "At the time of the most recent rate review application, October 2022, the Federal Reserve Bank of Philadelphia Survey of Professional Economists reported an average 10 year CPI inflation forecast of 2.8 percent."

Are you with me?

A Yes.

Q Is that statement still factually accurate?

A Yes.

Q Back to your report. The fourth bullet

that starts with, "The data and resources." Are you with me?

A Yes.

Q You give an example there about your belief and the inconsistency between -- I'm sorry. I'll start over. You give an example there that there's inconsistent use of the term "job." Are you with me?

A Yes.

Q What other data or resources were used that you believe are inconsistent and lack a clear and definable methodology?

A So the frequent use of -- the interchangeability between handle and job and then bridge time and job, as well as the data sources that -- I believe it was TBPA001844, which is an Excel file, as well as previous data on -- from dispatched data. I believe 1844 included a job start time and then a finish time. And those numbers did not align with the reported average of 7.5 hours per handle.

Q Okay. Thank you.

What you just testified to, I kind of thought was all included within inconsistent use of the term "job" leading to diverging estimates of

pilotage workload. Am I correct on that front?

A Yes.

Q Okay.

A Yes.

Q Okay. So that's an example.

Can you identify any other data or resources that were used to justify a rate increase that you believe are consistent -- are inconsistent and lack a clear, definable methodology?

A That was the one that I -- the job handle time was the one that I focused on.

Q So is that a no, you cannot identify any others?

A Not that I recall. I just focused on job time.

Q Okay. You previously produced a report, for which I believe you were the project manager, or some similar title, back in 2018 to the Washington State Pilotage Final Report of Recommendation to the Joint Transportation Committee. Does that sound right?

A Yes.

Q And in that report you analyzed, including Florida, the various methodologies used throughout the United States to set pilotage rates,

correct?

A Correct.

Q And in terms of setting pilotage rates, what was the conclusion that you reached in that report in terms of the best practice?

A To instead utilize a Public Utility Commission model to determine pilotage rates as opposed to others -- as opposed to using a Board of Pilotage Commissioners or other kinds of configurations and arrangements.

Q In that report, did you also conclude that the employment of automatic adjusters has advantages?

A I would have to go back and check, but that sounds familiar. Forgive me, it was a long time ago.

Q Understood.

A If I did remember -- I think there was a reference to cost-of-living adjustments as potential best practice. And the reason for that was it creates some degree of predictability. And it avoids a lot of the -- in Washington State, where there was none, it does create a lot of acrimony over fighting over rates on a regular basis.

Q Are you aware of any rate structures in

Florida that have employed a cost-of-living adjustment?

A I am.

Q Which ones?

A I may not recall all of them, but all -- to my knowledge, all of the recent modifications. So Everglades, St. Johns Bar Pilot Association, Fernandina, LLC, or Inc. I believe Canaveral includes one as well. I do mention this in the report, though. I do recall a few of these.

I'd have to go back and check, but I have a -- I have reviewed this, I just don't recall every single one. But I believe Miami or Biscayne, I would have to go back and check which one.

Q Well, let me ask it a little more specifically, maybe it will help us out. When you say "cost-of-living adjustment," are you talking about within a rate structure the PRRC has for the last, say, ten years or so, approved a set rate escalation going into the future for rate structures?

A I am familiar with that, yes.

Q And is that what you're referring to when you're saying there's been cost-of-living adjustments and rate structures in Florida?

A Well, Florida doesn't usually use a COLA. So COLA, or cost-of-living adjuster, is usually revised on an annual basis based on changes in CPI that reflect changes in the cost of living. Florida -- my understanding is that Florida statutes does not allow for a COLA for pilotage fee adjustments or rates, but they do allow for adjusters.

Q So the rate adjusters in Florida, from your perspective, are not cost-of-living adjustments. Is that accurate?

A That's accurate.

Q And they're not cost-of-living adjustments because they do not look back at some period of time to determine what cost-of-living adjustment is appropriate?

A That's correct. Usually my understanding of the cost-of-living adjustments is that they will make adjustments on an annual basis based on recent source data, on annual data.

Q The State of Washington changed its pilotage rate process and basically adopted the recommendation that was expressed in that report from 2018, correct?

A That's correct.

Q And based on that structure, the State of Washington now sets a targeted net distributed income for its pilots as a starting point for determining rates. Is that correct?

A That's my understanding, yes.

Q And what is your understanding as to whether or not that is a process that's employed in Washington that can be employed in Florida?

A Well, it's -- I don't know the challenges of changing the Florida process, and it's a little bit outside the scope of my work for this project, but it would entail -- my understanding would be it would entail some sort of legislative change. That is what was required in Washington State, was legislation to change the rate-setting process.

Q Let's go to actually page 1 of your report. And I'm looking at the heading, "Comparison of Other Maritime Industries and Professions." If you're with me.

A Yep.

Q The first sentence, "Harbor Pilots are considered the pinnacle of the mariner profession and command earnings much higher than other professions and activities in the maritime industry." Are you with me?

A Yes.

Q So what follows that sentence is an example regarding 34,520 individuals employed in the occupational category of captains, mates, and pilots, as expressed in Exhibit 1; yes?

A Yes.

Q Are any of those 34,250 individuals employed in that occupational category state-licensed pilots?

A No.

And if I can clarify. The sentence is a little -- it should have been written more clearly. What's missing is to say that pilots earned, on average, roughly between, you know, around 5, $600,000, and 450, $550,000 a year, as compared with the closet profession to state-licensed pilots -- captains, mates, and pilots of water vessels.

So this is -- it's not written clearly enough. This is meant to compare -- what's missing is what pilots typically earn, state-licensed pilots, versus what captains, mates, and pilots of water vessels earn.

Q And if you were to rewrite this and include what pilots typically earn, would you be including the numbers that you included in your

Exhibit 11?

A I would include that, as well as other examples as well. That's right, I would -- that's correct. This is for the United States, this number here, 97,820, that's for the entire United States. I could provide examples taking that to compare against.

Q What other examples besides the ports included in Exhibit 11?

A You know, honestly, there's so many examples that I probably just resort -- I'd probably refer back to the exhibits in 11 only, because there are so many examples, I would just choose those to illustrate that point.

Q Okay. So am I correct that you do believe within those 34,250 individuals, under that occupational category of captains, mates, and pilots of water vessels, that there are people included in occupations that you would consider to be comparable to state-licensed pilots?

A So no occupation is perfectly comparable, but the closest comparator would likely be someone who is a captain of a vessel.

Q Okay. And where would --

A And they would be --

Q Where would they be shown -- I guess, where would they be shown within Exhibits 1 or 2 in terms of an average wage?

A For people who are captains?

Q Yes, sir.

A That would be the national average of 97,820, among 34,520 employees. But again, these are employees, these are not state-licensed pilots.

Q Right.

But is a captain of a vessel an employee?

A In many cases, yes. And they will get -- so they are captured in this data.

Q So where do I find them within Exhibit 1 or Exhibit 2?

A So they could be -- Exhibit 1 is -- is captains, mates, and pilots of water vessels across the U.S. and metro regions. So they could be found in any one of these countries. So, for instance, there are 2,990 people employed in the Houston region with the occupation of captain, mate, or pilot of a water vessel, which honestly -- and I don't have -- I don't have detail -- I don't have any insight or -- not insight, but I don't have any deeper sort of -- there's no transparency into like what's included on the pilots in that category, but

anyone who's a captain of a vessel employed by an employer in the Houston area would be reported as one of the 2,990 jobs in 2023.

Q Is it correct for me to say that you have no way of telling me how many captains of vessels are included within those 2,990 jobs within Houston?

A That's correct. This is the most detail that's available.

Q Okay. So I don't believe your report includes anything to this effect. But does your report include anything that's going to give us a number for an average wage for captains of a vessel, whether it be nationally in Florida or any region?

A My report will not provide -- does not provide that.

Q Do you have an opinion in that regard?

A I believe I've -- so captain -- I -- and I might -- I -- from what I recall, I believe that I -- it was from Captain Bushy's deposition, that a captain often makes around $200,000 a year. But I would want to go back and check, I don't want to misrepresent his deposition, but that's something that I do recall. And I do recall seeing articles, news articles that corroborated that estimate.

Q Okay. Anything besides news articles and

Captain Bushy's testimony that makes you think that $200,000, or any other number, is an appropriate number for the average wage for a captain of a vessel?

A Those are the numbers that I -- those are the only numbers I have available. So nothing beyond that.

Q What articles are we talking about?

A I'd have to go back and check. Because it wasn't in part of the report, I didn't include it, but I could currently provide that afterwards, what I referenced or what was there or what I was thinking of.

Q So those articles have not been provided to date?

A They have not.

Q You've got in this Exhibit 1, captains, mates, and pilots of water vessels, numbering 2,160, from New York, New Jersey, and Pennsylvania. Do you consider the individuals that hold those 2,160 jobs to in any way compare to a state-licensed pilot of Florida?

A I believe that our -- there are likely -- without again having visibility into any further details of this data, I believe there are people

who -- although not exactly comparable to a pilot, are captains of vessels.

Q But you can't --

A And oftentimes -- I'm sorry.

Q Go ahead.

A And oftentimes the pipeline for people to become pilots is often through being a captain of a vessel, whether it's tugboats, a ferry, an oceangoing vessel, other kinds of -- or cruise ships. Those are oftentimes the pipelines for people to become pilots.

Q What do you base that statement on?

A The work that I had done in 2018, through the Washington State Transportation Committee.

Q So that work, does it just relate to the State of Washington in terms of a pipeline?

A I believe that it is broader than that. So it's not just Washington State, but it's in general across all types of all districts of the U.S., the common pipeline typically involves someone moving up the ranks within other water vessels -- or waterborne vessels.

MR. MANSON: I don't want to break your concentration, but when it's time for a comfort break, just let me know.

MR. PAGE: Yeah.

BY MR. PAGE:

Q Looking at Jacksonville, in Exhibit 1, to your report, 810 jobs. Are you with me?

A Yeah.

Q Do you know how many state-licensed pilots there are in Jacksonville?

A I don't recall the exact number, but it's something that would be easily available through the existing Florida documentation.

Q Okay. I'll represent to you that there are approximately six, based on that representation.

A Uh-huh.

Q You put in your Exhibit 11 a 2020 net income for the Jacksonville pilots of $563,700; yes?

A Yes.

Q The discrepancy between that number, $563,700, and the annual average wage and the annual median wage of this 810 jobs in Jacksonville, wouldn't that discrepancy alone indicate to you that this data from this captains, mates, and pilots occupation is not comparable to state-licensed pilots?

A So this data does not in any way include state-licensed pilots. Like the -- let me correct

myself. The vast majority of these regions, the only state -- to my knowledge, the only state-licensed pilots that are included in this data set are those that are employees, which, to my knowledge, includes Port Los Angeles, Grays Harbor, and I believe the Great Lakes.

So it does not surprise me, because state-licensed pilots are not included -- the Jacksonville state-licensed pilots not included in this data set because they're not employees.

Q But you still think Exhibit 1, and the analysis in your report that relates to Exhibit 1, is material to this case?

A I do believe that people who are captains of vessels, while not exactly comparable to pilots -- state-licensed pilots, because again state-licensed pilots are considered the pinnacle of the mariner profession --

Q You can --

A -- so -- sorry. Go ahead.

Q You cannot tell us, as you sit here today, or on available data you cannot tell us at a later point in time how many of these 34,520 jobs are state-licensed pilots. Is that right?

A I can tell you that -- I cannot give you

an exact number, but I can tell you it's a very, very small fraction.

Q Okay. And my question was: How many jobs within that 34,520 are captains of a vessel? I misstated and said "state-licensed pilots." Is your answer the same regarding captains of a vessel?

A It does not allow me to further -- it provides no additional visibility into of that group of captains, mates, and pilots what numbers are actually captains versus mates.

Q So --

A Or pilots.

Q In terms of what percentage it would be, can you give me any estimation?

I think for state-licensed pilots, you said a very, very small percentage. What about for captains of vessels?

A I'm not able to give you a percentage.

Q Do you know if it would even be a statistically relevant percentage?

A I believe it would be, yes. But typically because for any given pilot revenue, a captain would have first, second, and third mates. I would imagine it would be smaller than the total number. It would be a -- it would be a smaller

percentage than mates.

Q But you don't know what that would be, correct?

A I don't know that exact number, no.

Q Do you know that general number?

A I don't know the general number. I'm guessing it's -- I would be guessing, and I don't want to speculate or guess.

Q Thank you.

MR. PAGE: Let's take a break. Five minutes, please.

MR. MANSON: Okay. Just on the record -- this doesn't have to be on the record, but just the line open, it's 3 o'clock. How much more do you think you have, Eric, time-wise?

I know also, Donna, that you've got a half an hour as well.

MR. PAGE: I will tell you I am moving as absolutely quickly as I can. And I don't have an answer for that yet.

MR. MANSON: I'm not asking you to give you a hard time, Eric. I have an absolute -- I have to leave to get onto an airplane, so I'm looking to see if I can find somebody -- I want you to finish today, as you said, but I want to

see if I can find somebody else to cover. I'm just trying to figure out how long you think you're going to go so I can get that coverage on this five-minute break.

MR. PAGE: What time do you need to leave?

MR. MANSON: 4:00. Because we talked about 12:30 to 4:00. I'm going to call and see if I can get somebody else in the office to cover the back end of the depo. I need to actually leave here right now. I need to be at the airport at 4:00, and I need to leave where I am now at 3:30, but I was going to have someone else come in and do a half an hour, but now I'm going to have to arrange, I think, longer than that.

MR. PAGE: Yes.

MS. MCNULTY: If this is helpful, Eric, I can yield most of my time to you. I just have one question so far.

MR. PAGE: I mean, if I continue to go absolutely quickly as I can, as I've been doing, then I think I've got a couple of hours.

MR. MANSON: So what do you think, 6:00?

MR. PAGE: Yeah. I'm supposed to be

somewhere at 6:00, but I will have to cancel that if needed.

MR. MANSON: Okay. I will make -- on a break, I'm going to make some calls and see if I can get us coverage to 6:00. I'm asking someone to jump on a call that didn't expect to be here, so I don't think we'll get you past 6:00, plus we'll be almost to 18 hours of deposition with this individual by that time. And I think you'll get what you need by 6:00. Let me go off break and make some calls, and I'll be back by 3:12.

(Recess from 3:08 p.m. to 3:14 p.m.)

BY MR. PAGE:

Q I'm just going to share this because we've chatted about it here and there, and it's not been marked an exhibit, Mr. Cohen, to your deposition. And I feel like that's my oversight.

All right. Can you see that?

A Yes.

Q And does this look familiar to you?

A I think we looked at this last time. So yes.

Q Yeah, I think we looked at it but didn't mark it. But you will recall down here, we're

looking at primary consideration, and then here we start to look at the factors in 5(b); yes?

A Yes.

Q Okay. So I'm just marking that now because I didn't -- I want to remember to mark it and because we may need to refer to it, but it's Exhibit 35.

(Cohen Deposition Exhibit Number 35 marked for identification.)

BY MR. PAGE:

Q And you still got your report in front of you?

A Yes.

Q Let's take a look at page 5, Exhibit 6.

A Okay.

Q You've got Savannah Bar Pilots Association added in there from your prior version of your report. Why is that added in there?

A You know, I think it was just to illustrate a broader universe of price differences across regions, but because I did not include Savannah as a comparator, it's not of any -- of much use for the rest of the analysis.

Q Okay. So then are the ports shown in Exhibit 6 that are not included in Exhibit 11, in

terms of their difference in cost of living relative to Tampa, not really of any use in the analysis?

A Correct. It's just for context.

Q Thank you.

Compared to your prior report, entries were removed for Mississippi River Branch pilots, Mississippi River Crescent pilots, and Mississippi River New Orleans, Baton Rouge pilots. Why were those entries removed?

A New Orleans, Baton Rouge pilots are still in this exhibit.

Q I apologize. I missed it.

A And then I -- I don't recall why the Mississippi Branch pilots were removed, but many of these are in the same metropolitan region anyways, so for the purposes of illustrating differences in the cost of living, it -- it wouldn't matter.

For instance, the Associated Branch Pilots of New Orleans, New Orleans-Baton Rouge pilots, and Crescent River all are reported, I believe, under the same metropolitan region, for the purposes of comparing the regional price parity index. But I don't recall specifically why they were taken out other than just to make this a more manageable table.

Q And your portion of the final report is significantly larger than your portion of the July 8th draft report, right?

A I believe just --

MR. MANSON: Objection to form.

THE WITNESS: Oh, I'm sorry.

MR. MANSON: No, go ahead. I just said objection to form.

A I believe because we shortened the forecast section of the report, in addition to additions to the earlier sections of the report.

Q The report in total length is about the same, though, right?

A I think so, yes.

Q Mr. Kemmsies' portion is now only about a page and a half, right?

A Yes.

MR. MANSON: Just for the record, I apologize, Eric, Paria Heeter is now appearing for the Petitioners.

MR. PAGE: Okay. Are you leaving us?

MR. MANSON: Thank you.

MR. PAGE: Thanks.

Hey, Paria, can you hear us okay?

MS. HEETER: Yes, I can. Thank you.

MR. PAGE: Yeah. We are on the final report of the Petitioners' economic experts, page 5.

MS. HEETER: Thank you.

MR. PAGE: And do you have a copy of it or do you need me to share a screen?

MS. HEETER: Is this -- you are referring to the most recent version?

MR. PAGE: Yes. And Mr. Cohen has a copy in front of him so I have not been sharing the screen, more so for Doug's hearing, but I'm happy to share it if you would like me to.

MS. HEETER: If you don't mind, if you could just hold up, like a one-minute break, let me just grab a copy, and then run back in. That would be easier than making you share your screen.

MR. PAGE: Sure. Thanks.

MS. HEETER: Yep. Thank you. You can go ahead.

MR. PAGE: All right. Thank you.

BY MR. PAGE:

Q Looking at page 5, the heading on the bottom, bold heading, "Comparison of Ports With Pilotage Services." Are you with me, Mr. Cohen?

A Yes.

Q First couple of sentences there, there's a comment about useful indicators to help identify peer ports, including overall tonnage, types of cargo, and payloads, and regional characteristics of pilotage.

Do you see that?

A Yes.

Q So that section goes on for a couple of pages, and is inclusive of Exhibits 7, 8, and 9. Are you with me?

A Yes.

Q Other than what's in Exhibits 7, 8, and 9, and what's in the commentary that accompanies those exhibits, did you look at any other regional characteristics of ports?

A I do not believe -- I believe this is inclusive of all the characteristics that we considered.

Q Okay. And the last time we sat down, you said that you had a target net income for the Tampa Bay pilots of 500 to 550-ish thousand, correct?

A Correct.

Q And correct me if I'm wrong as well, but I also believe that that figure was based upon your

average of the other three Florida ports as shown in Exhibit 11. Is that right?

A Correct.

Q So in terms of coming up with that target net income, does anything within this section, comparison of ports with pilotage services, influence that number other than potentially the exclusion of certain ports?

A It would be the exclusion of certain ports -- exclusion of certain ports, so nothing additional. So to identify what ports we wanted to utilize for comparative purposes.

Q So looking at Exhibit 7 on page 6, the -- under Florida ports, the Canaveral Port was excluded from your Exhibit 11, correct?

A Correct.

Q And is it fair to say that all of the other ports under the headings "Other Gulf ports, Atlantic Coast and West Coast Ports" are also all excluded from your determination of target net income?

A Correct. The target net income then was ultimately derived from the average of Jacksonville, Everglades, and Miami.

Q Okay. You can take them one by one, if

you wish, or you can take them as a group. But why were the other Gulf ports excluded from your determination of target net income?

A So Sabine was determinated to not be a good comparable because it is disproportionately reliant or driven by oil and gas. And also again drawing on Captain Bushy's deposition, if I recall correctly, Sabine was determined not to be a useful comparable for that reason.

Q Okay. How about Houston?

A Houston, because we also looked at ports of similar size, looking at marine cargo tonnage 2022. Houston was considered to be so large that it was determined not to be a useful comparator. So based on size alone, so Houston, in terms of marine cargo, tonnage, domestic and international combined, of all modes, is about ten times the size of Tampa, or Tampa -- the Tampa Port Authority, so including AT. For similar reasons, we also opted to remove New Orleans. Another reason, I should say, for Houston was because of the lack of cruise ships going through Houston.

The Ports of South Louisiana and Lake Charles were also excluded based on both size, the type of tonnage that is often the predominant form

of tonnage -- or, I'm sorry, and the type of tonnage -- the type of cargo, I should say. For instance, Lake Charles, almost 90 percent of all the tonnage or the cargo is oil and fuel, or oil and gas. And also the fact that neither Port South Louisiana or Lake Charles handles cruise ships.

As I mentioned, on the Atlantic Coast, Charleston would -- would be a good example to include, but I don't have any data on the income, so it's just the lack of data canceled out Charleston. But Charleston does meet the requirements -- or does fit our criteria based on the other metrics. So they do handle cruise ships, their tonnage, domestic international 2022 was almost identical to Tampa. So it was about 27.7 million tons, short tons.

And Savannah does not handle cruise ships, so I opted not to include Savannah. The west coast ports were for information comparative purposes to help illustrate what pilots earn across the country. So looking for west coast ports that show or display some of the same characteristics.

So the ports of Seattle and Tacoma are the Puget Sound pilots. They do not do a lot in the way of tankers though. So roughly about 1.7 percent of all vessels that are handled above, I believe it

was -- I think our cutoff was 14 feet of draft, were tankers. So a very small percentage. They do handle cruise ships though. But combined, they're also a bit larger, but in the same ballpark with the larger combined tail with respect to tonnage.

The two Columbia River ports are combined, so the River pilots and the Bar pilots are another comparator. They do handle cruise ships out of the Port of Portland, as well as the River ports, so they typically don't require pilots, I believe. And they do a little bit higher percentage of their anchors, but we decided to exclude them.

Port of Los Angeles was for comparison -- for comparative purpose again for context, but those pilots are actually City employees, so we decided not to use them for -- for context in comparison, but not ultimately to inform a decision about what the right net income per pilot would be.

And the Bay Area pilots, for similar reasons, they're not -- they're private, independent contractors. But again for comparative and context only.

Q Thank you.

Regarding the ports that you commented on as being too large, and I believe those might have

been the ones under other gulf ports, in terms of taking one of those ports and recognizing that they have a significantly higher number of pilots that are servicing the vessels that are coming in and out, the tonnage that is coming in and out, wouldn't that be a way to normalize the size of those ports so they could be comparable to Tampa Bay?

A Well, I think there's a lot of additional complexity that comes with a much busier port, with respect to the number of vessels that are moving in and out, the types of vessels. For those reasons, we thought -- and this was in conversations with Dr. Kemmsies as well -- opted to use tonnage as a way to look for peers within a reasonable range based on tonnage as one consideration.

Q And the only peers you came up with were the three Florida ports that you used?

A Correct.

Q And to be specific, you used those three Florida ports to determine a target net income, not for any other purpose, right?

A That's correct. That was ultimately to identify net income --

Q So --

A -- to compare.

Q So when you're excluding the other gulf ports, the Atlantic Coast ports, and the west coast ports from your consideration of using them as comparables for a target net income calculation, are you analyzing them in terms of being a comparator port for any other reason besides target net income?

A No, only with respect to net income.

Q Okay. In terms of some of the -- you spoke about natural gas and oil being the predominant product going in and out of Sabine. And I think you kind of mentioned that for some other gulf ports. Is that right?

A Correct.

Q Which column reflects the natural gas and oil product going in and out of those ports?

A That would be on page 6, Exhibit 7.

Q And is that the share of cargo tonnage, oil and fuel?

A Correct.

Q So for Tampa and Manatee, you have that at 49.6 percent. Is that right?

A Correct.

Q And is that number from the U.S. Army Corps of Engineers?

A Yes.

Q And then for the other gulf ports, the numbers there, starting at 89.7 for Sabine and going down to 69.2, 29.5, 26.3, and 88.5, those are all that same measure as compared to the Tampa and Manatee, 49.6, right?

A Correct.

Q And from the same source, correct?

A Correct.

Q In that first column, share of trips, tankers, is that also from the U.S. Army Corps of Engineers?

A Yes.

Q So Port Everglades, you used as a comparator for your target net income, right?

A Correct.

Q That second column, "Share of cargo tonnage, oil and fuel," that number is 60.7 percent, right?

A Correct.

Q Is that 60.7 percent number for Port Everglades right about in the middle of the two highest of the other Gulf ports and the two lowest of the other Gulf ports for share of cargo tonnage, oil and fuel?

A For Everglades, let's see, about

60.7 percent versus the -- oh, it's roughly -- it looks like it's in the middle, yeah.

Q Okay. And the Jacksonville percentage is virtually identical to the New Orleans percentage. Is that right?

A Yes.

Q In terms of these percentages and such in Exhibit 7, and Exhibit 7 as a whole, are your work papers contained within the documents that we looked at at the beginning of the deposition that were provided today?

A Yeah, these should all be sourced from the same waterborne statistics Excel file that was included that we looked over.

Q Okay.

A Including the formulas.

Q Okay. You do not have in this Exhibit 7 any cruise ship percentages. You just have a thumbs up, thumbs down, right?

A Correct. No, I do not have -- the waterborne statistics just do not include -- to my knowledge, based on the data, do not include cruise ships.

Q Did you look anywhere else for that data?

A I looked on a port-by-port basis. So,

for example, we looked earlier, and we reviewed some of the documents that were provided, I believe it was for Everglades, or maybe it was actually -- I think it might have been Miami, but the PDF we looked at before did provide information -- I went on a port-by-port basis to see how many cruise calls for select ports.

Q And it --

A But it wasn't from the waterborne statistics data, so --

Q Did you get that data for any of these ports in Exhibit 7?

A I believe -- I think I described some of the Florida ports, so --

Q Was that out of the Investigative Committee reports that you got that data?

A No. That was -- for any reference to cruise ships and the number would have been -- later on would have been from specific port websites. So, for instance, on page 10, for Port Everglades pilots, there is -- yeah.

So at the bottom of the last complete paragraph, I referenced a decline in cruises of 16.2 percent. So that does -- that's an example of data pulled directly from the ports and the port

websites.

Q Did you get any data on cruise ships percentage-wise outside of the Florida ports other than yes or no?

A I did not.

Q Other than yes or no?

A No.

Q And your yes or no came from Dr. Kemmsies. Is that right?

A Dr. Kemmsies, and also just an online review of websites to determine whether or not they have cruise ships, but not how many.

Q You spoke about also, I believe, vessel types in terms of carrying oil and gas within the other Gulf ports. Is that right?

A Correct.

Q And you spoke, I believe, of a heavy dependency upon oil and gas, indicating that only certain types of vessels were going in and out of those ports. Is that right?

A Correct.

Q Did you do any analysis of whether vessels with similar characteristics were going in and out of the Tampa Bay ports?

A Yes. That's the first column in

Exhibit 7. So looking at the share of trips, and that's the enter and exit of vessels, into the ports of Tampa and Manatee that were tankers.

Q Right.

But just because they're a tanker, that doesn't dictate all of their vessel characteristics. Would you agree with me?

A Yes.

Q So besides just identifying them as tankers, did you look at the vessel characteristics of the tankers and other vessels going in and out of the Tampa Bay ports versus other ports?

A Not with respect to some of the dimensions, such as like length overall. The only characteristic that's available in the Army Corps data is vessel draft. So we did not look at the characteristics.

Q Did you look anywhere besides the Army Corps' data that gave you draft vessel characteristics?

Did you look anywhere else for vessel characteristics?

A Not in comparison to Tampa versus other ports.

Q Okay. Let's go to page 8 of your report.

Are you with me?

A Yes.

Q You testified earlier that you couldn't tell me what pilots associations were included within the Port of South Louisiana, LA, referenced here in Exhibit 9. Am I restating that correctly?

A Yes.

Q Would your answer be the same to the port entry for New Orleans, Louisiana?

A Well, there are at least two pilots associations that serve the Port of New Orleans.

Q And they are?

A The NOBRA, New Orleans-Baton Rouge, I forget -- I'm sorry, I can't remember the acronym, but NOBRA. And then the Associated Branch pilots of the Port of New Orleans.

Q Can you tell us, among those two pilotage associations, what percentage of the marine cargo tonnage from 2022 each of them handled?

A I do not have that data, but that's certainly, I believe, something that would be retrievable from the Louisiana Pilotage Commission documents. I don't have that in front of me available for that percentage split.

Q Okay. So you can't give me an answer on

what that percentage split would be?

A Right, correct.

Q And would that be true for the remainder of that row regarding vessel count, tankers, and tankers, a share of total trips?

A Correct.

Q Okay. And the only vessels that are counted in this Exhibit 9 are those with a draft above 14 feet. Is that right?

A Correct.

Q And that's a delineation that's made by the Army Corps of Engineers?

A No. That was a delineation that was recommended by Dr. Kemmsies.

Q Why?

A Because in his -- it was his opinion that vessels below 14 feet of draft were most likely not vessels that would need to be piloted. So, for example, yachts, personal vessels, and so forth.

Q Do you know what he based that opinion on?

A Just his professional opinion based on years of experience working on ports.

Q Do you know the pilotage organizations, if there are more than one, that service the Port of

Greater Baton Rouge, Louisiana in this Exhibit 9?

A So I believe that would be NOBRA. I don't recall specifically off the top of my head which other -- what other associations serve the Port of Baton Rouge.

Q But you believe there are one or more associations in addition to NOBRA?

A At least NOBRA. I'd have to go back and look at which other ones serve that port.

Q So do you believe that there are others?

A I -- I'd have to go back and look. I don't know right now.

Q All right. The heading "Pilot" -- sorry, "Harbor Pilot Compensation." Are you with me?

A Yes.

Q About halfway down that first paragraph, "Pilotage Assignments and Districts." Are you with me there?

A Uh-huh. Yes.

Q Just read that sentence through the end of human passengers to yourself.

A Okay.

Q So as I look at that, I break it down to navigation complexity, inherent risks, nautical mileage, length of mileage duration of a typical

assignment, and types of payload. Of those five factors, are any of those factors that you believe the PRRC did not evaluate?

A I would have to go back and look at the Investigative Committee report, but I don't recall a comparison of ports by tonnage, for example, or characteristics being factored into the report. But I would want to go back and review the report first.

Q There were comparisons done between various types of vessels as between various ports with the application of the requested rates, correct?

A Yes.

Q And would you -- will you agree with me that those various types of vessels would likely carry those various types of payload between dry bulk and human passengers?

A Yes.

Q All right. Exhibit 35. This is 310.151 Florida Statutes that I just marked. And as you noted, have discussed here and there. In that same paragraph of your report, the end of that paragraph on page 8, a statement is made, "Regional differences in the cost of living also affect the real earnings of pilots across the country."

Are you with me?

A Yes.

Q All right. Looking at Section 5 of 310.151, you've got 5(a). Do you see that up on the screen?

A Yes.

Q And then 5(b) starts here, and you get No. 1. And it's going to continue down through No. 12. So my question for you -- and I can scroll down on the screen whenever you're ready -- is, where, if anywhere, in these factors do you believe that the PRRC is required to consider regional differences in the cost of living affecting real earnings of pilots across the country?

A Can you scroll down some more? I'm having difficulty seeing your screen. And go up again. I'm sorry.

Q No, I'm happy to.

A Okay.

Q Do you remember the question?

A I do.

Q Do you have an answer?

A Well, nowhere does it explicitly refer to regional differences in cost of living.

Q It doesn't refer to that --

A It --
Q I'm sorry. Go ahead.
A Oh, but it doesn't mean it's not a consideration when setting your reasonable net income per pilot. But nowhere does it explicitly say differences in cost of living across regions.
Q And you understand that this 5(a) is a mandatory requirement for the PRRC?
A Yes.
Q And do you understand that everything under (b), those 12 that we looked at, is a mandatory requirement -- are mandatory requirements?
MS. HEETER: Object to form.
A Yes.
Q Okay.
A Yes.
Q And do you -- do you see anything -- and I can scroll down again -- that would require the PRRC to look at any variable in setting pilotage rates in Florida with that variable in terms of across the country?
MS. HEETER: Object to form.
A Can you scroll down, please?
Q I'm happy to.
A And then a little more. A little further

down, just to see the last part there.

Q Yeah. Sorry.

A Oh, okay. Never mind. That's actually ©, not (b). Well, it says that there's a bit of an open-ended No. 12 that cites any other factors that can be deemed relevant in determining a just and reasonable rate, which would include a net income -- a reasonable net income per pilot. And in determining a reasonable net income per pilot, comparing that income with other regions is one consideration. So in that -- in that -- at least under No. 12, I would say that regional price differences or cost of living do figure into that -- or can figure into that.

Q Can figure into that because that reads as if it's the PRRC's discretion, correct?

A Correct.

Q And from anything that you've read in this case, do you believe that the PRRC deemed it relevant to look at cost of living across the country?

A I do not recall seeing any use of cost-of-living comparisons across the country in the report.

Q Do you recall seeing that in any other

Investigative Committee reports or PRRC final orders or notices of intent?

A Not in -- specifically in any State of Florida PRRC reports.

Q Or Investigative Committee reports?

A Or Investigative Committee reports, I do not recall seeing it.

Q Or final orders or notices of intent, correct?

A Correct.

Q Going back to your report, page 8, the subheading, "Net Income Per Pilot Per Region." Are you with me?

A Yes.

Q And on the next page, No. 9, there's an Exhibit 10. Are you with me there?

A Yes.

Q Back on page 8, it's stated -- and this is your portion of the report, right?

A Yes.

Q It's stated in the middle of that paragraph, "For context, Exhibit 10 below shows" -- I'm sorry. "For context, Exhibit 10 below presents the average annual wages of other high-skill and/or high-risk positions in the United States, Florida,

and the Tampa/St. Petersburg Metropolitan Statistical Area," right?

A Yes.

Q Looking at Exhibit 10, how do the average annual wages of cardiologists, family medicine physicians, physicians all other, police and sheriffs patrol officers, and firefighters give us context in terms of the average annual wages of a state-licensed Florida pilot?

A So these serve as the benchmark to understand in context what the pilots make relative to other important -- publicly important occupations in the region. So that, for example, physicians that are high risk involve significant high-level training, many years of training, such as a cardiologist, to understand in the context of what the pilots earn relative to some of these other positions that are socially important, and important for society, that involve high risk and a high degree of training and more competitive training.

Q Would you consider a publicly important occupation to be a schoolteacher?

A I do.

Q A garbageman?

A Yes.

Q Security guard?
A To a degree, yes.
Q Social worker?
A Sure.
Q Therapist?
A Yes.
Q Why didn't you include them in Exhibit 10?
A Because those are not positions that typically entail either a high degree of personal risk and/or a high degree of training. So a cardiologist requires four years of undergraduate, four years of medical school, four to five years, or one year of internship, three to four years of residency to -- and then passing a rigorous board examination process to become a cardiologist and perform the services of a cardiologist.
Q Looking at --
A A police officer or a firefighter requires less training, but their lives are at a much bigger risk, much bigger risk. So these are examples to illustrate for comparative purposes other kinds of jobs, much like pilots have a high-risk, high-level education and training to become pilots. These are other kinds of occupations

that also require a high level of risk and/or a high level of training to perform those services in society.

Q What is the risk to police and sheriffs and patrol officers and firefighters that caused you to include them in this Exhibit 10?

A Because these are socially important positions held by people that are potentially putting their lives at risk.

Q Okay. So the risk is associated with physical harm or death; yes?

A Yes.

Q And then you already commented on there being a lesser degree of training for that group of folks; yes?

A Correct.

Q What is the risk associated with cardiologists, family medicine physicians, and physicians all other?

A Well, I mean, for cardiologists, it's the risk to the patient.

Q Not to the cardiologists themselves though, correct?

A Correct.

Q What about the other medical areas,

family medicine physicians and physicians all other, what's the risk to them?

A The risk is again to the -- primarily to the patient, but to a lesser degree than someone who's working directly on an organ, in this case the heart.

Q Well, if something goes wrong, the cardiologist is just fine physically, right?

A Yes.

Q If he prescribed the wrong medicine, as a family medical physician, it's not going to physically harm you, correct?

A Correct.

Q Would you agree with me that pilots are exposed to significant risks, both physical harm and even death?

A I would -- yes, I would agree that pilots are -- whether it's climbing the Jacob's ladder to board the vessel or down from the vessel, do face significant risk.

Q And that would include just stepping off a pilot boat onto a barge; yes?

A Yes.

Q So will you agree with me that in terms of cardiologists, family medicine physicians, and

physicians all other, there is extensive training but little or no physical risk?

A To themselves?

Q To themselves. Would you agree with that?

A I mean, there's always risk in some way to themselves, whether it's exposure to a disease or a virus or another kind of, you know, infectious disease of some sort, but generally the risk is greater -- my understanding is the risk is greater to the patient.

Q And would you compare the risk to those cardiologists, family medicine physicians, and physicians all other to be at all comparable to pilots in terms of physical risk?

A Not in terms of physical risk, but certainly in terms of level of training required to achieve the position of cardiologist --

Q I was just going to --

A -- and the risk -- the risk to those that are receiving the services of a cardiologist.

Q When a pilot provides a pilotage service to vessels, there are people on those vessels, correct?

A Yes.

Q Sometimes there's thousands upon thousands of people on those vessels, right?

A Yes.

Q Sometimes they're carrying volatile or highly flammable cargo, correct?

A Correct.

Q None of the professions identified in Exhibit 10 have a relation to the maritime industry, right?

A Correct.

Q Below Exhibit 10, you express 2019 Mississippi River Branch pilots income. I believe that's -- and that's from the Dibner report, correct?

A Correct.

Q Is the 2019 net income from the Mississippi River Branch pilots at all material to your report or opinions in this case?

A It is not.

Q What about the Port of Los Angeles net income of $434,000 expressed here, is that at all material to your opinion or report in this case?

A That is again to provide context to understand the broad range of net incomes that are earned by pilots across the U.S.

Q Are you aware that the pilots in the Port of Los Angeles are unionized?
A I know that they are City employees.
Q So you don't know one way or the other if they're unionized?
A I believe they're unionized, but I don't specifically -- if they're City employees, they are likely to be unionized. I believe they are unionized.
Q Do you see that document up on the screen?
A Yes.
Q "Memorandum of Understanding," right?
A Yes.
Q Do you see who it's by and between?
A Yes.
Q Do you see the date there, through 2027?
A Yes.
Q We'll get there in a second. It's not a short one. Do you see that Article 1, Recognition?
A Yes.
Q Does that confirm your belief that the pilots for the Port of Los Angeles are unionized?
A Yes.
MR. PAGE: I'll mark that as Exhibit 36.

(Cohen Deposition Exhibit Number 36 marked for identification.)

BY MR. PAGE:

Q Do you know whether or not vessels entering, leaving or shifting within the Port of Los Angeles may, but are not required to, request the services of and be piloted by a port pilot?

A I believe they are required to request the services.

Q Can you see this Port of Los Angeles Tariff No. 4 document?

A Yes.

(Cohen Deposition Exhibit Number 37 marked for identification.)

BY MR. PAGE:

Q Do you see this language starting over here with "Any Vessel"?

Sorry, my cursor is giving me a hard time.

A I see it, yeah.

Q Okay. There we go, "Any Vessel." Assuming this is an authoritative source, would you agree with me that vessels entering, leaving or shifting within the Port of Los Angeles may or may not request the services of a port pilot?

MS. HEETER: Object to form.

A Yes.

Q And do you see that next sentence, assuming this is a valid document --

A Uh-huh.

Q -- "The pilotage services are also understood to be voluntarily requested and rendered"?

Do you see that?

A Yes.

Q In Florida, do you know if the pilots are allowed to refuse to provide pilotage services in anything but exceptional circumstances?

A I believe they -- I don't recall the specific language. I believe that they have to -- or they cannot refuse except for -- I believe it is because they cannot refuse unless it's under specific circumstances.

Q Okay.

A I would add that in -- and this would be a question perhaps I would want to confer with Dr. Kemmsies, but, to my understanding, no large vessel would enter or exit the Port of Port Angeles without pilotage services.

Q Are you aware that the San Francisco Bar

pilots have their rates set through a legislative process?

A Yes.

Q And are you aware that those rates only get altered also through a legislative process?

A That does sound familiar to me, yes.

Q Okay.

MR. PAGE: Let's take five minutes.

(Recess from 4:08 p.m. to 4:15 p.m.)

MR. PAGE: Back on the record.

BY MR. PAGE:

Q I'm showing you, in a moment -- there we go. I'm not having much fun with my scroller. But is this -- at least as we're looking at it, appear to be the Nexus Economics report that you've been -- that is part of your scope to provide a rebuttal opinion regarding?

A Yes.

Q Okay. And I believe you testified earlier that you understand your role to be as a rebuttal expert concerning this report to the entirety of it?

A Yes.

Q Do you take issue with the methodology in comparing pilotage fees per nautical mile?

A I think that the -- the math does not seem to be problematic at all. I do question whether that's a useful comparator.

Q Why?

A Because, like, there's a lot of differences with respect to navigational complexity that, I think, minimize or reduce the efficacity or utility of this kind of comparator.

Q Well, if you're going to compare one port to another, you've got to find some variable, right?

A Uh-huh. Yes.

Q And the variable that you have used is net income for the three Florida ports to derive a target net income for Tampa Bay; yes?

A Yes.

Q So would you agree with me that doing a comparison between ports, based on fee per nautical mile, is an analysis of another variable that would differ between ports?

A I think it's a comparator variable, but there -- it's not a deterministic variable. In other words, it is one way to look at differences in pilotage services, but it does not ultimately capture that much, or reflect that much, with respect to the difficulty or the work involved in

providing pilotage services.

If we -- if we look at the different -- I mean, there's lots of ways, you know, we can go back to our discussion around which pilotage associations to include. There are other pilotage associations that perform much greater mileage, nautical mileage, for example, compared to Tampa, or other ports. You know, the Puget Sound pilots, the one that I'm familiar with in the northwest, oftentimes performs assignments that extend 60, 70 nautical miles.

So it is one way to compare, but it is not the -- it is that, it's just simply one way to compare pilotage services, but it is not the only, or I think, the -- the deterministic way to compare these different associations. But it is a way to compare. And yeah, so that -- and the math, there's -- I don't see anything wrong with the math that's being applied.

Q Do you consider net income per pilot to be the deterministic variable to compare ports?

A Not ports, but I think it's a useful comparator for pilotage services and for determining the rate based on net income per pilot.

Q Did you do any comparison of the Tampa Bay waterways in terms of nautical miles against

Port Everglades, Jacksonville, or Biscayne Bay?

A I did not.

Q Are you going to?

A I am not going to perform any additional research. So that would be what's in the report, so I do not plan to.

Q When you say you don't have issues with the math, I think I understand what you're saying is you take the rates based on vessel characteristics, divide it by nautical mile, and you're getting a price per nautical mile. Is that accurate?

A Yes.

Q Do you take any issue with the calculation of the rates?

A I have looked -- I did not see it's -- I don't recall having looked at the appendix that I have any issues specifically with the -- with the rates that would be applied based on the characteristics of length overall, draft, and so forth.

Q Do you anticipate expressing an opinion one way or the other regarding the rates?

A I will provide an opinion to the degree to which -- I will be providing an opinion about the rates, but just again based on the findings of the

report with respect to net income. I think --

Q No --

A -- you've asked this question before.

Q No, I didn't ask a very good question. I'll start over.

Are you going to express an opinion regarding the correctness of the rates as calculated in this Nexus Economics report in terms of those rate calculations being used in this nautical-mile comparison?

MS. HEETER: Object to the form.

A I looked over the appendix to see how they calculated it. I didn't see anything in the way that they arrived at the rates for the fees charged to the rates. That would be -- that seemed wrong, but I would probably go through it more carefully. I did not see anything, so I don't anticipate having an opinion about that.

Q Okay. And would your answer be the same concerning whether or not you're going to express an opinion as to the vessel characteristics assigned to these various vessels?

A Correct, I don't have -- I won't have an opinion -- I don't have an opinion about whether they correctly used the right characteristics for

those vessels.

Q Okay. Pilotage fee per hour of handle, I know you did work on workload and such that we'll get to. So I'm assuming that you will be rendering some form of opinion in this regard?

A Yes.

Q And will that opinion be based on you calculating a different hour per handle than 7.5?

A Yes.

Q So your opinion, will it boil down to applying your number, instead of 7.5, when we're looking at this Figure 2?

A It'll play an important part, yes, in questioning the utility of this kind of comparison.

Q Okay. But going back to the prior section or summary of a section regarding nautical mileage, you don't expect that you're going to be rendering an opinion regarding either the calculation of the rates or the use of vessel characteristics that get us to our numerator when we're doing this pilot fee per hour handle. Is that right?

A That's correct.

Q Okay. I scrolled down to the "Compensation per Pilot Analysis" in the Nexus

report. You've reviewed this in detail?

A Yes.

Q And you agree with the use, as comparative ports, of Miami, Port Everglades, and Jacksonville?

A Yes.

Q I believe in your report you said that the basis for excluding Canaveral was because cruise ships represent more than 50 percent of pilotage handles at Port Canaveral making it less useful as a comparator for the purposes of determining net income and rates. Is that right?

A That's correct.

Q Okay. Is that your sole reason for excluding Canaveral?

A That was the primary reason, yes.

Q What were the other reasons, if that was only the primary?

A I should say that was -- sorry. That was -- that was the reason. That was the sole reason.

Q Okay. You spoke about -- let me get back to it. You spoke about NOBRA, Lake Charles, Crescent, and Associated Branch. Do you see these four here?

A Yes.

Q And I believe your testimony for the basis of excluding them, was that those ports were too large in terms of the cargo tonnage that they were handling or that the vessel mix, in terms of tankers or oil and fuel vessels, caused you to exclude them. Is that accurate?

A That is accurate.

Q Did I miss anything in terms of the reasons that I just stated for your exclusion of those four ports?

A I also looked at whether or not how much of their international cargo was containerized. And so I looked at what -- that was Exhibit 8 on page 7. So, for example, Tampa/Manatee, for total international cargo, because you don't have a breakout for domestic, but for international cargo, roughly about 17 percent of cargo tonnage was containerized. So that was quite similar to Houston. But Houston, as we talked about, is so much larger, so we decided to exclude Houston based on size.

Baton Rouge and Lake Charles are both roughly about one percent of total tonnage is containerized. So that was the basis for excluding

them. And then Sabine was also zero percent international cargo containerized, so opted to exclude them as well.

Q Leaving you at the end of the day with three ports used for your targeted net income analysis; yes?

A Yes.

Q In terms of starting with eight ports, as Nexus did here in Table 8, and excluding the highest and the lowest, would you consider that appropriate in rendering an opinion on compensation per pilot from comparator ports, excluding the --

A Correct.

Q -- outliers?

A Well, being an outlier doesn't mean the highest and lowest. It really means how far a data point is from the median. So just because something is the lowest -- if we have five data points that are all very close to each other, and one data point that's twice as big as the rest, if you want to remove an outlier, you only remove that last data point that's five times as big as the rest, you don't remove the lowest to compensate.

So, you know, I -- I appreciate what they were trying to accomplish by removing outliers, but

an outlier -- removing outliers does not -- does not exactly -- it doesn't literally entail removing the highest and the lowest, it removes those that are so far removed from the rest of the data points. So again, if you have five data points that are all very close to each other and one that's five times larger than the median, then you just remove that one, you don't remove the lowest as well.

Q Okay. So do you think that in this instance, it would have been better off to leave all eight of the ports included rather than excluding the two that were excluded, which was Lake Charles and Miami?

A Yeah, I would have -- I'd have to -- I would have -- if it was me, I would have left Miami in for that reason. And I would have excluded Lake Charles and kept Miami.

Q Okay. Your example was having five data points that are close together and one that is five times away. You would agree that Lake Charles is by no means five times away from Everglades, right?

A Right. I was just using that to make a point.

Q What about applying a weighted average to result in this number versus a simple average, do

you have any opinion about that?

A So in this case, using a weighted average implies that pilotage is an open labor market, because you're saying that this is -- you're trying to get at an average earnings across all these regions where price signals or the wage reflects the demand for pilots. But pilotage is not an open labor market. The rates -- if you used a weighted average, it implies that the rates can fluctuate based on demand for pilotage across a larger geography, but that's not the case.

These are closed labor markets. They're also not -- they're opaque labor markets. So it's not as if -- well -- and I am less clear about the utility of it. I appreciate again what they're doing, but I'm not entirely clear about the utility of it because it's not an open labor market. People can't move easily from one district to another, from one association, let's say Miami to Lake Charles, as an example. It's not one single labor market.

Q Did you say that people can move from one to the other?

A They cannot.

Q Okay.

A Yeah.

Q So applying a weighted average appears to me, in this exhibit, to be trying to normalize between ports the volume of work in those various ports, because the number of pilots that work in a port is predicated upon the amount of volume coming in and out, because, you know, one person can only handle one ship at a time, right?

A Yes.

Q So wouldn't doing a weighted average that takes into account the number of pilots in a larger port make it more comparable in terms of pilot compensation than not doing a weighted average?

MS. HEETER: Object to form.

A Well, again, I think that it's not an open labor market, so it's -- yes. Like you could -- it's one way to compare and to arrive at one overall earnings across an entire region for pilotage, but these are closed labor markets. So it's a -- again, it's not clear -- I'm not clear what the ultimate utility is of doing that.

Q You didn't do any adjustment in your net income figures to take into account the number of pilots in the ports you considered comparable, did you?

A I did not.

Q Do you know how many state-licensed pilots were active in Port Everglades in 2019?

A I don't recall the exact number, but I know it's an available data point, but I just don't have it in front of me.

Q Okay. I've got limited time with you, Mr. Cohen, based on various factors. What else is it about the Nexus Economics report that you'll be expressing an opinion regarding?

A So there are really three things that I would like to express an opinion about in the report. So first is I disagree with using CPI to try to project net income per pilot across pilots associations. That's the first point.

Then I want to be clear that it's -- even though it's called estimated in the report, it's really projected because we don't have complete data for 2024, to be able to say with certainty how much any one pilots association earned on a net income basis. So that's one.

When one uses CPI to project income, you're making an assumption or a statement about what -- it's sort of a normative statement about what pilots should earn, that they should earn an income that is -- that follows inflation or adjusts

with inflation, but we know that's not the case.

So we know that net income per pilot is a function of many things. So it's a function of volume, the characteristics of that traffic volume. It's also a function of cost. So when you apply CPI to inflate net income per pilot for a given region, you should also apply that to their cost structure.

And, in fact, in many cases, particularly in Florida, as we've already covered in this deposition, Florida ports -- or Florida pilotage associations do not have COLA. So their incomes do not increase based on CPI growth over time. So I think it's -- I think it's very misleading for the purposes of comparing net income per pilotage association to use inflation, or CPI, to project what these other benchmark comparators incomes for pilotage associations are for 2024.

There's no data, there's no -- we haven't -- we have not factored in other considerations, again, like traffic volume, characteristics, and cost. So that's my -- my first piece of feedback.

Q Okay.

A It's also -- to be clear, it's -- I was going to say, just to be clear, it's -- particularly

in the case of Florida, there's no entitlement to -- to have incomes follow inflation. There's an adjuster, but there's no -- there's no requirement or entitlement for incomes to follow inflation.

These are not employees. You know, the one exception that we already covered was the City of Los Angeles, these are not -- these pilots are independent contractors. They can be mostly thought of as independent businesses. So using CPI is -- I think it's very misleading to try to use them to compare benchmark to benchmark Tampa with. So that's my first immediate comment.

Q Can we --

A The second comment is --

Q Can we talk about that for a minute, because I have a feeling you're going to have a lot.

A We can cover it. But yeah, I'm sorry, I didn't mean to go so fast here.

Q No, no, I got it. I just want to stick with your first so we can kind of talk through that a little bit.

A Yeah.

Q So in your report, you used a 2019 Port Everglades figure, correct?

A Correct.

Q Is this the figure that you used, 549,998?
A Yes, but the year is different.
Q I understand.
You attributed it to 2019; yes?
A Correct, yes, which is -- yes.
Q And St. Johns pilots is Jacksonville, right?
A Yes.
Q And this is the same 2020 number that you used, 563,700 from the year 2020?
A Yes.
Q Same year, right?
A Same year.
Q You made changes to those Port Everglades and Jacksonville -- I'm sorry. The only changes you made to those Port Everglades and Jacksonville net incomes was to reduce them to Tampa dollars; yes -- I'm sorry, adjust them to Tampa dollars; yes?
A Yes -- well, yes. And I can explain why.
Q I think you explained it in your report, and we can go back to that in a minute. But since we're not in person, it's a little more challenging. So let me just ask you a couple other things.
You talked about projecting income. Is

it your understanding that the compensation that's being set forth here in the Nexus report is as of January 1, 2024, what would be expected in 2024?

A Yes, that's a projection.

Q And is it based on taking a previous net income number and applying historic CPI to it?

A Yes.

Q You did not do that, right?

A I disagreed with that approach, yes.

Q You didn't do that, right?

A I did not do that.

Q Nor did you apply the rate escalators that are in place for any of the three Florida ports that you considered comparable for net income purposes, correct?

A Yes. And I explained why.

Q You did.

A I did not include them, and I can explain why.

Q Got it.

It's in your report why, right?

A Yes.

Q So you made the comment that the state pilots have no entitlement to have their income follow inflation, correct?

A Right. What I said was that there is no -- pilot net income is a function of many things. So very simplistically applying CPI to the last known net income per pilot outside of Washington State ports alone, even though there are COLAs in those other ports, other districts, is misleading, because it's a function of income -- I'm sorry, it's a function of many things, including cost, as well as traffic.

Secondly, you cannot apply CPI -- you should not apply CPI to Florida ports, because those are built on -- the ones that are referenced have escalators. They're not based on inflation. Those are not cost-of-living adjusters.

Q You did not apply those rate adjustments either though, right?

A I did not. And I can explain why.

Q Tell me why.

A Well, because we don't have detailed information. The only way -- the only reason to apply an adjuster is if we had all the complete information, like an audited statement for each of the Florida pilot associations up to the last year. And we don't have it. The only way we can have it is if we have a Dibner statement, and we don't.

However -- and I'll give an example. So if we go to an explanation, let's say -- let's go to --

Q St. Johns Bar pilots, page 9?

A Yeah, let's do that. Let's go to St. Johns. So the projected net income per pilot, which is the last data point that we have from the PRRC Investigative Committee report, was 563,700, in 2020. And I know that's a projection. That's the best number that we have available for 2020.

So two things: One; okay. So the order did not go into effect until 2021, which means the escalators did not apply until afterwards; the Nexus report -- let me go to the page here. Give me one moment so I can reference them. Lake Charles -- hold on a sec.

Okay. So the Nexus report applies CPI beginning in June of 2020, and then applies CPI -- applies a CPI inflator from June 2020 to January of 2024 -- sorry. July 2024 -- no, I'm sorry, June 2024.

So, one, the new rate did not start until 2021; and, two, if you look at the changes, as I mentioned before, the things that -- the variables that drive net income per pilot -- so we know that between fiscal year 2019, when that first -- when

that projection was actually made for 2020, to fiscal year 2023, this is based on port data, vessel calls actually increased 9 percent, and total cargo tonnage was down 3.8 percent.

Between 2021 and 2023, fiscal year, they increased slightly from 1.3 percent to 3 percent. But cumulative inflation, based on CPI of urban consumers for the region, which Jacksonville is covered, which is the south region, between 2021 and 2023, increased 13.5 percent. And that CPI applies to costs. So that's the -- that would apply to the cost of providing pilotage services. It doesn't apply to the income that the pilots make.

Remember, what the pilots make is a function of traffic, volume, characteristics of traffic, the rate structure, the escalator is part of that, and cost of services, cost of delivering the services. And then the number of pilots on top of that.

So if we continue on. Let's see here, I'm losing my pages here. Nine -- give me one moment here and let me get oriented with my pages. Where is my page? Bear with me one sec. I'm on page 10 of the report. So -- well, while I look for this -- so basically even if you apply the

escalator, the escalator would not make up for those counter prevailing factors that would drive down the income per pilot. So I decided lacking complete information to then just use the last known data point, which was not listed, the 563,700, and not change it.

It's quite possible -- again, we don't have an audited statement for 2023, which should be the right comparator, that's 2024, for year 2023. If we had an audited statement, we could use that instead, but we don't have an audited statement, but we do know that there are these countervailing factors that will bring down net income per pilot. In fact, those factors would probably, at a minimum, stabilize or keep constant the net income per pilot compared to that benchmark of 2019.

It might even actually bring net income down per pilot for 2023. We don't know, because we don't have an audited statement, because it's not a transparent labor market. We don't have this information available on a regular basis. So for those reasons, it was judged that using the 563,700 was a reasonable estimate of what the St. Johns Pilot Association earned in 2023.

Q But not applying either the escalator or

CPI, nothing was done in terms of the pilots' net income being raised to offset cumulative inflation. Is that right?

A That's right. So even if you have an escalator --

Q I'm --

A -- in place --

Q I'm sorry, Mr. Cohen. I'm running out of time.

A Well, I was just trying to answer your question so you can have a complete answer.

Q Was my statement correct or not?

A Why don't you restate it.

Q By not applying the rate escalator or CPI, nothing was done to offset the negative effect on net income. Is that right?

A By not applying -- by not applying the escalator, I -- so basically we -- lacking complete information, we know that there was significant negative effects on net income, so we opted to keep the same net income projected from 2019, because it's likely that it actually went down. So actually we might be overestimating net income, so yes.

Q You might be, but you haven't actually worked out the numbers to make that determination.

Is that right?

A We don't have all the information available to do that.

Q Okay.

A But it's a reasonable estimate -- or a reasonable benchmark, I should say.

Q It's an opinion; yes?

A Yes. It's -- it's an opinion, yes.

Q What's your second issue with the Nexus report?

A Well, the second thing is that I don't know why they -- if they're going to inflate net income per pilot, which I disagree with to begin with, but if they're going to do that, why do they use CPI and not the escalator?

Q Okay. What's your third?

A So the third one is that, as I mentioned before -- and I think we already covered this, but it's a very normative statement, in order to use CPI, it applies to net income per pilot. An additional point is that there are some notable, what I consider, inaccuracies, in the baseline data that's being used to calculate -- even if I disagree with the math being applied, there's some inaccuracies with respect to the -- or

inconsistencies in the data that's being used as to the baseline. And so I can walk through those as well and give you some examples.

Q Are you talking about the compensation --

A In the Nexus --

Q -- in comparison, or are you talking about the workload?

A Well, that too actually. We can talk about that as well. Thank you. That's another one I want to bring up as well. But, yes, specifically with respect to net income baseline that's being used to compute net income per pilot in other districts.

So, for example -- and there's two pieces to this. So part of this, I can appreciate -- you know, I can appreciate the fact that a lot of this information did not come out until July 2024, so I fully understand in many cases why they were not able to use this data, but it's my recommendation if they revise this report, then to include more recent data.

So, for example -- so Associated Branch Pilots of New Orleans, they have a projection of 659,427 for 2024. But going back to the annual reports, it's 588,600 per pilot. It's not clear if

that includes retirement benefits or not, which is something that needs to be clarified, but that's an observation.

Crescent River, the latest report shows a net income per pilot from 2023, this is the July 2024 annual report, Louisiana Pilotage Commission, shows 563,920 is the average net income per pilot. The amount projected for 2024, based upon CPI, is -- in the Nexus report is 688,798.

So, again, I'd recommend that they go back and review some of the more recent -- again, part of this is the fact that I think the report came out before some of these new data points were released, but I would recommend they go back, specifically for doing the benchmark for other regions to look at that.

With respect to Jacksonville, so the -- looking at the Florida ports now. The Jacksonville rate did not kick in until January 1st, 2021, but they -- they treated it as 2020, and then inflate it by CPI, which we've already covered, so I don't have to explain the reasons why I disagree with that, but the base number should be corrected. But if they're going to follow that approach, they should at least update it to the 2021, not 2020.

With respect to Everglades -- and this was -- I can point you to -- let me find it here for you. Okay. So Everglades, which is on page 17 of the Nexus report. So they have -- this is line 1, pilot compensation, 2017, 549,998. But the final order actually did not kick in until 2019. So that the -- the new rate did not kick in until 2019.

And in the notification for the new rate, it indicated that the actual net income per pilot based on the old rate that was still in effect in 2017 was $412,000. So there's a wide disparity there, because they're using the wrong year. So that was -- that 412 number for 2017, was reported in the final notice --

Q But the --

A -- for the rate to go into effect for the Everglades, for Port Everglades.

Q For Port Everglades --

A And that's not --

Q -- you used the same number, you just used 2019 instead of 2017, correct?

A Correct. But then I treat the number differently. I don't inflate it, one. And, two, when they use it, they're overinflating it -- even thought I disagree with the method they're using,

even if they're going to continue with that method, they're overinflating it because they're using an earlier year. So they're using 2017 to 2024 as opposed to 2019 to 2024.

Q I understand the way that would work, yeah.

A The other piece would be Canaveral. So Canaveral they have -- they have an average total net income per pilot of 753,934. That's line 15 in Exhibit -- Table 16, on page 17. So they have -- for Canaveral, they have -- so they've got 753,934.

The way they inflate that though, is they start -- again, setting aside that we've already talked about how I disagree with using CPI to inflate these because even if it's -- especially in Florida, but irrespective --

Q We got it.

A -- regardless, we don't use CPI, especially in Florida, because it's an escalator.

Q Okay.

A We're on the same page, just making sure.

In addition to that, they're off by a year, because the starting point should be the -- they have here, line 11, "Average total income per pilot, 681,691," but the final rate did not go --

the new rate did not go into effect until 2023, not 2022, even though originally, I think they were -- the Investigative Committee report, and other sources, originally stated it would start in 2022. In fact, it didn't, their final notice didn't go into effect until 2023.

Q Okay. Besides those, and setting -- well, hold on a second. In terms of the third point that you raised, inconsistencies regarding data as to the Nexus report portion that concerns compensation per pilot, any other issues just in that section of the Nexus report regarding inconsistent data that you believe is inconsistent?

A Those are the data points that I immediately flagged. Let me check quickly here. There's other stuff, too, but --

Q And not workload, we'll get there, just --

A Yeah, we'll get to workload.

So we talked about Crescent River. I actually had a higher number for them in 2023 for NOBRA. So they had -- so there's one number I thought they might have had -- the number was low, just for -- to be consistent. So NOBRA was on -- let me find it here for you. I'm not seeing it

here. Oh, there it is. So 584.

I had for -- based on the Louisiana Pilotage Commission annual report, they reported, I think it was like 617. But every other instance, the numbers were higher as their base numbers were significantly higher than the actual annual reports for 2023.

Q Okay.

A As well as their base year, I should say, their accuracy with respect to their base years.

Q All right. Thank you.

A But like I said, so there's really several layers of areas where I disagree with the analysis and I recommend some changes.

Q Got it.

We discussed St. Johns Pilot Association in some detail. And you were talking about vessel calls, cumulative inflation, rate escalators, et cetera, et cetera. And for those various reasons, you did not make an adjustment to the 563,700 number from 2020 for Jacksonville pilots, right?

A Correct.

Q And in looking at Port Everglades, you as well did not do an adjustment to that number. And as well, you were speaking of vessel calls, and

things like that, annual escalators and such, but at the end of the day, you did not change the 549,998 number from 2019, correct?

A Correct. It was my opinion that based on the other factors, it was not -- it's even likely potentially that their net income went down by 2023, but we don't know that, so yes.

Q Yes, you did not change the number?

A I did not change the number.

Q Doing your work in this case, have you spoken with any state-licensed pilots about the process of providing pilotage services in Tampa Bay or elsewhere?

A I have not directly spoken with any state-licensed pilots --

Q Have you spoken --

A -- in this case.

Q I'm sorry?

A In this case I have not spoken directly to any state-licensed pilots.

Q Okay. Besides listening to the deposition of Captain Bushy, have you spoken with him or anyone of his ilk, you know, a former state-licensed pilot?

A I have not.

Q In your prior report, the draft from July 8th, in that Exhibit 21 that I put up earlier, the chart that included the sources. Are you with me?

A Yes.

Q You identified multiple times as the source for the information that you then put in your draft report a chart from a Mr. Lough, L-o-u-g-h, that was part of the Washington UTC Order 8. Do you recall that?

A I do.

Q Am I correct to say that you are no longer relying on that chart and you're relying on some amended work from Mr. Lough?

A I am digging deeper to find the actual source material for the districts that I included for comparative purposes. And that's why I cite, for example, the Louisiana Pilotage Commission and their annual report as sources, not the Washington State UTC for those cases.

Q Did you look at a second chart from Mr. Lough in that Washington case?

A A second chart? I guess I don't follow. Can you explain?

Q I'll show you.

All right. Does that appear to you to be the same case that the Lough chart was submitted in and that you pulled information from?

A That was a -- it looks like this was a source that I -- that I did look at, yes.

Q Does that look familiar, that title, as something that you reviewed?

A I do recall reviewing this, yes.

MR. PAGE: All right. We're going to mark this as 38.

(Cohen Deposition Exhibit Number 38 marked for identification.)

BY MR. PAGE:

Q Okay. And you did look at this, you said?

A I do recall looking at this, yes.

Q All right. Did you look at this part of this document?

A I do recall looking at this, yes.

Q And you recall that Mr. Lough made some corrections from the prior chart that you relied on in this chart?

A Yes.

Q Okay. Do you recall that he added the St. Johns Bar pilots down here?

A Yes.
Q Was any of the work of Mr. Lough the reason why you removed some of the ports that you had previously cited in your draft report of July 8th?
A No.
Q Did you review the Washington UTC Order 08 in terms of how they viewed the work of Mr. Lough?
A I did review -- I did review one rebuttal statement that did -- I don't recall the gentleman's name, but it's -- I believe it's cited in my references with the link to the document. That would be -- okay, so it's -- yeah, it's on page 21 and 22, there's like a really long link to it. But it's a Washington State UTC rebuttal, or it's testimony at the hearing, providing some of the analysis.
Q So does that --
A It's a really long link.
Q As I'm looking at the bottom of page 21, is that rebuttal testimony of David Lough on behalf of Puget Sound pilots?
A Yes.
Q And then it's retrieved from the link

that's provided?

A Yes.

Q And is it your understanding that what we're looking at, is that rebuttal testimony?

A This is, you know -- yes.

Q Okay. And to your recollection, there's nothing else besides this document that was his rebuttal testimony that you reviewed?

A I believe this was the only one actually. I'm sorry. I may have misremembered. I thought there was one other. It looks like there wasn't, yeah.

Q And I'll ask again. Did you review the Washington UTC Order 08, in terms of its view of the work of Mr. Lough?

A I do not recall. I do recall -- I didn't use it, but I remember -- I don't recall. I remember there being another piece that's not listed in my references, but I didn't use it anyways. So it's a statement about the pilots -- the Puget Sound pilots data estimates that were provided, but I didn't use that file.

Q Do you know if the Washington State rate-setting model includes a consideration of a target assignment level per pilot?

A That sounds familiar. But again, I haven't carefully reviewed it since I was involved in the analysis back in 2018. I haven't followed as closely the procedures for the UTC since it was -- became responsible for rate setting.

Q But your recollection is that there was a target assignment level at that point?

A That term sounds very familiar to me, yes.

Q And if it was expressed in that Washington report from 2018, you would stand by whatever is expressed in that report?

MS. HEETER: Object to form.

A Yes.

Q Do you recall anything in that report from 2018 that you would not stand by as being accurate at the time?

A I'm sure that, you know, with the benefit of six years, there might be areas that potentially were -- if not inaccurate, maybe could have benefited from a more detailed discussion, but I don't recall specific areas.

MR. PAGE: All right. We'll mark that rebuttal as 38.

BY MR. PAGE:

Q Does that look like your report?
A Yes.
Q You're the project manager on the report; yes?
A Yes.
Q You don't recall what the target assignment level was when you made this report. Is that right?
A It might -- honestly, it's been so long that, you know, that report -- it might have it in there. I remember that was the concept that we talked about. So it's quite possible it's in there, I just don't recall.
Q Sure. That is why I am sharing the screen with you.
Before we get there, do you see this "Total Number of Pilots" section?
A Yes.
Q It discusses a provision where there's a responsibility of the Board to determine from time to time the number of pilots necessary?
A Yes.
Q And you see in doing that, they consider a number of factors, including lead time necessary to select and train new pilots?

Do you see that?

A Yes.

Q Workload, assignment, preparation, and rest needs. Are you with me?

A Yes.

Q Surface transportation and travel time constraints related to pilotage assignments; yes?

A Yes.

Q Would you agree with me that all of those things are appropriate considerations when you're trying to determine from time to time the number of pilots necessary to be licensed in a district?

MS. HEETER: Object to form.

A Let me read through this carefully.

Yes.

Q Okay. And then what we were talking about, target assignment level, currently set at 145 assignments per pilot per year; yes?

A Yes.

Q And that would have been, as of your report, dated July -- sorry, January 18th, 2018; yes?

A That would have been -- let's see, yes, that would have been -- I believe that would have been as of the end of 2017.

MR. PAGE: Okay. Mark that Exhibit 39.

(Cohen Deposition Exhibit Number 39 marked for identification.)

BY MR. PAGE:

Q Are you aware of the number of handles historically that the Tampa Bay pilots have handled on an annual basis?

A The Tampa Bay, I'm sorry, or did you --

Q Yes, the --

A Can you repeat that?

Q Are you aware historically the number of handles that the Tampa Bay pilots have handled on an annual basis?

A I am.

Q And that is?

A I believe it's in -- well, I have the data. I think if you include -- if you exclude shifts, but shifts are handles, if you exclude shifts, I think last year it was 4,141, or 4,140. And then it kind of fluctuates.

I think if you include -- this is in one of the files we submitted per our responses for handle analysis, but I think -- I'd have to go back and check the exact numbers. We have it -- if you exclude shifts, I believe we would have it in the

report here.

Q Okay.

A So it's Exhibit 12.

Q I was interested in the number inclusive of shifts. Are you able to give me a number inclusive of shifts or no?

A Yeah. I can get you a number inclusive of shifts. I just don't have it in front of me. But it's in our -- one of our earlier responses was called "Handles Analyses." I think it was Handles Analysis 1.0, or something along those lines.

So that included -- that's the data on -- handles data from the Tampa Bay Pilots Association back from 2016 to 2023. So one could pull out -- easily pull out shifts -- or include shifts and exclude cancellations.

Q Have you done that?

A I believe -- I don't know if we did the exact breakout. I'd have to go back and look, but the data is easily -- it's easy to do. It's right in the file.

Q Okay.

A I mean, I could do it right now. I mean, it's pretty --

Q No, I'd rather not use our limited time

in that regard.

Back to your report, Exhibit 11, page 13. Are you with me?

A Yeah.

Q In terms of Florida ports that you're using in Exhibit 11, would you agree with me that you are commingling data from different years to arrive at your adjusted to Tampa dollars number?

A I would agree that I'm using different benchmarks from different years, but I'm also making an assumption for the purposes of benchmarking that those years -- these net incomes per pilot are appropriate comparators for 2023.

Q And that's --

A That's kind of what I was explaining earlier, that I think that an example of that is Jacksonville. I think it's reasonable for the purposes of a benchmark to assume that the net income per pilot in 2020 is probably the same as in 2023, give or take some percentage -- a small percentage difference absent an audited statement.

Q The bottom of Exhibit 11 says "for information purposes." What does that mean?

Is that just the other ports' part of Exhibit 11?

A Yeah. There should have been an asterisk there for the other ports.

Q All right.

A Because we're not using those to come up with a reasonable net income per pilot using that data, it's just for comparative purposes.

Q Okay. Let's go to page 14 of your report.

A Okay.

Q Under the subheading, "Job and Handle Times."

A Yes.

Q The second paragraph, "It would appear." Are you with me?

A Uh-huh. Yes.

Q Towards the end of that paragraph it says, "The additional travel time is incorporated into the pilotage fee shippers must pay." Do you see that?

A Yes.

Q Do you believe that that's true?

A That might have been a mischaracterization, because what we meant to say was that it's -- when arguing about the net -- the handle time, to include the travel time, it's -- the

way it's been presented should not be included. There is no specific -- I'm not familiar with transportation fees, so -- or I should -- let me correct that. I believe this was a little -- this could have been written more clearly.

So, in other words, what we're trying to say is that we do not believe it is common or usual in the 7.5 hours per pilot handle time average to include transportation time to and from one's home. That's what was intended, it just came off -- it was not written clearly.

Q So you do not believe that shippers are paying for that travel time of the Tampa Bay pilots, correct?

A I'd have to go back and check the rate structure, but I -- and the fee structure. So it -- if I recall, there was a charge for transportation, but I'd have to go back and check that.

Q Besides that transportation charge, do you believe that shippers who are paying pilotage fees to the Tampa Bay Pilots Association are paying any other transportation charges?

A Not that I recall, but I would just have to go back and look at it again.

Q Assuming you recall that correctly, then

the location of where a pilot lives would be immaterial to a fee that shippers get charged, correct?

A If they're not charging -- where they live, yes. So if they -- if they are living -- the transportation fee, in our opinion, should not -- the shippers should not be charged for pilots, in our opinion, traveling from their home to an assignment.

Q So in your opinion, the shippers should not be charged any transportation fee whatsoever?

A Yes.

Q If all the shippers are charged a flat transportation fee, it's immaterial where a pilot lives, right?

A Again, I don't -- I'm commenting here on the usage of 7.5 hours as an average, not on whether or not there should or should not be a transportation fee.

Q That paragraph we're looking at doesn't have anything to do with 7.5 hours. It's just saying that additional travel time is incorporated into the pilotage fees shippers must pay. And that if --

A And I'd have --

Q -- a pilot elects to live a considerable distance from the pilot's station, that that's being passed on to the shipper.

A That was my --

Q Do you believe --

A -- understanding, but I would want to go back and check.

Q Do you believe that as you sit here today?

A Again, I'd have to go back and check and read the language again.

Q I need to know what you believe as you sit here today.

A I am not certain at this very moment. I'd have to go back and check. Again, this was taken out of context, because this was really intended -- and it was probably written less clearly than -- it should have been written more clearly, but it was in the context of this 7.5 hours per handle time.

Q Who wrote this?

A I wrote this.

Q So how was it taken out of context if you wrote it?

A Because I didn't write it clearly, or

clearly enough. And it was explained to you instead during this deposition.

Q Okay. Do you believe that the handle time numbers that are used for the ports of Florida during the Investigative Committee's work and by the PRRC are consistent in terms of the components that they incorporate?

MS. HEETER: Object to form.

BY MR. PAGE:

Q I just want to know your belief.

A I can't honestly say, because the 7.5 number is so unsubstantiated to me, that it's -- it's -- the way that it's being used in other ports -- or I'm sorry, other pilotage applications makes me question the veracity of that number and how it's being used.

Q Why do you say that the 7.5-hour handle time is unsubstantiated?

A Because I've seen no evidence to demonstrate that it's grounded in data, in evidence.

Q Have you heard the testimony of Captain Rose regarding that topic?

A I've heard that they canvass their pilots, but then I've also heard that they use the same number that they used back in the 2010

application, or 2008 application. So it's -- I would prefer to see -- you know, when I looked at the dispatch data, those numbers don't comport to the 7.5 number.

So I would prefer to see more clear evidence of where the 7.5 number actually came from, particularly as it's being used to determine rate comparisons within other rate applications as well.

Q So if I am hearing you correctly, what you would like to see is data where the pilots are tracking all the components that go into handle time. Is that correct?

A I'd like to see consistency, yes.

Q So you'd like to see data where they're tracking all the components of handle time?

A Well, I think we already talked about that, because we've been told the handle time is the job. And so we have data on jobs. And the average per job is 3.7 hours.

Q Bear with me. This is Exhibit 34. It's the redline that I discussed earlier. And this Exhibit 7 no longer appears in your current final report, correct?

A Correct.

Q Where amongst these components does your

3.7 hours of job time start?

A So the data that we used to compute the 3.7 hours is based on the dispatch data. I'm calling it dispatch data, it might go by a different term, but this is the data that was provided in the -- and I can check the exhibits here.

Q No. Can you answer my question based on what I've got there in front of you or no?

A I can't because -- I mean, I would guess potentially beginning with pilot boats, but again, these are not all categories that are included in the jobs -- the jobs data.

Do you mind if I just grab some water real quick?

Q Go ahead.

A Okay. Give me like 30 seconds.

Q Yep.

A Okay. I got water. I'm back.

Q Thank you.

Give me a second. The document that I am attempting to share with you does not display well. But it discusses, between pages 14 and 15, the various TBPA documents that you used to arrive at a 3.7-hour time, which I believe you are referring to as a job time. Is that right?

A Correct.

Q And when does the clock start on that job time?

A So the -- my best understanding -- my understanding, based on the data, is that there's a separate field for bridge time. So there's a gap for onboard time, they call it. So the best information I have is that there's a job start time when they either, my understanding, get on the pilot boat if they're going to an assignment.

Let me see. Get on the pilot boat. And then there's a difference in -- there's a gap of about 30 -- I think we have 34 minutes or so, it depends on the year, between the job start and the onboard time.

So I'm -- I mean, I don't have more visibility than what I have in the data, but it appears that it would begin with them going to the pilot -- getting on the pilot boat, but I don't have that level of -- the data doesn't provide this level of detail that we're seeing in this table.

Q And that's what you believe the start time is, getting on the pilot boat?

A Potentially that's where -- that's what it appears to be, but it's unclear.

Q I understand -- I understand, but I'm trying -- I'm just trying to figure out how you're measuring it. So are you telling me that on the pilot boat is the start time column?

A Yes.

Q Okay. And then the onboard time, what does that signify to you?

A Getting off -- if it's a -- if it's getting -- if it's a boat -- it's a vessel that is coming into port, then it would be getting on the vessel, climbing the Jacob's ladder or ascending onto the vessel.

Q Okay.

A From the pilot boat.

Q And then alongside time, what does that represent to you?

A That, I believe, is with respect to the tugboats, but I'm not exactly sure. I'd have to go back and check.

Q Okay. And then finish time is what?

A When a -- this is when they complete the job.

Q What does it mean to complete the job?

A Well, it depends on whether it's a -- it's an enter/exit of a vessel. So if it's -- if

it's a vessel that's entering a port, then it's disembarking from the vessel. If it's -- otherwise there would be a gap where they would have to -- if it's a vessel that was exiting the port, then to climb down onto the pilot boat and then be taken back to the pilot station.

Q So if it's exiting, finish time would be when they're back at the pilot station?

A Again, I don't have that much clarity, so I'm just speculating.

Q I'm just trying to figure out how you're looking at it. So would that -- on a vessel that's exiting Tampa Bay, the finish time to you would be when they're back at the pilot station?

A Quite possibly.

Q Well, is that how you interpreted it?

A I interpreted it as -- as completion of the assignment. So this is the time charged, this is the time that they're submitting as part of their tariff. This is their tariff -- this is their tariff charge to the customer, and this is the start time for this pilotage services rendered, and the finished time for the pilotage services rendered. And that's the difference -- those differences in times is what I'm using to come up with the 3.7

hours per handle, excluding shifts and cancelations.

Q Okay. When you were talking about finish time for a vessel entering Tampa Bay, you had a very clear answer, which is you believe that finish time is representative of the pilot disembarking the vessel. So I'm asking you for a handle that is exiting Tampa Bay, what is your understanding of what finish time represents?

Where is the pilot at the finish time?

A I would assume in that case it would be at the pilot station -- it would be at the -- onshore after disembarking from the pilot boat.

Q So for an exiting vessel, you believe that the time on the pilot boat would be included in the finishing time; yes?

A Yes.

Q Looking at what we've got up here on the screen, any of those first three entries, travel home to office, job prep, or travel office to station, any of those included, to your understanding, within the data that you looked at to calculate your 3.7 hours?

MS. HEETER: Object to form.

A Because I don't have clarity, I would assume that travel home to office and office to

station -- at least travel home to office are not included. But again I don't have clarity. I don't have -- there's not enough visibility in detail in the data to discern that.

Q You attended the deposition of Captain Rose, correct?

A Yes.

Q Do you recall that he was designated to be the corporate representative for the Tampa Bay Pilots Association regarding handle time?

A I do recall that.

Q Have you -- from hearing his testimony, has that helped you reach any conclusions about my question as to whether travel home to office, job prep, and travel office to station is inclusive within the categories that you relied on, start time, onboard, alongside, and finish?

MS. HEETER: Object to form.

A Again, I'd have to go back. I don't refer to his testimony in this report, but I do recall him saying that they factor -- they include travel time as -- from their home as part of travel time, handle time.

Q Okay. Have you gone back and reviewed his deposition since you attended it, his deposition

transcript?

A I have not reviewed it recently, no.

Q Do you have a copy of it?

A I do. I believe I do, yes.

Q And have you gone back to review his testimony to determine whether the corporate representative of the Tampa Bay Pilots Association believes the travel vessel to office, job completion, and travel office to home times, as represented in the document up on the screen, are inclusive within the categories that you used to compute your 3.7 hours?

MS. HEETER: Object to form.

A Well, I think there's two issues there, right? So one is you're asking do they -- is it included in the data that's been provided on assignments; and, two is whether to include it.

It appears that travel to and from home is not -- I'm guessing not included in the assignment time. But again, I don't have clarity into the details of the data that are beyond what was reported in the -- the Excel files that are provided on dispatch data. So I would prefer not to speculate.

Q So the only thing you relied on for your

3.7 hours is what's in those Excel files?

A In that calculation, yes.

Q And you did not rely on the testimony of Captain Rose, as my client's corporate representative, regarding the composition of handle time. Is that correct?

A I referred to the 7 -- I -- I compared it with the statement that's been repeated by the pilots, that 7.5 hours includes travel to and from their homes. But those are two different -- entirely different sources; one is from the pilots and one is based on their statements, and then one is the actual assignment -- or handles data that's been submitted as part of interrogatory response -- responses.

Q The data is entirely from the pilots, correct?

A Correct.

Q And you said that the data reflects the tariff that's charged to those paying for pilotage services, correct?

A There is a --

MS. HEETER: Object to form.

THE WITNESS: I'm sorry.

MS. HEETER: You're fine. I just

objected to form.

THE WITNESS: Okay. Sorry.

BY MR. PAGE:

Q That's --

A There's a --

Q You stated that's your understanding of that data, correct?

A Yes, there is a tariff fee included as a field in that data.

Q Okay. And the columns that you relied on to calculate your 3.7 hours, is it your understanding that those columns and that time relates to that tariff?

A Yes.

Q Okay.

MR. PAGE: Let's take a five-minute break. And I'll see if I can wrap up.

(Recess from 5:37 p.m. to 5:43 p.m.)

MR. PAGE: All right. Back on the record. I believe I neglected to mark the Nexus Economics report that we were discussing earlier, so I am going to mark that as Exhibit 40 to Mr. Cohen's deposition.

(Cohen Deposition Exhibit Number 40 marked for identification.)

BY MR. PAGE:

Q And then, Mr. Cohen, page 15 of your report, please, if you could go there.

A Yeah.

Q And do you see the subheading, "Workload and Hours"?

A Yes.

Q And there's a discussion within that regarding representations made in the Tampa Bay Pilots Association application regarding average hours per pilot, including regarding the Canaveral Pilots Association.

And then below that, there is discussion of the Port Canaveral Pilotage Rate Review Committee report regarding as well average pilot yearly actual hours, right?

A Yes.

Q So hopefully this is a relatively simple thing, but what I wanted to ask you -- I'm showing you what has previously been marked as Exhibit 18 to your deposition, and starting here on page 10, in terms of this Subpart B, "Time spent by applying" -- it's not quite written perfectly. "Time spent by applying pilot on actual piloting duty actual hours per year."

Are you with me?

A Yes.

Q So what I'm really just trying to determine here is whether or not -- and I've got a blank page inserted in there for some reason, but whether or not what starts on page 10, what carries over here on page 11 -- and you probably recognize this graph; yes?

A Yes.

Q And then what continues on -- it looks like I've got another blank page in there somewhere, somehow -- to this chart on page 12, this is what you're having an issue with in that portion of your report at page 15 that we just looked at under workload and hours, right?

A Yes, this being -- that's correct.

Q Okay. So it's in terms of Canaveral that your comments on, and the representations in this application on page 10, 11, 12, that you're addressing on page 15 of your report, right?

A In comparison to Tampa, that's correct.

Q Right. Right. And the subsequent document relating to Port Canaveral, the PRRC Committee report.

So is there anything else in this

application regarding this particular section that you have issue with in terms of the representations made as to actual hours per year of the pilots in Tampa Bay or in the other ports of Florida?

MS. HEETER: Object to the form.

A Well, so now looking at this more carefully -- so do you want to remind me -- so in looking at this document, what years is this in reference to? I think it was 20 --

Q Per --

A -- 21, correct?

Q Per your report, this is 2021 representations. And I can find it, but I believe that that is correct.

A So 2021, the handles, so here you have -- it's a bit -- it's misleading. It's actually additional -- there's an additional misleading element to this, in that the total hours reported, you're using a number -- they're using a number of 4,757 for Tampa, but that -- if you look at the actual data on handles for 2021, if you exclude shifts and cancellations, it was 3,601.

So even if you throw shifts back in -- because shifts are a handle. If you throw shifts back in, you're looking at -- I'd have to have the

data in front of me, but it's probably about in the realm of 4,000.

So this -- I think this table is misleading for another reason additionally, in addition to the 7.5-hour number that we talked about. The number of handles is misleading because you're also multiplying that 7.5 hours average by cancellations, I would assume, and shifts. So I think that is another problem with this table now that we brought it up here.

Q You seem to be saying that the number of handles is wrong. Not misleading, but wrong. Is that correct?

A Well, again, it -- it depends on what handles includes. So what we're saying -- what it's essentially saying is that it's taking an average of 7.5 hours per handle for Tampa, and it's multiplying it by every handle. But if you exclude shifts and cancelations for 2021 -- and we have this in Exhibit 12 in the report -- it's actually 3,601. So it's -- I'm questioning the use of that handles number.

I'd like to go back and see how much of that is actual shifts and handles versus everything, including cancelations. Because if it includes

cancelations, that means you're including -- you're multiplying 7.5 times a cancellation. So the problem is that then you're saying that the -- the input and output of this is hours per pilot.

And the table is showing that the pilots of Tampa may work more hours per pilot than everybody else, but that's based on what seems to be an inflated total hours number. So I want to go back and scrutinize that number a bit more.

Q Okay.

A Does that make sense?

Q We already --

A Do you follow what I'm saying?

Q I have followed everything that you said since the first minute we started talking under oath about a month and a half ago.

A Okay.

Q The 7.5-hour number you have issue with, and now you're telling me you also have issue with the number of 4,757 for handles, correct?

A Correct.

Q Do you think that the number 4,757 for handles is wrong, or do you not know at this time?

A I think -- again, without having the data in front of me, I suspect that includes shifts and

cancellations. In fact, I know that it definitely includes shifts, and it might include cancellations as well. The reason I say that is because if you net out shifts and cancellations, the actual handles number for 2021 was 3,601. So by using shifts and cancellations, if, in fact, cancellations are included, which it seems like they are, you are grossly inflating hours per pilot.

And here, what I reckon is the reason for this table is to show that the Tampa Bay pilots work a lot more and have a heavier workload than every other pilots association in Florida. So I'm questioning the handles numbers, too, now that we look at this.

Q Mr. Cohen, Attorney McNulty is going to have the power shut off in her building at 6 o'clock, and she probably has a question or two she would like you to answer.

My question to you, regarding this handle number of 4,757, was: Do you think it's wrong or do you not know at this point in time?

A It looks --

Q Can you give me --

A It looks suspicious to me. That's my answer.

Q Okay. So you do not know at this time --
A I think it's improperly being used.
Q Okay. Thank you.
Other than that, and other than what's in your report regarding the issue you have with how Port Canaveral is represented in the application versus how it subsequently appears in the report of the Investigative Committee, are there any other issues that you have with this section of the report?
I'm just trying to narrow down what we're going to talk about at the final hearing.
A Just again, if we have a consistent definition of hours per assignments, or handle, that would be something I would want to make sure that it's included, that we have a consistent use of -- estimate and methodology and definition of hours per handle --
Q And you --
A -- to do these comparisons.
Q And you do not think that that exists?
A Well, only having looked at the Tampa number, I think that number alone needs to be revisited.
Q Okay. In your work on this matter, did

you ever consider modeling a few scenarios rather than just one input on net income per pilot value?

A Yes.

MS. HEETER: Object to the form.

THE WITNESS: I'm sorry.

BY MR. PAGE:

Q What other scenarios?

A Well, we could model different types of net income -- different levels of net income per pilot. We could also model -- we could model different forecasts. There are many different inputs one could use. We could also do the other way. So one way is to look at, as an input, net income per pilot and see what -- based on everything else in the new rate structure the -- as is what would be the revenue generated based on that to accommodate a net income per pilot. The model is built to do both directions. So we could look at it that way.

We could also look at based on the assumptions in the application -- and this is the work of the CPAs on this -- both models, to look at if you have -- using the inputs and assumptions of the pilots, what would be the actual net income per pilot as a result of that, as well as what's the

difference between what they projected would be their gross pilotage revenues versus what would actually occur are the actual output of revenues generated based on their assumptions.

And in both cases, there was a pretty significant disparity between the two. So we continued to test that with different scenarios to look at what those differences are. So if we increased net income per pilot by a significant amount, it did not appear to justify the rate increase that was being proposed or was being -- the new rate structure, there was still a significant disparity.

Q Ultimately the model applied only looks at it from the net income perspective in the other direction, right?

A It looks at it from -- but also gross pilotage revenues as well.

Q Okay.

A So it looks at it in both directions, yes.

MR. PAGE: I do not have anything else at this time.

Ms. McNulty, I apologize for running so long. Do you have anything?

MS. MCNULTY: I do have something. Maybe we can just cover it very quickly, if not, I can -- it's okay. If I could just jump in real quick, if that's okay.

MR. PAGE: Yes, please.

EXAMINATION

BY MS. MCNULTY:

Q Okay. Thank you very much. And this will be relatively fast. I just have a couple of questions from your August 2024 report, Exhibit No. 1. And then Exhibit No. 1 was the average and median wages, captains, mates, and pilots of water vessels 2023.

A Uh-huh.

Q Do you recall that? Do you have that handy?

A Yes, I have it in front of me.

Q Okay. Thank you.

So you may recall that you were asked a number of questions about this chart, specifically related to the captains and a couple of questions about the pilots. Do you recall that?

A I do.

Q And this -- the jobs and wages in this chart also includes mates. Is that correct?

A Yes.
Q In response to a question that you asked, you -- that was asked of you, do you recall mentioning that there were captains, first mates, second mates, and third mates?
A Yes.
Q So can you explain a little bit more about the first, second, and third mates?
A I'm sorry.
Q Go ahead.
A Okay. Sorry.
Just different levels, and it's -- it's different levels of -- within the mariner hierarchy to becoming a pilot -- I'm sorry, becoming a captain on a vessel.
Q So is it correct that on any given vessel, might there be first, second, and third mates?
A It's possible that some vessels only have a first mate or a second mate, but it's -- honestly, it's -- it's -- I don't have that level of visibility or information to say. It would vary.
Q On any given vessel, would there be anybody other than a captain?
A In most -- I believe in most cases,

there's at least a first mate, but it depends on the vessel, if it's a tugboat or a cargo vessel. It just depends.

Q Okay. And generally speaking, does a first mate earn more than a second mate?

A That's my understanding.

Q And does a second mate earn more than a third mate?

A That's my understanding.

Q And does the captain earn more than all of them?

A That's my understanding.

Q And all of those are included in that chart on Exhibit 1. Is that correct?

A Correct.

MS. MCNULTY: All right. Thank you. That concludes my questions at this time.

MR. PAGE: I don't have anything else.

Paria, do you want the floor for anything?

MS. HEETER: No, I'm good. Thank you. No questions.

MR. PAGE: All right. Mr. Cohen, I appreciate all the time that you've provided and your efforts to answer honestly and

completely. Sorry we didn't get to do this in person. It would have been easier and quicker, but I understand that Seattle is probably a nicer place right now than hot, steamy, rainy Florida.

But we'll probably be seeing you here in three or four weeks in lovely Tallahassee. So take care of yourself. And we'll see you soon. And with that, we'll wrap up, other than Paria, are you all going to read?

MS. HEETER: Yes, we will.

MR. PAGE: All right. And we will order.

MS. MCNULTY: And so will the Pilots -- I mean the Committee. Sorry, it's been a long day.

MR. PAGE: A long day. Thanks, everybody.

MS. MCNULTY: We would like to get a copy of the deposition.

(At 6:00 p.m., no further questions were propounded to this witness.)

CERTIFICATE OF OATH

I, the undersigned authority, certify that SPENCER COHEN remotely appeared before me on September 3, 2024, and was duly sworn.

Witness my hand and seal September 12, 2024.

Felicia A. Newland
Notary Public - State of Florida
My Commission No. HH 1518663
Expires 4/21/28

REPORTER'S CERTIFICATE

STATE OF FLORIDA:
COUNTY OF HILLSBOROUGH:

I, Felicia A. Newland, certify that I was authorized to and did stenographically report the deposition of SPENCER COHEN; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED September 12, 2024.

Felicia A. Newland

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SIGNATURE PAGE/ERRATA SHEET

WITNESS: SPENCER COHEN (9/3/24)
RE: TAMPA PORT AUTHORITY VS. PILOTAGE RATE REVIEW COMMITTEE

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