CONFIDENTIAL

BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 250

ARBITRATION HEARING IN THE MATTER OF:

AMERICAN TRAIN DISPATCHERS ASSOCIATION; BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN/IBT; BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS MECHANICAL DEPARTMENT; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; NATIONAL CONFERENCE OF FIREMEN & OILERS, LOCAL 32BJ/SEIU; TRANSPORTATION COMMUNICATIONS UNION/IAM; BROTHERHOOD OF RAILWAY CARMEN DIVISION, TCU/IAM; AND TRANSPORT WORKERS UNION OF AMERICA

NMB Case Nos. A-13998 (ATDA), A-13999 (BLET), A-13986 (BMWED), A-14000 (BRS), A-14001 (IAM), A-14005 (SMART-TD), A-13985 (SMART-MD), A-14002 (IBB), A-14003 (IBEW), A-14004 (NCFO), A-14006 (TCU/IAM-Clerical), A-14007 (TCU/IAM-Carmen), and A-14008 (TWU)

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Reported by Misty Klapper, RMR, CRR

PRESIDENTIAL EMERGENCY BOARD MEMBERS:
CHAIRMAN IRA F. JAFFE
BOARD MEMBER BARBARA C. DEINHARDT
BOARD MEMBER DAVID P. TWOMEY
COUNSEL ON BEHALF OF NATIONAL CARRIERS CONFERENCE COMMITTEE (NCCC):

DONALD J. MUNRO, ESQUIRE
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939

COUNSEL ON BEHALF OF ALL OF THE UNIONS BEFORE THE BOARD:
ELIZABETH A. ROMA, ESQUIRE
GUERRIERI, BARTOS & ROMA, P.C.
1900 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 624-7420
COUNSEL ON BEHALF OF BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN:

JOSHUA McINERNEY, ESQUIRE
WENTZ, McINERNEY, PEIFER & PETROFF, LLC
3311 Bear Pointe Circle
Powell, Ohio 43065
(614) 756-5566

COUNSEL ON BEHALF OF SMART TRANSPORTATION DIVISION:

ERIKA DIEHL-GIBBONS, ESQUIRE
ASSOCIATE GENERAL COUNSEL
SMART TRANSPORTATION DIVISION
UNITED TRANSPORTATION UNION
24950 Country Club Boulevard, Suite 340
North Olmstead, Ohio 44070
(216) 228-9400

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CONFIDENTIAL PROCEEDINGS

CHAIRPERSON JAFFE: On the record, please.

Good morning, everyone. We're ready to start the Carriers' case. At your convenience, Mr. Munro.

MR. MUNRO: Thank you, Mr. Chairman. We're ready to begin the Carriers' case-in-chief and I realize we have an ambitious schedule for today. We're going to try to move this right along.

We plan to begin with an overview of the round, some industry economics and then our compensation case. And if all goes well, we will end with at least a portion of our health care presentation.

This is intentionally designed as a series of fairly short presentations that will highlight the most important aspects of our written materials. And I'd like to begin by calling my first witness.

Brendan Branon is the chairman of the National Railway Labor Conference and the principal spokesperson for the carriers in this bargaining round.

CHAIRPERSON JAFFE: And I assume that counsel would prefer to have witnesses sworn in?

MR. MUNRO: We hadn't discussed it but that's fine with us.

CHAIRPERSON JAFFE: That's fine. May I ask the court reporter to swear in the witness please.

Whereupon:

BRENDAN BRANON,

was called for examination, and, after being duly sworn, testified as follows:

MR. BRANON: Okay. Thank you, Don.

Good morning, members of the Board. As Don mentioned, I am Brendan Branon. I'm the chairman of the National Railway Labor Conference on behalf of the National Carriers Conference Committee and all the

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Carriers represented by the Multiemployer Railroad Coalition.

I'd like to thank the PEB members for your service. I'd like to thank the NMB counsel as well for all of your efforts. This is undoubtedly a matter of great importance to the railroads and our employees and we appreciate all of your assistance.

The purpose of my initial remarks today are to provide the Carriers' perspective on the round, to discuss our priorities and to describe the proposals that we believe reflect a reasonable settlement.

Railroads do work that matters. We're the backbone of the freight transportation industry and we are critical to the economy and we are proud of our employees who make the railroads run every day. Railroad employees work hard. They deserve the great pay and

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benefits they receive. There's no dispute about that. We look forward to reaching agreements that will continue to maintain the high standard of pay and benefits that has attracted great people to this industry for decades and will in the years ahead.

Now, we know the nature of collective bargaining is such that disagreements can be expected. And nothing in the Carriers' case is intended to diminish the importance or the contribution of the industry's people to our performance. And nothing that we intend to say in these presentations should be taken as a criticism of our employees or their bargaining representatives.

In the heat of negotiations, as we often know, disagreements arise. But we should not lose sight of our shared interest in the continued success of our

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industry as we resolve these negotiations.

In my initial remarks today I will address four areas. I will discuss the Carriers' priorities at the outset of the bargaining round. I'll provide an overview of the parties in the bargaining. I will describe the Carriers' proposals, as well as discuss the costing of the parties' proposals.

Now, when the round began, we identified a number of priorities. First, crew size. As you will hear shortly from Mr. Fritz, the Union Pacific CEO, the industry's ability to modernize is critical to how -- is critical to our success. And with the implementation of positive train control, it is now possible for the railroads to move to a new operating model for the conductor where he or she is deployed from ground base roles rather than riding in the cattle locomotive. This model is safe, it's more

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efficient and will lead to quality of life improvements for conductors.

Second, health care. The Carriers have maintained from the outset that we need to continue to adjust plan design and other provisions to encourage the efficient use of benefits, to help constrain health care cost inflation and to better conserve our plan resources.

Now, you will hear that the Carriers' proposals are drastic, that they're radical. That is simply not so. The national railroad health care plan is a platinum level plan and will continue to be so under the Carriers' proposals. But it cannot stay static either.

Our proposals not only leave the plans at the high end of unionized benchmarks for health care, but they're aligned with the type and extent of changes negotiated and agreed upon and ratified by our employees in prior

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bargaining rounds.

Third, work rules. The Carriers set out at the beginning of the round to modernize a range of work rules that we felt the time had come to address and where we could better adapt how we worked to modern resources or -- rather, modern processes and better match our resources with customer and operational demands.

And lastly, compensation. From the outset we have proposed to reach an overall agreement, including fair increases that would maintain the wage premium that rail employees receive today versus peers. This would allow the Carriers to continue to reward, recruit and retain employees in the labor market. We believe our compensation proposal that we maintain today will achieve that result.

Moving to a brief overview of the round. But before I do so, I'd like to

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stress something. It is always our objective to reach voluntary agreements. We are disappointed that we've been unable to do so. We will remain focused throughout this entire process on reaching agreements though, and we look forward to working with our rail union counterparts to doing so promptly and fairly.

As this slide shows, the Carriers formed a Multiemployer Coalition in this bargaining round represented by the NCCC, as has been the case for decades in national handling.

The unions at the outset of bargaining formed two coalitions. Now, the bargaining with these coalitions took somewhat different paths throughout the round, but they're now maintaining an overall position with 14 separate work rule proposals.

Starting with the CBC, the larger Coalition, there was an initial in-person

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bargaining session in late February of 2020. And at that meeting, the Carriers presented an overview of all of our positions, along with our detailed health and welfare proposals. Then the pandemic arrived and further in-person meetings were canceled.

The CBC did not agree upon a virtual meeting thereafter for another five months, not until late July, where the Carriers presented our health and welfare proposal. Thereafter, there were only three more, unfortunately, virtual meetings for the remainder of that year, and the Carriers presented further detail in our health and welfare proposals and our work rule proposals.

It was not until the spring of 2021 when we received a complete set of what amounted to the Coalition's initial proposals. In those proposals were included 34 percent compounded increases,

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the near elimination of every cost-sharing and cost restraint provision in the health care plan and hundreds of work rule proposals.

Now, following the receipt of that initial package of proposals in the spring of 2021, we pursued various efforts through the remainder of the year to form working groups, to discuss costing, to determine how best to engage in bargaining on items of interest within a reasonable overall framework.

There were no in-person meetings in this bargaining round with the CBC between that initial meeting in February of '21 until August -- rather, February of '20 until August of '21.

Now, there was some engagement, as you will hear from some of our witnesses, on the Carriers' operating craft and scheduling proposals in the fall of '21, but many months passed between meetings.

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At the first meeting in 2022, in late January, the Carriers presented a specific economic proposal and Labor presented a revised comprehensive proposal.

That proposal included the addition of a sixth year, 13 additional points of compounded GWI, taking their position from 34 percent over five years to 47 percent over six years. And unfortunately, at that point we were further apart than when we had started bargaining two years prior.

Thereafter, the large Coalition filed for mediation. We spent approximately two and a half months between the first substantive mediation discussion and the NMB's proffer of arbitration and little progress was made in those discussions.

Now, critically, as reflected in this chart, throughout the entire bargaining round of the CBC Coalition,

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there was, unfortunately, very little substantive bargaining on most of the Unions' paid leave and work rule proposals that had been maintained in this proceeding. For most of these proposals, as you can see, there was very little, if any, time spent that we can identify on examining the bargaining record and the type of discussions that you would expect in order to change detailed, complicated, costly work rule proposals and consider how those changes might affect other provisions, consider what other tradeoffs or possibilities might exist to address the underlying interest.

For many of these proposals it was just a demand and a presentation made in March of 2021. The result at this point is an incomplete and insubstantial record that's lacking the intense, detailed give and take bargaining that is required in this context to make the type and extent

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changes that are proposed by the Unions.

Turning to the Maintenance of Way SMART Mechanical Coalition. There were no bargaining meetings even scheduled before the pandemic began in March of '20 and a single virtual meeting was agreed to in April. Thereafter, there were no virtual meetings agreed to until late September.

There were some sporadic virtual meetings in the fall of '20 and in those meetings the Carriers provided, again, our specific work rule and health care proposals.

And from the outset, this Coalition as well, we sought ways to engage. But the position that was maintained by this Coalition was absolute, especially on health care, and none of the Carriers' proposals would even be entertained. This unfortunately made progress difficult and in the end unachievable.

Moving to the summer of '21, this

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Coalition then presented to us what they referred to as a comprehensive proposal. It included more than 40 percent in increases in annual labor costs, along with a host of other changes. And, again, it rejected every Carrier proposal in its entirety.

Before we could even respond, a week later, the Coalition filed for mediation. We spent the fall meeting virtually on approximately a monthly basis with the mediator and searching for issues upon which we could engage and make progress, all to no avail.

By early '22, frankly, the meetings had stalled. The Coalition demanded a proffer of arbitration and a release from arbitration -- a release from mediation. The NMB initially declined that request and there were no further meetings until May of this year.

And at that those meetings in May,

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the Coalition simply merged its economic proposals with the coordinated bargaining Coalition positions, thereby actually significantly increasing the cost of the positions that it had previously maintained just a few months prior, putting us again, unfortunately, even further apart than when we had started.

And again, similar to the CBC, when the bargaining record is examined, we can account for almost no meaningful substantive bargaining on the Unions' work rule proposals that remain on the table. And even on the topic of sick leave, where there's actually some discussion, the extent of that discussion really amounted more so to why the Labor Unions felt that a new and substantial sick leave program was necessary, not how it would actually work, not how it would interact with the existing statutory RUIA benefits, the existing contractual supplemental sick

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leave benefits, just a demand for a new and significant benefit.

And when we raised the prospect of perhaps examining whether we could restructure the existing statutory RUIA benefits or supplemental sick leave benefits into a different form of sick leave like the one that's being demanded today, that suggestion was rejected.

And while we understand why the Unions are making the demand and we understand the pandemic raised many new and pressing concerns, the record just lacks the foundation and basis upon which to simply impose three weeks of sick leave on top of the already existing sickness and absence benefits.

Turning to crew size. As mentioned, the Carriers have maintained since the outset of bargaining that this is a top priority and we filed a national notice on SMART-TD that invited them but

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did not insist on national handling.

We also filed local notices. And that kicked off a series of procedural objections from SMART-TD over the local notices that resulted in almost two full years of litigation and arbitration. But in the end, it was determined in August of '21 that the Carriers' local notices could proceed in almost every respect.

And since then there has been negotiations, now each in mediation, ongoing since last September, Union Pacific, BNSF and Norfolk Southern. The most recent meetings occurred earlier this month and further meetings are scheduled.

You will hear more about this tomorrow from both myself and Don. And to be clear, there's been no agreement that's been reached in these negotiations. But the important point is that they've been robust in our view. They've included multiple exchanges of frameworks from the

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Carriers for how the conductor redeployment program would work, including commitments from the Carriers covering critical issues, such as protection for current employees, scope rights for SMART-TD and provisions on how the transition would occur.

These discussions have also been very helpful with key issues and suggestions identified by the labor representatives. We look forward to continuing these discussions and reaching a complete resolution of this issue from this bargaining round.

I'm going to turn to a brief overview of the Carriers' proposals. Starting with compensation, as is reflected here, we propose 17 percent in general wage increases by July of 2024. This would be the highest GWI package achieved in national handling since the 2005 round and it would provide double

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digit, almost 11.4 percent increases, effective as of the first of this month.

Importantly, our proposal includes the payment of these wage increases in full retroactively, resulting in an average $6,300 payout for each employee as of July 1st. The proposal also includes a signing bonus, $1,000. On average, that equals 1 percent of annual pay for our employees currently, taking the total projected lump sum and retro payouts upon ratification as of July 1st of this year -- it will only grow moving forward -- to $7,300.

And with our average rail compensation of $90,000 per year per employee, the 11.4 percent increase will mean on average rail employees earn $100,000 a year as of the effective date of the Carriers' proposed agreement.

And why do we believe our compensation proposal is fair? I'll start

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with some historical markers.

Through good times and bad, settlements on GWIs in this industry, what we would call structural wages, have ranged between 10 and 17 percent in modern times. The Carriers' proposal in this round is at the very top end of that range. It's consistent with current labor market fundamentals and it will maintain our employees' existing wage premiums versus their peers.

In contrast, as reflected in the red bar on the right side of this chart, the Unions' wage position is far outside these historic norms and the pattern of wage settlements in our industry.

The Carriers' proposal is also fair and appropriate when put in context and compared against on an average annual basis other benchmarks in labor market fundamentals.

First, on the far left is the

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Personal Consumption Expenditure Price Index. And you'll hear much more about this from Dr. Jesse David in our presentation today. This is the appropriate inflationary measure to consider in this context. It's the Fed's true measure of inflation.

And even with everything we have experienced in the last 12 months, the PCE, taking what's already occurred in the first two and a half years of this bargaining round and projecting forward for the next two and a half years, is expected to average approximately 3 percent.

Now, second, the average annual wage increases in other contract settlements, this reflects an analysis and assessment of literally hundreds of other labor agreements that have been agreed to between parties during the period of this bargaining round, these also averaging

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3 percent on an annual basis.

You put these two benchmarks together, the proper form of inflation, PCE, actual average labor settlements across industries, averaged across the five years of this agreement, the Carriers' proposal stands up and holds its own against these.

Again, in contrast, the Unions' proposals far exceeds these benchmarks.

Turning to paid leave. Carriers propose an additional day of paid leave to be provided annually to each employee. As a starting point, as you'll see on the left side of this chart, the Carriers' current paid leave benefits, including vacation, holidays, personal leave days, sickness benefits. And while they vary by craft, in total they exceed and meet existing benchmarks for paid leave.

We believe our proposal is a more measured and appropriate change, both in

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terms of these benchmarks and the bargaining record because it's responsive to the work-life balance interest the Unions have raised. On its own, it's equivalent to half a percent of general wage increase and it serves as an additional quid pro quo for the Carriers' scheduling proposals.

Turning to health care. This chart summarizes our proposal and I won't go through all this detail right here right now. But the key point is the national railroad health care plan is a premium platinum level plan and the Carriers' proposal will keep it. This is amongst one of the best health care plans in the country for employees and it will remain so.

But as I said at the outset, it can't stay static either. Health care plans routinely revolve and shift how benefits are covered and delivered and how

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costs are shared between employers and employees. Our proposal does that here, but it does it in a manner that is consistent with benchmarks and it's consistent with the type and scope of changes that have been agreed upon and ratified in prior bargaining rounds.

Crew size. What is important to know is that we are not asking this Board to recommend any of the specific details about how the redeployment would occur. That is a topic that is best left -- the details of that are best left to the parties.

Instead, as you'll hear further tomorrow, in this proceeding our position is that modernizing the role of the conductor is critical and that technology is in place now to do it safely and to do it effectively and to do it in ways that protects our employees and creates better jobs with higher quality of life.

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Our position is also consistent with how PEBs have historically addressed the question of crew size. It's to settle on a process, a process that would flow naturally from the local discussions that have already occurred and are underway. This would provide for negotiated resolution of this issue coming from this bargaining round.

Importantly, the Board has full authority to issue such a recommendation, just as PEB 219 did with the arbitration process depicted on this slide.

Turning to work rules, we originally had more than 20 proposals and we saw a need to modernize, as I mentioned at the outset, to provide more flexibility in how we operate and schedule and assign work. We've scaled that back considerably.

This slide represents and reflects the 20 various work rule proposals that we

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withdrew through the round and have withdrawn in this proceeding.

And why have we done that? Well, in large part, because there was, admittedly and unfortunately, little, if any, substantive negotiations over these proposals. There were no agreed upon quid pro quos or other types of exchanges in bargaining that would have produced agreements on these topics on their own, and we are not seeking to burden this Board with the task of trying to discern in your recommendations how the parties should have settled on these issues.

That, frankly, distinguishes the position that the Carriers maintain in this proceeding versus that of the Unions.

And so what remains are the Carriers' work rule proposals. It's a single package with three related components. These proposals have been selected because they use modern

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electronic systems in the case of automated job bidding in particular to handle the scheduling of operating crews.

Right now we're still using systems and processes that are quite antiquated. They integrate with these existing processes and do not tear down or impose some new system, importantly, on top of what's already existing. They provide for increased schedule flexibility and certainty, more time off to be incorporated along with our proposals in an attempt to address the concerns that have been raised by the operating crafts.

Lastly, these proposals are all proven effective. There's some version of each of these that is in place and working effectively right now on the railroads. It gives us the real-world -- real-world experience to understand how these will work.

Turning to costing, critical area.

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It's how we account for the direct financial impact of our proposals as well as Labor's proposals. What I'm going to review here today are summaries, but we can provide the Board as much detail as it desires.

Okay. As is reflected in this chart, summary costing of the Carriers' proposals, we will provide an increase in compensation and benefit costs of approximately $5.7 billion over the proposed five-year term in this agreement. I won't read all the numbers here for you. You may be wondering why do the Carriers' health care costs go up more than a billion dollars total, even under our own proposals.

That's because all our proposals do is moderate in a measured manner the health care costs the Carriers have experienced already in this bargaining round and are projected to experience

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moving forward.

We expect to be paying by 2024 almost $400 million more per year for health care for our employees than we did at the outset of this round. Those are real costs that go into the business and reflect the increasing value of the health care benefits that we are proposing. And all that this chart does is reflect that it's proper to account for that cost.

Turning to Labor's proposals. What we see in contrast is almost $15 billion in additional labor costs over the proposed five-year term of the agreement.

On wages alone, the Unions' proposal includes more than $10.5 billion of additional costs over these five years. And on benefits, whether you ascribe to the view that maintaining status quo has absolutely no cost, which is what the Unions assert, or you recognize that the cost of providing the current benefits

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with no changes will be approximately $1.7 billion more of the -- above the pre-agreement baseline, there's really no question that we're far apart and there's no dispute.

On paid leave, this reflects the Unions' sick leave and holiday demands. Those costs alone exceed $800 million a year, more than the projected cost of all annual health care inflation.

This is a considerable impact. It needs to be fully accounted for. Similarly, the Unions' work rule proposals come with high cost, almost $300 million, in our view, annually by the end of the agreement.

As we've discussed, none of these demands, not a single one of them, come with any offsets or quid pro quos or even the willingness to consider the exchange of an equivalent value of the wage demand for the work rule proposals.

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And I know that the Unions' costing of their proposals is slightly different than the costing of our proposals. But we believe we understand what's driving a large part of that variance. It's all easily explainable. And regardless, whether you use the factors or assumptions that the Unions do or that the Carriers do, there's no dispute that we're far apart. Proportionally they are the same. Any claims of a dispute about costing is really just a diversion in our view.

What you're left with when you compare at a summary level the costing of the Carriers' and the Unions' proposals is the significant gap represented on this slide, almost $9 billion over a five-year period.

And on an annual basis, starting in 2024, the Unions' proposals would cost more than $3 billion more than the Carriers' proposals. These costs will

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carry on essentially in perpetuity. And as you'll hear further from Ms. Hamann, Union Pacific's CFO, these costs come with significant risk and impact on the business moving forward.

When you take a slightly different look at the costing, what is represented here is the GWI equivalent of the Carrier and the Union proposal at the end of the agreement. The $3 billion gap between the Carriers' costing on an annual basis is reflected in the almost 30-point gap in equivalent general wage increase value of the two respective proposals.

Now, importantly, there are Union proposals that have not even been costed, including the proposal to abolish Carrier attendance policies, create new scheduling practices for the ops crafts.

It's at this point, based on the level of the discussion, the absence of a discussion, frankly, it's unclear how

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those would impact costs. It would assuredly be significant.

In closing, I'd like to leave the Board with three numbers, 21.8. As we just saw, this is the increase in GWI equivalent total compensation in the final year of the Carriers' proposed agreement. This figure is at the high end of the value provided in any five-year agreement in national handling and it's consistent with all the benchmarks and fundamentals that should be followed, in our view, in the Board's recommendations.

Next, $38,000. This is additional take-home pay, wages, that the average rail employee would receive under the Carriers' proposal. And what this means is when you account for the $7,300 that we project in immediate lump sum and retro payments as of July 1st of this year, there's more than $30,000 on average per employee still coming in wages in the next

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two and a half years.

And lastly, $150000-plus. This is the average annual value of the total compensation of rail employees at the end of this agreement, inclusive of wages, paid time off value, health care, retirement benefits. This means rail employees will remain among the very best paid and benefited employees of any industry in the United States.

When the round started, rail employees -- and we're proud of this -- they ranked at the top 93 percent in total compensation of U.S. workers. And when the round ends under the Carriers' proposal, they'll continue to rank among the top 93 percent of total compensation of U.S. workers.

We believe that reflects a Carrier proposal that is fair. It does not diminish. It does not expand. It maintains this wage premium.

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In conclusion, Carriers' proposals will have significant and beneficial impact for our employees and their families, will fairly reward them additional pay and great benefits that they have earned and deserve and it will provide for railroads to continue to retain and recruit great people to our industry moving forward.

For these reasons and for all the additional reasons that you will hear further in our case, we assert that our proposal is a fair and reasonable settlement and it should be followed by the Board in its recommendations. And when those recommendations are issued, we will look forward to reaching agreements with our Union counterparts and the rail chiefs in this room.

And in closing, I think one thing we can all agree upon, that it's time to resolve this round and it's time to

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deliver pay increases to our employees and put the uncertainty associated with this process behind us. And when we do that, we can all get back to focusing fully on what we know we can do best together, which is running the safest and most effective freight transportation system anywhere in the world.

I thank the Board for its service. I look forward to working with you through the remainder of this process, along with our rail Union counterparts. I'm happy to answer any questions you may have.

CHAIRPERSON JAFFE: Thank you, Mr. Branon.

I think we're good at the moment. We may have some later when you come back. Thank you, sir.

MR. BRANON: I'll be here all week.

MR. MUNRO: Mr. Chairman, for my next witness I'd like to call Lance Fritz, the chief executive officer of Union

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Pacific.

CHAIRPERSON JAFFE: And would the reporter please swear in Mr. Fritz.

Whereupon:

LANCE FRITZ,

was called for examination, and, after being duly sworn, testified as follows:

MR. FRITZ: Thank you, ma'am. And thank you, Board. I appreciate the fact that you've committed to and said yes to conducting this for us. And I look forward to having an end to this process.

My name is Lance Fritz. I'm the chairman, president and CEO of Union Pacific, and I very much appreciate having an opportunity to address you today.

Prior to being CEO, one of the jobs I held at Union Pacific was vice president of labor relations so I do understand the process. I understand the issues that are in front of us and I understand the difficulty in reaching agreement on these

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issues. I'm sorry that it has taken us to a Presidential Emergency Board, but I'm very much looking forward to getting closure.

There's two things that I am going to accomplish today or attempt to accomplish today in my presentation to you. The first is to give you some context about the railroads, where we've come from, where we are today and where we're going.

And the second is to explain why our proposal is fair, it's prudent, it's equitable and it forms a foundation for us to be able to grow into the future. And that growth is the basis for long-term benefits for all of our stakeholders, including our Union employees.

I want to reinforce something that Brendan started with this morning and be crystal clear about it. We value our employees, period, hard stop. They do all

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of the hard work necessary to continue to keep America's economy running. They provide all of the necessities of our lives.

Through the pandemic, they didn't have an option to stay at home and work from home when things like their children couldn't go to school anymore and had to stay home. The work of running a railroad happens on the railroad. 85 percent of my employee base had no option but to continue to show up and work through the pandemic.

And now, two and a half years later, you know, that sounds like a burden, but it doesn't sound like the anxiety and the fear and -- and the challenges and the hardship that actually occurred during the period. And we recognized our employees for that sacrifice, for rolling up their sleeves and continuing to keep the economy moving.

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As a matter of fact, Union Pacific at the end of 2020 provided a $1,000 payment as a point of recognition for every craft employee that had worked through the pandemic year of 2020.

The reason why we did that wasn't to make up for lost wages. It wasn't to do anything other than to say we recognize your sacrifice, we want to make sure you know we see and recognize that and we value you for it.

Given my experience in collective bargaining, I understand that we will -- management and our Union leadership will see the same topics from very different angles and we'll have very difficult conversations about those topics. It's happening right now in this year's national. That has nothing to do with the value that I see and believe in and cherish in our employees.

So let's get into the first part of

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our discussion this morning, where's the railroad, where we came from and where are we going.

There's -- it's indisputed that railroads are in far better footing than we were a decade, two, three, four ago. We're in much better shape financially, operationally from a safety perspective.

If you go back to what was really the dawn of this Renaissance, the Staggers Act in 1980, from that point forward we've made fundamental changes in the railroad. I'll talk a bit about them in a moment, those driven by capital and process improvement.

But this chart basically describes statistically what happened. In essence, we were free to compete. We were free to price and go after business and -- and innovate in an industry that prior to that had been overregulated and stagnated.

And as a result, we had a better

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service product and all of our stakeholders ultimately benefited from it. Our customers saw a 40 percent real reduction in their rates between 1980 and 2020, 40 percent real rate reduction, while their service product improved.

Our employees saw wages increase over 100 percent, 107.5 percent during the period. Our safety improved dramatically. Personal injury rates dropped by 84 percent in this four-decade period.

It's indisputed that we are a much safer, a much better industry and capable of standing on our own two feet. We were all facing dire consequences prior to 1980 and we all are in much better condition today. And that didn't happen by accident. It happened by the diligent application of capital into the industry and process improvement.

It's no secret that railroads are very capital intensive. This chart

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describes that perfectly. Compared to most other industries, certainly all manufacturing and industrial industries but for one or two, we are substantially more capital hungry. We invest six times on a percent of revenue basis what U.S. manufacturers typically invest.

If you look back over the last five years, railroads, U.S. freight railroads, have invested $20 billion annually in capital and operating maintenance to keep the railroads in good operating condition. These are large-scale investments.

If you go back over that last 40-year period, railroads have invested fully 40 percent of their revenue dollars back into the railroad. And all of that is very consistent with current administration priorities. The administration has talked about building back better, having a U.S. economy that's founded on really strong infrastructure in

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the United States. And we're part of that. We're a fundamental part of that.

As a matter of fact, versus our competition, we own and maintain our own right-of-way. We do not rely on the Federal Government to subsidize our ability to serve the markets that we serve. That's unique and it's an important point. It's why we are so capital-intense.

And that capital spending and those operating improvements ultimately when we look forward are about being a foundation for growth. If you look over the last, call it, decade, 15 years, we heard yesterday from our -- from our Union colleagues that the railroads have become very, very profitable. And it's true.

We expanded our margins over the last, call it, 15, 20 years and we did it mostly through capital, some in pricing for the value that we -- that we give to

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our customers through better service product and operational improvements. We'll talk about all of that through this -- through my presentation this morning.

And that generated a lot of long-term enterprise value. As we look forward, that long-term enterprise value from here won't be created by margin expansion nearly to the extent that it's going to need to be created by growth.

And this chart gives us hope. It says there's growth opportunity out there. Over the course of the next decade or two, freight transportation demand is expected to grow substantially in the United States.

And there's opportunity and optimism based on my conversations with our customers. Right now, most all of our large sophisticated customers are looking to reduce their greenhouse gas emissions,

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their intensity, either in absolute terms or in relative terms. And we're a solution for that.

Freight railroads emit about one-quarter of the carbon and greenhouse gas emissions than trucks for shipping the same ton of freight, one-quarter. We're three-quarters, 75 percent, less polluting than trucks.

So when a customer converts part of their supply chain from truck to rail, they automatically are taking a step forward in reducing their greenhouse gas emissions. As a matter of fact, we have a calculator that we provide every customer, either real time or at periods of time through the year, that share with them how much greenhouse gas emissions they've saved during the year. Last year we saved our customers about 23 million tons of CO_2 emissions.

And I also see an opportunity to

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grow with our customers through our PSR transformation. We'll talk about that in a moment. But fundamentally we've changed our operating strategy, our transportation plan, to provide a better service product on average and in most cases for our customers. Not in every case, but in most cases.

And as I talk to our customers, they tell me hey, that's opening up the door for us to show you more of our supply chain. And it's happening for Union Pacific. We are winning new business every day in almost every market that we serve.

And the last thing that enables our growth is that our physical infrastructure is in excellent condition. Our railroad's in the best condition it's been in in years, in decades. And it's on the basis of strong targeted capital investment, process improvement and making sure that

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when we fix something, we fix it right the first time and don't have to come back to it.

And PSR has opened up a lot of capacity on the railroad. I'll mention this again in a moment, but we're running about 25 to 30 percent fewer trains every day. We're starting 25 to 30 percent fewer trains every day.

We didn't do that through magic. We did it by taking a very complex old transportation plan that had unique, special train starts for different commodities, like an ethanol train or a train of dried distiller grains, and we commingled that back into the manifest world, back into the shared commodity train world.

That allowed us to -- to start fewer trains because we commingled the traffic and it shows up in train size. Prior to this transformation, we were

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running trains about 7,000 feet long and today we run trains about 9,500 feet long.

And there's one last thing I want to mention about our infrastructure being in excellent shape. The American Society of Civil Engineers gives a report card for U.S. infrastructure. It's a widely quoted report. Freight railroads are almost always at the top of that list. Our grade for last year was a B. Now, it would have been an A, but for the fact that Amtrak typically gets starved of its capital needs specifically up in the Northeast corridor every year.

Now, that looks like that was changed in the infrastructure bill that was signed last year, which is great. But until that starts generating capital investment in infrastructure excellence, we're probably still going to be a B. But freight rails are in great shape.

And as we look into the future,

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capital investment is going to continue to be required, as will innovation. And it doesn't always take the form of physical infrastructure. A lot of times in today's world, it's taking the form of technology and investments that enhance customer experience.

On this chart in that first bucket UPGo and Fast Gate, those are -- UPGo is an app that truckers can use when they enter our intermodal ramps -- intermodal terminals. And it allows them to do things like see a map of the terminal, know where they're going to go pick up or drop off their box.

Fast Gate allows them to go paperless through the gate. They can get on and off or intermodal terminal without talking to anybody. It records a document that allows them to submit to their employee for pay. So they don't even have to have any paperwork in their cab if they

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so choose. It's an excellent tool and it's making the time on ramp, on terminal for truck drivers much lower than it used to be.

That's a benefit for truck drivers. They like to come to our ramps because we'll process them quickly. And it's a benefit for the supply chain. We're not wasting their time. We can get maybe an extra turn every couple of days that they serve their customers.

Our competition isn't sitting still either. Trucks are constantly looking for ways to be better, more efficient, to effectively compete against what railroads do very well, which is large scale, bulk, heavy goods economy support.

So things like autonomy and electric trucks, electric trucks are a little ways off. Autonomy is not. Autonomy is within the next handful of years for revenue service. We're an

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investor in TuSimple. We're an investor because we want a seat at the table and see what's going on. We're going to see if we can apply it for our own benefit to expand our own supply chain with customers and our knowledge tells us the technology is real and it's coming. So we -- we have got to continue to invest and innovate in order to stay competitive.

And part of staying competitive is staying cost competitive. Now, there's something I mentioned at the beginning of my discussion and that was we are profitable. We're highly profitable. We're generating a lot of cash.

That didn't happen by squeezing every expense and making it work harder. It happened by really sound capital investment and process improvement. This is a case in point. And it speaks to what Don and Brendan have already said.

We're proud that our railroad Union

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workers, our craft employees are well paid. They're better paid than their Union peers in most other industries. That was true in 2005. It's even more true in 2020.

And nobody on the Carrier side is going to argue to try to shrink that dramatically. That's not how we've created such profitability in the industry and it's not how we're going to create growth in the industry going forward.

Winning requires capital investment and it requires cost competitiveness and it requires great employees. And that's exactly what we have. We have great employees who are in very good jobs, another priority of this administration. And we're right in the wheelhouse of that.

This slide shows you a quote from what the White House priorities are and what they're trying to accomplish and this build back better and this labor-centered

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economic recovery. And I take you to the bottom paragraph where the President is talking about ensuring that new jobs are good jobs you can raise a family on and you can ensure free and fair choice to organize and bargain collectively. That's a definition of railroad jobs.

We are unionized by law virtually under the Railway Labor Act and they are great paying jobs and for sure you can raise a family, a great middle class living, through railroad jobs.

I'm out on my railroad every week. I probably talk to hundreds, if not thousands, of employees every couple of weeks, certainly in a month. And when I'm on my railroad, the vast majority of my employees tell me, hey, boss, I love my job, I love the team that I'm working for and I'm very proud to be part of Union Pacific.

Now, let's set that aside. I also

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would love, you know, this tool or this isn't happening right and I want more of it or less of it or this is happening somewhere else and I think we should think about it. That's because we have a very open line of communication.

What my employees think is no secret to me. I know exactly what they think because they tell me every day. And what they tell me is they love their jobs, they love working for the railroad and they specifically love working for Union Pacific.

I've got a few examples for you. Probably the most telling example of the fact that our employees are not looking to quit and leave in droves but instead are looking to have their loved ones and respected friends and family members join them is that at the beginning of this year we started an employee referral program.

Since the start of the year, we've

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had out of our 33,000 employees, 8,000 referrals generate 1,000 job offers. People who want to quit their company don't invite others to join. It's been a home run success, regardless of how we look at it.

And then let me just share some anecdotes with you. The two ladies on the right, that's a mother-daughter combination, Rolette and Kayla Sudds. They work down in Houston, Texas.

I was out visiting Houston about three months ago and I got to meet Rolette and Kayla, more or less by chance. Rolette has been with us since 2012. She works in a terminal called Strang. It's a very complex terminal. It requires our best employees.

Every day, 600 cars come in and out twice a day in a terminal that is challenged by being landlocked. It's critical. It's a cornerstone for our

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Houston service unit.

Rolette is very proud that she works there. She does a great job for us. And when her daughter was looking for stability so that she could raise her family, Rolette thought hey, I think you should consider coming to the railroad, I think you can do the work and you're going to have to get through the process, which she did.

We hired her. She's been with us for about six months. And what Kayla says is, you know, I think we need more women here. And I couldn't agree more, because she thinks that -- the job is -- requires attention to detail. It requires kind of being on your feet, paying attention and being careful. And she said that's exactly what I have to do at home.

On the left-hand side, that's me celebrating four employees that had 50 years of service this year. Every year at

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our annual meeting the Board and I make a very big deal of any employee that's had a 50-year service anniversary. Usually we have four, six, eight, sometimes as many as ten. We've never had a year with none. We always have some to celebrate.

And in this group, it's kind of unusual to have a 50-year employee as a female. I'm looking forward to more. Nancy Brice on the left-hand side there, she is working an intermodal terminal for us in L.A.

Johnathan Deckard, he works for us in our shop in Palestine, Texas.

Greg Wahl is an engineer in Bakersfield. He helped us with PTC, positive train control, when we were introducing it.

And Pancho, on the right-hand side there, he works in Sparks, Nevada. He's like Mr. Positive. Everybody loves working with him.

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So bottom line, we've got great jobs. We've got people that want to work here. There's hundreds, thousands of UP employees who are related to each other. It's very common in our industry. And we're hiring like mad right now.

We've graduated 480 TE&Y already this year. We're going to graduate another 400 by the end of September. We have over 500 in training. By the end of the year we'll have hired and trained and graduated 1,400 people.

It's not without heartburn. There are parts of our railroad where it's very difficult to hire employees. That's not because they don't want to work for the railroad. It's because there's nobody in the labor pool. It's places like North Platte, Nebraska that has an unemployment rate of 1 percent. We have to actively find ways to develop labor in a pool like that because it's largely employed

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currently.

Now, I'm going to touch on a couple of things before I close. They're going to be thematic. I heard them yesterday. One is PSR, Precision Scheduled Railroading, and the role it plays and the other is our effort to redeploy conductors from the cab of the locomotive to the ground.

So let's start with PSR. PSR was a fundamental transformation of our railroad and virtually every railroad in the United States and in Canada. And fundamentally it's a change in how you design your transportation plan. The idea is don't touch and switch a car and stop a car if you don't have to, try to commingle as much traffic as you can because it gives you more opportunity to move it deeper into your network more frequently, use your assets wisely and make sure you have enough assets. Right?

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And in that context, we've, as I mentioned, fundamentally changed the railroad. We took a railroad that on any given day had 850 or 900 trains running on it. Today a heavy day is 700 trains. Maybe 650 or 600 is more like the number it should be. In terms of train starts it reflects that.

And the reason that can be is instead of starting all these specialty trains that are really hard to manage because they're largely unscheduled, they get released and then you've got to go scrounge up power and crews for them.

In the manifest world, that's largely a scheduled world. And we can find runs, opportunities to move cars and advance them into the network with great frequency.

So we've fundamentally transformed the railroad through PSR. That has fundamentally removed work from the

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railroad. That's why we've decreased our job count so much, both in the industry and at Union Pacific.

When you run 25 or 30 percent fewer trains, you need 25 to 30 percent fewer crews. When you switch fewer cars and yards, you need fewer utility jobs and switch jobs. When you maintain a locomotive fleet that's 30 percent lower than it used to be because you're not running as many trains, you don't need as many mechanics, diesel electricians, diesel mechanics to -- to work on the railroad.

I spoke about a similar issue in the last PEB I was at, the PEB 243. The topic there was the Union leadership said we were overworking our employees. That's why we had fewer head count. We -- same amount of work and we just were working them harder.

It just wasn't true. At that point

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we had swapped capital for labor. Large investment had automated a fair amount of the jobs and that's where the jobs went. This time around, it's about operation improvement. It's about fundamental transformation through PSR.

Our employees are not working harder or being overworked. They work hard already. The jobs are hard jobs. You're outside, you're on call. But it's no worse than it ever has been. As a matter of fact, the jobs are safer and more supported.

So let's talk about crew size. I want to start with the foundation positive train control.

PTC, positive train control, is a -- it's a mandate that happened in 2008. It's a technology platform that has technology embedded on locomotives, in the back office and on line of road. And fundamentally it's designed to do only one

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thing, stop trains. That's its design, stop trains in four circumstances:

Don't let a train get past a red signal. Don't let a train go into a work zone that it's not authorized to get into. Don't let a train go beyond its maximum authorized speed. And don't let a train take a route that is unintended, period.

But the technology forms a foundation for doing so much more. And one of the things it does is it takes the work of the conductor in the cab of the locomotive, which used to be and, to a degree, still is, communicate with the engineer, share what's going on, know what's coming up in terms of workload for the train and make sure the engineer is well informed.

Well, the engineer is getting well informed now largely through a screen that PTC is involved. So we see an opportunity to take the work of the conductor and

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redeploy it from the cab of the locomotive onto the ground, where that conductor's work remains.

This chart, it's just a slide of a couple of activities that are very typical for a conductor's day, in tying hand brakes, untying hand brakes to secure cars or throwing a switch or lacing air hoses if we're going to pick up or drop off cars.

That work can be on the ground now. And the beauty of doing that is threefold:

One, it can enhance safety. We can do it safely and efficiently by putting the employee on the ground because they can turn into shift work. That's a quality of life benefit and a safety benefit.

Fatigue is one of the largest concerns that our labor unions and management share. By taking somebody out of the cab of the locomotive and putting

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them on the ground we turn them into shift work. They can stay at home at night as opposed to staying away from home 100 nights or more a year.

We're in the middle of negotiating this. You heard that from Brendan this morning. And it's a hard negotiation for obvious reasons. But I'm -- I'm optimistic that with continued hard work, we can get something agreed to. It will be a very attractive and lucrative agreement if reached. And what we want from you is the opportunity to continue that negotiation on property.

So let me conclude. Railroads are critical to the U.S. economy. We're critical to the global economy. Our employees, our craft employees, our Union employees, are critical to getting that job done. And we want them rewarded.

Our proposal does that. It has market-based, reasoned and very fair

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general wage increases. It has reasonable changes in work rules and a reasonable move really not towards the middle of the fairway on health and welfare plans, but a reasonable move to keep it at platinum or Cadillac and not let it get out of control.

That proposal is also consistent with maintaining the role that railroads play in the United States, both in achieving the administration's objectives, as well as in helping us grow.

I thank the Board for your attention. And if you have any questions, I'd be happy to address them.

CHAIRPERSON JAFFE: I think we are in good shape, but thank you very much, Mr. Fritz.

MR. FRITZ: Thank you, Chairman.

MR. MUNRO: Mr. Chairman, with the Board's permission, we'll move on to our third witness.

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CHAIRPERSON JAFFE: We'll do one more before our break. That's fine.

MR. MUNRO: Thank you, Mr. Chairman.

CHAIRPERSON JAFFE: Of course.

MR. MUNRO: I'd like to call Dr. Kevin Murphy. He is our lead economist and will discuss the Carriers' view of compensation.

DR. MURPHY: If it's okay with the Board, I could do it from here?

CHAIRPERSON JAFFE: That's fine, Dr. Murphy. I will have the court reporter swear you in.

DR. MURPHY: Okay. Thank you so much.

Whereupon:

KEVIN MURPHY,

was called for examination, and, after being duly sworn, testified as follows:

DR. MURPHY: Thank you so much. It's my pleasure to be here today. You've

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heard already from two people directly involved in the railroad industry.

I'm an economist and I teach economics at the University of Chicago. And my goal in economics and teaching is to really do it from an applied perspective. And one of the industries that I've studied over time is the railroad industry.

And I would like to try to bring an economic perspective to some of the discussions we've had so far and in particular, from a point of view of a -- how we think about compensation. And my goal is to hopefully help the Board by providing a little bit of economics to help us think about these issues before us here today.

So let me just go to an overview of my talk that I'm going to give. I have a tremor that makes it hard for me to use a clicker.

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So I'm going to talk about three main topics: total compensation and why total compensation is the appropriate way to look at comparing the proposal before us today.

Briefly, total compensation is what you should look at because that's what matters to both sides, both to the employers who have to pay the full bill and to workers who receive not just wages but other benefits from their jobs.

Secondly, I'm going to talk about labor market considerations and in particular, how should we compare and how do workers in the railroad industry compare to other industries and also how do we think about some of the issues out there in the economy today.

The situation or the state of the railroad industry, inflation, obviously top of mind for everybody, how does that factor into our discussions here today and

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also issues of the overall labor market and what we expect here over the period of the contract.

Finally, I want to talk a little bit about the consequences of different proposals and what they're likely to generate in terms of the outcomes for the -- the railroads and the workers, all this done from an economic perspective.

So let me first talk about topic number 1, total compensation. As I said earlier, why do we focus on total compensation, not just wages. The answer is because that's what matters to both sides.

Employers, when they look at how much -- how many workers to hire or how their bottom line is affected, it's obviously affected by not just the wages they pay, but also the cost of the health insurance that they provide, the taxes that they pay, for example, for Social,

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insurance and things like that, and also the cost of, say, personal, you know, paid time off. Those all factor on the employer side.

On the employee side, those same things carry over; that is, workers benefit from wages, but they also benefit from health care plans and other non-wage compensation. Personal time off or paid time off is also a benefit from the workers' side of the equation.

So let's look at the situation we're at today in the railroad industry on the next slide. And this is the picture of where we are and I think you've seen these numbers before.

If we look at the total compensation, which, as I said, is the appropriate benchmark, if we look at that today for railroad workers as a whole, it comes out to a little under $61 per hour, translates into a little over $126,000 a

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year.

As you can see on the left, wages are about 60 percent of that, but there are other significant elements as well: retirement and unemployment benefits, which obviously cost the employers and benefit workers; health care -- health and welfare benefits, that's another 16 percent; supplemental pay, such as overtime pay, and paid time off. Those are all components of the current basket of compensation that we look at.

Now, that's where we're at. If you think about well, how does that compare to other industries and other workers, you've heard a lot about -- about the railroad premiums. I'm going to talk about that next.

So in terms of the railroad premium -- and this is -- this is all drawing on the work of Jesse David, who is going to talk about this in greater

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detail. And I should mention that everything I'm going to talk about here today is going to be covered by other witnesses. My goal is to kind of give you an overview and tie it back to the fundamentals of economics.

If we make a comparison to other unionized workers, we've got the railroad workers on the left -- as I stated, a little under $61 an hour in total comp. So the railroad workers at $61 an hour compared to goods producing, manufacturing, trade and transportation and transportation warehousing, the railroad workers compare favorably in terms of total compensation.

That's also true in terms of wages, but again, total comp is really what we want to look at for purposes of these types of comparisons.

In his analysis Jesse David is also going to look at comparisons for other

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groups of workers. You can go to the next slide. As we said, based on that previous slide, the premium relative to those other groups of unionized workers, somewhere between 2 percent, the smallest difference, and 39, the biggest difference in that chart.

He also does a nice analysis in looking at different occupations and comparing the occupations in the railroad industry to similar workers in other -- in that occupation and other industries. He gets much larger premiums, not surprisingly, because this is a comparison not just to Union workers, this is also nonunion workers as well, between 59 and 114 percent.

And finally, if you compare to other industries, generally you'll see pretty large differences, between 21 and 53 percent. The only exception is the utility sector. And he in his report goes

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into great detail trying to analyze that where we still see a premium, but it's in the single digits.

So overall, what do we say, and I think you've heard this before, railroad workers are currently earning a substantial premium. And my understanding from looking at the proposal by the Carriers is they have to look into reducing that premium. That is, they're looking to maintain the premium that their workers enjoy today.

And if you look at the next slide, if you compare the proposals today that the Carriers and the Unions have put on the table relative to past proposals, the Carriers' proposal of 3.3 percent in total comp -- again, looking at total comp, the right thing to look at, 0is actually at the high end or higher than the average of what we saw over 2005 to 2020, but are pretty close. And at the same time, the

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Coalition of Unions, they're proposing about 6 percent in total comp as -- and discussed by Jesse David in his report.

I should point something out. The 6 percent does not include the increase in paid time off. If you include the increase in paid time off, that number is going to go up to more than 7 and a half percent. So that's actually, you know, a bigger gap than even these figures show on the Board.

And as I said before, paid time off is a component of both the cost and benefits of the total compensation package. So really, the difference is even bigger than what we see here.

All right. Of course, we can't just look at where we are and where we've been. We have to think about, you know, what's the market like today and likely, most importantly, where are we going to go in the next couple of years.

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Okay. So let's talk about that. So how do you think about that? Well, this is a collective bargaining agreement, right? And collective bargaining is a situation where an employer sits down with their employees and try to negotiate a deal that works for both parties.

And you ask, well, what are the forces that drive the deal and make the deal work for both parties. On the one hand, if we -- we have to think about labor supply, are wages high enough to be attractive to the workers and allow the employer to recruit and retain workers. That's sort of are wages high enough to satisfy the objectives of both labor and -- and the employers.

On the other hand, we have to worry if the wages are set too high, employers will want to hire fewer workers and that will reduce employment, make those employers less competitive in the overall

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marketplace, which isn't going to be good on that end. So it's kind of a balancing act.

I'm not saying that negotiated wages in a collective bargaining agreement are the same as a wages setting in a market absent labor -- absent collective bargaining.

What I'm saying is that the same forces are at work. You have to think about the supply side, are wages high enough to attract and retain workers, and you have to think about demand side, are wages too high and will it discourage employment and reduce the employers' ability to compete.

So that's the purpose of my next slide. The ideal place is what balances these two things appropriately. On the one hand, wages are high enough to attract applicants and really reward the workers for their efforts. And in this context,

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that's about maintaining the premium where it is today.

On the other hand, if you go too high, that's going to raise costs, reduce employment and output. And as I'll talk about a little later in my talk, the reality of both of these is important to understand.

So let's go to the question of are wages currently high enough and if compensation is currently high enough to attract and retain employees. This comes from a report of David Allen. That -- Professor David Allen is going to look at the ability of the railroads to hire and retain workers.

And what his analysis shows, as shown on this chart, is that if we compare the railroads in terms of applicants per hire, we see they're dramatically higher than the marketplace as a whole. That tells us that even though they've gone

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down, applicants per hire is down today in '21 from where it was in '20, it's still, at 42 and a half, much higher than what it was in any industry -- in the industries as a whole in previous years.

And if you look on the right in terms of overall pay, railroad workers by and large stay around. Okay? And you might say well, geez, how does this jive with what we heard yesterday about, you know, them having difficulty hiring. And you heard from, you know, the CEO of Union Pacific this morning. There are issues with hiring specific employees in specific locations. Two things:

One is when we think about the labor market today, it's really undergoing two things that are related but different. On the one hand, labor markets are tight. But it's not tight enough that they're having trouble hiring. They're still -- overall, the level of wages are certainly

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sufficient to generate a given number of applicants.

But the labor markets are also being disrupted by -- you know, there's a lot of disruption going on. That is, individual employees are deciding I want to move to a different city, I want to do a different job, I want to retire. This world is a mess right now, right? It's a tough -- it's a tough world right now.

All of us -- when I'm not talking, I'm wearing a mask. It's not a fun world to be in. And that's causing disruption. And what happens when you have disruption is you're going to get localized problems where you're in a situation where enough people have changed what they want to do that you're having trouble hiring in those places.

So the hiring problems are much more localized. And if you have localized hiring problems, raising wages across the

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board is not a very effective solution because most places you have plenty of applicants. And raising wages is just going to get you fewer hires because the employees are going to demand less and it's going to do very little to solve those spot shortages.

Instead, the response you would expect to see -- and, indeed, when you heard the discussion yesterday from the other representatives, what they are seeing is in particular places there's a bonus, $12,000 or whatever the bonus is, for hiring that particular worker. That's what's going to happen to solve those issues.

So when I look at the picture, I say this is not really that at odds with the kinds of evidence that people talk about where there are problems in hiring. And one of the problems where we have spot problems in hiring, it's a pretty big

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drag. Because if I need five people to do a job and I can get four but not the other, that creates -- that's a drag not just for the employer, but also for those other four workers who really may not even get hired at that point. So, again, that's the kind of thing that's not solved by raising wages overall.

All right. So now let's go on and talk about inflation. Now, I'm not a macroeconomist, but I know enough about inflation. And I think you've probably heard this discussion many times in the past.

Inflation fundamentally is about too much money chasing too few goods. And you can get that in two ways:

One, you can just have too much money through either overly aggressive or overly loose monetary and fiscal policy or you can have too few goods.

We're getting inflation today right

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now because of both. And when you have too much money, what that tends to do is drive up both wages and prices. And to a first approximation, you might say too much money is going to drive up both. That really wouldn't affect real wages.

But when you have too few goods, that's a real shock to the economy. That's a change in the actual real part of the economy. And those too few goods, due to supply chain problems and other things out there, are going to put downward pressure on real wages. You're not going to get prices -- wages rising with prices because that -- that real shock is going to lower real wages.

And that's exactly what we've seen in the economy. If you look over the last year and a half or so or two years, what you're seeing is higher prices. That is, prices are rising and wages are rising, but real wages are going down because

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wages are not keeping up.

And that's due in part to the thing I talked about, which is there's a negative real shock here where we've actually seen too few goods. The ability to produce goods today in the economy is down. And that's going to lead to lower real wages.

So now let me talk a little bit about the history of real wages. This is a chart of real wages over a little more than four years' worth of time. And if you look over this period as a whole, real wage growth in the economy has been pretty weak. This is studied and known by labor economists for a long time.

The growth in real wages over this period is about a third of a percent per year. If we start in early '80s and basically do a four-year growth, it turns out to be about a third a percent per year.

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Most of the growth occurred in two big periods. Most of the growth occurred in the late '90s, when we had a very strong economy overall. Also occurred in the late teens, basically 2015 to 2019 or 2020, when, in fact, we had a very strong economy. But overall, we've thought about real wage growth about a third a percent per year.

Now, if I look over the period of the contract that's happened already, the first two and a half years, real wage growth in the economy is zero or down a little bit. Real wages are a little lower today probably than when we started in 2020.

Now you ask well, what do I think about real wages for the period 2022 to the end of the contract. It's really a question is, do you think real wage growth over that two and a half years is going to be weaker or stronger than over this long

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period as a whole. I think it's very hard to look at the economy today and say we're in a better than average position looking forward.

A lot of headwinds out there. Headwinds would include things like, you know, the rising interest rates, prospect of a recession, ongoing war in the Ukraine, supply chain problems that are persisting.

So I would say, you know, as an economist, we'd be expecting relatively modest or no real wage growth in the economy over the next couple of years. So we combine very little real wage growth up till now in the contract period with low expected real wage growth in the next few years. I think it's fair to say something close to no real wage growth in the economy is -- is what I would expect.

And as you saw earlier today -- I don't have a slide on it, but as you saw

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earlier in the presentation today, if you look at the other Union settlements, they're coming in right about expected inflation. And that's consistent with not just in the economy as a whole, but actually in the unionized sector as well, an expectation of whittling away of real wage growth.

Now, one reason for that is the possibility of a recession. And -- but I want to emphasize the discussion I just had doesn't depend on there being a recession. The real question is, is the next couple of years kind of better than average or worse than average. I think there's very few things that you'd look at and say boy, I think this is a better than average time we're looking at over the next few years. I think it's -- it's probably a worse than average time, which would cause you to revise down the expected real wage growth from the maybe

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average third a percent per year to probably closer to zero.

Now let's talk about inflation. What do we think about inflation? As I said, we've experienced quite a bit of inflation right now. Most of the expectations about inflation -- and again, this is going to be covered in more detail by Jesse David in his -- Dr. Jesse David -- in his presentation.

If you look at comparing different kinds of bonds, inflation adjusted bonds to non-inflation adjusted bonds, they give us five-year inflation rates expectations of about 2 and a half percent today.

What that means is the markets are expecting inflation to go down from its current very high levels. You can also look at the next slide, which is consumer expectations. They're a lot higher. Consumers are a little less optimistic than the bond market. They're taking

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about 3.6 percent. So we've got 2 and a half from the bond market and 3.6 from consumers.

If you go to the next one, which is -- this is ten-year inflation, this is based on forecasters. They're thinking 2.8 percent. Again, that's ten years. Probably push that up a little bit for the nearer term, but nonetheless, I think we're talking here 3, 3 and a half percent based on these numbers.

And so let's put that together with our proposals. So, again, these are the proposals on the left. The historical rate of increase in the prior contracts was about 3 percent. The Carriers' proposal comes in about 3.3 and the Union Coalitions come in at 6.0. But, again, that doesn't have the paid time off. That number would be more like 7 -- 7 and a half, almost 8 sometimes if you put that in.

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If you compare that to the PCE or the CPI-U, again, as an economist, I would say the PCE is a better measure of inflation. I think the BLS and others would agree with that. That would imply that the Carriers' proposals offer modest real wage growth, but I think that's consistent with the first two and a half years, where the economy has seen really no real wage growth, and probably negative, and it's consistent with the expectations of what's going on.

In contrast, the Coalition's proposal at 6 percent, not including the personal paid time off, or 7 and a half plus percent, including paid time off, is implying real wage growth, which would be increasing the premium that -- that railroad employees enjoyed.

As I said, when we looked at Dr. Allen's work on turnover and the ability to recruit, there's nothing in

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economics that says an overall increase in the premium is needed on that dimension. And this would be a very substantial increase in the premium under the Unions' total comp proposal.

One last thing -- it's kind of a footnote, but something that I would at least have in the back of my mind if I was thinking about this issue. One thing economists always worry about is inflation expectations because if we get the expectation of inflation, it's kind of a self-fulfilling prophecy.

And one of the things that happens if we were to set compensation growth higher or too high, it would be fueling inflation expectations. We'd be -- as a very visible settlement, it would flow back into that. I'm not saying that's the major thing I would think about. It's something I would have in the back of my mind.

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So those are the things I think that I would say I think are the most important things in thinking about the settlement. We're in an environment of lower real wage growth in the economy. Consistent with other Union settlements, that means to maintain the premium with the economy as a whole, we should be thinking about compensation growth roughly in line with inflation.

Now we'll talk about some things that I don't think are that important or that have been misunderstood in how they affect things. And here first I'm going to talk about productivity.

Professor Eakin is going to talk about productivity growth at length. I'm just going to point out a couple of things that kind of highlight what he's going to talk about. So we'll go to the next slide.

First, productivity growth, even

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though it's often measured as labor productivity, it's not fundamentally about labor. And that's true in general, but particularly true in the railroad industry over the history that we've seen.

Over that post-Staggers Act period, productivity growth came from two main things:

In the early part, call it the first 20, 25 years, the time from 1980 roughly to early 2000s, it was really a period of where the industry rationalized a lot of its network, got rid of less efficient operations, was able to consolidate the operations, improve efficiency.

Economists like to think of that as low-hanging fruit. Those were inefficiencies that were there in the marketplace that were eliminated, generating tremendous productivity growth. By the time we get to the 2000s, now

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productivity became much more difficult. That rationalization and other things had taken -- you know, had kind of been run out.

And you can see it in the data where, in order to get further productivity growth, the railroads had to invest significantly more in capital.

And you see a rise in capital investment in that later period. And with that rise in capital investment, you're going to get more output per worker, not because each of the workers is doing more, but because more capital is producing more output, right? That is, you have more of the capital producing the output over that period.

So neither of those pieces have really contributed to growth in a demand for labor, the rationalization that we needed fewer of that old, inefficient capital and also fewer workers to work

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with that old, inefficient capital.

The growth in capital investment in the last couple decades has meant we can produce more output using more capital, but also that didn't increase the demand for labor.

And that's an important feature, because productivity growth at the industry level doesn't really relate per se to changes in industry level compensation. And the reason is often productivity growth actually reduces, rather than increases, the demand for labor. As we grow in productivity at the industry level, that industry is going to probably -- in many cases and certainly in the railroad case, given the sources of productivity growth, is going to actually lead to lower demand for labor and, therefore, no upward pressure on -- on compensation.

Secondly, even when the demand for

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labor is growing, that's -- you know, that's going to affect how many workers, so not so much how those workers get paid.

In contrast, productivity growth at the economy level is related to compensation. The major way in which an economy increases its wealth and gets richer is through productivity growth. But at the industry level, the relationships are the other way around.

Industry, for example -- and there's been enormous productivity growth that people often forget is agriculture. The greater productivity growth in agriculture has actually reduced the need for farmers. There's actually fewer farmers today because of that.

And the railroad industry has many of those same forces at work: improved technology, rationalization in network, investments in capital.

Now, finally I get to the last

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piece of my discussion, which is the relationship between all the forces I just talked about and profits.

Now, first off what we call profit is not really all what economists would think of as profit. Indeed, most of it is not. Most of what we're calling profit is actually return on capital.

And what I talked about earlier, that the railroads have invested more and more in capital, means that the returns on those capital is going to go up, not necessarily because the rate of return is going up. There's just more capital that's earning a return.

And that profitability that's come about in a sense it reflects that greater investment and greater efficiency. But if you go back and look at the slide that was put up this morning on output productivity and -- and rates -- it was a chart that had kind of flatlines before the Staggers

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Act and everyone took off -- one of the things you'll notice is that one of the things that's really helped the railroads is that they've been able to grow their output. That is -- and how have they done that?

They've done that by competing successfully against other industries, particularly trucks. With all the emphasis on environmental and greenhouse gases, that's becoming even more important. Railroads have an advantage. They're much less energy-intensive than trucks.

But they have to compete to get that business. And competing to get that business depends on their costs, what their costs are. And so one of the dangers you have, you say well, geez, all this productivity growth, all this rationalization, that's reduced employment and with -- and that's increased output

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per worker, so maybe you should raise wages.

Well, the answer is if you raise wages you're going to accelerate that decline in labor. You're not going to arrest it, right, because you're going to make the industry less competitive with other industries like trucks. That's going to reduce output. That's going to reduce labor.

Secondly, you're going to accelerate the substitution of capital for labor. The higher the wage rates are and the higher total compensation is, the more you're going to encourage these firms to substitute capital for labor. The net effect of all that on capital is not clear.

On the one hand, less output means less capital. More substitution of capital means more capital. So I can't tell you which way capital is going to go,

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but I can tell you for sure which way labor is going to go. Labor is going to go down because you're going to have less output, less able to compete against other industries and also an increase incentive to substitute capital for labor.

So where does this leave us? I think the following -- I'll go back and stress some of the most important pieces.

Railroad workers earn a premium. That premium is there and has been there. That hiring data really tell us that -- and retention data tell us that there's really not a call for a broad increase or decrease in that premium.

To do that, to accomplish a stable premium, given the inflation we have today and the relatively poor prospects in the economy as a whole for real wage growth really would call for something like essentially maintaining the premium through compensation increases roughly in

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line with inflation.
Now, nobody has a crystal ball. I don't have a crystal ball. I can't tell you what's going to happen. You know, inflation could come down faster than we think. It could go -- stay more consistent than we think. I think the best we can do there is go with the forecasts that are out there. Those are the consensus view.
But on the other side, on the real wage side, I think we have much stronger reasons to believe that real wages are going to continue to be challenged, particularly given the -- the kind of headwinds the economy faces.
Doesn't mean -- even if there's not a recession, there's still significant headwinds out there over the next two and a half years. And we certainly know as a factual basis that historically over the first two and a half years of the

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contract, real wage growth has -- has been -- has been zero or even negative.
And finally, on the profit and productivity side, it's true the industry is in better shape than it's been. It's gotten there through investments in improving their operations and investing in capital.
As discussed earlier today by Union Pacific, we're sort of in that improving operations mode today, not just investing in capital, trying to cover up new ways -- discover new ways to organize production, to improve productivity. That's going to help the industry compete against other -- other -- other competitors like trucks. And it will also provide a return on those capital investments that the industry has made to this point.
However, raising wages is -- even in that environment, you don't want to say simply because you're profitable that

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raising wages, therefore, won't reduce employment because you can afford it. That's not how the world works.
When you raise wages, whether you're profitable or not profitable, higher wages will raise costs, make you less effective for competing for business the way you've -- you know, really what accounts for the growth in the industry up till today, growth in intermodal and growth in other types of transportation where the industry has become more competitive and, at the same time, induce more substitution toward capital.
So I think a combination of the realities of the labor market, the realities of the productivity and profit side of the world I think, you know, tell us, you know, a prudent, steady-as-you-go process ought to be probably what economics pushes us toward here, maintaining the premium. That will

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maintain the ability of Carriers to attract and retain workers.
Doesn't mean there aren't problems out there right now in different locations in different spots for different jobs. But that's not an overall compensation issue. That's more this disruption that's affecting many industries.
Even if I think about the university, I mean, we have that same issue right now. We have a lot of people who have decided to take early retirement, for example, because -- and it's not because pay at the university isn't good enough. It's because, you know, there have been big changes in the economy and some people say boy, this is too much of a pain right now.
And some of that's going on in the railroads, but that's going on across the economy. But that's not really what's going to -- that's not really a problem of

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where is compensation. It's really a problem of the disruption that the pandemic and other things have generated for -- for the world around us.

That's how I see the economics. There will be a lot more detail on all these points. Everything I talked about today will be covered in one of the other presentations that the Carriers' experts will put forward.

I'm happy to try to answer any general questions. I think if you have specific questions about some of the charts and other things I put forward, it probably would be best to ask them of the specific people who are going to talk about those, whether that's Jesse David or David Allen or Professor Eakin.

But hopefully what I've been able to provide today is a little general perspective on the different areas that my talk covered.

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Thank you so much. I appreciate the opportunity to speak to you today.

CHAIRPERSON JAFFE: Thank you.

BOARD MEMBER DEINHARDT: I just have one question. I think you said there's a difference in the narrative between the Carriers and the organization on the supply and demand of labor issue. You know, we heard a whole big story yesterday about how difficult it is for the Carriers to be hiring qualified people and yet we hear from you that that's not really the story. And your explanation is that the difficulty in hiring is on kind of a location by location and job title by job title basis. And so you can't really look at this 44, you know, applicants per position because that's really an average.

Are you the person to give us more detail and more data on that? Is there any data on more a localized basis for this challenge of finding qualified people

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or, Mr. Munro, should I just be patient and all will be revealed?

DR. MURPHY: I think on the very specifics it probably would be better to talk to some of the other people. But let me try to distinguish between two parts of it.

One is if you look at the turnover of existing employees, you do see an increase in turnover in many -- in all industries that existing employees are changing.

And that's this disruption part I talked about. Many of those employees are going to places that some pay less than where they're at, not necessarily going because they're getting paid more. It's really -- you know, the pandemic has upended many aspects of people's lives and they've decided they want to do something different.

So I'm not surprised in this

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industry that you see some of that same stuff going on. We see that across the economy. I mentioned how that happens at the university.

On the hiring side, if you're thinking about the level of overall wages, really the big issue that's between the Carriers' proposal and the Union proposal here, I think you want to look at the broad statistics because the broad statistics are really telling you about the broad story.

Indeed, if you think about the discussions we heard yesterday from the Union on hiring, they mention well, geez, you know, one of the things we see that seems at odds with the figures that I have here is the specific cases where they're offering -- and for Chicago they're offering more money for diesel mechanics or, as we've talked about earlier, what you need to do to hire people in western

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Nebraska.
But those -- that's how you would expect to deal with those kinds of issues, right? They would be dealt with, with where I have a problem. And raising wages across the board is not going to be an effective way to deal with that because you're actually going to discourage hiring for the places that have plenty of applicants and do relatively little to improve the situation, for example, where you have little or no applicants on specific jobs. It's just -- it's the wrong cure for the issue.
And that's kind of true -- you know, it's not just true in -- in railroads. That's kind of what's going on out there in the economy as a whole. That's part of what's driving up prices, for example. One of the things driving up prices is people are saying, you know, I'm having a hard time not just getting

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workers, I'm having a hard time getting parts, I'm having a hard time getting lots of things. And that's the disruption element on the inflation side that's really driving up the real cost of goods and, therefore, driving down real wages.
But hopefully some of the other witnesses will be able to address more of the specifics of the kinds of areas where they're having issues.
I have some anecdotes, but I don't have data specifically on those jobs.
BOARD MEMBER DEINHARDT: Thank you.
CHAIRPERSON JAFFE: I'll follow up on just one thing. Part of your presentation as I followed it essentially asserts that there's an elasticity with respect to wage rates and necessarily level of employment.
Do you have any evidence that suggests that that is, in fact, the case with respect to these Carriers and these

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crafts? So if wage rates went up, for example, you would presumably use fewer engineers or you would use fewer maintenance of way employees or the like?
DR. MURPHY: Yeah, I think there is evidence that if you look at economic studies of the railroad industry, you do see evidence of that kind of capital, particularly capital labor substitution. This goes way back.
My thesis advisor, Sherman Rosen, actually worked on Class I railroads and looked at labor capital substitution in Class I railroads. That's a really old study, but I think people who have looked at that empirically have found that kind of relationship.
It's much greater in the long run than in the short run. And, you know, that kind of substitution is kind of some of what we've seen over time, not so much because labor has gotten more expensive,

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but mostly because capital has gotten cheaper. But those are just two sides of the same coin, right?
It's -- it's -- you know, I could switch from domestic cars to foreign cars because domestic cars got more expensive while foreign cars get cheaper. And so I think the evidence from the literature would support that type of elasticity estimates.
CHAIRPERSON JAFFE: And it's your belief that that's the case today, even after all the substitution that's taken place over the last 40 years?
DR. MURPHY: I think we're continuing to see that substitution today. So I would think that's still the case.
CHAIRPERSON JAFFE: Fair enough. Thank you.
DR. MURPHY: Thank you very much.
CHAIRPERSON JAFFE: Off the record, please. Take a break.

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(Thereupon, a brief recess was taken.)

CHAIRPERSON JAFFE: Mr. Munro.

MR. EASLEY: Mr. Chairman, the Carriers call for their next witness Mr. Ken Gradia, former chairman of the National Railway Labor Conference.

CHAIRPERSON JAFFE: May I ask that Mr. Gradia be sworn in, please.

Whereupon:

KEN GRADIA,

was called for examination, and, after being duly sworn, testified as follows:

MR. GRADIA: Good morning, Mr. Chairman, Board members.

With your indulgence, I will deliver my statement seated. I've already asked counsel to handle the clicker. Unlike Dr. Murphy, I cannot claim physical problems, but rather technical incompetence. So hopefully that will correct any problems.

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I appreciate the opportunity to be here today with you. Let me give you a bit of background of my history.

I started at the NRLC in 1984 and retired June 19 -- or June 30, rather, 2019. Prior to that time I was an attorney in various roles at the Federal Railroad Administration.

In my nearly 35 years at the NRLC, I was directly involved in seven bargaining rounds, the first three as labor counsel and director of labor relations, the next two as vice chairman and the final two as chairman of the NRLC.

Next slide, please. My purpose here today is to walk the Board through a very brief summary of the railroad bargaining rounds over my time with the NRLC and highlight the highest structural wage increases that were negotiated in each round. And when I say structural, I am distinguishing between increases that

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are rolled into the wage base and obviously then compound over time versus other types of payments that are not rolled into the base, such as lump sums, COLAs, et cetera.

While I will focus on structural increases, I will also note nonstructural increases in each of those rounds. I am largely focusing on the structural increases because, as you will see, the parties during the last several rounds have moved away from nonstructural increases.

When I say the highest, I will focus on the highest structural wage increases in each round.

In the past three bargaining rounds, national settlements have been uniform across graphs. That's not always been the case. As you will see, in earlier rounds there have been variations between the Unions.

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I'm going to simplify my presentation in a way that presents the picture that is most favorable to the Unions in each round. That means that throughout my remarks, I will be focusing on the highest GWI package and the structural COLA that accompanied that package. Therefore, I will highlight the maximum total structural increases the parties have agreed to since I began my tenure at the NRLC for each of those rounds.

Next slide. Now, as this Board well knows, your mission is to assist the parties in reaching a voluntary agreement. We have up on the screen an excerpt from the prehearing submission by the Unions. And they quote PEB 222 in saying that PEBs, in making recommendations, treat as a critical ingredient their acceptability by the parties. Now, we agree with that point. I think that's exactly right.

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Next slide. Here's a further excerpt from that same submission. And here I want to draw attention to that in determining acceptability, a key component is the reasonable expectations of the parties, discerned by, among other things, past bargaining.

Now, often in determining acceptability PEBs have an opportunity to look at pattern agreements. In this round there is no pattern to reference.

We would submit that the parties' extended history of actual settlements over 35 years of bargaining through good and bad times is the most compelling evidence you will have before you for the proper wage settlement in the dispute before you.

Next slide, please. This is a somewhat busy slide, but it captures all of the bargaining rounds that I've been involved in from 1985 all the way through

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2015 and then at the bottom of the Carriers' proposal.

As you move across the chart, you'll see the range of GWIs. As I said, in earlier rounds there were times where there were different settlements, so you have a range of GWIs. In others you have uniform GWIs.

The COLA package with GWI equivalents, these are COLAs that were rolled into wages at various times. And we've expressed them both in dollar amounts and as a percentage.

The sum of those increases is shown as the highest total structural increase for each of those rounds. And then in the last column to the far right are the various nonstructural pieces of compensation that were included in each of those rounds. I'll go through all of that in more detail in a moment. But this is a handy reference to the range of what has

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been actually agreed to.

And what you will see is that history that's before you makes it clear that there is a pattern of structural increases that falls within a fairly narrow range.

Now, in four of those rounds, the national settlements were based on PEB recommendations. It had wage packages ranging from 10 to 17.7 percent.

I know that the Chairman and Member Twomey will be familiar with at least some of those PEBs based on their past service in that capacity.

In the three non-PEB rounds, the parties negotiated wage deals ranging from 12.5 to 17 percent.

And as you have already seen in Mr. Branon's presentation, the Carriers' proposal is at the upper end of this range. The Coalition's proposal for that contract is far outside these historical

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norms.

Next slide, please. This is the first of the seven rounds that I am going to review. This is the 1985 round. It followed two PEBs, one with the UTU, another with many of the nonoperating crafts. And this was really the first round after implementation of the Staggers Act, which was referenced in Dr. Murphy's testimony.

At the beginning of the '85 round, the financial health of the railroads was still, I think could be accurately termed as precarious. The highest structural GWI increase in this round was 10.5 percent.

There was a structural COLA of 13 cents. And you see the percentage equivalent there. The 1985 agreements provided for a COLA, but the agreed-upon formula did not produce any increase during the term of the agreement.

However, the predecessor

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agreements, that of the 1980 round, provided that a portion of the COLA from that round would remain as a balance in the 1985 round and at that time was not rolled into rates.

However, in the '85 agreements, the parties agreed to roll that carryover COLA, which is 13 cents, into the base effective June 30, 1988 and, hence, the total structural increase of 11.4 percent.

Now, there were lump sums agreed to also in those contracts. They varied by craft, anywhere from $500 to $1,800. And the important point is that they were not rolled into the wage base.

Next round is 1990. 1990 was a watershed round. It resulted in PEB 219, of which I think everyone in the room is familiar. Those recommendations were ultimately imposed by Congress on some Unions. Others reached voluntary agreements.

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This round was heavily focused on addressing the industry's financial productivity challenges through major work rule changes, productivity improvements and health care changes. Those changes affected every craft and resulted in significant Carrier savings.

The highest GWI, it's not a range here, but the highest GWI is 10 percent. There were significant -- no COLA, but there were significant sweeteners, a gratification bonus of $2,000. There were lump-sum cost of living adjustments of significant amounts, ranging from 3- to about $5,000, which were intended to offset cost of living increases during the period of the contract without structurally changing rates.

This was also the round in which the so-called Harris COLA was introduced. The chairman of PEB 219, Bob Harris, came up with the idea of a COLA that would come

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into effect after the moratorium in any particular round. The intent was to encourage the parties through COLA adjustments to reach earlier settlements.

The intent was once a settlement was reached, that COLA would be eliminated and supplanted, if you will, by the -- by the agreed-to wage increases and then replaced. A new Harris COLA would be put into place for the following round. And that became a feature of the parties' agreements until they were permanently eliminated in the 2005 bargaining round for most crafts. There was a carryover for a couple of crafts, but in the ensuing round after that, they also were eliminated and became a part of industry lore.

This is one of the richest rounds you will see in terms of nonstructural sweeteners. And there's a variety of reasons for that, which I won't get into,

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but the PEB 219 package, if you will, of changes included those sweeteners as part of the creation of an acceptable deal, in their view, to both sides.

Next slide, please. The 1995 round followed three PEBs, 228, 229 and 230, one of which Member Twomey chaired. The highest -- there was a range of GWIs, depending on craft. Highest was 14 percent.

There were also COLAs, structural COLAs. The very first Harris COLA became effective in July of 1995, produced 9 cents. Those agreements also provided for a COLA effective in either December of '99 or July of 2000.

Regardless of the effective date, that COLA produced 56 cents. The sum of those two COLAs is the 65 cent figure that you see, equivalent to 3.7 percent, with the total structural increase 17.7 percent.

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Now, there were ratification bonuses depending on the craft. The $400, I believe was essentially for the non-op crafts, 1 percent for the ops. And that -- that's the full story of the '95 round. Again, you'll note the 17.7, which is the high watermark of settlements that you will see over the seven rounds.

Next slide, please. Year 2000, voluntary settlements in that round. There were some individualized arbitrations, but ultimately voluntary settlements. Again, you see there was a range of GWIs from 9 to 12 and a quarter percent.

The COLAs varied by craft. The crafts that received the highest GWI package received a structural COLA increase of 27 cents, the 1.4 percent and ultimately the 13.7.

All of the crafts in this round eliminated the Harris COLA during that

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round, but the effective date of the elimination varied by craft. There were also variations in what each of those deals did with the Harris COLA.

In some cases, the Harris COLA was permanently rolled into rates. Other cases they were eliminated, rolled out. In still others, they were eliminated, rolled out of rates and recovered from first -- from retroactive wage payments.

Now, to add to the complexity, the BMWE in this round negotiated structural COLA-based increases in four contract years. There's one GWI and then four COLA-based increases. The end result of all of that is that structural increases varied substantially by craft and not all COLAs were ultimately structural.

However, as I noted at the outset of my comments, we focused here on the highest GWI plus COLA package, which was the 13.7 percent. All of the crafts in

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this round negotiated for new Harris COLAs beginning in 2005.

As I mentioned earlier, those were largely eliminated in that round. There was no payment of those COLAs, nor was there any recovery. It is also the last round before wage settlements started to shift away from nonstructural compensation sweeteners and toward more uniform GWI settlements across craft.

Next slide. This takes us to the 2005 round. Again, no PEBs, a voluntary -- voluntary settlements. Highest GWI was 17 percent across the board with crafts.

Now, there was no COLA at all, nor were there any lump sums. And in fact, this was the last time parties added a COLA in a national wage settlement.

The vast majority of the Unions eliminated and did not replace the 2000 Harris COLA. The two exceptions were UTU

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and YDM. They did provide for a new Harris COLA in the 2010 round, but ultimately that was eliminated and not replaced. So that was the end of the Harris COLAs.

You'll note here that the structural increase was 17 percent, highest GWI package since 1980. It was also backloaded. What the parties didn't know at the time of the negotiation was that there was going to be a market crash as part of the 2007-2008 financial crisis.

When the market crashed and with a backloaded contract, the industry unexpectedly found itself in its most precarious financial position since before the 1980s and had little flexibility to respond to the marketplace challenges that faced them during this time.

Next slide. This is the 2010 round, which the Chairman will recall. I will hesitate and avoid characterizing

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what he remembers about it, but this is the result. There's a range of GWIs, 14 to 15.6. Now, this was a round in which there was a pattern or a lead settlement, however one would characterize it, with the UTU. That's the 14 percent.

And the rest of the Unions went to PEB 243. And the outcome was the 15.6. The difference between them was monetization of certain pieces of the UTU package. But the end result was the 15.6.

All of the bargaining units, with the exception of UTU, received a 1 percent ratification bonus to incentivize ratification after the PEB. So that was the -- the other piece -- nonstructural piece of compensation, which takes us to the last round before the current dispute, which was the 2015 round.

There were no PEBs. These were -- no arbitrations, except certain follow-on arbitrations for discrete pieces of the

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settlement. Highest GWI increase, 12.5 percent, no COLA, no other nonstructural compensation.

Next slide. So to sum up, here is the pattern displayed graphically. As you can see, the range of settlements, highest GWI, highest COLA and it's -- also plotted against that is inflation utilizing the PCE measure, which Dr. Murphy mentioned and which will also be addressed in detail by my next -- by our next witness, Mr. David.

To the far right are the two proposals that are before you, the Carriers' proposal, which you can see, is in range and the Coalition's proposal, which is decidedly not in range, but well out of step with historical pattern of settlements.

You can also see that there's no relationship between inflation and GWIs. That's because, in my time at the NRLC at

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least, the parties never really attempted in bargaining to predict inflation and then try to adjust structural GWIs to reflect that.

They are, as you can see, at various places and at various times relative -- the settlements are relative to inflation.

Now, the Carriers' proposal before you, as you can see, would be one of the richest wage settlements in the parties post-Staggers bargaining history, but also includes a $1,000 ratification bonus, in addition to the GWIs, which include a hefty retroactive aspect to them.

Only one of the last three national rounds has included a nonstructural sweetener like that. So what do we draw from all of this? As already stated, we think that the Carriers' proposal is well within this range of historical settlements over the last seven rounds and

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one of the richest wage settlements.

The Unions' proposal is not. Their demand is far outside that range and would set a marker and a precedent that is -- has not been seen in the industry over the history of modern rail bargaining.

And with that, I will be happy to take any questions that the Board may have.

CHAIRPERSON JAFFE: Thank you, Mr. Gradia.

I think we're actually in good shape. Thank you.

MR. GRADIA: Thank you very much.

MR. EASLEY: Mr. Chairman, the Carriers' next witness is Dr. Jesse David.

DR. DAVID: I think I'll use the podium.

CHAIRPERSON JAFFE: And if I could ask the court reporter to please swear in the witness.

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Whereupon:
JESSE DAVID,
was called for examination, and, after being duly sworn, testified as follows:

DR. DAVID: Thank you to the Board and really appreciate everybody's patience and consideration here for my talk, my piece of this process.

I'm an economist and I was asked by the Carriers to evaluate the wages and total compensation of the Union members, both at the current point in time -- and I'm using 2020 as a benchmark for that -- as well as the growth in those measures over several previous rounds.

I do that by looking at a number of publicly available benchmarks and applying judgment and economic analysis to determine what might be deemed most comparable and what measures one might use to evaluate that comparability.

Here we go. Overall, four

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conclusions. Summarize those quickly. And some of this you've heard from some of the other witnesses. A lot of that data and some of that analysis came from my report. I'm going to dig into that in a little more detail.

First, as of 2020, the railroad workers earned more than their peers in both wages and total compensation across all -- essentially all comparator industries and occupation groups that I analyzed. And by the way, I'm using 2020 as the base year for this comparison. Obviously, any retroactive increase that comes out of this process would raise that premium exactly in proportion.

Second, the growth in that compensation, the growth rate on an annual basis. It's expanded over the last three rounds over the last 15 years. That's the period I've analyzed. And the premiums have gone up because of the wage increases

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and the increases in other components of total compensation.

The rate of growth for the railroad workers' compensation over that period has been faster, again, than any of the other benchmarks that I evaluated.

I also compare that compensation growth to what's happened with various measures of inflation and as been previewed to you, I'm going to discuss a little bit about what those different measures mean and what -- what relevance they might have to this process. And I find, of course, that the railroad workers' compensation has exceeded inflation under any measure substantially over the last 15 years, thereby increasing the purchasing power of that compensation.

And then finally, I look at the two proposals and evaluate those, again, against publicly available information, in particular various measures of projected

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inflation to give some sense of whether the premia and the rates of growth that we've seen in the past are going to be maintained.

So let's dive right in. You've seen this one before. The total compensation as of 2020, obviously, again, before any retroactive increase, I created an annual numbers per -- per employee, on average, $126,000 in total compensation and about $90,000 in payroll, which is all of the cash payments, excluding the various insurance components and the retirement and tax components.

I also calculated that on a per hour worked basis, which is the second column, about $61 per hour in total comp and about $43 an hour in cash payments, of which about 37 is straight wages.

For the rest of my analysis, I'm going to focus on the hourly, the pay per hour worked and total compensation per

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hour worked, rather than annual. It makes more sense to do that in a benchmarking context for a variety of reasons, the main one being that the factors that affect annual compensation are largely, or at least to some extent, outside the control of anyone in this room and certainly of the Board, whereas hourly pay follows directly from the GWIs and some of the other elements of -- of compensation.

Again, we've seen this one. Wages are the bulk of total compensation, but there are very significant aspects of compensation outside of wages that total about 40 percent. I break it down this way because some of the benchmark data that I analyzed, which all comes from the BLS, has a very specific definition of wages and I attempted to take the data from the railroads and parse out the components that match what BLS calls wages and leave in other elements of

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compensation the parts that BLS calls something else, for example, paid time off.

Okay. So we've seen the average about $126,000 in total compensation, about 90,000 in payroll. But that varies quite a bit across the crafts, from a high of about over $150,000 of BLET to a low of about $100,000 at NCFO.

As you can see from this chart, the bulk of the variation unsurprisingly is in wages and the health components and the retirement components very similar across the crafts. But there's quite a wide range, as everybody knows, within -- and as well within the Unions as well. But I'm going to be looking at the average for my benchmarking purposes.

Okay. So let's start with total compensation. The preview of my results -- you've seen this already -- if we're looking at all of the elements of

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compensation, the $61 per hour worked in 2020 before any retroactive increase. I find that across all of the comparable occupation groups, the railroad workers earn substantially more, even greater than double some of the -- the comparative groups that I'm going to demonstrate for you.

Across industries, so when you're looking at employees of different occupations across all of the relevant industries, same thing. The railroad workers are compensated more highly and we've been calling that a premium in the range of 20 to 53 percent across all the comparable industries, with one exception, which is actually quite informative to this process, the highly specialized utilities sector.

Workers there across all occupations do earn slightly more, about 9 percent more than the railroad workers.

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I'm going to talk a little bit about what that tells us.

And then finally, the BLS -- and these analyses are all coming from the National Compensation Survey at BLS, which is the source of the ECEC and ECI measures that you may be familiar with -- does provide an additional breakout for unionized workers across various industries, once again, the railroad workers as of 2020 earning more in total compensation than all of the unionized groups, some as high as 40 percent more. So let's look at some of the detail there.

The BLS in the ECEC provides a couple dozen different alternatives to look at subgroups within the overall U.S. economy of employees. I extracted the ones that I think are the most relevant. I'm not going to say they're perfectly relevant, but this is the best we can do from the ECEC. If you want to get more

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specific, we have to turn to another survey. And I'm going to do that next.

Within occupation groups, the four groups that I found that were most relevant -- I've excluded, for example, service industries, agriculture, that sort of thing. We're left with occupations the construction, extraction and natural resource group; installation, maintenance and repair; transportation and material moving; and production occupations. So these are all workers across the economy aggregated by occupations spread across industries.

When we aggregate those, we find nobody is earning more than $40 an hour on average in terms of total compensation compared to the 61 paid to the railroad workers in 2020. And, again, that number is going up.

So quite substantial premiums when we're comparing total compensation against

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the industry groups available in the ECEC -- excuse me, the occupation groups.

We can also look at industry groups, which means within certain types of businesses looking at all occupations within those businesses. That's what I show here.

The $61 per hour, again, total compensation for the railroad workers compares to the construction industry, manufacturing industry and the transportation and warehousing industry very favorably, about $20 premium compared to all workers across all occupations in those industries.

The ECEC provides one other cut at the data where they look at only employees in large firms, greater than 500 employees. It's a well-known fact in labor economics that employees at those types of firms tend to earn more. The ECEC confirms that.

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But even compared to those employees at larger firms, which are, like the railroads, large firms, still a 10 or $13 premium in the two industries, manufacturing and the transportation industry that the ECEC provides. By the way, the railroad workers themselves are part of the transportation industry in this data.

Now, I mentioned there is one industry that the ECEC provides that shows higher total comp than the railroad workers. And that's the relatively small and highly specialized utilities industry, in which total compensation is a little bit under 10 percent higher than for the railroad workers.

That's because there are a large number of highly educated and highly skilled occupations in the utility industry that have no analog for the railroads, in particular, for example,

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electrical engineers. And the ECEC does not allow you to pull those out in terms of the data that they have. If you want to do that, you have to go to the other surveys, but those only look at wages as opposed to total compensation. So I'm going to do that next and we'll see that once we control for occupations, that negative premium for the utility industry goes away.

And then I mentioned the last type of benchmark provided in the ECEC for total compensation is breakdowns within industries by unionized workers. And we find positive premiums across all of the industry groups reported. The transportation and warehousing industry is relatively small -- and again, the railroad workers are in that -- and much larger compared to unionized workers in the three other relatively comparable industry groups for unionized workers in

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that data. So very high premiums there.

Okay. So if we want to get a better breakdown, a more fine breakdown of industries and occupations to get groups of workers that are truly more comparable than those high level breakdowns in the ECEC, we can only look at wages. Total comp isn't -- the BLS doesn't track it at that level. But if you look at wages, you can dig down to six-digit SIC codes and occupation codes that really give you a fine look at groups of workers and provide data on the characteristics of those workers.

The characteristics that I examined to determine comparability are the following:

English-speaking proficiency is one; education level, high school degree, some college, college degree, et cetera; tenure on the job. The railroad workers, as I'm sure you know, have relatively high

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tenure, but there are some other industries out there that are in the same ballpark, close to 15 years. And lastly, the size of the firm, as I mentioned. Railroads are large firms, so we want to compare the railroad workers to workers at other large firms. And the NCS that I used for this -- excuse me -- the OEWS survey provides that kind of detail. And, by the way, lots more detail in my report. Everything I'm talking about here is coming directly from that document.

So when I look at wage premiums across the comparables that I find, I once again see positive premiums against every group that I examined for the railroad workers, ranging up to 49 percent when looking across industry and generally above 25 percent. So 25 percent would be roughly $9 an hour in terms of wages.

Find very similar when looking at comparable occupation groups. There are

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few that are similar to the railroad workers with premium near zero, but all -- roughly all positive, except for, perhaps, one that's roughly zero, and some, again, as high as 50 or 60 percent in terms of wages. So let's dig into those examples.

Now, my process for finding what I deem the most comparable industry and occupation groups, I mentioned already that I examined four measures of worker characteristics and matched those up against the railroad workers. The details of that is in my report.

I also excluded part-time workers and I excluded occupations that I think everyone would agree have no relevance here, for example, service-type occupations, agricultural occupations and a variety of other types of occupations that have no analogs within the railroad workers. The details of how I did that process are included in my report.

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After conducting those comparability analyses, I found five industries that matched the railroad workers across all the four dimensions within a fairly tight window: Education, tenure, English-speaking proficiency and size of firm. Those five industries are here.

Air transportation, the airlines, of course; couriers and messengers, the UPSs and FedExes; the U.S. Postal Service, which is treated as an industry by the BLS in this survey; public sector, rail transportation workers, Amtrak and other local or regional passenger lines for example; and the utility sector, which I mentioned.

I'll jump right to the utility sector first. We've got positive premium across all of these in terms of wages, but you can see that once controlling for those factors that I discussed, in

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particular, occupation types, we now see a positive premium in the utility sector for the railroad workers. It's relatively small compared to the others, still positive.

The other premiums are quite large, as I mentioned, reaching 25 percent when looking across the industries for these most comparable groups.

I had a second set of industries that were somewhat less comparable, for example, matching on three of the four criteria. I included those here. There's more detail in my report. But once again, positive wage premium across every one of those industry benchmarks. They're mostly manufacturing industries and transportation-related industries.

I did a second set of comparisons where I restricted my analysis to matching individual occupations across all industries to the individual crafts by ICC

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Code within the railroad workers universe. It's quite a detailed process and there's a crosswalk in my report that you can see that shows which occupations I matched against the different crafts.

After conducting that and excluding the part time and the other adjustments that I made, I found once again positive premia for the railroad workers in terms of wages against all of these comparable occupation groups.

When you take the weighted average across all ICCs based on the distribution of those workers within the railroads, we find a premium of about $8 an hour, actually closer to $9 per hour, about 25 percent. That's that final set of two columns.

And before I move on from the premia, I'd just like to say none of my opinions bear on whether these premia are appropriate or fair in the context that

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we've heard discussing here. That's not part of what I was asked to do. I'm just presenting the numbers. And I'll talk about the implications of what the proposals mean for these premia, but whether historically that's an appropriate premia is not something I'm opining on.

One other issue to address in terms of comparability across the groups is region and location of the workers. We're looking at dollars paid and we're talking about increases, GWIs and we're talking about inflation. We're discussing these all in the context of what does -- the salary and the benefits of the railroad workers, what does it buy, right? What is the standard of living that it provides?

And in order to get a fuller picture of that, you also have to consider the location of the workers, because the cost of living varies quite a lot across the United States. So I did one final

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analysis here where I obtained cost of living data by state. And that's what's represented on the left-hand map, the darker regions, unsurprisingly, those with more expensive goods and services, higher cost of living, California in the West, New England in the Mid-Atlantic, with lowest cost of living mostly in the South and Appalachia and the Plains states, unsurprisingly.

Well, interestingly, when you look at the distribution of employment of the railroads -- and unsurprisingly, of course -- it's essentially flipped. Most of the workers at the railroads relative to the distribution across all U.S. employment are in the center of the country, not on the coasts. So that means they're enjoying lower cost of living than workers across the U.S. economy as a whole.

And that's what's shown on this

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right-hand chart here. Illinois and Nebraska are the states that have the most railroad workers relative to the average distribution of all U.S. workers. And there are very few railroad workers in California and New York, again, relative to the population and overall employment in those states.

The converse nature of these two charts implies essentially an additional premium of about 5 and a half percent for the railroad workers. That is, on average, they're enjoying a cost of living that's about 5 and a half percent less than workers across the U.S. as a whole. So that's just another data point, a bit of context to keep in mind when thinking about these premia.

So that was a static analysis as of 2020 before any retroactive increase. I also looked at growth over a number of years to see the rate of increase of those

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wages and total compensation and, therefore, those premia.

I chose to examine a 15-year period. Why did I do that? Well, the average tenure of the railroad employees is slightly under 15 years, which means that the average worker is going to be affected by what happens in this room and in this bargaining round has already experienced wage growth over that period.

That covers three whole bargaining rounds. It covers a couple of full U.S. business cycles and it's a period where we can get very consistent data from the BLS without changing designations of industries and occupations. So all of those are the reasons that we're going to look at a 15-year period.

So what do we find? We find that from '05 to '20 -- we've seen some of these numbers already -- total compensation and wages have grown for the

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railroad workers at about 3 percent. Over the last five years, that's the set of columns on the right, closer to 2 percent. And if that 1.89 for GWI over five years seems a little low, that's of course because we're running through 2020. We don't have an increase yet for 2020. So those numbers are going to go up. But roughly the numbers to take from this are about 3 percent over 15 years, about 2 percent over five years before any retroactive increase.

All right. So what's happening to those benchmarks over the same period? That's what I've got next here.

First, the total compensation analysis from the ECEC, let's take that back 15 years, see what's happened to those same industry and occupation groups.

What you have here is the occupation groups, 3 percent for the railroad workers, between 1.7 and 2.97 for

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the comparator groups from the ECEC. So again, not only are we seeing positive premia today, but we see a faster rate of growth over the last 15 years for the railroad workers. So if that continues, obviously those premia are going to continue to expand.

Similar results from the ECEC for total compensation when looking across industry groups, 3 percent for the railroad workers, roughly 1 and a half to 2.9 for the different groups of workers, as designated by the BLS and the ECEC.

Even the highly paid utilities industry is seeing slightly slower growth over a 15-year period than the railroad workers. And, again, that's an underestimate, that 3 percent, because that's going to go up after this bargaining round is settled.

Union employees, what about them in terms of total compensation? The same

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groups tracked by the ECEC, all of them have experienced slower rate of growth of total compensation over a 15-year period, in some cases 1 and a half percent lower per year.

I did the same analysis -- so those last three charts were total comp from the ECEC. Now we can go and look at the same surveys that I analyzed for just wages with the finer breakdown by industry and occupation groups. That's what we've got here.

Again, roughly 3 percent over 15 years for the railroad workers, less than that across every one of the industry groups for wages. Some more than 1 percent less, all of them at least slightly lower in terms of rate of growth over 15 years.

Same result -- so that was the tier one industries, most comparable as I discussed. The less comparable but still

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fairly close in terms of things like tenure and education and size of firm, all lower rates of growth over 15 years than the railroad workers. Some are close, but none match the 3.1 percent that the railroad workers have experienced over 15 years.

So I mentioned there's some other benchmarking we can do here. We've heard a lot about inflation. Let's talk about that.

Three measures tend to get the most discussion. I'll focus on the middle one first. That's probably -- the CPI-U is probably the most commonly mentioned and publicly discussed index. If somebody says inflation, most people go right to CPI-U. It's also called headline inflation. There's a few other names for it.

The CPI-U tracks urban households -- that's the U -- which are

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about 93 percent of the U.S. population. And it's looking at the prices of goods and services in a fixed basket of products and services over a fairly long period of time. The BLS doesn't update that very often.

The CPI-W, the one on the bottom, is a subset of the CPI-U that only covers wage earners and clerical workers in urban regions if they've been employed over some roughly one-year period. That only covers about 29 percent of the U.S. population. So it's a relatively small subset and, again, excludes rural workers. Same sort of fixed basket issue as the CPI-U.

And then we go to the first one, the PCE, which we've heard about. This one has a number of differences from CPI. First, it's the broadest set of goods and services in the economy and one thing it includes that the CPI does not, for example, would be goods and services

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consumed by households but not purchased by households. And, in particular, health benefits, for example, medical care, a lot of that is provided for households, but they don't pay for it. CPI doesn't cover that, but the PCE does.

Another key issue about the PCE is that it's dynamic. When prices change -- let's say the price of beef goes up and the price of chicken goes down. People buy more chicken and less beef. That means overall, the cost of living changes less than you would guess if you kept that basket of goods fixed.

The PCE adjusts more frequently and so better reflects the actual purchasing power based on people's real buying habits. And for a variety of reasons, including those, especially those, the PCE is the Federal Reserve's preferred measure. It's what the Federal Reserve uses when it's targeting inflation. A lot

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of other government agencies use it because they believe it provides the best measure of actual purchasing power.

Okay. So let's look at what's happened to these indices over 15 years, GWIs at about 2 percent, total compensation about 2.3 percent -- excuse me, this is a five-year analysis first; I'll do the 15-year next -- so in the ballpark of about 2 percent before any retroactive increases over the last five years through 2020.

During that same period, all three measures of inflation well below that on an annual basis, between 1 and a half and 1.8 percent per year.

The hexagons show the total, the compounded effect of this spread, which means that the real purchasing power of the compensation has gone up by roughly 2 and a half to about 4 percent over five years. So that's the increase in total

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compensation relative to the various measures of inflation over that same five-year period, again, before anything in 2020.

So that means the purchasing power of the railroad employees has gone up by those amounts in five years.

Similarly in a qualitative sense. If we extend back to 15 years, again, roughly the average tenure of the railroad employees -- it's actually a little bit less than that -- 3 percent for the GWIs and total comp compared to less than 2 percent for inflation, whatever measure you use over that period. If you compound that spread over 15 years, you get an increase in purchasing power on the order of about 20 percent over 15 years. That's a result of the last three bargaining rounds, again, not counting 2020.

Okay. So with that context about how we got to today over the last five

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years or 15 years, I was also asked to evaluate the proposals.

Won't go into the details here, but the parts of the proposals that I analyzed are what's in the top piece, the GWIs, plus I was provided data on the expected rate of growth of the health and welfare component of compensation that was performed by some other folks at the NCCC or that they retained. And I combined those two based on the relative weights of those components to get an overall rate of growth inherent in the two proposals for the GWIs and the health and welfare.

I did not include what's in the bottom piece, any of the additional time off. I didn't include the lump sum. I didn't include any of the other work rule or craft changes, just the top two components.

And here's what I found. Some of these numbers should look very familiar.

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In terms of the GWIs, there's a few different ways to look at it. You could just sum up the five increases. That's the first column. Frankly, not that useful, right, because wages compound. That's the way it works.

If you do a simple compounding, you're just multiplying the increases without paying attention to when they happen, you get the second column, 31 percent for the Unions, 17 percent for the Carriers.

The most appropriate measure has to account for the timing, however, because I'm sure you've seen it, the two proposals have GWIs coming in at different times. 2019 we had a mid-year increase. So if you have a January 1 increase in 2020, you're getting more than one year's worth of increase because it's squeezed into six months.

So you get a higher compounded

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effect if you take that timing into account. That's that third column, 33.2 percent for the Unions, 17.6 for the Carriers, and I've annualized that in the final column. So that first set of two rows, just the GWIs.

I mentioned I was provided data for the health care component. The growth rates in that part of the compensation, that's the next two rows, 35.6 percent over five years for the Unions' proposal, 17.8 percent increase for the Coalition's -- excuse me -- the Carriers' proposal.

When you annualize those, you get a little bit higher than the rate of growth of just the wages. And if you blend those two together to get an estimate of rate of growth of total comp, that's the third set of rows. And, again, excluding the PTO and the other components, about 6 percent for the Unions' proposal, 3.3 per year for

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the Carriers' proposal.

And now let's compare that to what we think might be happening with inflation over the entire five-year period. The most recent forecast from the CBO -- and I think we've heard mention of the Philadelphia Fed. They were very similar. They both were based on information as of May and they came out earlier this month.

Those two forecasts, including actuals up through whenever the modelers had data, come out to about 3 to 3 and a half percent per year.

Now, there's a few issues to discuss here. Like Dr. Murphy, I'm not a macroeconomist. I'm not going to predict inflation for you. But there are a few things I know about how these estimates are developed.

The CPI and the PCE are highly affected by energy prices. And I think we've seen in the last two months that

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both of those things going up a lot. And so we've had headline inflation as high as 9 percent, depending on how you measure it. All of that increase in the last two months has been due to energy prices.

I think Mr. Munro showed a chart earlier yesterday which showed that when you extract energy prices from these inflation measures, it's actually going down since February, four to five months consecutive, what's called core inflation is falling.

Now, core inflation is not inflation. You still need -- if you have dollars and you need to spend them to live, you need to buy energy, so you care about the headline inflation.

However, if you're trying to predict what's going to happen next month and next year, the core is a much better measure because it excludes this highly volatile energy component. That's

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falling.

So given all that information, I don't know that there's any particular reason to take those forecasts and try to guess how they might look different if we did them today or tomorrow or whenever this bargaining round ends. So for the moment I'm sticking with those projections that were developed in May and published in July that give us 3 or 3 and a half percent.

If you wanted to include the new information that's come out in the last month or two, those two could be perhaps a half a percent higher. I've done some math there. There's a lot of judgment involved in how one would incorporate that, but you could add a half a percent to those if you felt that that transitory increase, what we expect due to energy costs, is not going to go away. It's at least baked into the current price levels.

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Now, it may go away, and that may be what the Fed and other forecasters are predicting. I don't know.

So summarizing that, the GWIs at about 3.3, 5.9 percent for the two proposals, total comp very similar, 3.3 for the Carriers, 6 percent annually for the Unions when you're accounting for the timing of the GWIs. You can compare that to inflation in the 3 to 3 and a half percent range, including both actuals through 2021 and the projections, possibly a half a percent higher if you wanted to take into account the spiking in energy that's occurred over the last few months. You can draw your own conclusions about how the two proposals compare to that projection.

And that's the extent of my -- my work here today. Lots of details in the report and I'd be happy to answer any questions.

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CHAIRPERSON JAFFE: Thank you, Dr. David.

I'm sorry. I have some by way of clarification.

DR. DAVID: Sure. Of course.

CHAIRPERSON JAFFE: You referenced the ECEC data for comparative purposes throughout the presentation. Is there a reason that you used that data for the comparator jobs and industries but didn't use the ECEC data that's there for rail when doing that comparison because the ECEC data for rail shows rates that are very different than the ones you were using for comparator purposes, right.

DR. DAVID: Yes. So to be clear, I used ECEC for the total compensation comparisons. I used the OEWS for the wage comparisons.

The reason there is that what they call rail includes a lot of other people. It's not just the 97,000 workers at issue

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in this bargaining round.

So, yes, you could go and pull the rail numbers or at least -- OEWS has a rail sector. The ECEC has something at a higher level. But it wouldn't be drilling down to specifically the workers that we're looking at here.

CHAIRPERSON JAFFE: Well, listed wage rates, for example, for engineers and conductors, right, is one category which would be fairly comparable --

DR. DAVID: Within the OEWS, yes, not the ECEC. And I do -- if you go into my report and look at the specific occupation breakdown, which is the basis for those wage comparisons, I do it on a craft by craft basis and I include exactly those occupations that are obviously the most comparable. I mean, railroad engineers are as comparable as you can get to that craft within the railroad workers. Of course, you have to be a little bit

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concerned that you're comparing the same people to themselves, at least in part. So that's why I brought in other occupations as well.

CHAIRPERSON JAFFE: Fair enough.

And I had a couple of questions about the methodology in Table 1 of Exhibit 3, which was your full written report.

DR. DAVID: I have it here. Sure.

CHAIRPERSON JAFFE: Page 6.

DR. DAVID: Okay.

CHAIRPERSON JAFFE: For any using the Bates numbers, it's C000332.

DR. DAVID: And that was actually one of my slides, so I may as well just pull that up at the beginning. This one.

CHAIRPERSON JAFFE: Fair enough.

The questions that I had related first to what's included in the constructive allowances and arbitraries. It looked like you took an aggregate

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number and then averaged it over all of the groups.

DR. DAVID: That's right.

CHAIRPERSON JAFFE: I did not know if there was significant variation on a group by group basis for that particular component, for example.

DR. DAVID: Well, there's a huge variation because a lot of the crafts get zero for those sorts of things. So those numbers are for the operating crafts, the dollars that they're earning, but then spread across all 97,000 of the railroad workers.

CHAIRPERSON JAFFE: And you chose 2020. Was that year typical or were there some differences a result of both COVID impact on the operations of the Carriers and employees that made that a little bit different?

DR. DAVID: Yes. So annual earnings looked somewhat different, but

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hourly earnings were quite similar and -- you know, for reasons that you could expect. In particular, for example, we've heard discussion about overtime. Well, overtime is -- the premium for that is in the supplemental pay, so that wouldn't affect the $36 wage rate.

It was a little bit different in 2019. Broadly speaking, you see -- I think one of the charts we saw showed that trend. There was a little dip there, but the overall trend is fairly smooth.

CHAIRPERSON JAFFE: And you included items like early retirement health. Those are payments made to folks who no longer are employed at the railroad?

DR. DAVID: That's one that's probably better directed at one of the railroad folks.

CHAIRPERSON JAFFE: Fair enough.

DR. DAVID: The data in terms of

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the payments was provided. I did the math to calculate it per hour. If that's going somewhere else, then, you know, that's --

CHAIRPERSON JAFFE: Not troubled, just wanted to understand. That's all.

DR. DAVID: Fair enough. The details about that was not part of what I analyzed.

CHAIRPERSON JAFFE: And lump sum --

DR. DAVID: Those are --

CHAIRPERSON JAFFE: -- what does that refer to?

DR. DAVID: What's the question?

CHAIRPERSON JAFFE: I'm trying to figure out what a lump sum payment was that's referenced in the calculation. That's all.

DR. DAVID: You know, again, I think probably one of the railroad witnesses can probably describe that better.

CHAIRPERSON JAFFE: That works as

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well.

I'm going to be happy to leave it at that then, if I may, Dr. David, but thank you very much.

DR. DAVID: Thank you.

MR. EASLEY: Mr. Chairman, the Carriers' next witness is Mr. Jerry Glass.

CHAIRPERSON JAFFE: May I ask the court reporter to please swear in Mr. Glass.

Whereupon:

JERRY GLASS,

was called for examination, and, after being duly sworn, testified as follows:

MR. GLASS: Good morning. My name is Jerry Glass and I'm president of F&H Solutions Group, which is a national labor relations consulting firm headquartered here in D.C.

My consulting practice is focused primarily on labor relations and collective bargaining. I have served and

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continue to serve as chief negotiator in a variety of industries. I've negotiated personally more than 300 collective bargaining agreements in the airline, aviation, education, passenger and commuter rail, construction, media, property management and manufacturing industries.

A big part of our business, in addition to the negotiations, is conducting comparative analyses of collective bargaining agreements in various industries and providing analysis on both labor negotiations and industry settlements.

For context, let me just go through the agenda of what I plan to discuss this morning.

I'm going to provide an overview on the current collective bargaining agreement environment. I'm going to review bargaining outcomes from the period

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of 2005 to 2019 and compare those outcomes to settlements in U.S. labor market and comparable industries.

I'm also going to review the current norms and trends that we're seeing in collective bargaining based on publicly available information on settlement trends, as well as my firm's independent analysis on over 500 collective bargaining agreements in comparable -- in other industries.

Finally, based on those collective bargaining benchmarks, I'm going to analyze the comparative proposals of the parties to determine whether they're consistent with current and historical collective bargaining norms in the U.S.

So as everybody knows in this room, we're entering our third year dealing with the impact of COVID-19. And there is no doubt, certainly in the bargaining that I do, as well as certainly in this industry,

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that COVID remains really the most influential factor in collective bargaining today.

Now, to be sure, employers are no longer contending with government-ordered shutdowns or large-scale absences due to the COVID infection, nor are employers actively engaged in collective bargaining over the impact of COVID, you know, whether it's paid, quarantine leave or essential worker pay. Those issues have largely fallen off the table and are no longer actively negotiated.

Also, there is no longer the debate over the effect of mandatory vaccinations and that has left us as well. But there are important lingering factors that remain.

The greatest impact from a collective bargaining standpoint is the disruptive effect that COVID has had on the labor market. This effect has

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manifested itself in three ways that are relevant to collective bargaining:

First, the labor market has experienced a precipitous decline in labor market participation at the beginning of the COVID-19 pandemic. As businesses were forced to close, employees were told to go home or work from home and others left the workplace due to COVID-19 infection or exposure to COVID-19.

Second, after an initial wave of both voluntary and involuntary separations, economic activity has rebounded and there has been a tremendous spike in consumer demand, primarily for consumer goods.

The uptick in demand has resulted in an immediate need for employers to recall and hire additional workers. However, as explained in Dr. David Allen's report, many workers who left the workforce during COVID-19 have opted not

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to return to work. So this has resulted in a tremendous shortage of available workers, which obviously negatively impact employers, who are eager to expand and grow their workforces and expand and grow their businesses.

The worker shortage continues to be a problem for the labor market today and availability of qualified workers is probably the most significant factor affecting both Union and nonunion workforces.

Third, COVID-19, when you couple that with other world events, has caused tremendous supply chain disruptions throughout the world. And these supply chain disruptions continue to be an issue that affect employers throughout the U.S.

In fact, even now, supply chain issues are being disrupted by the continuing impact of COVID, the lingering impact of COVID-19, as China has

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implemented draconian lockdowns in places like Shanghai, which obviously affect the availability of consumer goods that are imported from that part of the world.

Likewise, global supply chain issues have been disrupted by the spillover effects of the war in Ukraine. And the nationwide worker shortage has fueled those disruptions as employers from all levels of the supply chain, from raw materials to manufacturing to transportation to retail sales, struggle to keep up with the demand in the face of the worker shortage.

So before I explain how these market dynamics are affecting collective bargaining agreements today, let me just take a step back and provide some historical context to the bargaining history between the parties in this proceeding.

You've heard from Ken Gradia this

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morning and he's previously reviewed the voluntary -- voluntarily negotiated collective bargaining settlements between the Carriers and the Coalition Unions from the period of time of when the railroad industry was deregulated.

I want to take just a couple of minutes to put these settlements in perspective by comparing these negotiated agreements with collective bargaining settlements in other industries and include in that some of the trends that I'm seeing.

So to make that assessment, I've reviewed publicly available compensation and employment data developed and maintained by the Carriers, collective bargaining settlement information available from BLS, from the U.S. Department of Labor, from the Cornell School of Labor Relations, from BNA, Westlaw, labor union websites and some

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other sources, including my firm's very substantial database of collective bargaining agreements that we have in multiple industries.

And I compared the wage settlements agreed by the Carriers and the Coalition Unions with wage settlements in other industries to determine whether these prior agreements are consistent with prevailing collective bargaining trends in the U.S. or whether those settlements result in railroad workers losing ground in comparison to other workers whose wages and benefits are determined by collective bargaining.

Now, it's worth noting that this kind of comparison does have limitations because it presents a bit of a distorted view of the collective bargaining process because settlements have tradeoffs. There's going to be a round where the primary consideration is wages. And so if

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the Unions want higher wages, generally there's an offset elsewhere in the collective bargaining agreement, whether it's increased flexibility for the Carrier or increased contributions and changes in plan design to health care.

So I didn't take that into account and I'm solely focused for the purposes of my presentation on -- on general wage increases. And our focus specifically is on structural wage increases. So our analysis of the collective bargaining agreements do not include COLA, which I can tell you at least now are virtually nonexistent in collective bargaining agreements. Cost of living increases and -- and COLA formulas have pretty much gone by the wayside in virtually all U.S. industries.

We also didn't include lump sum payments. Again, we only compared the general wage increases of these

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agreements. And then I also want to note that my analysis does not take into account the starting point for wages achieved through collective bargaining. In other words, a 3 percent increase at a higher base wage is going to produce more in dollars than a 3 percent increase at a lower base wage.

As Dr. Jesse David just explained, railroad workers earn higher wages per hour worked on average than unionized workers in other industries. So even if the Coalition Unions negotiate the same percentage increase for their members, this means a larger nominal wage increase in comparison to employers who started bargaining with a lower wage rate.

So with these qualifiers, let me share my observations and conclusions regarding the collective bargaining agreement.

So first thing I want to do is look

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at the collectively bargained general wage increases from the period of 2005 to 2019. Now, one thing I'll point out is that in the freight railroad industry, the usual duration of a contract is five years, while under the National Labor Relations Act in other industries, the normal duration is three years.

For comparison purposes, we've analyzed the last three voluntary settlements in the freight rail industry and we've done so for two primary reasons:

First is you're going to hear from Dr. Kelly Eakin the freight rail industry underwent a significant transformation in the immediate aftermath of the Staggers Act in 1980.

During this time there was massive consolidation of the Carriers. There was substantial improvement in the operational and financial performance of the Carriers. And there was significant reductions in

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head count. By 2005 this transformation was largely complete, so we've limited our analysis to the time period between 2005 and beyond.

And then second, for comparison purposes, the fact of the matter is there's just a lot more information on collective bargaining agreements from 2005 forward.

So we've heard from Dr. David that over the last three bargaining rounds, railroad workers have more than kept up with their peers, including unionized workers, and have expanded their existing wage and total compensation premiums. My -- my report and my conclusions support that -- those comments from Dr. David.

Now, if you look at the chart that I'm showing now, on a cumulative basis railroad workers have achieved approximately a 45 percent increase over this 2005-2019 period, averaging 3 percent

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a year.

When you look at all settlements in all industries, it's about 40 percent cumulative over that time and about a 2.7 percent average. And then when you look at just private nonmanufacturing, it's very similar to rail workers, about 45 percent cumulative increase and about 3 percent for the -- for the average.

Now, when you look at the average annual general increases for rail workers during the last three bargaining rounds, the average turns out to be about 3 percent. The highest you can see there is 4 and a half percent and the lowest was 2 percent, which occurred, I think, in 2010, 2016 and 2017.

You can also see that over this long period of time, these increases compared favorably with the results of collective bargaining in other industries.

Now, when you look at wage

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settlements and you view it by bargaining round, it shows that the average five-year settlement in the freight industry over the last three rounds was right about 15 percent. It fluctuated from a high of 17 percent in 2005 to 2009 and then 2015 to '19 it was 12 and a half percent.

The 15 percent average exceeded the average for all industries, which was 13.1 percent, but was nearly identical to the five-year average for private nonmanufacturing employers during this same time period.

So this average represents, in my view, a very reasonable and justifiable benchmark for determining appropriate general wage increases in this round. In the Carriers' proposal of 16 percent, which is not compounded, those general increases are consistent with the patterns established in the last three bargaining rounds.

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My analysis of available compensation data, government benchmarks and collective bargaining settlements doesn't substantiate the claims that the Coalition Unions have put forth that rail workers are falling behind their peers in other unionized industries as a result of recent collective bargaining settlements.

So let's talk a little bit about recent settlement trends. So as I stated at the beginning of my presentation, the tight labor market has presented significant challenges for employers and labor unions engaged in collective bargaining agreements.

Employers are struggling with recruitment. Staffing shortages have caused significant increases in overtime worked in a number of industries. And so as a result of that, employers are being presented with proposals of all sorts, seeking to improve work-life balance for

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workers, such as additional holidays, vacation or paid time off.

And many industries are negotiating incentives, whether they be signing bonuses or referral bonuses to attract and retain new workers. The freight industry in that regard is no different. And given the importance of the freight industry to the national economy, the Carriers face tremendous pressure to expand their workforces in response to the increases in demand for freight rail services.

However, as explained by Dr. David Allen in his report, the Carriers have fared better than most U.S. employers, as the high wages and the generous benefits that are provided for in the railroad industry make these jobs more attractive for the limited number of job seekers.

Despite the challenges which affect employers in all industries, collective bargaining settlements vary by industry

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and even within industry. So the lower wage earners are seeing the most significant wage growth, those in hospitality and the restaurant industry. Those wages have historically been low, so we're seeing the highest percentage increases in those two industries.

And there's also been a trend to eliminate any two tier pay systems that are still in effect. And as you probably have seen over the past months, there were workers at both Kellogg's and John Deere that took strikes over these -- this issue in particular.

And though wage settlements have trended upwards since 2020, the wage settlements generally have not kept up with inflation.

The Consumer Price Index has been trending above 5 percent during the last two years, yet the average wage settlements have not kept up with the rate

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of inflation. Many wage -- excuse me -- many recent settlements are utilizing lump sums as opposed to general wage increases to address the recent high inflation phenomenon.

Now, when I look at the historical -- well, I should say the historical and prospective industry comparisons, and I've looked at the period 2020 to 2024, the five-year trends for wage settlements during this period of time is a little bit higher than historical norms, but not -- not by a lot.

And as I've mentioned, some industries have seen more significant changes in settlement trends. And those settlement trends come from two sources:

They come from BNA, which averages the first, second and third year wage increases under collective bargaining agreements. And the other source is our own database of collective bargaining

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agreements where we've applied the same methodology to about 500 collective bargaining agreements we've surveyed and average wage increases in each year of those settlements broken down by industry.

So as you can see, when you look at all settlements in the BNA, the five-year period between 2020 and 2024 produced a cumulative increase of 15.3 percent. When you look at private -- and by the way, that -- that average is about 3.1 percent per year for all settlements.

When you look at private nonmanufacturing, it is higher, at 18.6 percent or about 3.7 percent annually. But you can see that in both cases, the average annual general increases fell within a pretty narrow band of between 3.1 and 3.7 percent.

When you look at private industry, the five-year increase is 14.9 percent. When you look at the transportation

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sector, it's 15.4 percent, again, about 3.1 percent a year. And then construction is the highest, at 19.4, or about 3.9 percent a year.

And settlements in the construction industry, which I'm very familiar with because I do bargaining in that industry, are really impacted by the tight labor market. That is the main reason why increases are slightly higher there. That industry is really looking at a pervasive shortage of skilled workers and it's aggressively recruiting new workers.

Now, in evaluating the parties' wage proposals, I've applied the same basic methodologies to evaluate the proposals offered by the Carriers and the Coalition Unions to determine whether these proposals are consistent with current collective bargaining trends and wage settlements.

So as you've seen previously -- and

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I know here the Carriers are proposing a cumulative increase of 16 percent over a five-year period, which consists of five increases ranging from 2 to 6 percent, plus a $1,000 lump sum payment.

Under this proposal, the rail workers would receive an immediate 11 percent pay increase plus back pay for the retro period of 2020 and 2021.

By comparison, the Coalition Unions' proposals has a cumulative increase of 28 percent over the five-year period, and that consists of five increases ranging from 4 to 8 percent, with the majority of those increases frontloaded so rail workers would receive a 20 percent increase plus back pay for the retro period of 2020 and '21.

I want to note here that the labor cost impact is also greater. And I don't know that this has been focused on much. But the Carriers' proposed increases occur

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in July of each year and the Coalition Unions' proposals are effective on January 1st of each year, which will actually result in a slightly higher increase for the Coalition Unions' proposals, because that increase is in effect for the full 12-month period as opposed to splitting and weighting it between two six-month periods.

When you look at collective bargaining agreement settlements for this same period of 2020 to 2024, the Carriers' proposal, as you can see, is much more consistent with prevailing norms. The average general increase in recent collective bargaining settlements is 15.3 percent for all settlements. And that's consistent with the 15-year trend of 15 percent for the freight rail industry.

The average settlement for all private nonmanufacturing employers is slightly higher, at 18.6 percent, but it's

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only a half a point above the Carriers' proposal in each year of the five-year agreement.

So based on those metrics, the Carriers' proposal is comparable to settlements being reached by private employers and service, not production employees in those industries. The Coalition Union proposal is not.

When you look at comparisons to benchmarks, the really extraordinary wage demands of the Coalition Unions cannot be justified by what is taking place in other collective bargaining agreements. And by contrast, when you look at this, it's clear that the Carriers' proposal is right in the sweet spot of where settlements are in other industries.

So collective bargaining settlements in all other industries, as I pointed out in that period, is 15.3 percent, or just under 3.1 percent. For

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private manufacturing, it's 18.6, or about 3.7 a year. The Carriers' proposal is at 16 percent, which is 3.2 percent per year. The Coalition's proposal is about 10 percent higher than the highest available benchmark for recent settlements.

Let me just close by saying that I concluded that the Carriers' proposals most likely approximate the terms of a voluntary settlement based on my experience in bargaining hundreds of collective bargaining agreements. The Carriers' proposal is consistent with recent settlements in the industry, as well as current settlement trends.

And I cannot find any data or information suggesting that the higher wage demands of the Coalition Unions are consistent with any collective bargaining benchmarks or trends.

Thank you. And I'll take any

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questions that you might have.

CHAIRPERSON JAFFE: Thank you, Mr. Glass.

BOARD MEMBER DEINHARDT: So I just have a couple of questions.

You had mentioned that the CPI is trending over 5 percent over the past few years. And in Dr. David's proposal we have numbers -- CPI numbers up to 2020 and then we have forecasted inflation numbers for 2020 to 2024 that are more in the 3 to 3 and a half percent range.

So I'm wondering where the difference lies with your numbers of over 5 percent and his numbers of 3 to 3 and a half, which he said could be 3 and a half to 4.

MR. GLASS: Right. Let me ask Dr. David to first answer that.

DR. DAVID: Can I speak here?

The 3 to 3 and a half includes two years, 2020 and 2021, which are actuals.

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And in those years we were under 2 percent. So when you take 2022, which is forecasted at about 6, and then 4 and then 3 and you average that with like a 1 and a 2, that's what gets you the numbers in the range of 3 for the five-year average.

So that's not a full forecast. Two of those years are actuals and then three of them are a forecast.

BOARD MEMBER DEINHARDT: Can you just give me those numbers again for those five years? And these are CPI numbers?

DR. DAVID: Well, I'm going from memory here but the CPI-U, if that's what we want to talk about -- and PCE would be anywhere from 1 to 3 percent less or maybe a half a percent in some years. We're looking at probably about 3 to 3 and a half percent total in 2020 and 2021. So it averaged under 2 percent per year.

And then we've got about 6 in 2022 and then about 4 or 3 and a half and then

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2 and a half. If you add all those together, you get an average of about 3 to 3 and a half.

Did that come through?

MR. GLASS: And just by comparison to what Dr. David said, my comment on the 5 percent was just over the past two years as opposed to a longer period of time, so much more recent higher inflation.

BOARD MEMBER DEINHARDT: Okay. The other question I had was about page -- the chart on page 10.

MR. GLASS: I'm sorry.

BOARD MEMBER DEINHARDT: The chart on page 10, I'm looking at wage settlement trends.

Do you have any information on these different settlements, when the settlements were reached? I'm just wondering if there's a difference in settlements that were reached in 2020 or 2021 that extended to 2024, as opposed to

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ones in, say, late 2021 and year-to-date, in this year, that extended backwards and forwards.

MR. GLASS: So I can answer that question based on my own collective bargaining that I've done.

Settlements reached in -- first off, there weren't a ton of settlements reached in 2020 as a result of the pandemic. That really stifled collective bargaining across all industries because nobody was meeting face to face and what little negotiations were being done were being done remotely.

But there was so much uncertainty as to what was going to happen and when the economy was going to rebound there just weren't a lot of settlements.

The more recent settlements -- well, even -- so if you look at settlements in 2020 and 2021, they were obviously lower because of the uncertainty

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surrounding the economy.

Settlements that have occurred in 2021 and 2022 have been a little bit higher, but not a ton higher. And the reason for that is while the labor market has been extremely tight, there's still a lot of caution from employers as to what's going to happen, what's the aftereffect of COVID, as well as now worrying about a possible recession in 2023.

So, again, what employers are doing is that general wage increases are remaining somewhat moderate, but the lump sum payments or like a signing bonus or something like that are a little bit higher than I've seen historically.

BOARD MEMBER DEINHARDT: Thank you.

CHAIRPERSON JAFFE: And if I could piggyback on that if I may, is it possible for us to get some of the underlying contract by contract data? And the reason I make that request as well is the same

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thing that Member Deinhardt noted. We have multi-year contracts with annual lanes, as it were, with respect to what the percentages are. And it would be interesting to see if there were any trends built into the data set when you don't use averages.

MR. GLASS: Yeah. So I think, Brian, we've submitted the Excel spreadsheet, right?

MR. EASLEY: I don't believe so.

MR. GLASS: Okay. We're going to provide you with that underlying data. I've got an Excel spreadsheet that lays out by industry over that period of time, so we'll provide that to you.

CHAIRPERSON JAFFE: Thank you.

Will that also note when the agreements were reached and how many years --

MR. GLASS: Yes.

CHAIRPERSON JAFFE: Perfect.

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MR. GLASS: Yes. They both tell you when they were reached and the duration.

CHAIRPERSON JAFFE: Fantastic. I hadn't seen it and that didn't mean it wasn't there. We've received a lot.

Fair enough. Thank you.

MR. GLASS: Okay.

CHAIRPERSON JAFFE: Thank you, Mr. Glass.

MR. GLASS: Thank you, Mr. Jaffe.

CHAIRPERSON JAFFE: Is the plan to break for lunch?

MR. MUNRO: Mr. Chairman, yes, we're happy to break for lunch now, if the Board would prefer. I believe our next witness is available, but I'd suggest a lunch break.

CHAIRPERSON JAFFE: Ms. Roma, do you have a preference one way or the other?

MS. ROMA: Whatever is convenient

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for the Board.

CHAIRPERSON JAFFE: Is the next witness still Mr. Allen?

MR. MUNRO: Yes.

CHAIRPERSON JAFFE: So you're estimating about 25 minutes?

MR. MUNRO: Yes, sir.

(Thereupon, a discussion was had off the record.)

(Thereupon, at 11:51 a.m., a lunch recess was taken.)

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AFTERNOON SESSION (1:04 p.m.)

MR. EASLEY: Good afternoon, Mr. Chairman and members of the Board. The next six witnesses from the Carriers will be presented in pairs by subject matter. And the first such pairing consists of Dr. David Allen from the Neeley School of Business at Texas Christian University and Ms. Judy Carter, who is vice president and chief human resources officer at Burlington Northern Santa Fe.

CHAIRPERSON JAFFE: Thank you very much.

May I ask the reporter, please, to swear in both witnesses.

Whereupon:

DAVID ALLEN AND JUDY CARTER

were called for examination and were duly sworn by the reporter.

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Whereupon:

DAVID ALLEN

was called for examination, and, after being previously duly sworn, testified as follows:

DR. ALLEN: All right. Good afternoon. Thank you for having me. I will do my best to keep you all awake in the after-lunch portion of the program. But my name is David Allen. I'm a business school professor at the Neeley School at TCU and also at the University of Warwick in the U.K.

By way of background, broadly speaking, my research and teaching focuses on human capital, human resource management, the flow of people into and out of organizations, really with particular focus on why people change jobs, why they might quit one job or take another job. And so I've been asked in this case by the Carriers to really focus on two main things.

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One being to look at and evaluate recent data and metrics related to recruitment and retention indicators and try where I can to connect them with some external benchmarks to give a frame of reference.

And the other is to think about the role of compensation in these issues and -- and the extent to which compensation is playing a major role in the recruiting and retention challenges that we've been talking about and whether really, the incremental difference between the proposals is something that I think is necessary for attracting and retaining the necessary talent.

So beginning sort of with the end in mind, just a quick review of what I would say are some of the primary conclusions that I drew from looking at the various sources of data are that the job openings do continue to attract a

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sufficient number of applicants; that recent recruiting and hiring challenges are largely a function of broad economic trends more so than carrier specific issues; that job tenure at the railroads is quite long and turnover rates, at least voluntary turnover rates, remain quite low in comparison to most benchmarks in the economy; and, again, recent upticks that we've seen in attrition are a function of broader economic trends more so than Carrier-specific issues; and then finally, my conclusion that the compensation and benefit levels are not likely to be the most important factors driving these decisions.

I will try not to be too repetitive with what we've discussed already about economic conditions, but I think it's -- in the context of recruiting and retention it's worth talking about these issues. I'm sure everyone has heard the terms, The

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Great Resignation, The Great Reshuffle, a variety of terms. But just recognize that employers are currently facing a pretty challenging labor market. So mobility is high, job vacancies are high. Lots of firms are having difficulties acquiring the human capital that they need.

In this particular graph this is voluntary quits in the economy as a whole. And so what you can see there is a very sharp drop right at the beginning of the pandemic. Those people in the face of that uncertainty, if they had a job, they're very unlikely to give it up. But then you pretty quickly see a sharp rebound and then these increasing quit rates that have been deemed The Great Resignation.

So what we find there is a couple of things going on that account for that. As the economy rebounded and firms attempted to staff back up by recalling

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workers or hiring new workers, they found themself faced with two interrelated challenges.

One is I think the economic activity rebounded much more strongly or quickly than people anticipated. And so the firms really needed to -- to ramp up faster than expected.

But then there's also been a decrease in the labor force. There are many workers who left the labor force and then, for a variety of reasons, opted not to return to work. And there's lots of reasons that might be the case.

Some had still health concerns about the pandemic. Some were happy with the government support they were getting. We see potentially a shift in some people's priorities, for example, opportunities to work from home, balance work and family things becoming a bit more important.

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And so for all of those reasons -- although, as we've also heard, many economists now think that we're heading into what's likely to be a recessionary period. But in the immediate term right now and in the near market, there's still -- it's a challenging market with labor shortages, increased demand for labor and elevated amounts of turnover.

So as I think about this in terms of both the attraction of talent and the retention of the talent that we already have, on the attraction side we're seeing lots of firms, including the railroads, they're really trying to ramp up their hiring efforts. And in many cases there are some upward pressure on wages in the economy as a whole. And then you see these much more targeted efforts to where there are specific challenges. Firms are doing things that we've heard about, like hiring bonuses and the like.

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On the retention side we are seeing still elevated quit rates, people leaving for other positions, often increasing their compensation when they do, although part of what I'm going to talk about is that a lot of the research on why people change jobs suggest that it's a bit misleading in most cases to focus on compensation, that actually for most people, their level of pay and their satisfaction with pay are relatively weaker predictors of their likelihood to quit.

What we often see actually in practice is that somebody will become dissatisfied with the workforce and there are -- with their working relationship and they'll search for something else. And most people would prefer to search for something that pays at least as well as what they've got now before they actually quit.

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And so then when they leave, it's easy to say I'm leaving to take a higher paying job as opposed to, for example, saying well, I'm leaving because my boss is a jerk to me, which is what led me to search in the first place.

But I'll cover a little bit more of that research. But the larger point is that the decision to leave a job is a really complex one. And we often include dozens of variables in our research trying to predict that. And as I said, they suggest that pay is a relatively weaker predictor of turnover.

In terms of the Carrier-specific data that I looked at -- so recall the two things I'm trying to examine are recruitment and retention indicators of various kinds and then potentially the role of compensation in making those decisions.

So to answer the first one, I used

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voluntary quit data and some employee tenure data and hiring data submitted by the six Class I Carriers to look at various metrics for that.

I requested data from 2015 to current to where it makes sense to perhaps look at some trends over time as it relates to that. I tried where I could to also identify some benchmarks that I could use to give a frame of reference for that. The benchmarks are necessarily a bit coarse. They're not perfect. Every industry is a bit unique. It has their own characteristics. But, nevertheless, drawing primarily from the Bureau of Labor Statistics, I present some benchmark data to try to look at those questions.

To answer the second one and thinking about, well, what has the role been in pay in people's quit decisions primarily, it's really, I think, important to be cautious about relying too much on

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anecdotal data. I think those -- those examples can be illustrative of things that are going on. But I think it's really easy to find examples of people who really love their job or really hate their job, people who are leaving for a higher paying job, someone who is leaving mid-career.

I tried to find some ways that I could systematically look at the reasons -- just if you'll bear with me for a minute, just thinking about sort of the fundamentals of theory and research on why people quit jobs, it's important to keep in mind that there's two intertwined things going on there.

One is the desire to leave a job, which is often driven by internal factors, of which pay could be one, but there are many others that can drive that desire to leave.

But that's not sufficient. You

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also have to think about these issues in terms of the ease of leaving or the ability to leave as well. And that is often driven by these more external market-based factors, such as how many opportunities are out there and how good those opportunities are relative to where you currently are.

So in trying to get at this issue, I requested some data on exit interviews as one metric for thinking about what are the reasons that people are giving for why they're leaving. And so I have some data there to share with you.

And then I also identified a social media site called glassdoor.com that collects employee sentiment about their employers.

So I'll give some more reasons for why I looked at glassdoor.com in particular and draw some conclusions about what it says about what current railroad

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employees are saying anyway about their employers.

So I'll start with -- this is an example of one of the hiring benchmarks that I used. So five of the Carriers submitted data on job vacancies and applicants and hires that I used to calculate an average number of applicants per hire. And I had data from 2017 through 2021 on this.

And so a couple things from -- from the graph. This graph is an average across all the Carriers. So it's a bit of a general summary. You can see that there is a significant jump in 2020 -- which is not unexpected, as people were uncertain and trying to find jobs and organizations were hiring less -- and then a sharp drop in 2021, although it's really in some ways back to -- closer to prior levels, but a significant drop as the opposite is happening.

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So there are lots of opportunities out there for people and the firms are trying to ramp up their hiring. So the denominator in those applications for hire is going to be -- is going to be going up.

And so you can see that there are dozens of applicants for hire still for the railroads, even though they're experiencing greater challenges than they have in past periods. Again, in the search for benchmarks, I found a variety of sources suggesting various ranges for what does it take in order to -- to fill a job. And I found ratios of anywhere from 3:1 to 25:1.

And so even at the higher end of that, the railroads are still attracting sufficient applicants in -- across -- across the board.

Another thing that you might see in this particular chart in looking for a benchmark for applicants for hire, I

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looked at some data that's published by the BLS in their JOLTS survey, which is the Job Openings and Labor Turnover Survey that they do. And so they -- they collect data on job seekers in the economy relative to number of open positions. And so that's the -- the short red bar in the graph is just and indicator in the broad economy as a whole what does it look like in terms of the number of job seekers per open position.

So you can see the differences there and you can also see the same pattern going on in the larger economy, where in 2020, that ratio more than doubled. And then in 2021, it went back to where it had been and even a little bit -- so less than half, because it's the same pattern that you're seeing in the railroads that we're seeing in the larger economy.

So my conclusion from this is that

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while the Carriers on a whole are in some cases with some jobs having difficulty filling them, they're still attracting sufficient applicants to fill their jobs broadly speaking. And the trends to me look like they're similar to what's going on in the broader labor market.

So this decline that we're seeing from 2020 to 2021 is more a function of the labor market and not some dramatic change in how attractive the Carriers' jobs might be.

This graph looks at tenure as another indicator of sort of how attractive the carrier jobs are over the long run. And so this is, by Carrier, the average tenure of their workforce at the beginning of 2022.

So a couple of things that I would comment on from this is, one, in the abstract, in general, the average tenures are quite long, range from just under 13

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years to just under 19 years.
And to try to get some comparison for -- I mean, it looks long to me, but for some comparison, I again went to the BLS data. Every other year they collect a supplemental survey called the Current Population Survey. One of the things they measure on that survey is employee tenure.
And so the red line in that chart is from the 2020 data, which is the most recent data that has been released from the CPS, the median -- and, again, that's across private sector employers -- for the economy as a whole was 3.7 years.
That particular source does include a breakout by industry. So I looked at the transportation and warehousing industry and the median was 3.9 years. It doesn't break out by occupation. I looked at the transportation and material moving as an occupational sector and it was 3.3 years. So all in the same range and all

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much shorter than what we see in the railroads.
So my conclusion from this is that generally speaking over the long run, these appear to be relatively attractive jobs because people stay in them for a long time.
Perhaps the issue in the broader economy that's gotten the most attention is this Great Resignation. And so this chart is an example of some of the analysis using quit rates from the -- from the Carriers.
So I have data from all six of the Carriers here. These are voluntary quits in this particular case. So this is not involuntary terminations. It's not layoffs and retirements are not in this data. This is people who voluntarily just quit their job.
And you can see the cluster of lines along the bottom is -- are the quit

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rates from 2015 to 2021 for the Carriers, annualized quit rates, and -- so again, you can see a couple things here looking at -- at these data.
One is that -- I mean, just in general, I would characterize these quit rates as very low. Prior to 2021, all pretty much below 5 percent annually, which is, just in a broad sense, a very low turnover environment.
You do see over the time frame here a slight upward trend in quit rates and then a slightly sharper uptick from 2020 to '21 as we've entered this period of increased quits called The Great Resignation.
So again, in order to try to put a larger frame of reference around this, I compared it with data from JOLTS on voluntary quits in the economy as a whole. This particular line is transportation and warehousing industry sector that I deemed

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to be most comparable, although if you -- if you look at broader comparison of the economy as a whole, the quit rates are even higher.
But what you can see from -- what I take away from looking at this is that -- well, one, it confirms that the quit rates of the Carriers remain very low.
But then secondly, if you think about the upward trend and the uptick from 2020 to 2021, the pattern is the same as what's going on in the larger economy. And if anything, the uptick is milder in the railroads than in this broader industry sector.
So again, if -- in my opinion, if there were something significantly changing in terms of the relative attractiveness of carrier jobs, we would expect this gap to be narrowing in some way as opposed to staying -- staying constant or perhaps even widening a little

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bit.

And so you can see from that I didn't find any evidence in the Carrier data that -- that employees are quitting in droves. That data went through 2021. This chart just sort of follows up on the most recent period. So this is from January to May of the current year. And you can see the JOLTS so far voluntary quits and the Carriers.

And if you look at this with the data that came from before, you see that these -- it's sort of leveling off, which is kind of what I would expect from the broader economy. So we're still in this elevated quit area, but I think that there's a -- that going forward, it is likely to probably start to level off at some point.

This other piece was trying to get at the question of so it's a relatively low turnover, high tenure environment.

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But people are quitting and they are leaving, so are there ways that we can sort of systematically try to assess the reasons for people leaving.

And so as I mentioned earlier, one of the ways I did this was I requested exit interview data. So two of the Carriers -- it was CN and CSX -- had that data and were able to share -- share with me so I could sort of systematically look at what the exit interview data said.

So, for example, for CN, they asked individuals in their exit interview to identify the top two reasons for their leaving. And they have one choice that's compensation/benefits and another that's my pay and benefits. And together, those were selected by only 11 percent of the respondents as among the top two reasons for resigning.

Similarly, CSX provided this exit interview data where base pay was one of

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the categories and benefits was a category. And for the base pay category, 4.3 percent of the respondents indicated that that was their top reason for leaving and for benefits it was 1.3 percent. So the exit interview data anyway suggests that compensation and benefits are not the primary reasons that employees are leaving.

I mentioned I tried to look at some social media sentiment. I chose glassdoor.com. If you're not familiar with it, this is a social media site and their primary purpose is to give employees a forum where they can rate and make posts about their employer.

And so because that's what it's focused on, I thought it was a good source for this information. It also -- it allows employees to post anonymously, so hopefully they can be honest. And also, employers can't edit or remove any of the

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ratings that are provided for them.

So employees can give an overall rating. They can also rate their employer in terms of six workplace factors, one of which is compensation and benefits. And so I looked for each of the Carriers for the ratings on these workplace factors. And in every case among the six factors, compensation and benefits was the most highly rated workplace factor that the employees rated the Carriers on on this site.

The ratings on compensation and benefits ranged from 3.2 to 3.8 out of 5. And just for reference, the way the ratings are designed, that means that on average, the employees rated themselves as okay or satisfied with compensation and benefits. So in no case was it the two categories below or dissatisfied or very dissatisfied with compensation and benefits.

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Again, my purpose here was to attempt to provide some analysis about the extent to which it looks like compensation and benefits are driving the quit challenges that we're seeing. And from what I could tell, which is consistent with the larger literature on why people change jobs, comp and benefits is a relatively minor driver.

So then just sort of -- sort of wrapping up, we know that there are significant challenges still. So we're still having increased attrition from The Great Resignation. We're still having high demand for labor. We're still having a need to hire rapidly in a situation where -- I know the Carriers are trying to hire rapidly in a situation where it takes a significant amount of time in many cases to get people hired and on board and trained and ready to go.

And so from my perspective, it's

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not surprising that we're seeing an uptick in quits, although my assessment of the -- the data is that it is not as dramatic in the Carriers as you might see elsewhere. And we're seeing challenges in terms of hiring as well. And I'd be surprised not to see those things, given what's going on in the larger economy. But I think they're a function of the larger labor market. And I think as conditions change, if we enter a recessionary period, I think they're likely to cool off.

So, you know, my perspective is that I think it makes sense to be very thoughtful and strategic about what we do in terms of committing to compensation increases in the future.

And I believe that that is the extent of my presentation. So thank you. I'm happy to answer questions.

BOARD MEMBER DEINHARDT: So I'm still trying to understand. If you say

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that there are a sufficient number of applicants for these jobs, in fact, double what might be the standard for what sufficient is, why is it that we're still hearing this narrative some, purportedly from leaders of the Carriers, saying we can't fill these jobs, we don't have enough people? If they have enough applicants, why don't they have enough people to hire?

DR. ALLEN: So my answer would be twofold to that. One is part of it is the time lags involved, and so they have not been able to -- to catch up with -- with the demand yet. But then probably the broader answer goes to a question that you asked this morning in that what I presented here was a broad average. So there's going to be ranges for that.

And so what -- what you're likely to see is that in some jobs, they're having not as many challenges with hiring,

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but then there are going to be some locations or some jobs where it is more challenging, and so they're having to resort the types of things that we've heard of, like significant hiring bonuses and those types of challenges.

BOARD MEMBER DEINHARDT: Do we have any more vertical data, I guess -- I mean, deeper data to show those kind of differences?

DR. ALLEN: So I did not analyze the hiring data by location or by job type. I was looking at the broader trends. I imagine the Carriers could probably give you a better picture of maybe where they're having the biggest challenges.

BOARD MEMBER DEINHARDT: All right. Thank you.

CHAIRPERSON JAFFE: I have three brief ones, if I may, maybe four, Dr. Allen.

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DR. ALLEN: Okay.
CHAIRPERSON JAFFE: In your data that categorized voluntary quits, if an employee was on furlough, recalled and then declined recall, is that part of the voluntary quit or not part of the voluntary quit?
DR. ALLEN: Not part.
CHAIRPERSON JAFFE: Okay. And do we know how significant that group of employees was in the time frame that you were looking at?
DR. ALLEN: On the furlough recall?
CHAIRPERSON JAFFE: Furlough recall that the employee says no, thank you.
DR. ALLEN: I'm afraid I don't have the answer to that.
CHAIRPERSON JAFFE: I'm not troubled. I just need to understand.
The JOLTS data -- I don't mind acknowledging I wasn't familiar with it before I read your report.

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Is that done, as you described it, on an aggregate basis so that if the economy as a whole has 20 million vacancies and there are 30 million people looking for work, that gets you a JOLTS of 1.5?
DR. ALLEN: Well, I mean, they're sampling, you know, households and businesses to get those data. But, yes, that's the gist of it, is an aggregate just count of --
CHAIRPERSON JAFFE: So it is not purporting to be an average of the number of applicants seeking individual jobs? It's an aggregate economic measure of available jobs on the one hand and applicants on the other?
DR. ALLEN: That's right.
CHAIRPERSON JAFFE: Okay. And the information that we contrasted that with for the Carriers, those were targeted individual applicants to jobs or something

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else?
DR. ALLEN: What you said. So that was more closely tied to number of applicants and then hires --
CHAIRPERSON JAFFE: And if I'm an applicant and I send in an E-mail to the Carrier and the Carrier has 20 vacancies in that job category, am I deemed to have applied -- that one person is deemed to have applied to all 20 or is it counted some other way for purposes of calculating the applicant per job ratio that you've set forth?
DR. ALLEN: So in the data that I used, it was tied to a specific job posting. So they would have to -- they would be for a specific job posting, not just one for -- for all 20 of them.
CHAIRPERSON JAFFE: Right. But did they accept electronic applications, as many places do, or not?
DR. ALLEN: I can't say how the

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Carriers classify who is an applicant --
CHAIRPERSON JAFFE: Perfect. That covered that one.
And the third question I had is you indicated that it's your belief from what you studied that compensation was not as significant a factor with respect to recruitment or retention.
And I wanted to ask the question, if it turns out that one or more Carriers are paying new hires at the full job rate rather than at the initial hire rate, would that not suggest that there was at least a belief on their part that the new hire rate wasn't attractive enough to get the people to come on board and perform the work?
DR. ALLEN: That's hard -- that's hard for me to answer. I will say my own just sort of work in this area leads me to believe that most -- many people believe that compensation is a primary driver

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in -- in attrition decision, even though the data doesn't really support that. But I'm not sure I can speak to what the Carriers think.

CHAIRPERSON JAFFE: And that's fair enough too. Happy to leave it at that.

We're in good shape, I think. Thank you, Dr. Allen.

DR. ALLEN: Thank you.

Whereupon:

JUDY CARTER

was called for examination, and, after being previously duly sworn, testified as follows:

MS. CARTER: Give me a second to get mask off and glasses on.

Good afternoon. Just to remind you I'm Judy Carter. I work at BNSF and I've been at BNSF Railroad for 16 years. Three years ago I became the vice president and chief human resources officer and have responsibility for retention and attraction of the talent across our

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railroad.

So like Professor Allen, I share the belief that railroad jobs are still good, attractive jobs. And I'm hopeful based on your questions for Professor Allen I'll be able to give some context into what BNSF is seeing in this space.

So in my time here today we'll talk about how we attract, how we recruit, how we retain and some anecdotes about what we're seeing in our organization, what we're hearing from our employees. So that's what I'll do in my time here.

I know from your backgrounds you're probably very familiar with BNSF, but I thought I'd give you a little bit of context around just kind of what we stand for, what our values are and how we -- how we view our employee workforce.

We say at BNSF that railroad is a high calling and it certainly is. We are critical to the nation's infrastructure

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and supply chain and we do that while operating our network 24 by 7, 365 with very talented folks. We pride ourselves through this environment. You have to be a tough-minded optimist who rises daily to challenges that our network provides to us, including many forces that come from Mother Nature.

We like to say that railroading is an outdoor sport and we can't always predict what's going to happen on any given day. We foster a culture where safety is our absolute highest priority and we provide a work environment with the right tools and resources so that our employees can work free from accidents and injuries.

We have a strong track record of process improvements that increases safety, efficiency and customer satisfaction. We celebrate a very rich heritage of over 170 years, and we also

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keep our eyes very focused on our promising future.

Employees across BNSF have a sense of pride, of excellence in their work and feel a mutual responsibility for their own safety and the safety of others.

And to echo what you have heard already today from both Brendan and Lance, we value our employees at BNSF and appreciate all the work they have done through the pandemic and beyond.

So let's get into recruiting and retention. One of my jobs is to oversee our recruiting and staffing function. In that oversight, I continue to see a very high demand for railroad jobs, even in the current tight labor market. And we'll talk a little bit about some of the questions you had around how it works at BNSF, based on some of the industry data that Professor Allen shared with you.

So we do have an online electronic

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process for our postings. And when jobs are posted, they have a number to them for requisition. And we track those applicants against that requisition. So when we count the number of applicants for any given job, we're tracking it against the requisition for how many people posted to that job.

But to address what you just brought up, Chairman, there is the capability for our staffing to see that if there are candidates that may be qualified for other jobs in certain locations to start to adjust and move those around where they can say, okay, not this job, but maybe this job, based on how we're dynamically hiring. But that wouldn't change the original count as to what -- how many applicants applied for that particular requisition.

So as we move through the process, we screen those applicants. We assess the

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candidates through normal interview processes. We have assessments that we put candidates through. And then once they get through that, they get a job offer, which starts our background checks, our medical processes and assessments all the way to the job offer.

The conditional job offer turns into a final offer letter. The candidate accepts that and then they come on board. They're considered hired at that point. They come on board and have to go through, obviously, a certain amount of training depending on their craft that impacts how long it takes to actually have that employee being productive with boots on the ground in the particular job that they are hired for.

So what have we seen in 2022 from a hiring perspective? So this chart takes you through the first six months of the year where we've seen about 1,250

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employees being put into agreement positions across our network. I will say that we have been in a very dynamic situation, a hiring situation, and responding to the changes and the tightness of the labor markets in certain geographies over time.

And so we meet weekly. There's a team of workforce folks who meet weekly to manage -- and you can see on the chart that it is dynamic on how we are able to get them through the process I just described. So we're paying attention to how things are changing across our hiring locations over time. And I'll get into that a little bit more here in a minute.

So for the jobs that you're seeing here that we've hired for, about 1,200, we received over 46,000 applications from external applicants. So to Professor Allen's point, there was about 36 external applicants per craft hire at BNSF. We

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received about 4,000 more internal applications. So overall, there was about an average 42 applicants per craft hire.

So that shows that overall, our demand for jobs at BNSF is still high. But the question remains is hiring harder than it used to be in prior years pre-Great Resignation.

And the answer to that is yes. We have told the FTB, as you all referenced, that this is a very tough labor market, especially in certain of our geographic locations and for certain of our positions.

But as was just explained, we are doing much better than other employees. And so while it feels harder to us or some of my folks in my HR community at BNSF, the hardest it's been in quite some time, we know that overall we're still doing very well and our jobs are still very sought after.

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And so while the applicant per hire ratio is different than what it was a few years ago, part of that reason could be because of our hiring initiatives. Our 2022 hiring plan is higher than it's been in several years. So it's comparable to about 2018, which is our -- in the last five years our high watermark in terms of how many people we were hiring. During that year we saw 34 external applicants per hire, which is right in line with what we're say seeing today in 2022.

Aside from the numbers, our overall applicant pool remains very strong. In particular, we're the most proud of our relationship with the military. One in five BNSF employees is a military veteran. 29 percent of our 2022 nonmanagement new hires is former military. And this year we have hired veterans into top -- I'm sorry -- into nonmanagement positions in 23 of our states. Our top states for

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military recruits are Illinois, Washington and Texas. And we're very proud of that.

So with this strong pool in mind, let me explain a little bit about why we're using hiring incentives. If demand is so strong, why do we have to use hiring incentives?

The answer to that is that we're competing for labor across the western half of the country. Competitors in some of these geographic markets are offering hiring incentives where there are very tight labor pools. You heard some examples of that earlier today, and Nebraska in particular is an area where we're seeing that extremely tight labor pool. We've seen it in the Pacific Northwest, Minnesota, Montana, North Dakota and California.

I'll give you some examples of what we're seeing from our competitors that we're trying to remain competitive with on

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incentives. We're seeing for CDL drivers for Penske about 5- to $10,000 being offered as a hiring bonus. AT&T is offering about $10,000 for installation technicians. And John Swift is offering $2,500 for experienced drivers.

So you see there's a breadth of range there of what the incentives are based on the tightness of the labor market and the type of job being recruited for.

BNSF is also offering market incentives in those geographies where this labor market is particularly competitive, but from a career perspective, railroad jobs in my belief do not require a hiring bonus to remain competitive overall. And the overall lifetime compensation and benefits that we offer, we are, and have always been, at the high end of the market, as you've heard from many of our experts here today.

And in those particular geographic

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areas where we are seeing competition, some of these applicants may be looking for the short-term benefits of a particular job. What I mean by that is they may take that hiring bonus and work at that company for a few years, but then, when they're looking at their longer term career, which we'll talk about in a little bit about railroad tenure, they will come back to railroads that offer that long-term career perspective once this labor market perhaps adjusts.

So let's talk a little bit about employee retention. Just like recruiting, success in retaining our employees is critical, as it ensures we have an experienced workforce and reduces the costs associated with recruiting and training a workforce in a high turnover environment.

Our strongest retention tool by far is our great package of compensation and

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benefits, of which you've heard a lot about here today. Operations craft employees earn between 80- and $120,000 a year and a subset of those can earn considerably more.

We offer best-in-class medical, dental, vision and life insurance, including some very specific benefits around second opinion services and centers of excellence for medical care.

In addition to all of that, we offer robust support for our BNSF families, including education and mental health benefits, referrals for consultants, sleep consultants, wellness challenges to stay physically fit, maternity and new parent care and excellent employee assistance program benefits.

We continue to invest in our employees' well-being and development through these wellness programs, which

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offer fitness and gym discounts, on-site health clinics to have preventative care and on-site vaccination clinics post pandemic and continuing into flu season. Our employees are eligible for railroad retirement benefits after 30 years of service, their eligibility based on age, and they also have access to a 401(k) program.

So all of these benefits offer quite a competitive package that our employees talk about. Professor Allen's point on GlassDoor, that rating for BNSF is highest in the compensation and benefits area.

So let's talk a little bit about tenure. The quality of our jobs and benefits shows up in our average tenure data. BNSF's Union-represented employees have an average tenure of about 14 years, which is more than triple that of other transportation workers and double that of

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members of the workforce with similar educations.

We also see the dedication to our workforce through our years of service. We talked about that earlier with UP's data. We look at 40 years of service or more and you can see over time we have a substantial number of employees who retire with 40 years of service.

Railroad Union jobs are also so good that oftentimes folks that convert from being a Union employee to a management employee decide to go back to the craft for many of the reasons that we talked about here and the great compensation and benefits offered.

Professor Allen talked a little bit about quits and I'll give you the BNSF data on voluntary quits by tenure. We know, as we talked about earlier, railroading is a very challenging environment. It's outdoor. It's 24/7.

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It's 365. And as we are able to attract people, once they are with us for a while they, realize it's simply not nor them and they don't like it.

So it may take a little bit -- as you see the drop-off here, it may take a little bit for someone to work through the seasons of the outdoor sport before they realize that, no, this is not a career I want to continue in.

And that's how it's been for decades. We've seen this drop-off in the very early stages of your career and then it levels off where if someone stays with us past five years, they're probably not going to leave and they're going to keep their career with BNSF.

So, for example, in 2022 the vast majority of employees who voluntarily resigned, nearly 80 percent of those had less than ten years' experience with us. And over half had less than five years'

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experience with us. But we lose very few people once they've worked for us for more than that three- to five-year period. They're very unlikely to leave after ten years of service.

So we've talked a little bit about the massive walk-outs and people who are leaving in droves, so I wanted to give you a sense of the comment that you all heard at the STB and will probably hear more about.

There's data that we have for the resignations and at BNSF from all crafts and all tenure levels for this year is about 1,300. So that's an attrition rate of about 4 percent. In today's market and as I'm getting out post-COVID meeting with my industry peers and people outside the railroad industry, that is a jaw-dropping percentage that they hear when they say man, I wish that could be us. Folks are seeing much higher attrition rates,

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especially in this labor market.

So while that's higher than it's been historically, it's hardly suggestive of we're having a mass exodus of people. The overall attrition, which includes retirements and terminations, for this year is about 9 percent. So this means that while some people are resigning instead of leaving through retirements and other means, it's not a flood of people headed toward the exits at BNSF.

To build on what Professor Allen said, there's another point I'd like to emphasize, is that we don't have any evidence that the resignations that we're seeing are primarily attributable to compensation. It's not reflected in what we hear anecdotally. We also pay attention to comments on social media and other forms of communication and we just don't see that compensation and benefits is being listed as a primary driver. To

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the contrary, it's often cited as one of the best things about working at BNSF.

My colleagues later will go into our new Hi Viz attendance policy, but I just wanted to touch on it at a high level to tell you what I'm seeing.

We've heard specific criticism in the media around our attendance policy. I would say that most of this criticism, based on the data we're seeing, is unfair and doesn't reflect the overall employee view of our new attendance policy.

Our leaders across our network have talked to many employees about this new policy and most have stated it is working for them. In fact, a long-term locomotive engineer that I was having a conversation with said that there were no problems with the policy at all. In fact, she said railroading is a choice. We know how operationally this has to work. You have to expect to travel. You have to expect

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to be available. That's just the nature of the job.

So those voices are very common and reflective of our retention rates, but the critical voices that are complaining about the policy are quite loud and getting a lot of attention.

As you'll see here and with -- my colleague goes into more data on Hi Viz, about 96 percent of our employees are currently in compliance, which is much better, actually, than under our previous attendance policies. So we actually expect that there will be less discipline under this new approach going forward.

The last couple of comments I want to make is talk about the nature and quality of life and work-life balance at BNSF.

It continues to show us that these are very good jobs and that there is the ability to have work-life balance as a BNSF railroader. Union employees get paid 11 days of holiday pay and five weeks of vacation per year, depending on

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their years of service.

The work hours are simply just not what the Unions claim. Our data shows, as you can see here, about an average 34 hours a week in 2020. And that number went down to 33 per week this year. Of course, those are averages and some of our employees do work much more than that.

It's also important to emphasize that work hours are not the same thing as availability. If you're in an assigned service, you have to be available to work. And that is acknowledged in the compensation, but there's not a problem of overall and overreaching overwork.

On the nonoperating side what we see is about 42 hours per week. They have scheduled work and, for the most part, many of them do not have the requirement to travel regularly like our operating crafts. So these are the key indicators that these remain very good jobs.

One thing I'd like to build on that my colleague Lance at UP mentioned was two issues

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that prove that BNSF is still a great place to work.

One is the same type of referral program that UP has. Just as an anecdote, about a month ago in Dilworth, Minnesota, my HR team interviewed about eight candidates for a position there. Seven of those had been referred by current -- two IME employees. And that's something that we're seeing a lot of, existing employees referring people that they know and care for into our workforce.

The second is that BNSF is a generational family railroading experience. We have so many of our railroaders who are related to each other and who have grown up in the railroad together.

One of those families is from Minot and Dilworth. The dad worked for us and three of his four sons came to work for us and then three of their sons joined us and that was all on the TY&E side.

The other story is a three-generation

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railroad family, where we've had 75 years of someone in the family working for BNSF. And we saw this with a grandfather who started in engineering. His two sons came to work for us. One was an exempt employee, one was a scheduled employee and a local chairman. And then one of his grandsons came to work in our legal department and two other family members on the TY&E side. So it's just striking that, you know, folks really don't send their kids and grandkids to work for companies that they don't like and haven't benefited from.

Lastly, I'll cover the technological improvements and capital investments we've made to, make railroading easier and safer. One such example is called WorkforceHub, which is an application that allows employees to view their standing on the board and train lineup information very easily from any mobile device.

We developed this in consultation with our employees across the system and continually enhance this application based on

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employee feedback. Some of the things that our employees are able to benefit from in this application is that every 15 minutes, BNSF takes all of our known events and uses them to help predict when an employee is likely to be called to work so that that employee has better estimates of when they may be called.

It also allows for text messages communication, rather than phone, so that the employee is able to get that on their personal cell phone, rather than calling and potentially waking up other family members who may be resting.

And finally, it allows employees to easily access several BNSF systems at once so they can view all of their information in the portal, whether that be attendance data, compensation data or other information that they're needing.

And then my final point that we're very proud of is that BNSF is an award-winning company and has been recognized externally in

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many different ways around our work environment, whether that be for new graduates, for our development program, for how we develop our employees through our training programs.

I mentioned our strong relationship with the military community and we've been recognized for that, as well as a lot of different diversity awards for best employers for women, a diversity award and we have people of color awards for our Indigenous STEM professionals and our corporate Chamber of Commerce in Fort Worth.

So it's worth emphasizing that we worked really hard to make BNSF a work environment where people are proud to join and proud to stay. We've had lots of achievements in our opportunities for our female employees and our people of color employees and that has been one of our priorities that we've worked on for several years. And I'm very happy to say we're making progress there and we're being recognized for that progress.

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So that's all I have to cover for you today. So I'm happy to take any questions you have.

CHAIRPERSON JAFFE: Thank you, Ms. Carter.

I think we're in good shape, but thank you very much.

MS. CARTER: Thank you.

MR. EASLEY: Mr. Chairman, our next pair of witnesses will be discussing railroad industry economics. And they would be Dr. Gerard McCullough and Jennifer Hamann from Union Pacific Railroad.

CHAIRPERSON JAFFE: Could we swear in the witnesses, please.

Whereupon:

GERARD McCULLOUGH AND JENNIFER HAMANN

were called for examination and were duly sworn by the reporter.

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Whereupon:

GERARD McCULLOUGH

was called for examination, and, after being previously duly sworn, testified as follows:

DR. McCULLOUGH: So my name is Gerard McCullough and I'm emeritus professor of applied economics at the University of Minnesota.

The railroad industry has -- the Carriers have asked me to analyze industry economics with a focus on prospects of the industry for the next decade. Basically I'll talk about where the industry has been very briefly, talk about where it is now, again, very briefly, and then focus in more detail on where the industry is going economically.

So by way of introduction, in 1976 Congress ordered the U.S. Department of Transportation to report on the status of the U.S. freight railroad system. The 1978 DOT report was called A Prospectus

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for Changes in the Freight Railroad Industry and it presented a dire picture of the industry.

It characterized it, as, quote, in the worst economic condition of any privately operated mode of transportation. And that's not the picture that I'm going to present here.

My findings in my report are that the railroads are financially healthy today, but staying that way is not guaranteed. My conclusions, now through 2030, railroads must focus on market expansion and cost control.

Next slide. So I'd first like to do a little bit of introductory economics before getting into the details. And to do that, the example I chose -- and this is not product placement, I'm not doing an advertisement for Minnesota. It just happens that this works, that railroads are -- what I want to show is that

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railroads are multi-product firms and capital intensive. And the example I found is a yard in Staples, Minnesota, which is a couple of hours north of Twin Cities.

And I think that illustrates the two key dimensions of railroad economics. And the first is that railroads are -- now, this is the jargon of economics -- multi-product firms. And that simply means they serve many different markets.

So for context, if we take a look at that slide, starting at the right, there are three oil trains lined up and those are carrying oil. In this case they could be carrying chemicals.

Then next to that we have the silver-topped train. Those are multi-rack auto cars. So they're carrying finished automobiles.

Next to that we have a train of covered hoppers. They're carrying grain,

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another multi-rack auto car carrying finished automobiles, and then an open hopper train carrying coal, and then finally on the far left the train carrying intermodals.

So again, all of those are different markets that railroads serve. All of those have different cost characteristics, different demand characteristics, but they all contribute to the viability of the railroads.

And that's one of the things I want to stress as I get into this, that that multi-product nature, those different markets and the variety of the markets is going to become more important in the coming decade.

The second point then is that railroads are capital intensive. And to provide context on that, if you look at all of those trains lined up, they're all waiting to get on a single track which

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runs to the east. And those oil trains are carrying shale oil to refineries in the east.

That being a single-track line means that when those trains have to go back to the west, most of them will have to go back on that single-track line, okay? And again, the congestion here is caused by shale oil.

And what happened -- and this is BNSF in this case -- is that in 2008 the entire railroad industry shipped 9,500 carloads of shale oil. By 2014, which is when this picture was taken, the industry was shipping 493,000 carloads of shale oil. So that was a new discovery.

And that put pressure on railroads which have -- in this case had a network set up to handle coal, grain, maybe intermodal, now having to carry a lot of shale oil, okay, which meant they need to raise a lot of capital and take time to do

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the adjustments that they have to do to be able to carry that freight without congestion.

Next slide. So that's the basic economics I want us to keep in mind, which is they are multi-product firms that are capital intensive. Now I'll do one slide very quickly on history.

In my report I began with 1830. And the idea there is that in 2030 railroads, the freight railroads will be celebrating their 200th anniversary. Lance Fritz this morning started at 1980, and I think that's a good point for me to start too.

And -- and the point there is that up -- in fact, right before 1980, in the 1970s there was a big railroad bankruptcy, which maybe some of us in this room actually remember, all of us in this room heard about, which was the Penn Central bankruptcy. That then threatened to

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spread beyond the eastern part of the United States to the Midwest and that forced Congress and the administration to act.

And the action they took -- this was the Carter administration who looked at the problem and said, you know, the problem with these bankruptcies is not really a problem that government can solve. It's a problem that the railroads have to solve. But they can only solve it if the regulatory framework is changed.

So the Carter administration -- actually, they were building on work that had been done by the Ford administration, so it was actually a bipartisan effort. The Staggers Act was passed. As Lance Fritz described it this morning, it was successful. It worked. Railroads responded by rationalizing their networks and increasing the efficiency of their operations.

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And I think that's point one that I would like to make, which is the policies that were developed in the 1980s, which still prevail, have worked.

Next slide. So the evidence of that, first evidence of that is that shippers have benefited. What I'm showing here is a diagram which the Surface Transportation Board puts together on a regular basis, which is an index of rail rates. And it's an index which is inflation adjusted, so it gives us a real sense of how rates are behaving.

And you can see looking at this index here that this is -- between 1985 and 2020, there's actually been a 30 percent reduction in real railroad rates. And that's to the benefit of shippers. Lance said this morning that if I go back to 1980 -- and he was right -- it goes to -- well, it's a 40 percent difference between 1980 and 2020.

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And actually Kevin Murphy talked a little bit about this earlier. If we look at the kind of steep downward slope of this line between -- in the back part of the 20th century, that's the period at which the railroads were really doing rationalization. The network in this period dropped from about 160,000 miles to 120,000 miles.

And then as we move into the early part of the 21st century, that rationalization ends. The railroad system stabilized at about 118,000 miles. Railroads are still dealing with increasing input cost. At this point the price of fuel is going up, so you see the uptick in rates. But still between '85 and 2020, there's a 30 percent reduction in the rates that they're charging to the shippers.

Next slide. Again, the 1980 policies have worked. We also see that

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workers, managers and shareholders have all benefited. So the first line here is operating revenue. Turns out that real operating revenue if we go between 1980 and 2019 -- again, this is in inflation-adjusted terms -- doesn't really change. Okay?

Now, remember, rates are going down, so the output actually increased quite dramatically. The number of ton-miles produced increased, but the real revenue stays pretty much the same. It then drops off, as expected, with COVID-19 in 2020.

Operating expenses though, this is what saved the industry, this is where the Staggers Act was right, okay, operating expenses, because of multifactor productivity gains -- and, they were, again, described this morning by other witnesses -- caused the operating expenses to drop from 70.84 billion down to 49.38

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billion in 2019. And that -- that explains the next line, which is the increase in net income.

Average annual employee compensation -- again, real terms, 0also increased, as did the return on equity. I'll come back to that at the end.

So again, the 1980 policies have worked for shippers, for workers, for rail executives and for shareholders.

Next slide. So now this is where I get to the more important charge that I had, which was to talk about the future. And so I think these next two slides are the most important.

If we were talking about the industry earlier -- and it's great fun to talk about the history of the railroad industry and its relationship to the United States economy and how, at least in the late 19th and early 20th century, railroads drove economic growth and

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economic growth drove the railroads. That's not the case anymore.

I think to understand certainly the next decade and future decades of rail -- of the performance of the railroad industry, it's the macroeconomics which is going to drive the railroad industry.

So the point of departure for the analysis that I did -- excuse me. The point of departure from my analysis here -- and I'm not a macroeconomist like Kevin Murphy. I'm not a macroeconomist. So I -- I went to S&P Global, which is a well-reputed macroeconomic forecasting firm, and also actually is the firm that was chosen by the U.S. DOT to do its freight analysis forecasts. And so they do the macroeconomic forecasts for the DOT. The DOT then incorporates them into its planning and it distributes that freight analysis framework to state and local planners. They have a good

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reputation. They know what they're doing.

And we asked them, then, to do a macro forecast in July of 2022 and then translate that into what the freight market was going to look like over the coming decade. So some quick details about the forecast.

Their assumptions are what you would expect based on what you read about now in the -- in the business press, that -- that energy prices are expected to increase based a lot on what's going on overseas. The COVID-related fiscal injections are expected to end and monetary policy is expected to become stricter.

Taking all of that into account and many other factors -- and here are the three numbers that I think matter:

S&P global predicted that the rate of GDP growth, gross domestic product, on an annual basis, so the annual growth of

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gross domestic product -- actually, their period was between 2019 and 2030 -- was going to be 2.32 percent, right, which is slow. And actually, the next couple of years we're expected to be flatter and then pick back up to sort of the normal 3 percent type average. So that's the beginning point of what's happening in the macroeconomy.

They then -- and now they're looking across all of these different commodities that are relevant to railroads and their prediction is that the growth of the overall freight market -- so that's all modes -- was going to be 0.5 percent per year between 2019 and 2030.

And so if you look at that bar chart that I have up now, that's what 0.5 percent annual growth looks like. It's hard to see. Okay? And we see that it's highways to start and then the orange piece is all of rail, so that's carload

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plus intermodal. And actually most of that is intermodal. And then the blue part is water here. Actually, air doesn't show up. Air would be in the air. It's a little white blip across the top.

So 0.3 is the second -- 0.5 is the second important number. But the really important number for our purposes is that the S&P prediction of the growth of the rail market is 0.3 percent a year between 2019 and -- and 2030. All right?

When we were being taught that it's important to save money, I think a lot of us heard the rule of 72, which was ask the bank what the interest rate is going to be and divide that into 72 and that will tell you how fast your money is going to double. So if it's 6 percent -- I'm giving away my age now. So if you divide 6 into 72 it will take 12 years for your money to double. If you divide 3 into 72 it will take -- if it's a 3 percent

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interest rate, that's 24 years. If you divide .3 into 72 that says that the railroad freight market will double in 240 years.

Now, obviously, that's not what S&P is forecasting. They wouldn't try to forecast out that far. But again, it gives us a sense that this is not a dynamic market that we're looking at. Okay?

So let's go to the next slide. And by the way, so I'm sure that knowledgeable railroad people here listening to this will say well, you're talking about the growth of tons of freight and railroads don't ship tons, they ship ton-miles. Okay? So to really make sense of this, we should be looking at ton-miles or when we ship these things -- when we produce ton-miles, we receive revenue. So we need to know what the revenue is going to be as well.

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I would say yes, that's true, certainly. And there are -- in my report I talk more about -- about those categories. But it's still the fact that the economy -- and I think S&P is right here -- produces tons of goods. Right?

And so no matter how they then translate into shipments, the railroads have to compete for those tons. And they will have to continue to compete for those tons of freight.

So now this next -- so that 0.3 is a somewhat frightening number, but the really frightening part of that is if you look in detail at what is the composition of that market, right -- and when I went through the tonnage predictions or tonnage projections which S&P provided, if you notice, in 20 -- in 2019, which was an actual, about 71 percent of those tons were bulk tons. So these were commodities that would move: coal; some percent of the

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chemical; grain that would move in bulk commodities, which we saw in that Staples, Minnesota freight yard. And 29 percent were what I would characterize as truck competitive commodities.

So that's paper, intermodal especially, food products, right, where railroads are in very tough competition with trucks to get that traffic.

Now, again, the frightening part is that when you shift over to 2030, notice that the bulk component now is 65 percent and the truck competitive component is 35 percent. And that's not a small amount if you think what percent of the 71 do I have to change to get to 65. If I still had grad students, I would have asked one of the grad students to do that. But that's about 9 percent. Okay?

And the shift in truck competitive from 29 to 35 actually means that the truck competitive piece is going up by

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about 21 percent. So the market which railroads are going to face in 2013 is significantly more competitive than the market that they faced in 2019.

And it's even a little bit more scary, because when S&P Global does its estimation, it assumes that trucks have the same competitive capabilities in 2019 with rail that they have in 2030. So it assumes that the mode shares don't change. And the Chairman asked earlier about elasticity of substitution capital to labor.

S&P -- and I think they're right here -- don't try to estimate across elasticity between rail and truck. And having tried that before myself in my career, you just don't have the data to do that in a realistic way. So they make what I think is the safe -- well, they make the assumption for projection purposes that the mode shares don't

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change. All right?

But that says railroads are going to have to run just to be able to stand on this, okay, because this 35 percent is going to be -- this is going to be a more competitive traffic mix than they have in 2019.

Next slide. And part of the reason for being concerned about this is that this is not going to be a statically competitive market. Okay? So for one thing, yes, there's limited overall growth in the potential market for railroad traffic, but if we look at the picture on the left, the kind of trucks that railroads are going to be competing with are probably going to be better.

We heard again this is morning from Lance Fritz that autonomous trucks are very close and we also have seen in our own work that most of the -- the large manufacturers are working very hard to get

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to electrically driven trucks. And that combination of autonomy and electric motivation means that their cost structure is going to be about 15 to 25 -- once they -- and this includes even having to pay for these more expensive trucks. They're going to be significantly cheaper to operate. So that's number one in terms of the competitive future.

And then the second point is that if you looked at that 0.5 percent growth in the overall freight markets, that means that truckers are going to be competing more viciously with each other. So it's going to be even harder for railroads to penetrate into those markets.

And then I do talk about this more in the report, but there's also -- certainly if you've seen the recent hearings in April by the STB -- the Surface Transportation Board in terms of rail regulation, there's every reason to

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believe that the STB is going to be more aggressive in regulating railroads than they have been in the past.

Next slide. So to summarize that really -- actually three points. But first, looking on the left, again, at these containers that -- that for railroads to compete with trucks, they will be competing with -- in a market where it's already more competitive. And that means that they're going to have to control rates. They can't, I don't think, rely on rate increases to make up the difference in any way. All right?

It's pretty hard to imagine increasing your share of these markets by increasing your rates. Right? So the pressure is going to be there's going to be downward pressure on rates.

And then the second point, if we go back to Staples, Minnesota, what was happening there is reconfiguring

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operations in a network to move oil instead of coal and grain. Here you're talking about reconfiguring a network to move intermodal containers rather than coal and grain. And certainly that's going to involve significant capital investment.

And so the -- and then the third factor, which is another thing to worry about -- this has also been mentioned -- the S&P May 2022 forecast did not forecast a recession. But, like good economic forecasters, they covered themselves and said that for 2023 and 2024 they see basically flat economic activity with some pickup in '25 and beyond.

And the history is that railroads don't do well with downturns. And even recent -- they've gotten better if you look over the past decades. But in the 2007-2009 Great Recession, revenue dropped by 22.4 percent. Net income dropped by

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20.7 percent. In 2020, the COVID-19 recession, revenue dropped by 11.1 percent, net income by 11.4 percent.

So these factors you're going to have to do price discipline. It's going to be expensive to invest and to reconfigure the network and there's still this possibility of a significant downturn.

That all says to me -- that all says to me that what railroads must do is control their operating costs. Nothing else to do but that, right? It's the only way to go, is to control the operating costs and keep prices down and to have capital available.

So if nothing -- I think what I've proved now is that economics is, in fact, the dismal science. But there's actually a more positive story that one could tell here, and I think this is a real story. And that is that railroads have the

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potential -- again, Lance Fritz mentioned this this morning -- to help some of the critical national problems, to help solve some of our critical national problems.

So one way of looking at that from an economic point of view is to say okay, let's assume -- and we can only do this by way of assumption -- that railroads actually are more than successful in competing in these markets and that 10 percent of the truck share shifts over to rail. All right?

So if we could take 10 percent of the trucks that are on the highway now and shift them over to rail, what would be the effect? A safer way of doing that economically is to say what if in the last decade, so between 2011 and 2020, we took 10 percent of the combination trucks out there on the highway and move them on to the rail network. And we did that simulation. I had help from Cambridge

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Systematics on that. And we actually had a set of cost estimates that had been done by the Congressional Budget Office by David Austin.

So a 10 percent of diversion of freight from truck to rail 2011 to 2020, but in real 2020 dollars would have saved shippers 23.4 billion over the past decade because of the reduction in cost, generated 13.2 billion in highway congestion and accident costs.

So these are the so called external effects, the advantage of moving from a more energy-intensive to a less energy-intensive mode and a safer mode, right, where you don't have to share your ton-miles with automobile drivers. It would have generated $4.6 billion a year in reduced highway maintenance cost. So that's the fiscal effect. And then finally, it would have reduced environmental costs, particulate emissions

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and greenhouse gases, which is a major, major issue, by $7.5 billion a year.

That pretty much finishes what I think the Carriers were asking me to do. There's one more point that I want to make. I think Jennifer Hamann is going to talk in more detail and with more expertise and more direct experience about this, but from an economic standpoint, it has concerned me that -- you don't want to exaggerate the level of railroad profitability. We hear these large numbers of 25 percent profit ratios and operating ratios, they're dropping down to 65 percent. And that's -- that's leading to outlandishly high profits.

The problem with that is that that's talking about profitability without taking capital expenses into account. Net income doesn't include capital expenses. Net -- net income includes depreciation, right, but it doesn't include the capital

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expenses.

And in the railroad industry -- and I looked at that -- over the past decade the amount the railroads spent on depreciation average was about $5 billion a year and the average in capital expenses was $10.5 billion a year.

So to simply use that simple profit ratio of net income to total income is -- is -- distorts the real level of profitability.

Economists certainly would prefer that you look at the net income in terms of the assets that were used to generate that income. So if you do it in terms of return on assets, the average for the railroads in 2020 was 6.7 percent. Average across S&P 500 firms is 3 to 10 percent.

So railroads are right about the middle in terms of what I would consider profitability, return on assets. You

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could also look at it in terms of the cost of getting shareholders to invest in the railroad, which is the return on equity. Okay? And there again, railroads were at 10.6 percent return on equity and for S&P 500s, the average there is 10 to 15 percent.

So certainly not outrageous in the level of profitability.

So next slide. So this is not a yard in Staples, Minnesota by any standards. This actually is a yard in Texas. And I'll end this on a personal note.

I actually as a younger person was an analyst -- a special assistant at the -- at the U.S. DOT in the Federal Railroad Administration when we basically built the case for the Staggers Act.

And the question -- one of the questions we were dealing with there was how could the railroads make up what

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looked like 2- to $3 billion -- and this was in 1980 dollars -- in deferred maintenance that they had accrued over the past couple of decades under regulation. And again, the conclusion was that they were capable of doing that, but only with regulatory reform.

If I were at the -- I'm not interested in this, but if I were at the FRA today, I would say there is a study that's worth doing, which is what will it take railroads to have the capital available to make the kinds of network configurations that they have to make to compete in this market that they're going to be facing over the next 10 -- 10 to 20 years.

And I don't think it's necessary for the FRA to do that because I think the railroads are capable of doing that within themselves right now. But it certainly involves keeping operating costs in line.

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CHAIRPERSON JAFFE: Thank you, Dr. McCullough.

DR. McCULLOUGH: Thank you.

CHAIRPERSON JAFFE: Just a few clarifiers, if I may, for my education.

DR. McCULLOUGH: Yes.

CHAIRPERSON JAFFE: On slide 6 one of the rows was labeled Average Employee Compensation. Where did those numbers come from?

DR. McCULLOUGH: Yes. Those are numbers from the Association of American Railroads.

CHAIRPERSON JAFFE: Second, I think you indicated that it was almost impossible to conceive of rates being increased by the Carriers.

DR. McCULLOUGH: That would be the rates to -- that they're going to be using to compete with trucks, right?

CHAIRPERSON JAFFE: Right. But aren't trucks currently undergoing

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pressures, both from fuel cost increases and labor cost increases, such that they're charging their customers more money?

DR. McCULLOUGH: That's true.

CHAIRPERSON JAFFE: So why can't the Carriers, if there was a need to do so, do the same thing?

DR. McCULLOUGH: So I think the Carriers -- the primary factor in the Carriers' competition with trucks is the flexibility and the level of service of the trucks.

And so I think they're not just doing -- it's not pure price competition in terms of what the Carriers are charging. And by that I didn't mean that railroads would have to lower rates. I think their existing rates -- they would not be able to aggressively increase their existing rates and compete effectively.

CHAIRPERSON JAFFE: For reasons

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other than price?

DR. McCULLOUGH: For reasons of the difference in service levels, the service advantages that trucks have.

CHAIRPERSON JAFFE: Given your indication that this is an extraordinarily capital intensive industry and business, how significant an impact on the operating costs would take place if there was an increase in wage costs?

DR. McCULLOUGH: I -- that's not a subject that I looked into in terms of my requests. There are other people who do that.

CHAIRPERSON JAFFE: That's fine. That's always an acceptable answer.

And the last question I had is with respect to your reference to investments and capital improvements and the like, are the profit numbers that we've been looking at net of those expenditures?

DR. McCULLOUGH: It depends on what

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ratio you're looking at. So -- so the operating expenses don't include the capital expenditures. That's right.

CHAIRPERSON JAFFE: The operating expenses don't, but the corporate profit numbers would already have --

DR. McCULLOUGH: So the net -- sp operating expenses do not include the capital expenditures. And, therefore, the net income, which is basically the difference between operating revenue and operating expense, does not include those expenditures.

CHAIRPERSON JAFFE: Got it. Thank you for the clarifications.

We're in good shape. Thank you, Dr. McCullough.

DR. McCULLOUGH: Thank you.

CHAIRPERSON JAFFE: Welcome. We're ready for you.

Whereupon:

JENNIFER HAMANN

was called for examination, and, after being previously duly sworn, testified as follows:

MS. HAMANN: Good afternoon. Thank you, Chairman Jaffe, Members Deinhardt and Twomey. My name is Jennifer Hamann. I'm the CFO of Union Pacific and it's my pleasure to talk to you today. There's essentially three points that I want to talk to you today and they all relate -- so there's three points I'd like to cover today and they all relate to the concept of risk.

First, I'd like to build on some of what Mr. -- Professor McCullough testified to today by outlining some of the significant and ongoing risks that the rail industry faces to future success.

Next, I would like to talk about the relationship between risk and employee compensation and our labor spend.

And then finally, I'll address the role that risk plays in the capital markets and, in particular, profit distributions such as share buybacks and dividends.

So to start with, we'll take a step back for a moment and look at the bigger picture. And as both Lance earlier and Professor McCullough just discussed, the rail industry is very capital intensive. We think of our business in terms of five critical resources. Four of the five require capital investment. And the fifth, of course, is why we're here today. And I'll address the critical role of our employees in just a moment.

But I'd like to start with the capital assets. Shown on this slide is the historic cost to acquire these assets. And because of the long life of our assets, the replacement cost is much, much higher. And that really goes to the point

that Professor McCullough was just making about the difference between depreciation that flows through our income statement and then the actual capital investments that we make.

So if you think about it -- we'll start with locomotives. Union Pacific owns or leases roughly 7,500 locomotives. And it's on the books today for an acquisition cost of 9.4 billion. If we were to replace that fleet today, conservatively it would cost about three times that amount using conventional technology.

If we, though, were to invest in more emissions-friendly technology, that number likely goes up even more. As an example, in January Union Pacific committed to purchase 20 battery electric locomotives, low horsepower switching locomotives. We plan to run those in two yards, so we also need to equip those

yards with the charging infrastructure to run those locomotives. We believe that investment will cost us $100 million for just those 20 locomotives and the associated charging infrastructure.

Our freight car fleet totals more than 50,000 cars. And that's on the books for a cost of $2.2 billion, with an average age of over 30 years. So we're actually in the process of replenishing parts of that fleet today. In 2022, Union Pacific plans to invest $252 million. And that's up threefold from what we spent in 2021 in terms of freight car acquisitions.

Of course, the largest area of investment is our track, which includes over 42,000 main line and second main line miles, as well as nearly 9,000 miles in our yards and terminals. This investment is on the books for $57 million -- excuse me, there's a B there -- $57 billion. But with a useful life of roughly 50 years,

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again, that very much understates the current costs.

So these are big numbers, maybe interesting numbers, but the question you might be asking yourself is well, so what?

Well, the so what is that we make annual capital investments. Union Pacific will invest $3.3 billion in 2022 alone. And these investments are predicated on long-term demand.

We make big risky bets in order to compete in an ever-changing marketplace, but one that has no guarantees of success.

For instance, because we are a derived demand industry, we are especially vulnerable to recessions and other economic shocks. When industrial output falls, that has as impact on our business levels. For instance, when housing starts to decline, that flows through in terms of fewer carloadings of lumber, less carloadings of roofing granules, all the

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way down to fewer container loads of home furnishings.

The start of the pandemic further illustrated how economic shocks are visited on our railroad, where we saw our loadings fall 20 percent over the course of just 60 days.

And even in a robust economy with strong demand, we see consumer preferences changing, as people are wanting to spend more on experiences versus goods and more of their paycheck is going to health care and internet services.

No different than other industries, we have to compete to both keep existing customers as well as to win new customers. And as you've heard mentioned today, that competition for freight is increasing as the cost structure of some of our competitors is changing. And autonomous trucks is a prominent example here of how competitors' costs could be much lower

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going forward. And, as Lance mentioned earlier, also, rails must fund our own infrastructure. The infrastructure of our competitors, trucks and barges, are paid for by the taxpayers.

Another change in our industry that we're dealing with are supply chain disruptions. And this is obviously a phenomena we're all familiar with. But whether it's impacting the microchip supply for automobiles, driver availability for the trucking industry, port capacity chassis supply, these all ultimately have an impact on our business, on our cost structure and on our ability to serve our customers.

We also face risks from regulatory and legislative actions, causing us to periodically adjust our business strategy to respond to those changes. As a regulated industry, we're subject to regulations that impact everything from

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how we inspect our track and our equipment to potentially forcing us to share our privately owned and maintained rail infrastructure with another railroad. Truck size and weight and emission changes could impact the rail industry as well.

Finally, the demand for rail service is not steady. Between 2014 and 2021, Union Pacific's carloadings fell 16 percent. And as we sit here today, roughly halfway through 2022, our carloadings are still not back to pre-pandemic levels.

Now, this decline in carloadings is not a function of rail service. Instead, it is a result of changing markets and demand. And so building a little bit off of Professor McCullough's testimony about diversity, I'd like to share with you a couple of recent examples with Union Pacific.

And the first is with coal. Coal

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used to be the single largest commodity hauled by the railroad industry. Between 1999 and 2009, as our coal loadings were rising and there was more demand for us to move increasing numbers of trains out of the Southern Powder Basin of Wyoming, we invested more than $1 billion to double track and, in some cases, triple track our railroad and the joint line that serves the mines.

Unfortunately, this investment coincided with a surge in natural gas supply, as well as rising concerns about carbon emissions. And the result of that? Well, for Union Pacific, our coal carloadings peaked in 2008 at just over 2.3 million carloads and at that time represented 25 percent of our book of business.

In 2021, those loadings had dropped by roughly 67 percent, or only now 770,000 carloads and roughly 10 percent of our

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book of business.

Now, in an effort to mitigate the impact of the falling coal carloadings, we did have an opportunity to ship products related to the booming shale oil and gas play, moving frack sand from Minnesota and Wyoming -- excuse me -- Minnesota and Wisconsin to Texas. Over the course of seven years, from 2009 to 2016, we invested $200 million to support this business, but again, only to see the market move away from us.

As drillers substituted local brown sand for white sand, our frack sand loadings fell by more than 70 percent, from a peak in 2014 of 250,000 loads down to less than 75,000 loads in 2021.

Now, the last point I want to make on this is something that Judy Carter also mentioned. And that is in addition to the risks of running a railroad I just described, we are an outdoor sport. So in

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addition to market risks, Mother Nature plays a role. And this impacts both our ability to provide service to our customers when lines have severed by flood or fire, but it also has an impact to our business levels when you consider the impact of drought on crop supply.

Now, in addition to the capital assets that we've just discussed, our rail employees are critical to the industry's success. And as Lance, Brendan and Judy all described, it's our great workforce that enables us to leverage our capital assets. It's the crews that drive and maintain our locomotives. It's the boots on the ground that inspect our track, maintain bridges and signal systems and it's the people that switch our cars, process garnishments, ensure accurate payroll and do all the myriad of activities that are necessary and completed successfully each and every day

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by our craft professionals that help us effectively serve our customers.

But the price of that labor must be competitive. We believe our employees should be well paid for the role that they play. And as you heard from Dr. David, Mr. Glass and others, our employees are well compensated. But I think it's fair to note that there is a difference between the compensation of our agreement and our nonagreement employees. And it's different in a couple key respects, but it goes back to the role of risk.

While labor costs are often considered to be variable, that is true only insofar as we can change head count. Wage and benefit costs are baked into the collectively bargained agreements for five or six years. And once that is set, we cannot impact those costs other than to alter head count.

And we are today being asked to

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lock in significant increases in labor rates at the same time that there is tremendous uncertainty in the marketplace. By contrast, nonagreement employees often have compensation that fluctuates due to economic and performance cycles. So company performance, good and bad, ultimately drives their compensation, at least in part.

For managers and other nonagreement personnel, this compensation model is aligned with how I just talked about capital investment and how I'll talk about shareholder returns in just a moment. In other words, they are exposed to risk.

For example, during the pandemic, Union Pacific's executives and our board of directors took a 25 percent pay cut for several months. In addition, our nonexecutive managers took one week of unpaid leave for three months. Additionally, we reached agreements with

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three of our crafts, representing about 4 percent of our workforce, to participate in salary reduction or unpaid leave, allowing us much-needed flexibility, but more importantly avoiding significant furloughs for those employees.

Of course, that's not the only driver of our nonagreement pay. There are other factors that play into it, including the market for various skills, but risk is a component.

Unionized employees have elected a different model. They do not want the same degree of risk in their compensation in the event of a downturn but then cannot be expected to get higher compensation when the company does well.

It is different, of course, if they were to negotiate for profit-based compensation. Then it would be fair for them to expect to do more when the company does well.

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The other exception is that at least at Union Pacific, Union employees have an opportunity to invest in Union Pacific stock either through their 401(k) plans or through our employee stock purchase plan, which comes with a generous 40 percent company match. And that's available -- it's been available for almost a year now, a little over a year, and we already have 23 percent of our unionized workforce who is participating in that plan and therefore is participating in the company's performance through those plans.

This next slide illustrates the very point that unionized wages are not connected to company performance. It compares the financial performance of Union Pacific to labor cost increases over the most recent contract cycle.

Between 2015 and 2019, our carloadings declined more than 13 percent.

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Now, there were numerous reasons, certainly the falloff in coal and frack sand that I just discussed, as well as lower North American auto production and then the impact of tariffs on Chinese imports.

With that reduced business level, we acted as best we could to mitigate the impact of lower loadings, but we still had a decline in our operating income of 2.4 percent. During this time, the wage and benefit costs guaranteed to our Union labor force totaled 147.7 percent, well in excess of our company performance.

As I look ahead, I see two large disconnects between the Union wage ask and what we see ahead for the rail industry and the broader economy.

First, while there will be opportunities for growth, as Professor McCullough explained, growing freight rail volumes is not going to be easy.

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And second, we are entering a time when many are forecasting a recession. Just to put a few specifics around that, a recession is technically defined as two consecutive quarters of GDP decline.

In the first quarter of 2022, GDP declined 1.6 percent. Now, we don't have final numbers for the second quarter of 2022 yet, but most estimates say that it is going to decline. In fact, IHS Markit, who is a recognized service for business information, is forecasting that the second quarter GDP will actually be down even more than first quarter, at minus 1.8 percent. And IHS Markit is forecasting that for 2023 and 2024, GDP will likely be under 2 percent in both of those years.

So then when I look at the Union wage ask from the Unions as being a 28 percent increase over the five-year period, or effectively a 31 percent

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increase when you consider the impact of compounding, the 14.7 percent that I showed on the prior slide and this 50.1 percent represents the total increase in benefits or the total ask.

So in other words, they are asking for more than three times more in this round of what they received in the prior round. Large fixed rate increases that occur contemporaneously with the onset of inflation are problematic for both sides. As our costs increase, more employees will be at risk of furlough.

Now, the last area of risk that I want to discuss is the capital markets. UP and the other Class Is are participants in the capital markets in two ways. We have stock or equity that is held by our owners. We are not owned by management. We are not owned by our board of directors. We have independent shareholders. We also have public debt

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that is held by various external parties.

Now, the participants in the capital markets, both debt and equity, do so because of an expectation for a return. They put capital into the market, but they take a risk when they do so. They do so prudently and generally after weighing tradeoffs between risk and reward.

For instance, with debt investors, they generally take on less risk because they're offered regular interest payments. And depending on the quality of the debt that they're investing in, they have a high likelihood that at the end of the debt period, they will receive their principal back.

On the equity side, there's generally considered to be a higher risk in the form of potential for capital loss; in other words, decline in stock prices, but with potentially higher rates of return.

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And equity investors have two ways basically then that they can earn a return. One is through a dividend and the other is then by selling the stock that it purchased, again, hopefully at a higher price. As a public company, we have the benefits of the access to the public markets. But that also comes with the expectation of providing returns to our investors.

In terms of accessing the capital markets, any suggestion that we don't need to because of our free cash flow is simply incorrect. I routinely go to the debt capital markets. Cash flow is not smooth. And so in a company like ours, we need to access the market in support of our operations and the capital investments that we've been describing today.

I think it's also important to point out why we go to the debt markets more regularly versus issuing equity.

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This is done because debt is generally a more economical source of funds. And as with all of our efforts to be cost competitive, we want to finance our investment activities in a way that optimizes our capital structure. With our equity owners, they expect to receive distributions of our profits. And we do this through stock buybacks and dividends.

Now, my understanding from listening to yesterday's opening arguments is that there's a perception that rails disproportionately distribute profits to their shareholders versus redirecting some of that money to labor. That logic fails to consider two things.

And the first is how we prioritize our uses of cash and capital. And just to level set, this listing of priorities that I'm about to share with you is something that we talk routinely with our owners about, with our shareholders. And that is

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that the first dollar goes back into the railroad. We do that to invest for safety, for service and to grow.

Next we pay competitive wages and benefits for our employees. We pay our suppliers for their goods and services and we pay our tax bills to local, state and federal entities. Then and only then do we distribute our profits to our owners in the form of dividends and share buybacks.

The second fact that's ignored when stating that we disproportionately favor shareholders is the reality of the capital markets that I just described and the expectations of a publicly held company and the role of risk and returns on investment. Many companies pay dividends and also have programs to repurchase their own stock.

As evidence of that, in an article in The Wall Street Journal a couple of weeks ago they reported that the S&P 500

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companies paid out a record $140.6 billion in dividends in the second quarter of 2022 and that that was a 14 percent increase from the second quarter of 2021.

Additionally, stock buybacks by the S&P 500 companies hit a record of $972 billion during the 12 months ended March 31st. And that was more than double the 499 billion that had been paid out the previous 12-month period. So these methods of returning profits are not only expected by shareholders, they are the norm.

Now, as I said at the onset, risk plays a role in the capital markets. And to illustrate the downside risk impacts that can be seen from market participants, unfortunately, we don't have to look very far.

As this slide shows you, as of July 22nd, which was last Friday, UP stock was down 15 percent. The S&P Transport

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Index was down 15 percent. And the S&P 500 was down 17 percent.

These declines effectively eliminated any stock price appreciation gained over the last 18 months, as the markets are off to their worst start in 50 years. Now, there are a variety of reasons, many have been mentioned here today, in terms of inflation, recession fears, but the why doesn't really matter.

It is the reality of the market and it further illustrates the inherent risk borne by market participants. Generally speaking, a company's financial performance is reflected in how its stock is valued in the market. Deviations in that performance, either due to market sentiment or investor expectations, can then be grounds for shareholders to demand action, which is commonly referred to as activism and something that our industry has not been immune from.

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Another recent example where market risks impacted UP shareholders was in 2020, with the pandemic hitting the global economy and, as I mentioned, our business levels. We cut our share buyback program by 36 percent versus 2019 levels and only increased our dividend distributions by 1 percent.

Market participants are rational and they understand risk. But no rational investor would make an investment without the potential for and, over the long run, the expectation of a return on that investment. And given the risks that investors take, it is completely rational to expect that they would have more upside potential than stakeholders who accept less risk.

And this is the same point I made with respect to the variable compensation for employees. If labor tied compensation to company performance, then it would be

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taking on the risk of poor outcomes and so it could expect then more upside as well. If it does not take that risk, then it is a different story.

So then in keeping with the theme of risk, I'd like to leave you with just a couple of thoughts. Union Pacific has been in existence for 160 years. Over that time, the various management teams, employees and shareholders of our company have witnessed many changes, navigated uncertain times and faced many risks.

And looking ahead, I see no reason to think that the future will be much different. In fact, by all accounts, the pace of change and the risk in business has increased. So to stay relevant and to stay competitive, we must be agile. We look forward to reaching an agreement that will pay our employees a good wage for a good job, but those wages should be consistent with the market.

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UP and the other Class I railroads should not be required to pay higher-than-market rates for labor for a fixed five-year term that limits flexibility, raises business risk and impedes our ability to remain cost competitive.

Market participants, the shareholders of the Class Is, have in some years gotten greater rewards than our employees. But that's because of risk. And as I just illustrated, those gains aren't guaranteed.

So thank you for your time and I'd be happy to take any questions if you have anything.

CHAIRPERSON JAFFE: Thank you very much. We're in good shape.

MS. HAMANN: Thank you.

MR. EASLEY: Mr. Chairman, I think I would suggest a short break at this time.

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CHAIRPERSON JAFFE: Sure. Fine. Off the record, please.

(Thereupon, a brief recess was taken.)

MR. EASLEY: Mr. Chairman, our next pair of witnesses will be Dr. Kelly Eakin and Ms. Cindy Sanborn from the Norfolk Southern Corporation. They'll be talking about railroad productivity and safety.

CHAIRPERSON JAFFE: Thank you. Could we please get the witnesses sworn in.

Whereupon:

B. KELLY EAKIN AND CINDY SANBORN

were called for examination and were duly sworn by the reporter.

Whereupon:

B. KELLY EAKIN

was called for examination, and, after being previously duly sworn, testified as follows:

DR. EAKIN: Good afternoon. My name is Kelly Eakin. I'm executive vice

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president of Christensen Associates. On behalf of the Carriers, I have prepared a report on issues of productivity and labor compensation. My purpose today is to summarize that report.

Let me begin by stating the key findings of my report. The six key findings are:

One, freight ton-miles per hour worked, the Unions' measure of productivity, is an incomplete, inaccurate and misleading measure.

Two, as an empirical matter, there is no correlation between changes in an industry's productivity and employee compensation. That is, industry productivity is not a basis for compensation.

Three, factors other than labor explain the railroad productivity changes.

Four, consistent with a competitive marketplace the vast majority of

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productivity improvements have gone to customers in the form of lower prices for freight shipments.

Five, railroad productivity improvements have been declining in recent years.

And six, future productivity gains will require substantial investment in infrastructure and technology. Above-market compensation increases could reduce funds for that capital investment and impede future productivity growth.

These findings lead me to the fundamental conclusion that productivity changes in the railroad industry do not provide a basis for determining compensation for railroad workers.

Total factor productivity is the correct measure of an industry's productivity. Total factor productivity, also called multifactor productivity, is the comprehensive measure used by the U.S.

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Bureau of Labor Statistics to monitor productivity into major sectors of the economy and individual industries.

Productivity measures how effectively inputs are converted into outputs. That is inputs, plural. A meaningful measure of productivity must consider the combined impact of all inputs, not just labor.

Total factor productivity is a superior measure of productivity because it obeys the fundamental definition of productivity. That is, getting more for less is an increase in productivity.

In contrast, the Unions' measure, output per hour worked by looking at only one input, is inaccurate and can falsely indicate an increase when productivity has actually declined and vice versa.

Total factor productivity captures the combined influence of all inputs. Total factor productivity is a consistent

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measure. When more output is obtained from less total input, total factor productivity indicates an increase in productivity. That is, total factor productivity obeys the fundamental definition of productivity.

In addition to considering all inputs, total factor productivity also captures the joint influences on economic growth of technological change, efficiency improvements in terms of scale, economies of density and other factors.

I used total factor productivity to analyze the performance of the railroad industry since it was partially deregulated by the Staggers Act in 1980. The red line in this figure shows the railroad's total factor productivity while the blue line represents the total factor productivity in the private sector of the economy.

This figure shows that the

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post-Staggers railroads have substantially outperformed the rest of the economy, averaging 2.2 percent productivity growth per year while the private sector of the economy averaged less than 1 percent per year.

But there are really three productivity stories here. The first story is the productivity spurt immediately following deregulation when the railroads averaged 4.7 percent productivity growth per year.

The second story is the productivity slowdown, 1996 to 2008, when the railroads averaged annual productivity improvement of 2.4 percent.

And the third story is of the current productivity decline since 2008, as railroad productivity has decreased by an average of 1.3 percent per year.

I will return to the productivity slowdown and decline in a few minutes.

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Now, my first key finding is that the Unions' representation of railroad productivity is incomplete, inaccurate and can be misleading. The Unions' measure is freight ton-miles per hour worked. But this -- this is an incomplete and, therefore, inaccurate measure of productivity.

By focusing on only labor, the measure completely ignores the other inputs used in production. For example, when there's simply a substitution of other inputs for some labor, then the Unions' measure would indicate productivity increase when, in fact, there's been none. The net result of the inaccuracy is that the freight ton-miles per hour worked overstates the increase in railroad productivity between 1980 and 2020 by more than 100 percent.

This discrepancy is not trivial. As shown in this graph, the inaccuracy of

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the Unions' measure is particularly noticeable during the recent period of productivity decline. The top series is the index of the Unions' measure and the lower series is the total factor productivity index since 2008.

Not only does the Unions' measure overstate productivity, but it also misleads by indicating that productivity has increased by 15 percent when it has actually declined substantially since 2008.

Furthermore, the Unions' measure could be misinterpreted. Using the common term labor productivity for freight tons per -- freight ton-miles per hour worked can leave the impression that this is Labor's contribution to productivity. This is simply wrong.

More than 40 years ago, the Committee on National Statistics for the National Academies cautioned that measures

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of output per hour of labor input are subject to misinterpretation by users who may incorrectly associate changes in these measures solely with the changing skill and effort of the workforce.

And the Bureau of Labor Statistics regularly publishes, most recently April 28th of this year, its longstanding disclaimer that measures of output per hour worked is -- in an industry do not measure the specific contribution of labor to growth in output. Despite these warnings, this is precisely the flawed measures that the Unions put forth.

My second key finding is that industry productivity and labor compensation are not correlated. As Dr. Murphy explained this morning, compensation growth is determined by the more general labor market and not by productivity growth that occurs in any particular industry or at any particular

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employer.

Furthermore, increases in productivity do not mean that the firm or industry has the ability to pay above-market wages. Competitive market pressures may cause productivity gains to be passed on to customers through lower prices.

An example that we are all familiar with -- an example that we're all familiar with is the computer equipment market. That industry has achieved tremendous productivity improvement passed through to consumers in lower prices for substantially increased computing power while real compensation per worker in the industry has decreased.

An examination of the empirical evidence confirms that there is no connection between productivity and compensation paid in an industry. What we have on this graph is a plot of the

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average annual growth rate of total factor productivity on the horizontal axis against the average annual growth in real hour -- real hourly total compensation on the vertical axis.

For the 86 industries comprising the U.S. manufacturing sector, this covers the period 1987 to 2019. Each dot represents an industry. The data are collected from the U.S. Bureau of Labor Statistics. If there were a connection between industry productivity and compensation, then industries with greater productivity growth would tend to have greater compensation growth and those with slower productivity growth would have slower growth in compensation.

That means on this graph if there were a trend, we would expect to see the dots along a straight line going up and to the right. But as you can see, the data are all over the place. Many high

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productivity growth industries have low compensation growth and vice versa.

In fact, there is no statistical correlation between industry productivity growth and compensation growth. And I also note even using the Unions' measure, similar analysis shows there is no connection or statistical correlation between output per hour worked and compensation growth in an industry. This is not a new or a controversial finding.

Over 60 years ago, the noted economist Solomon Fabricant did a similar analysis of 80 manufacturing industries between 1899 and 1953. He arrived at the same conclusion, that there is a negligible relation between an industry's productivity growth and compensation growth.

Now, let me turn to my third key finding, factors other than labor explain railroad productivity improvements.

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The post-Staggers productivity boom was caused by many factors unrelated to labor effort or skill. Specifically the productivity gains came from increased traffic volumes, reduction of inefficiencies and technological advances.

Additionally, market flexibilities and managerial efficiencies enabled by deregulation allowed substantial network consolidation and reduction in employment. Traffic volume, and particularly the shift in product mix toward western coal and intermodal traffic, was central to the productivity improvements.

Deregulation facilitated the consolidation of network and the abandonment of uneconomic routes. Technological improvements in locomotives and tracks have allowed heavier, longer trains to go farther distances. The average train in 2020 was 13 percent longer, had 72 percent more total weight

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and went 60 percent farther than in 1980.

Other technological changes, particularly in electronic track and equipment inspection, have led to operational efficiencies and improved safety. Much of the technological improvement has been embodied in new equipment that performs functions labor used to perform.

The substitution of capital for labor, coupled with negotiated changes in work rules, allowed substantial reduction in employment. All of these factors combined to enable the railroads to exploit economies of density. The railroad productivity story is about density, not labor.

Density is simply the ratio of output to network size. In this graph, output is revenue ton-miles represented by the red line. Revenue ton-miles almost doubled between 1980 and 2008, but has

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declined by almost 20 percent since 2008.

Network size is miles of road, shown by the black line. Miles of road have steadily declined, such that today there is little more than half the miles of road in 1980. Density, the ratio of output to network size, is given by the green line.

Between 1980 and 2008, railroad traffic density more than tripled. By getting more traffic on a smaller network, average costs decreased markedly. But the increase in density -- the increases in density have reversed in recent years, decreasing by 17 percent since 2008.

This is what is behind the productivity slowdown. Thus, I conclude that it is factors other than labor, primarily density factors, that explain the railroad productivity changes.

This brings me back to the productivity slowdown which likewise has

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resulted from factors unrelated to labor. As I mentioned a few minutes ago, railroad productivity growth began slowing around 1996 and has actually been in a decline since 2008. That is, in recent years, rail productivity growth has turned negative and not kept pace with productivity in the broader economy.

The basic explanation behind the productivity decline is that traffic density has decreased, the rate of technological advances has lessened and opportunities for reducing inefficiencies have become harder to find.

This bar chart shows that key drivers of railroad productivity had substantially lower annual rates of growth after 1996 than they had in the first 16 years following the enactment of the Staggers Act.

The slowing rate of employment reduction represents the largest

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differential between the boom and the slowdown periods. The other factors in this chart, ton-miles, miles of road, length of haul and train weight, all contribute directly to the measure of density.

The recent period of productivity decline largely results from loss of economies of density as revenue ton-miles have been decreasing substantially while the reduction in miles of road has been small.

Taken all together, the slowdown in these factors has slowed and actually reversed the improvements in traffic density. In a nutshell, the recent decrease in traffic density is the productivity slowdown story. Furthermore, over time, the pace of technological advance seems to have slowed and the opportunities for weeding out inefficiencies are fewer than in the

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earlier years.

To summarize, it appears the low hanging fruit of deregulation has been picked. The implication for future rail productivity growth, which I will -- this has implications for the future rail productivity growth, which I will discuss in a minute.

But first I would like to briefly touch on how the railroad productivity achieved thus far has been distributed among the stakeholders. This brings me to the next key finding, productivity improvements have been passed through to consumers.

We have a pretty good picture of the extent and the sources of productivity improvements, but where have those rail productivity gains gone? The answer is that competitive pressures have passed the vast majority of productivity gains on the customers in the form of lower freight

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rates. Adjusted for inflation, freight rates have decreased by more than 40 percent since 1980.

The productivity gains that have been retained by the railroads have allowed the industry to regain its financial health and make necessary capital improvements to foster future productivity growth. This reinvestment of the railroad's share of productivity is demonstrated in this figure.

These outcomes, lower rates to consumers, a healthy industry and sufficient investment to maintain the rail system and promote future productivity, are precisely the goals and hopes expressed by President Carter when he signed the Staggers Act.

Now, I return to the implications that productivity slowdown has for future productivity growth. This brings me to my final key finding.

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Future productivity requires substantial capital investment. The opportunities that deregulation presented to reduce inefficiencies and find new market flexibilities have largely been realized. Likewise, increased traffic density is more difficult to achieve and is currently moving in the wrong direction.

So what's left? What is left is the primary driver of future railroad productivity as technological change, much of which is embodied in new capital equipment. Achieving future productivity growth commensurate with that and the rest of the economy will require railroads to keep reinvesting in new capital that embodies technological advances.

Requiring the Carriers to pay above-market compensation because of past productivity would impede future productivity growth. First, it would

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decrease the Carriers' ability to sell finance capital investment. And second, it would decrease the incentive to make those investments, as the net benefit to the Carriers of any future productivity would be less. Accordingly, above-market compensation would have adverse consequences for continued productivity improvements.

I close my presentation by summarizing my key findings. The Unions' measure of productivity is flawed. It is inaccurate, inconsistent and can be misinterpreted. The superior measure is total factor productivity, which is a complete, consistent and it obeys the fundamental definition of productivity.

But the theory in evidence showed that the industry's productivity does not provide any basis for compensation determination. This conclusion is well-founded in labor economics and the

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empirical evidence shows conclusively that there is no connection between an industry's productivity and employee compensation.

The railroad productivity story is one of economics of density, not labor. Density economies were substantial in the early years after the Staggers Act, but are moving in the wrong direction in recent years. Most of the productivity gains have gone to customers. Those retained by the railroads have been reinvested in new technology and infrastructure that are essential for future productivity growth.

These findings lead to my fundamental conclusion. Productivity improvements in the railroad industry do not provide a basis for determining compensation for railroad workers.

Thank you.

CHAIRPERSON JAFFE: Thank you, Dr.

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Eakin.

We are in good shape. Thank you very much, sir.

DR. EAKIN: Okay.

Whereupon:

CINDY SANBORN

was called for examination, and, after being previously duly sworn, testified as follows:

MS. SANBORN: Good afternoon. I'm Cindy Sanborn. I'm executive vice president and chief operating officer for Norfolk Southern Corporation. I've been in the railroad business for 35 years. While only having worked for NS for two years, I spent 30 years with CSX in primarily operating roles. I spent three and a half years at Union Pacific and then moved over to Norfolk Southern in September of 2020.

I come from a railroad family. My parents both worked for the railroad. My father had 27 years, with a combination of

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CSX and Conrail service. And my mother had 32 with CSX and predecessor companies as well. So I've been immersed in the railroads at a very young age and have spent my career almost exclusively in the operating department. And it's a pleasure to address you all here today on this very important matter.

Today I intend to provide some real-world context to Dr. Eakin's testimony by discussing two main areas, productivity and safety.

With respect to productivity, I will be -- I will explain different sources of increased productivity for railroads and walk through some technological investments that have enabled railroads to operate more efficiently. I will also explain why it is imperative for the railroad industry to be able to continue making substantial developments into the future and I will

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preview what technology investments we will bring to life that will increase both productivity and safety.

Safety, of course, is a top priority of railroads. In the second section of my remarks I will explain the link between productivity and safety and how some specific advancements in investments we have made to increase productivity have also improved safety for our employees and the public.

First, railroads must be competitive in the transportation marketplace. This is true in many areas, such as service, and to be an investable entity. But I'm going to focus on the competitive landscape in terms of productivity.

The introduction of autonomous trucks and electric trucks are a direct threat to railroads, as each of these emerging technologies threaten the

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economic advantages that rail has over trucks. Each of these technologies are becoming more and more commercially viable, as Lance and others have noted in this proceeding.

Second, our customers demand that we improve upon the methods of moving goods on our network, providing real-time shipment visibility, as well as reliable service product. We represent a climate-friendly mode of transportation and many of our customers see great value in rail. But in order to provide that value, we must be productive so that we can charge a competitive price.

Providing a competitive service product at a competitive price must be accomplished. The good news is I don't know many excellent service organizations that are not -- that are not also productive. And rail is no different.

Third, productivity is about more

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than profit. It is also about safety. We are constantly looking to marry the best of automation and labor so that we can more effectively utilize our highly trained workforce.

There are areas where machines are more effective than people to do a repetitive, routine job and can detect things that a person cannot. There are areas where a person prioritizes, plans and completes necessary work. Their skills are critical to our success.

It is this intersection of automation and -- automation supervised and supported by a person we are embarking upon as technology evolves. I talk about putting our employees in roles that reflect their highest and best use and I'll provide some examples later.

At a high level, there are several areas railroads target to increase productivity. One is process, constantly

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developing new processes that will yield fluidity across -- and avoid congestion across our network. One example would be operating plans, changes in volumes, changes in origin to destination pairs, changes in capability within our yards and terminals.

Another area would be operating practices, the operating rules that we employ and require of our employees and the technology incorporating those rules.

Second is work rules, whether at the local or national level. One topic you will hear about in subsequent presentations is conductor redeployment. But I'll make a few comments here.

Following the point that I made earlier about finding the highest and best use of our employees, we need to move -- have the ability to move conductors and through freight service out of the locomotive cab and reposition them on the

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ground where their work occurs. This can be done safely.

This would also increase productivity. And it would increase more work schedule certainty and work-life balance as ground-based conductors would be home after their shift, something we often hear about from our existing employees and certainly from our newer employers that have less seniority.

Third is technical investments. These investments have rapidly accelerated in recent years. They're crucial to improving railroad efficiency and enhancing safety. And I will speak to this starting on the next slide, but first let me talk for a moment about capital investments in general.

Capital investments are tied to return that stems from improvements in the investment provided. We have invested in better materials. The metallurgy of rail

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today and the chemistry involved in creating the metallurgic composition is so much better than what we've had in the past.

Infrastructure and equipment, longer sidings to support longer trains that was the result of technology investments in locomotives.

We have AC technology on board our locomotives. It improves the ability for the locomotive wheel to adhere to the track and pull heavier loads. It is also much easier and simpler to maintain.

Distributed power, having locomotives distributed throughout the train in different portions of the train, maybe in the middle, maybe towards the rear, those locomotives controlled by the lead locomotive and the engineer on the lead locomotive to manage what we call in-train forces and allow us to move actually more traffic than we could prior

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to the introduction, managing those in-train forces.

Energy management systems tied into our dispatching system to ensure optimal fuel efficiency as trains are dispatched across the railroad.

Each of these investments allows us to maximize our employees' performance without compromising safety and, in many cases, enhancing safety.

When I think about the progress railroads have made with respect to productivity generated by technology, I think of three buckets: automation, mobility and predictive analytics.

In many cases technology investments also improve processes. So think of these concepts interchangeably as I describe them to you. But one point I want to make really clear. None of these investments rely on employees working harder or longer. It is not just true of

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the specific examples that I will discuss, but of any product difficulty improvements more generally.

You will notice the advances we have made enable employees to work smarter and more efficiently. When new systems and equipment come on line that require our employees to learn new skills, we train them to be sure they are knowledgeable and capable of using it.

I'm now going to spend the next three slides going into some examples of each of these areas.

The first one is automation. It's a great example as it relates to our track maintenance personnel. It is an important function for us to dump ballast rock on the track because ballast rock is what keeps track infrastructure safe for trains. The rails are securely fastened to ties and the ties are embedded in rock that keeps it from moving as ambient

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temperatures fluctuate across seasons, across geographies and during even the course of the day.

And this is a very historical example of actually how the track is surfaced back many, many years ago. Much of this has already been automated. But what I want to talk about is how we actually put the -- put the ballast rock off the track in order for mechanized equipment to come and put a surface or a leveling of that track in place, which is good maintenance practices and allows us to maintain our speeds.

If you look at this particular picture, this shows an actual ballast train. It shows its being unloaded. And you can see where the dust is in this picture. That particular car door is open and ballast is flowing out of the car along the track. So we distribute ballast utilizing our own trains.

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In the employee's hand, and the very first employee you see, in his right hand is a control device that allows him to control the opening and closing of the doors in order for -- on each individual car, one subsequent to the other -- in order to unload ballast rock.

In order to do this, this train has to literally operate at walking speed. So this employee can keep up with where the ballast is being placed and closing the doors at the appropriate time. So imagine the amount of time that it takes to unload ballast rock ahead of a team that's going to come out and surface or install ties. And we do that over thousands of miles at track at NS every year.

The change is in a completely different, more automated capability. This is also a ballast train. You don't see any personnel around it because it is using two new components that we've added

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into the technology of unloading these cars. One is GPS and having access to GPS coordinates.

Those GPS coordinates indicate where switches are, where road crossings are, where railroad crossings at grade are. And any other track features, detection systems and detectors knows where those locations are and does not dump ballast where it shouldn't be dumped based on those GPS coordinates.

We also have a series of -- it's called LiDAR. It's a very, what I call in very layman's terms, sophisticated radar which takes measurements of how the ballast is actually formulated along the tracks before the ballast is unloaded. We can figure out what that cross section of ballast looks like that is existing and figure out how much ballast literally we would need in order to allow for enough ballast to raise a track and create that

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surface.

So those two pieces, GPS and LiDAR, allow this train to operate at speeds up to 30 miles an hour, with doors opening and closing to distribute the rock in the amount needed at the precise location where it's needed.

At NS alone we have reduced in 2020 the demand that we thought we needed for ballast by 10 percent because we could more accurately place it where it was needed along the trackside and not put too much down where we didn't need it and enough where we did need it.

So this takes our employees to a place where they're able to actually perform the technical functions. This is actually under one of the rail cars and/or locomotives that have the technology and see the picture of the ballast section. This is what -- we have technically qualified employees that do this type of

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work to help set up for the performance of the ballast train ahead of our surfacing teams.

The next example is mobility. And we all see this in our personal lives, the joke of I have an app for that. We are also converting that as a real-time, very important component of our company as well and for the industry as a whole. You can see some screenshots of examples of putting information in the hands of our employees by company-provided devices. In our case at NS, it is an iPhone.

Before we would have paperwork that we needed to do or employees would have to come to on-duty and off-duty locations and interact with computers at fixed locations in order to show their time off or to talk about or declare what kind of work they had done during the course of their shift or no real-time updates and any other interaction had to be done by company

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radio.

So as we've distributed the phones, we have developed apps to install on the phone. You can see in the screenshot in the lower right, that's a screenshot of our mobile rail tool used by our transportation employees to be able to interact at customer locations, report their work, what cars they picked up, what cars they set off and now actually being able to use it on freight trains as well, grain trains that are spotted, coal trains as opposed to individual cars.

It gives real-time information, both for us and our customers, and reduces paperwork and transcribing paper or documenting from the computer paper information. It enables employees to spend their time doing the work, not typing into a computer or copy instructions onto paper.

Also in the picture the upper

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right-hand screenshot shows a shot of our internal social media application called FORGE. It allows us to communicate more effectively with our employees on a platform that is familiar and demanded by our newer generation.

I will tell you a quick story about another application that we've used called a mobile track authority. It is used by our employees that need to access a track to inspect -- we call them track inspectors -- need to have access to the track and they need to get permission for that access so that they know that there's no trains in there and no way for them to be -- for trains to come in on them so that they can actually take a slot of the railroad and be able to do -- perform their role.

We've recently -- prior to the changes with the app that we provided, you would normally need to call the train

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dispatcher at a centralized location, request time on the track between two points that you needed to inspect. And if you were able to get track time, you would literally copy down those instructions. You would repeat those instructions. You would get confirmation that those instructions were correct. It was necessarily redundant to make sure that we didn't have errors in the copying of the information. It was a safety mechanism that was very, very important to us. So we religiously followed that process.

Now with the mobile track authority, we're able to communicate wirelessly from a device in the field that the track inspector has to the train dispatcher. It actually inputs and creates the track authority for the dispatcher to approve or not approve or to adjust and then it communicates again electronically back to the tool.

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I recently hi-railed with a track inspector and I asked him, could you show me how that works and tell me what you think. And he was absolutely enthusiastic about the capability of the tool that he had, the certainty of the information that he knew was available. And he also had a screen -- screenshots of the actual dispatching screens that our dispatchers look at to be able to organize his time around when he knew trains weren't in the area and he would have a lot higher probability of getting track time. And when he knew he couldn't get track time, he would be out doing other things he could spend his time doing that were productive for him and for the company.

He showed me how it works. He talked about how input from employees was used to make a more -- or find the tool. And our adoption rate in that tool, both from the dispatcher and from our employees

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in the field, is in excess of 90 percent. It has been a very, very successful endeavor.

Slide 8, this is an area where we just scratched the surface in predictive analytics. It's about performance monitoring and fixing equipment or defects before a break or defect becomes evident.

Before we would change out equipment or material based on time or cumulative workload. Think about gross ton-miles or maybe a combination. Employees would visually look for defects on equipment in a yard where the equipment is static and not in motion. They inspect for many things, one of which is condition of wheels in our mechanical department. Defective wheels can lead to costly derailments.

So the change has been that we are predicting wheel wear based on readings from wayside detectors. We're using

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strain gauges in detection equipment on a trackside. An example is a wheel impact load detector, or WILD. Load detectors like the strain gauge are right here in the left-hand picture. They are in service at multiple locations across the North American rail network. It is an electronic data collection device that measures vertical wheel forces by a rail mount and strain gauge, which you can just see on the lower right-hand corner of that picture, and measures impact forces caused by damaged wheels.

This technology has a significant impact not only on safety, but maintenance and repair costs because it can improve the service life of wheel sets. It can detect defects that a human eye cannot see and a static environment in a yard where we otherwise would look for these defects. Since it finds defects sooner, before the wheels are condemnable, cars can be routed

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to a shop at a more convenient time for repair.

The picture on the right-hand side shows track mounted -- shows the interior picture of what those -- the technology looks like and actually in a box track side and is co-located with equipment and monitors those strain gauges.

So employees can now concentrate on repair. Trains are less likely to experience a defect requiring a car to be set out along the line of road due to defective wheels. This reduces employees from having to make repairs on line of road instead of in the yard or shop environment. We use our employees' skills to make repairs and technology to find what needs to be repaired. This also supports our customers whose car is delayed far less.

Another example of this is in our NS track department, where we are using

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models, machine learning and data science to predict rail wear in curves. Anytime you're looking for wear in rail you will find it accelerated in curves. And this is because as rail cars and engines go down the track, they want to go straight. When they encounter a curve, they're going to start to turn and pivot and you'll find that that rail on the high side, if you were to think of it being super elevated, will wear first. And it depends on curvature and it depends on tonnage in many respects.

So they are more tedious to repair because you go from this curve and it may be several miles before you get to another curve that you need to change rail. We try to use the existing rail for as long as it is economically possible and obviously safe to do so.

So we have pulled data together over many systems to analyze these

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patterns, to see if we can find common denominators that help us understand how the rail is wearing and how can we extend its life.

This has allowed us to look ahead and predict how rail wear will -- how rail will wear over five years using these many systems. We've adjusted our curve rail program to only replace a rail that had to be replaced based on this information. This freed up resources to install more rail on straight track where we have more demand for rail renewal presently at NS.

We are much more productive in installing rail on straight track. Considering both curve and straight or tangent rail renewal, we will install more rail this year on NS than we have since 1995. We will not need more people to do this. We will utilize our existing employee base. There will be a time when we have more curve rail to replace than we

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do today. We will allocate the resources to do so, but we will know we are replacing the right rail at the right time.

As Dr. Eakin's data indicated, the productivity increases resulting from existing technologies are leveling off. This means railroads need to continue to innovate to increase efficiency, which will require significant capital investments. There are no free upgrades.

A couple of examples include building out our platform that PTC, or positive train control, has provided us. You can see the PTC console on some of the equipment that we have and utilize for PTC in the left-hand picture.

PTC, as you know, was a congressional unfunded mandate to install a collision avoidance system across the industry, requiring billions in investment, 1.8 billion for NS alone.

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This PTC platform has enabled a new era of capabilities that are still being harvested requiring investment.

One example would be locomotive health monitoring, where locomotives detect mechanical issues before they occur, the ability to instrument our water -- water pressure, water temperature, oil pressure, oil temperature and finding signatures that will allow us to understand where we're seeing component failure before that component fails.

Another example is moving block to replace a fixed -- our fixed block signaling system. This in essence creates a safe zone around a train, allowing for trains to run closer together, creating capacity for more trains as we grow our business.

Final example which you see on the right is helix, which is an NS system currently in production for maintenance of

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way employees. This picture shows the digital representation of the augmented reality that the NS team will see in the future as they use this tool in the field.

It consolidates all information in one shared location and visually depicts the status of a job, meaning work job, and data associated with repairs to our workforce holding the device.

The enhanced data that is gathered trackside by our field teams will help improve our understanding of defects -- of a defect's root cause, helping us predict future occurrences.

These examples will fundamentally change the way we manage our teams, our workload, inventory and assets. It will require less paperwork, more time making repairs and less time documenting them and a clear understanding of all repairs that our employee can make in the area, reducing redundant travel time.

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Turning to safety. As I have said, many of the technological advances not only lead to improved efficiency but also to improved safety of our workers and the public. Safety is of paramount concern of all operating executives in our industry. We have an obligation to run safe and secure operations for our employees, communities and our customers.

As with productivity, much of the improvement in safety is due to the large capital investments that have been made in infrastructure, equipment and technology over the years. Data from the Federal Railroad Administration indicates that for the Class I rail industry, the overall train accident rate has decreased significantly and consistently since 1980 and the injury rate for employees is relatively low, compared with other industries, including trucking, airlines, agriculture and construction.

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These are tremendous safety successes driven by the industry's sustained investment in infrastructure, advancement of safety technology and modernization of operating practices. So here's some examples of what's next.

Here you see on the left-hand picture is another -- is a wayside detector. It inspects components as trains pass by. We looked at a WILD detector in detail earlier, but there are plenty of other detection systems on our network. The next generation of this is using machine vision to observe a passing train. This technology can photograph a moving train and provide incredible detail.

The technology can also interpret the images of the defects, which you see in the right-hand picture. It can detect components under rail cars and find defects that a human eye would likely

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miss.

We also have automated track inspection -- it is similarly important -- cameras on locomotives or rail cars finding geometry defects as the train passes over the track. A big value here is getting the data under load versus exclusively depending on visual inspection by a hi-rail vehicle putting much less weight or load on the track while passing over. So the cameras are actually seeing how the track interacts with the train as it operates over.

The data is sent wirelessly to inspectors in an office environment where data is reviewed and planning begins to initiate repairs. It will still be necessary to make visual inspection by employees, but not at the same frequency currently required, freeing up time for employees to make repairs found by the automated equipment. This also frees up

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track capacity for trains instead of reserving track time for hi-rail vehicles to pass and do inspections.

In both cases, employees fix the defects that are found by detection systems. These systems can find more than we can with the human eye and our people are -- our people are effectively used to make repairs using our employees to the highest and best use.

So to wrap up, productivity improvements will be challenged and come at a cost. As Dr. Eakin has noted, we have already done most of what can be done easily and without huge investments and/or changes to old work rules that don't fit modern operations and modern technology.

Importantly, neither current productivity improvements nor those we still hope to achieve require employees to work harder. To the contrary. Our goal is to utilize highly trained, dedicated,

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prideful workforce alongside targeted technology to improve employee safety, quality of life and service to our customers.

Putting our employees to work in their highest and best use, we can do both and make the railroad more productive and make jobs better for our employees.

Thank you.

CHAIRPERSON JAFFE: Thank you, Ms. Sanborn.

I think we're in good shape, but thank you for the presentation.

We're going to take a relatively quick break, so 10 stretching to 15, really make it 15 this time so that we can get you all out of here at an appropriate hour this evening.

Thank you.

(Thereupon, a brief recess was taken.)

MR. MUNRO: Thank you,

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Mr. Chairman. The Carriers would now like to move into our health care presentation. Because of witness availability issues, we're going to be splitting that presentation over this afternoon and first thing tomorrow.

But for today, I'd like to call back first Mr. Branon to explain the Carriers' proposals and then we have Dave Scofield, who is our health care actuary.

CHAIRPERSON JAFFE: May I ask that Mr. Scofield be sworn in, please. And I'll just remind you, Mr. Branon, you're still under oath so we don't need to administer the oath again.

MR. BRANON: Absolutely.

Whereupon:

DAVE SCOFIELD

was called for examination and was duly sworn by the reporter.

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Whereupon:

BRENDAN BRANON

was called for further examination, and, after being previously duly sworn, testified as follows:

MR. BRANON: Okay. Thank you members of the Board and thank you everybody for bearing with us through a long day. We have two more presentations and then we are, as Don mentioned, planning to wrap for the day.

So the purpose of my second presentation is to provide a high level overview of the health care environment and discuss how our national railroad health care and benefit plans operate.

I will provide an overview of our proposals. Mr. Scofield will discuss them at some further length. Before I do so, though, I'd like to make a point.

Health care in the United States is constantly changing. And in order to

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contain escalating costs and best position our members to engage with the healthcare system, we must routinely make changes to plan design and administrative practices so that the plans can evolve and adapt along with the healthcare system.

Maintaining the status quo is neither an appropriate nor an acceptable outcome. Doing so simply leaves no constraints on the plan's escalating costs and fails to keep pace with changes in the market. But this does not mean, importantly, that the plan will change what it has always been, which is a great plan with great benefits in the market that provides our employees with high quality and affordable health care.

I thought I'd start discussing our approach to the proposals that we maintain in this proceeding. We've identified the issues that we see along with proposed solutions in forming our proposals.

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First, as is demonstrated in this slide, the plan's cost-sharing is out of step with benchmarks and this contributes to the plan's inability to restrain costs. Accordingly, we propose changes to move towards these benchmarks.

Second, the cost-sharing continually erodes over time. A solution, as we see it, is to annually index cost-sharing provisions within the plan.

Third, we have a very high dependent enrollment figure and we'll discuss this a bit further. What this means is that for every employee on our plans on average, the plans cover an additional dependent above benchmark levels. And this is largely because we have a single-tier structure. So we have proposed to introduce a two-tier contribution structure.

Fourth, our pharmacy programs are -- unfortunately, they're inefficient,

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they're outdated and they're ineffective. So we are proposing to adopt updated pharmacy rules, both now and ongoing. And you will hear how this is the standard approach among plan administrators, plan sponsors and employers around the country.

And last, fifth, the Carriers and the Unions' financial interests with respect to sponsoring and administering the plans are not aligned. Therefore, what that results in is basic standard administrative changes that are available and that are widely maintained throughout the industry, throughout many industries. They're just not implemented under our plan.

And one way we see to begin to address that in this structure and in this environment is to add a provision requiring periodic rebids of the many vendors involved in delivering plan benefits under the national railroad

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health and benefit plans.

As an overview, I'll just take a minute to briefly describe our plan structure. I know, Mr. Chairman, you're very familiar with it from your past experience on PEB 243.

We have two medical plans, the national plan and a UTU plan which is the predecessor organization of SMART-TD. They have identical designs. They're jointly administered by representatives of the Carriers and the Unions. They cover approximately 325,000 members. That includes 100,000 employees, roughly, and the remaining members are the dependents of the covered employees.

There are two options in the plan. There's the MMCP, which is a PPO design that covers approximately 90 percent of our plan members, and a separate CHCB design, which is an indemnity design that's only available under our plan

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structure in rural areas where the -- where the MMCP benefits and network benefits are not readily accessible just because of the distribution of health care providers. That has the remaining approximately 10 percent of members enrolled under our plan.

There are, as you see here depicted on the slide as well, pharmacy benefits, mental health, substance abuse benefits. The plans collectively are, in turn, funded by a payment rate that is calculated on a per employee per month basis in which all Carriers who are participating in the plans pay on a monthly basis, as well as employee contribution, which under the national agreements are -- have been fixed at $229 per month since July 2016.

So as is reflected in this chart, the plan has experienced and is projected to experience significant increases in

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plan cost. At this point, looking forward to 2026, we project that the payment rate per employee per month under our plan will exceed $2,500 on a monthly basis. What that means is on an annual basis, the health care cost per employee will exceed $30,000. That's almost 55 percent more in 2026 than it was in 2020.

Yet what we see in the Unions' submissions submitted to this Board is the assertion that the Carriers' health care costs have actually gone down. That's just not the case. And what we show here is escalation, along with the freeze in employee contributions. When you account for that moving forward under the Carriers' proposal, it would provide that the Carriers' portion of the contribution, which is the payment rate less the employee contribution, would increase more than 60 percent by 2026. That's just a six-year period during the term of the

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agreement that the parties are discussing. In our view, this is what we mean when we say our costs are increasing.

So turning to history, this slide displays a key point. And I won't review all the text here. It summarized the changes that were agreed upon by the parties participating in this proceeding and ratified by the membership of these labor organizations in the prior two rounds.

We have a history of adopting meaningful changes in agreements. As I said, I won't review these details, but as is depicted from the 2010 bargaining round, the net effect of the changes that were agreed upon were equivalent to roughly five points of cost-sharing reduction from the Carriers' portion of the total cost share. And in the 2015 round, the net effect of the changes that were agreed upon reflect approximately

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four points of cost share shift.

Now, it may seem, adding these two together, that at this point the Carriers' cost share shift after the changes that were agreed upon in the prior two rounds should be nine points lower than they were going into the 2010 round. But that's not the case. And in fact, at this point, as we sit here today, the Carriers' total cost-sharing under the health care plans is exactly where it was prior to the 2010 round. And that's because of a phenomena that we refer to as erosion.

And as is reflected here in this chart, the value of the Carriers' negotiated and agreed-upon cost share changes has eroded. And that's because of two things. It's because of health care cost inflation and it's because of the fixed dollar provisions and contributions currently in our plan design.

In the Carriers' view, this two

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steps forward, two steps back approach should change. Without the ability to build upon the changes that have been made in prior rounds, the plans will continually fall behind overall trends in the health care industry and will limit the Carriers' willingness to consider enhancements of new programs and services.

So how do the Carriers propose to address this issue? Well, we propose to address it through what we call indexing.

As I mentioned, the Carriers' cost share proportion under the health care plans erodes because of fixed dollar plan provisions like we have had since 2019 and fixed employee contributions like we've had since 2016.

The Carriers are proposing to return to an historic 15 percent calculation to determine employee monthly contributions. And what this slide reflects is that between the period 2007

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and 2019, roughly covering most of the three bargaining rounds preceding this round, by virtue of the historic formula in place and the limited application of caps that were in effect and that applied under the calculations each year annually under the plan, the employee contribution reflected approximately 15 percent, somewhere roughly on average between 14 and 15 percent. And that was the case all the way up until the beginning of this round.

And what we see on this slide is that beginning in 2020 at the beginning of this round, that share of the Carrier total payment rate that was reflected -- that is reflected by the $229 per month that employees currently pay has begun to drop precipitously. It is now less than 12 percent in 2022 and it is projected to drop if the Unions' proposal were adopted to 9 percent by 2026. And it would only

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presumably continue to drop from there if that framework remained in place thereafter.

In 2026 if it were 9 percent, that would reflect one-half of the benchmark employee cost share represented by contributions of 18 percent that you'll hear Mr. Scofield discuss further in his benchmarking presentation.

So shifting gears a little bit, but staying on the topic of cost-sharing in general, alternative subject of actuarial value or AV, AV is the percentage of covered expenses paid on average by the plan at the point of service. The balance, as we refer to the percentage, the balance of that percentage to 100 percent is what the employee or the member pays in terms of co-payments, deductibles, coinsurance, et cetera.

So AV in our lingo is a measure of a benefit plan's design. And this is

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without regard to an employee contribution, which I'll get to in a second.

So currently the railroad plan's AV is 92 percent. And for reference, a platinum level plan is defined as a plan having an AV of 90 percent less two -- I'm sorry -- or less four or plus two. So that provides a range of 86 to 92 percent providing the definition of a platinum plan from an AV perspective.

At 92 percent, we're at the very top end of that platinum range. And when the round began, the railroad plan was at 90 percent. So just in the last two-plus years, the AV of the plan itself has also eroded two points.

So when you put the AV together, along with the employee contribution percentage that we reviewed just a couple slides previously, it brings you to the total cost share calculation. And as is

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reflected here, the 92 percent AV which provides the 8 percent employee remainder, along with the 12 percent employee contribution, derives the total railroad employee cost share split of 80/20.

When the prior bargaining round was resolved, the 2015 bargaining round was resolved, the effect of those changes -- while there were things moving at different points of time, but the effect of those changes was a targeted overall Carrier cost share of 76 percent.

And before I move on to a brief overview of our proposals, I'd like to turn and just discuss briefly some matters related to the plan's administrative practices.

As I mentioned before, the plans are jointly administered by representatives of the Carriers or the Unions. The NCCC is the Carriers' representative and the labor organizations

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have representatives for the two respective plans as well.

So in the Carriers' view, over the years we've proposed many basic and routine administrative changes to the plans. But often the Unions impose these changes. And in our view, they rely on excessively low thresholds and justifications for rejecting what are sensible and appropriate changes.

And why do we say that? It's because many of the things that we are proposing are the exact same sort of things that other plan sponsors and administrators are applying themselves to other health care plans.

And why do those plan sponsors and administrators -- I guess administrators in this context -- why do they make those changes? Well, they make them to adapt to the evolving healthcare system, to adopt new programs offered by claims

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administrators, the health care insurance providers, if you will.

And the result is under our plan structure, when we are unable to make sensible administrative plan changes that the Carriers bear nearly 100 percent of the increasing plan costs. Our members don't benefit from any of the changes. And we believe that this is driven in large part by the lack of a joint financial interest on the part of the plan administrators in controlling plan spending. So our proposals in part are designed to address this in a very small respect.

Turning to a brief overview of the Carriers' health and welfare proposals. The key point in all of this is that the Carriers' proposed changes in this bargaining round, when you net everything together, would reflect a 6 percent shift in the cost share from 80/20 to 74/26, a

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result that we believe is fully consistent with the types of changes agreed upon in prior rounds.

So what are the proposals? So first I'll start at the top with those top two boxes, benefit design change and employee contribution level.

The Carriers are proposing plan design changes and there are specifics associated with this in the sort of appendix of our position. But we are proposing plan design changes that would achieve an actuarial value under our plan in 2023 of 88 percent.

And as you can see on this slide, we are proposing to restore the 15 percent historic calculation to the employee contribution rate as determined by the Carriers' payment rate.

These changes will maintain platinum level benefits. They'll maintain member cost-sharing that's lower than

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Union-represented benchmarks. And as you'll hear from Mr. Scofield in particular, lower than the benchmarks that the Unions presented to us in this bargaining round but which they now ignore.

These proposals are also consistent with our recent settlements and they provide a direct and continual incentive for the joint administration of the plans to restrain health care cost inflation going forward.

They will also -- just by virtue of how we have proposed and designed them, they will address the erosion issue because they'll automatically index to maintain the established cost-sharing levels.

Second, contribution tiering. We propose to add a second tier to the employee contribution structure. Our plan is almost unique, if not unique, at least

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to our knowledge, in that we only have a single enrollment tier, considering how large of a plan we are. And whether you are covering yourself as a result or covering your spouse or covering your dependents as well, every employee pays the same monthly contribution amount.

And although the vast majority of employers when you look at the surveys have at least three, if not four, tier contribution structures, we are only proposing the incremental step of adopting initially a two-tier contribution structure where, if it's spouses enrolled under the plan, there would be a higher contribution rate. But if you just enroll yourself and your dependents, you would remain under our proposal in 2023 at the existing 229 contribution, that monthly contribution rate.

We are proposing this for a couple reasons. First, it's standard in the

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marketplace. It better allocates costs between and among the members of the plan. And it encourages spouses, admittedly, to enroll in their employers' plans, which would thereby directly begin to address one of the principal drivers of additional costs in the railroad plans, that high level of dependent enrollment.

Third, annual indexing. As I've mentioned, we propose to adjust the plan design features, but to do so in a manner that it maintains the agreed-upon cost-sharing levels. This would address the erosion issue and it's no different than what typical employers do every year under the plans that they sponsor. They make adjustments to maintain desired total cost share levels.

Continuing on with the review of the proposals. We propose to update pharmacy utilization management rules. We're doing this for a number of reasons.

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We believe we need to be following what our plan's pharmacy benefit managers recommend now and in the future going forward. That's what the vast majority of employers do.

Our current pharmacy utilization programs date from 2012. They haven't changed. Despite massive changes in the prescription drug and pharmacy benefit industries, we are literally ten years behind where we should be on these programs.

Importantly, modern and updated pharmacy utilization management programs would promote the safe and cost effective delivery of pharmacy benefits to our members to ensure they get the right drug at the right time and in the right quantity. This includes adopting the appropriate set of programs like prior authorization, step therapy, quantity management and things like an advanced

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opioid management program, things that most, if not -- you know, vast majority of employers do with their plans because they leave those decisions to the experts at the pharmacy benefit management programs. Our plan doesn't currently do that.

We believe these are very sensible and appropriate programs. They reflect the market approach. And this is also not something that we as plan sponsors or plan administrators would directly participate in, in these decisions. The programs, as they set up by the PBMs, are driven by experts, medical experts, who determine how and why to best structure the way in which pharmacy benefits are administered to members under these benefits.

Next, site of care management. The Carriers propose a program that encourages the use of freestanding facilities rather than costly outpatient hospital settings for certain procedures and services.

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These type of facilities provide much more efficient costs and they often produce better health outcomes.

This is a perfect example of how we believe we can partner in plan design changes to drive cost avoidance through structuring incentives for members to make better decisions about how, and in this case specifically where, to best engage with the health care system.

Next, competitive vendor bidding. Okay. The Carriers propose to require periodic bidding of all plan vendors. We have a broad set of vendors who are engaged by the plans to deliver the robust set of services that our members receive and enjoy and then bargain for under the plans.

And frankly, we don't think that this is something that should have to be hardwired into the plan. It's something that administrators do routinely all the

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time to rebid vendors. You're not going to get the best price for the services in this market unless you're routinely rebidding these services. But it is an example and one that would be effectively transparent to members of administrative practices in which we struggle to get agreements in the regular course of business.

And last, and certainly not least, the Carriers are also proposing to enhance several existing benefits, things that we have not done in many, many rounds, covering autism, hearing, hospice benefits, as well as increases to dental and vision coverages. These are the types of enhancements that reflect investments in the plans that we can and will continue to do when we achieve the right overall approach on an ongoing basis to addressing health care cost inflation going forward. As the market evolves, we evolve and we

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evolve in ways in which we can further invest in the plan.

Finally, the Carriers are also proposing a prescription drug copay assistance program. Programs such as this would reduce copays on certain drugs to zero dollars under our proposal while maintaining plan cost. Mr. Scofield will discuss this further, but you're asking how do you do this. Well, when you work with the PBMs, you can structure such a program to provide win-win outcomes for employees under certain conditions and for certain medications to get those appropriate drugs for no copay and it saves the employee and it saves the plan.

In conclusion, as we've considered what our proposals would be and should be at this stage of the process, one of the things that we've done is we've considered how prior PEBs have addressed the same or similar issues. And we feel, frankly, at

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least certainly in our modern history, that there's no better example of this than what PEB 243 did. And as is reflected in this chart, our proposals today align with much of the reasoning that PEB 243 applied in recommending a settlement based on the company's proposals in 2011.

So as you'll see here, first the Carriers' proposals rely on benchmarking to establish appropriate cost-sharing levels. In PEB 243, the Board relied heavily on the same type of benchmarking that the Carriers provide here, particularly the Kaiser Family Foundation survey.

Second, the changes that the Carriers propose will restrain the growth of cost. Again, in 243, the Board explained that the Carriers' proposals were necessary there to restrain increasing health care costs.

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Third, the Carriers' total proposed cost share change of six points is consistent with the outcome in prior rounds, including in PEB 243.

Fourth, the Carriers' proposals include benefit enhancements and shared savings as we've structured our overall approach. PEB 243 supported the same type of quid pro quo nature of the Carriers' proposals. And there, not every proposal that the Carrier made has shifted cost and not every proposal that the Carriers are making here will shift cost either.

So fifth -- and you'll hear further about this from Dr. Dana Goldman tomorrow, who is one of our planned health care expert witnesses -- modeling using the plan's own data establishes that our proposals will reduce utilization, but to do so without a negative impact on health care. Similarly, PEB 243 cited the Carriers' expert analysis favorably in

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this regard.

And sixth, the Carriers are proposing to address inadequate pharmacy management rules. In PEB 243 the introduction of pharmacy management rules were supported by the Board.

So in conclusion, this is a summary of the reasons why the Carriers believe our proposals are not only fair and appropriate, but why they're necessary in the current environment to ensure the plans remain consistent with benchmarks, to continue to provide great benefits to our employees, but to do so in a more cost effective overall manner that better restrains health care cost inflation in the future.

Mr. Scofield is going to testify after me. I mentioned Dr. Goldman is going to testify tomorrow as well. And I'm happy to take any questions from the Board.

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CHAIRPERSON JAFFE: I would normally pose some, Mr. Branon, but I think I'd prefer to hear from Mr. Scofield and then perhaps some of them, because of his status as actuary, if nothing else, may be more appropriate for him. If not, there will certainly be an opportunity for you or someone else on your side to address the questions that we pose.

MR. BRANON: Absolutely. Fair enough.

CHAIRPERSON JAFFE: Thank you, sir.

Whereupon:

DAVE SCOFIELD

was called for examination, and, after being previously duly sworn, testified as follows:

MR. SCOFIELD: Good afternoon, Mr. Chairman and members of the Board. My name is Dave Scofield and I'm happy to be here today. I'm a consultant and an actuary. I previously worked with the consulting firm Willis Towers Watson for

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about 35 years and now have my own consulting firm. I've supported the NCCC and the NRLC since 1995 and I've been involved in the last four bargaining rounds, including arbitrations and PEB proceedings.

I'll address two topics today, first the benchmarking analysis and the results and second the details of and rationale for the Carriers' health and welfare proposals.

You will hear the word benchmarking a lot this week, in fact, this afternoon. Simply put, to benchmark is to evaluate or check something in comparison to a standard. And a standard is an idea or thing used as a measure, norm or model in comparative evaluations.

The benchmarking report in the Carriers' submission was authored by me and Ian Duncan. Ian is a renowned actuary professor and thought leader in all

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aspects of risk assessment. The written support and submission includes many details. This afternoon I will address the highlights and key takeaways from that report.

The key features benchmark -- excuse me. The written report in the submission includes many details. This afternoon I will address the highlights and key takeaways from that report.

The key features benchmarked the importance of these features as they contribute to cost and the high level results are shown on this slide.

Benefit design richness measured by the actuarial value, or AV, in combination with employee contribution cost-sharing, define the total cost-sharing of a health care benefit. Total cost-sharing, in combination with average family size or covered members per employee, drive plan costs per employee.

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The railroad plans exceed benchmarks in each of these areas, whether considering Nonunion or Union plans. In using terminology created by the Affordable Care Act, or ACA, and now commonplace in modern health care vernacular, the plans are at the highest end of the platinum coverage level and will soon exceed that level.

I'll now go through the details of these findings. This slide summarizes the cost-sharing benchmarks related to actuarial value, the employee contribution percentage share and the total cost share. Each chart shows four bars: the broad benchmark, the union benchmark and two references to the railroad plan value.

The 2022 railroad value is shown, as well as the projected 2026 railroad value. The projected 2026 railroad value is important for the Board's consideration because this represents where the railroad

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plan value will be in 2026 if changes are not made in this round.

The 2026 railroad value reflects the estimated impact of erosion that occurs with the passage of time, as Mr. Branon explained earlier. We chose 2026 because that is the earliest possible year that changes likely could next be made, given the railroad bargaining cycle.

The railroad plan AV exceeds the benchmarks. Member contribution cost-sharing as a percentage of plan costs reflected in the middle box is far lower than benchmarks and will soon be at or below 50 percent of those benchmarks. Similarly, considering the combination of AV and member cost-sharing -- member contributions, excuse me -- in other words, total cost share -- the plan will soon be at or around 50 percent of that benchmark as well.

A critical point for the Board to

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consider is this:

The Union plan benchmarks shown here were primarily taken from the same exact surveys -- same exact survey sources that the Unions presented to the Carriers during two and a half years of bargaining from 2020 through early 2022. The Kaiser Family Foundation survey, the National Compensation Survey and the Willis Towers Watson Financial Benchmark survey were each referenced by the Union bargaining coalitions in a number of meetings.

As recently as January of this year, just six months ago, the 86.5 percent Union AV benchmark on this screen before you was presented by the CBC Unions' expert to the Carriers as an appropriate benchmark for Union employees. Now, in their submission from last week, the Unions have disregarded the benchmarks they presented during bargaining and have now taken a new approach. I will address

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this new approach shortly.

In addition to the benefit values just considered, here are benchmark comparisons related to plan enrollment and annual plan cost per employee. The railroad plans have a covered member to employee ratio far higher than benchmarks. This is a result of two factors, the richness of the benefits, which certainly entices members to enroll, but also the extremely rare one-tier contribution -- one-tier employee contribution which creates no barrier whatsoever for employees to enroll additional dependents.

According to Willis Towers Watson, the railroad covered member to employee ratio is in the top 1 percent of their survey. The top 1 percent. And the combination of the higher than benchmark benefit value and higher than benchmark enrollment levels drives the annual cost per employee to far exceed all benchmarks.

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A second critical point for the Board to consider in this regard -- is in regard to the representation of plan cost. The Carriers have shown you in their submission, as well as in Mr. Branon's presentation, plan cost metrics on a per capita basis or, more specifically, on a per employee basis.

Using a per capita measurement is a universal standard for conveying cost information regarding the population covered by a health plan. It's a universal standard. For example, on a per employee basis, the plan cost has increased by about 35 percent from 2015 to 2021, or about 5 percent per year. Clearly costs are going up.

The Unions, however, have crafted their argument on the fiction that costs are going down. Just one example of this is Cheiron's statement on page 1 of their report. They state that the Carrier

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health care cost change between 2015 and 2021 is a decrease of 4.7 percent, not the 35 percent that it actually is.

So how did the Unions get this number? They disregard the universal standard per capita costs and look only at aggregate costs. And they do this consistently throughout the report. Not only is this highly unusual, it's extremely misleading. Plan trend or any other qualitative -- excuse me -- quantitative health plan performance metric is always made on some form of per capita basis.

Here's another point to consider:

Notice that when describing railroad employee health care costs and how much they claim that those costs have grown over recent years, Cheiron reflects that on a -- well, a per capita basis. If they were to reflect the employee cost increase on an aggregate basis like they

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did when describing Carrier health care cost changes, employee costs would also decrease over that same time frame.

So why does Cheiron use a per capita when considering employee cost changes and aggregate when considering Carrier cost changes? I don't know the answer, but I can guess, I suppose. I urge the Board to ignore any reference to plan cost change over time that is expressed in the aggregate and is not presented on a per capita basis. Admittedly, sometimes it's hard to tell the cost basis from the comments in the Cheiron report.

To understand the Carrier proposal for employee contributions and tiering it is very important to consider benchmarks for tiering and how monthly contributions for those tiers are typically applied.

We present here two key benchmarks to recognize. First, it is nearly

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universal to apply a tiered contribution such as structured because employees covering more dependents will likely have higher costs and should contribute more toward their health care than an employee with no dependents.

That arrangement allocates costs more fairly, as Mr. Branon mentioned earlier. Far and away the most common tier structure is four-tier. You can see that on the left-hand side of the page showing the breakdown of how tiering works. This is a broad-based PwC survey and not one respondent in their entire survey reported a one-tier contribution structure.

Second, it is also nearly universal for the tiering to reflect a buy-up for the coverage of a spouse. That buy-up cost for spousal coverage, as highlighted by the red ovals, is in the range of 150 to $200 per month. This practice is

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employed to encourage spouses to enroll in their own employer's health care plans. Note that the PwC survey is a broad-based survey, while the Willis Towers Watson data reflects unionized employees.

The lack of spousal buy-up contribution drives the high levels of dependent enrollment we see in the plans and, by extension, a very high level of cost. In short, in large part because it costs nothing additional to enroll a dependent or spouse or child, employees do so at a rate that far exceeds all benchmarks.

Finally, note the level of employee contributions on the right-hand side of this page, particularly for family coverage, which can be described as 425 to $450 per month. This is based on 2021 -- excuse me. This is based on 2021 survey data. So for purposes of comparison to the current railroad environment and the

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Carrier proposals that you'll see, we can assume that these amounts would rise to around 450 or $500 per month by 2023.

We focus so heavily on family coverage because actual plan census data shows that 55 percent of current railroad employee -- the current railroad employee population would be enrolled at the family level.

Health care benchmarks presented in the Carriers' submission were taken from the largest, most respected sources available. The seven surveys on the left side of this page are routinely used for this exact purpose for benchmarking efforts. The Carriers also benchmarked against certain features of the Federal Employees Health Plan, which is the largest employer-sponsored plan in the world.

The right side of this page shows the survey sources that present data for

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the health care benefits for Union employees. And while the Carriers continue to view the broad survey benchmarks to be the most representative for the purpose at hand, we consistently present the Union benchmarks for completeness. The Unions themselves describe three of these four surveys, as shown in the red font, during negotiations as good benchmarks for Union workers, that is, until the submissions prior to this proceeding.

Unions have now departed from the benchmarking approach they used during negotiations. In the Unions' submission, the Board will see that the Unions are now claiming two new things.

First, they suggest that a proper AV benchmark be determined by 11 commuter rail organizations.

Second, that status quo is the post-pandemic standard, meaning that no

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change to health care cost-sharing is now the standard. No change. We will address these one at a time, first regarding the benchmark comprised of 11 computer rail organizations.

The Unions have cherry-picked these 11 individual employer plans to offer at least one plan option that has a high AV. Probably not a coincidence. Benchmarking is not the right description for what the Unions are doing here.

Not only do the Unions cherry-pick the employers with high AV plans, they also cherry-pick the plans within the benefit offering for those employers that use -- that they use as comparators. Almost all of the employers here have multiple benefit options that employers -- that employees can choose from, and it appears that the highest AV plan option was selected as the benchmark every time. What should we call this? Cherry-picking

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within cherry-picking? Who knows?

Just to give an example, the Cheiron analysis claims to have selected the plan option most like MMCP; in other words, one would think, a PPO. But for the Los Angeles MPA, Cheiron's report shows the plan data for an HMO with a 99 percent AV when the L.A. MPA also offers a PPO that, at quick glance, appears to have an AV much lower than the HMO.

The next point, there's nothing unique about these 11 organizations with regard to crafts like electricians, machinists, boilermakers, sheet metal workers, et cetera. The broad-based survey would be a more appropriate -- would be more appropriate for these multi-industry trades.

Third, these 11 organizations are regional and concentrated in urban areas. The Carriers have very few employees in

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many of these locations. This type of geographic disparity is important. The plan should be compared, at least in part, to employer plans that cover a nationwide workforce.

And lastly, it's only 11 employers. In our view, that doesn't come close to constituting what one would consider a benchmark for this purpose. The Board should recognize the value, breadth and appropriateness of the benchmarked sources used by the Carriers for health care benchmarking just as it did in PEB 243.

With respect to their status quo argument, the Unions provided the board with 17 MOUs, or memorandum of understanding, that contained very little information regarding health care benefits. For the most part, those MOUs simply state that participation in health and welfare benefits will continue or contains other vague language related to

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benefits.

The Unions have not provided the underlying CBAs or the underlying plan documents. In any event, the Board should not -- should note the following:

With respect to several of the MOUs provided, it does not appear that the relevant Unions actually negotiate over benefit design, meaning that the plan sponsor can change benefits at any time. This clearly does not establish a market approach of status quo.

For instance, a few of the MOUs relate to participation in a Taft-Hartley-like design, whereby the Union simply bargains for participation in the fund and the amount that the employer contributes to the fund. These MOUs indicate that contributions will remain the same unless increases are needed, but the language is referring to the employer contribution, not the employee

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contribution. The underlying CBA in this case explicitly gives the fund the discretion to change the plan design and to increase employee contributions. Clearly no guarantee of status quo.

Others involve participation in a state-run health plan that covers all state employees. The Unions don't even -- don't negotiate for these benefit designs either. Again, this is not a guarantee of status quo.

Also, a couple of the MOUs provide for participation in the national railroad plan, the one we're speaking about this week. In a few minutes I will go through the details of the Carriers' health and welfare proposals, which clearly do not reflect status quo.

In summary, hand-picked MOUs for small railroads where governmental agencies that say very little about health and welfare benefits are not enough to

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establish that maintaining the status quo, i.e., no cost-sharing increases, is the norm.

Avoiding erosion -- here we go. A final consideration before we move on to the Carrier proposals is in regard to erosion. Mr. Branon earlier described the phenomenon of the erosion that occurred with fixed dollar cost-sharing features. Conceptually this is not an issue unique to the railroads. The phenomenon of erosion affects all plans.

However, other plans avoid erosion by making annual changes to employee contributions and benefit design features. A couple of points of evidence among many others available are provided here.

The left-hand chart shows the maintenance of and, in fact, a slight decline in the employer portion of total health care -- the employer portion of total cost share over time. This is from

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a longitudinal look from 2015 to 2021, using the broad-based results from the annual Willis Towers Watson survey.

The right-hand chart shows the maintenance of and, in fact, the slight decline in the employer portion of plan cost-sharing reflecting employee contributions over time. This is from the National Compensation Survey data developed by the Bureau of Labor Statistics, again for the time frame 2015 to 2021.

Significantly, this survey reflects cost-sharing for unionized workers. It is clear that employers, both Union and Nonunion, make changes to their health care plans to maintain cost-sharing percentages over time.

To summarize the benchmarking findings, the plans have lower member cost-sharing than all benchmarks and are at the platinum level and rising. The low

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cost one-tier contribution drives extreme spouse enrollment and plan cost. Plan changes are made less frequently than is common among other employers. And as such, the plans suffer from erosion that other employers avoid by making annual changes.

Lastly, plan costs exceed all benchmarks. And as Mr. Branon pointed out earlier, Carrier costs have and would certainly continue to rise sharply under status quo. Certain of these costs have not been declining under any reasonable interpretation.

This concludes my discussion of benchmarking. I'm going to move to the Carrier proposal unless the Board would like to ask some questions on benchmarking now.

CHAIRPERSON JAFFE: Be happy to hold them, if you don't mind, for when you're done so that we don't piecemeal it

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inappropriately.

MR. SCOFIELD: Okay. Sure.

CHAIRPERSON JAFFE: Thank you.

MR. SCOFIELD: So now the Carrier proposals.

As Mr. Branon described, the Carriers have seven health and welfare proposals. I will go into the details of each of these and also present the rationale for each of them as well.

The current plan benefits and the Carrier-proposed benefits for 2023 are shown here. This is also included in the Carriers' submission. The columns show MMCP in network, MMCP out of network, which comprise the PPO plan and CHCB features.

These proposed 2023 features were developed to result in an 88 percent actuarial value. For this calculation we used a sophisticated pricing model based on actual plan cost data for 2021, the

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framework for which has been used by both parties for pricing design changes over the past couple of bargaining rounds.

All proposed benefit features are shown here, except as noted by the asterisks in the row related to certain outpatient procedures. I will address those asterisks in a few moments when I discuss the Carrier proposal for site of care management.

The rationale for the Carriers' proposed plan design -- so I went through its benchmarking. The 86.5 is highlighted and the Carriers' proposed 88 percent is also shown. That 88 percent is still at the platinum level and is still higher than the benchmarks. Note that as Mr. Branon said, the platinum level of coverage is defined by the Center for Medicare and Medicaid Services, or CMS, as a health plan with an AV of 90 percent with an acknowledged allowed range of plus

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2 percent to minus 4 percent. So the platinum level range is 86 percent to 92 percent. The Carrier proposed 88 percent is well within that definition.

I'll also note that at the time that the Unions presented the 86.5 percent AV Union benchmark during the last bargaining meeting before mediation began, they also presented another benchmark based a much smaller cohort, the Willis Towers Watson survey. This additional benchmark reflected a transportation Union cohort, or, in other words, a subset of the larger Union cohort. That AV benchmark was 87.9 percent. The Carrier proposal at 88 percent is consistent with that figure.

The Carriers' proposal for employee contributions is to develop the contributions through a two-step process. First, apply the historical 15 percent employee contribution formula that, as

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Mr. Branon described earlier, was used under the plans during the time frame of 2007 to 2016. This produces a dollar amount representing 15 percent of the Carrier total monthly payment rate.

The second step is to separate that dollar amount into tiered contributions. This slide on the screen shows how the 15 percent formula works.

This reflects the calculation that was used the last time the 15 percent formula was applied under the plans. We simply add up the Carrier monthly payment rates for medical, dental, vision and life and AD&D insurance and take 15 percent of that Carrier total payment rate.

In 2026 that yielded $228.89 -- Mr. Branon's presentation rounded it to 229 -- per employee per month. As was described earlier, this contribution amount is still in effect today.

The rationale for this employee

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contribution proposal is benchmarking and our past practice. This slide shows the broad survey benchmarks the FEHB result and the Union survey results. Note that each of the separate Union surveys shows 18 percent employee cost share on contributions.

As I noted before, three of these Union surveys were referenced by at least the CBC Unions during negotiations. Those surveys are shown in the red box. The Carrier proposal of 15 percent is less than each benchmark.

The Carrier proposals to develop a two-tier contribution after the 15 percent formula is applied to develop the initial one-tier contribution amount, akin to the development of the $228.89 cents we just discussed, would be based on the Carrier 2023 payment rates. Note that we since don't yet know the 2023 payment rates, the employee contributions on this slide are

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all estimates. These rates won't be finalized until the fall. Actual 2023 employee contributions will be developed once those final rates are known.

Tier 1 contributions would apply to employees that do not choose to enroll their spouse in the plan. Employees can enroll any dependent children that they have. For this tier, the Carriers propose to maintain the current $228.89 employee contribution today.

The Tier 2 contribution would apply to employees that do choose to enroll their spouse. Similar to Tier 1, employees that have dependent children could also enroll them in this tier. Tier 2 will have a higher contribution than Tier 1. And together, the two contributions will balance to the composite rate based on the percentage of employees with and without a spouse.

So, for example, in the 2023

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column, $295 is the result of the 15 percent formula. The Tier 1 contribution is a given at $228.89. And then based on the proportion of employees with and without a spouse, you can determine the $321 as the Tier 2 contribution.

So you can see the difference between Tier 1 and Tier 2 is a spousal buy-up monthly contribution. The buy-up monthly contribution for adding a spouse, as shown here, is $92 for 2023 and $137 by 2025.

During the benchmarking presentation I noted that the typical buy-up for spousal coverage is 150 to $200 per month. The plans will get there gradually under this approach. And note that the projected Tier 2 contributions here are far lower than the 450 to $500 that are typically charged for family coverage per the benchmarks we looked at

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earlier.

The rationale for the two-tier contribution proposal is benchmarking, plus an additional cost and enrollment component. The benchmarking evidence is clear. Tiered contributions are a nearly universal practice, as is applying a contribution buy-up for spousal coverage.

Under the railroad plans, spouses have the highest cost per member among employee spouses and children. And if a spouse is working, they will likely have health coverage available through their own employer. Note that 71 percent of employees under the plans currently cover a spouse. For reference, under the benchmark plans, spousal enrollment was only 45 percent in the broad-based populations and 51 percent for Union populations.

The Carriers make their annual indexing proposal in order to avoid the

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erosion in the AV that would otherwise occur over time if the cost-sharing were static. The Carriers' indexing proposal is specifically to increase the MMCP in network individual deductible by $50 per year and the out of pocket maximum by $500 per year, beginning in 2024.

The index amounts -- the index amounts of deductibles and out of pocket maximums for MMCP in network family coverage, MMCP out of network coverage and CHCB coverage will be determined by maintaining the existing relationship to the MMCP in network coverage.

For instance, the MMCP in network family deductible is twice the individual deductible. Therefore, the annual index amount for the family deductible will be $100; in other words, two times $50.

The rationale for the Carriers' indexing proposal is threefold. They will maintain the bargained for AV on an

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ongoing basis, creating similar results to the typical employer that is able to make changes each year to avoid erosion.

Second, changes will be more gradual than if they were made only every five years, as has historically been the case in our bargaining process.

And lastly, it will eliminate the inequity that exists today where the Carriers have no way to recapture the value of health and welfare changes between the time the round begins and the date changes are effectuated. For instance, this round began January 1, 2020. If some changes are made January 1, 2023, the Carriers get no value for 2020, 2021 and 2022 and no way to recapture this value. This contrasts inequitably to the retro wage amounts that employees typically receive.

Mr. Branon mentioned the pharmacy utilization or UM programs in the

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Carriers' proposal. The Carriers feel very strongly about this, and so I'm going to go through this in quite a bit of detail.

The Carriers propose to update the pharmacy UM program. To be clear, the Carriers are not proposing anything new, but simply to expand upon the rules we now have. The rules, both current and proposed updates, fall into three categories.

The first is prior authorization. Prior authorization is a process through which the prescriber must get authorization from ESI to prescribe certain medications. The problem is that many medications developed since 2012 for which a rule is available at ESI and would be important for member safety have not been introduced. This makes no sense. I'll give you a couple of examples.

Anti-inflammatory medications are

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used to treat rheumatoid arthritis. Two important drugs that are subject to prior authorization today are Humira and Enbrel. The authorization process simply confirms that the drugs are not being prescribed for an off-label use, which is a use that is not approved by the FDA, or not being used in combination with another biologic, which can be dangerous.

Otezla and RINVOQ, two new drugs, they do the same thing as Enbrel and Humira, have the same safety concerns, but the plans do not require prior authorizations for them. But they should. Again, this makes no sense.

A second example relates to diabetic medications like Trulicity and Ozempic. There are, again, rules that could apply but that do not, despite ECI's, the plan's pharmacy benefit manager, recommendation to put a rule in. Authorization here confirms that the

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patient is over 18 because these drugs can damage internal organs in younger people and to confirm that it's being used to treat type 2 diabetes, not type 1. These drugs are not made to treat type 1 diabetes.

The two other rule categories are step therapy, which requires that a patient try an initial medication before moving on to another, and finally, drug quantity management, which just ensures the dosage prescribed is at FDA-approved levels and at a cost effective strength.

The Carriers are also proposing a program that includes prior authorization and drug quantity management specifically for opioid medications. It's called the advanced opioid management program.

Contrary to what the Unions have asserted in their submission materials, the opioid epidemic is not under control and it's getting worse. Our country

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suffers 100,000 overdose deaths a year, 70 percent of which are from opioids. This AOM program supports safe prescribing of opioids and gives members essential resources in the event that dependency develops.

The Unions have pointed out that the opioid program would not save the plan money. Fair enough, but the Carriers nevertheless feel that this program is important to support the safe prescribing of opioids.

But to be perfectly clear, this program will safe lives. Determining which drugs are subject to UM rules should be an activity that is part of standard administrative practice. The Carriers have tried to work with the Unions outside of bargaining on an administrative approach on this issue, but the Unions have not been cooperative and the process is a slow one.

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Accordingly, the Carriers urged the board to recommend that all existing UM rules be implemented and that all future UM rules recommended by ESI be approved. ESI, after all, has an expert committee of physicians and pharmacists that are best suited to determine which drugs should be subject to UM.

The rationale for the pharmacy UM proposal is the current program is outdated. It reflects rules that were in place by the predecessor company to ESI when it was implemented back in 2012. The program is also ineffective. Five of the top ten drugs by plan spending have rules available that have not yet been implemented by the plans. That represents 10 percent of total pharmacy spending.

Also, most of ESI's customers have UM rules to impact twice as many prescriptions as the plans have. Pharmacy rules are designed to help members. They

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avoid unwanted outcomes, control cost while using safe and effective medications and provide needed resources.

Next, the Carriers are proposing what we call the site of care management program. For context, certain services can be in some cases provided at either a hospital or a freestanding facility. The problem is that the hospital setting is far more expensive and can lead to poorer health outcomes primarily due to infection. The way to address this situation is to give members the information and the financial incentive to select the appropriate site of care.

The Carriers are proposing prior authorization and specific additional copays for the use of an outpatient hospital setting when a more efficient and safer setting is available. Our goal is that members will avoid the additional copay and will receive information from

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the medical vendors explaining where the available freestanding facilities are.

And one important note:

If a plan member seeks prior authorization and there's not a freestanding facility within a reasonable distance of that employee's home, they will be approved to receive the service in the hospital setting without the additional copay. The prior authorization here is not authorizing the use of the hospital setting, just whether the additional copay applies or not.

The reason the Carriers are proposing the site of care management program is clear, and this slide speaks for itself. Everyone probably can't read this, but we show three groupings of bars. The bar on the left shows the cost in an outpatient hospital setting. The bar on the right shows the cost in a freestanding facility.

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The plans have high utilization in each of these service categories in a hospital setting. The cost disparity is very striking. Under the Carrier's proposal, plan members who go to a freestanding facility will not only avoid the additional copays, they will also pay significantly less in coinsurance.

There are several third-party vendors who provide services to the plan. With the exception of pharmacy and care management services, both of which have been bid within the last five years, none of the vendors have ever faced a competitive bid for services from the plan.

As Mr. Branon mentioned earlier, conducting periodic competitive bids for plan service providers is administrative practice. Most employers conduct rebids every three to five years to ensure that fees are consistent with the market.

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However, the Unions have shown very little interest in participating in administrative practices that are intended to avoid wasteful spending. Accordingly, the Carriers propose an ongoing requirement to conduct competitive bids for all plan vendors.

Here are the details:

Either co-chair of the plan committee -- that is, labor and management -- can request a rebid once every standard contractual term, usually three to five years, depending on the vendor. The plan committees will then conduct the rebid and decide either to stay with the incumbent or transfer to a new vendor.

If the Carrier and Union representatives of the committees disagree over the results of the rebid, either party can request a decision from a neutral. The parties will then implement

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the selection. Of course, any savings from the competitive bid will be shared with plan members through the 15 percent contribution formula.

Now, in their submission, the Unions appear to argue that the Carriers are attempting to somehow negate a determination made in a prior arbitration that involved alignment of the current medical vendors, alignment meaning where in the U.S. those medical vendors are available to plan members. That is not what the Carriers are proposing.

What the Carriers are proposing here is simply to require the same type of periodic competitive bid for all plan vendors that normally would be considered routine. This is a basic aspect of responsible plan management.

Finally, the Carriers are proposing to improve upon existing coverages and adding new programs to reduce prescription

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drug costs for members and the plans.

First, on the medical benefit, limitations related to autism spectrum disorder would be removed and applied behavioral analysis be covered, subject to standard medical management procedures. And maximum coverage dollar limits for hearing benefits and hospice benefits would be increased to market levels.

Second, under the pharmacy benefit, the plans would adopt a copay assistance program. Under this program, the plans take advantage of manufacturer coupons to lower the member copay to zero on certain drugs and use the remaining value of the coupon to reduce the plan's cost.

Finally, under both the dental and the vision benefits, annual limitations and allowances will be increased to market levels. The specific dollar increases are noted in the Carriers' health benefit submission.

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If the Board were to recommend the Carrier health and welfare proposals in totality, the result will be a high value H&W benefit package. It would reflect platinum benefits, below 15 percent employee contribution cost-sharing, modest employee contribution tiering, pharmacy rules to protect members, site of care management to promote safe and efficient care delivery and vendor bids to ensure proper pricing of services.

Thank you. Those are my prepared remarks.

CHAIRPERSON JAFFE: Thank you, Mr. Scofield.

I'm not going to say I have a few because I have more than a few. And I'm going to apologize up front. There's a lot of material you covered and a lot of areas.

Let me start with the slide on page -- Slide 14, if I can. I'd like to

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confirm that at least I understand some of the assumptions that are baked into that proposal.

MR. SCOFIELD: Yes. So --

CHAIRPERSON JAFFE: With respect to the Tier 1 --

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: That is an uncapped 15 percent based on the projections of cost?

MR. SCOFIELD: Yes. That's the Carriers' proposal.

CHAIRPERSON JAFFE: Okay. And that assumes no changes to the existing plan at all or it assumes some or it assumes full adoption of the Carriers' proposal?

MR. SCOFIELD: This assumes full adoption of the Carriers' proposal.

CHAIRPERSON JAFFE: Okay.

BOARD MEMBER DEINHARDT: Can I make sure I understand the question?

CHAIRPERSON JAFFE: Please feel

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free to. Go right ahead.

BOARD MEMBER DEINHARDT: You said Tier 1 is uncapped or Step 1?

CHAIRPERSON JAFFE: Step 1.

MR. SCOFIELD: Step 1, yes, the 15 percent application to the total Carrier monthly payment rate.

BOARD MEMBER DEINHARDT: Okay. Well, when you're talking about your Tier 1 --

CHAIRPERSON JAFFE: That was me.

BOARD MEMBER DEINHARDT: -- an employee without a spouse, your proposal is that it would stay capped at the --

MR. SCOFIELD: Actually, that's true. Yes, that's true.

BOARD MEMBER DEINHARDT: Okay. I got it.

CHAIRPERSON JAFFE: I used the wrong word and, in fact, he understood me.

BOARD MEMBER DEINHARDT: Now I understand.

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CHAIRPERSON JAFFE: By me. My apologies.

BOARD MEMBER DEINHARDT: Thank you.

CHAIRPERSON JAFFE: Okay.

Did you have projections on what an uncapped 15 percent would look like if there were no changes to plan design?

MR. SCOFIELD: I do not have that done, but it's easy enough to come up with, yes, sir.

CHAIRPERSON JAFFE: Fair enough.

Let me shift to now the Tier 1, Tier 2 -- Step 2 --

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: -- to use the right label.

By freezing the category of employee or employee and dependent children at the 228.89, if I followed the explanation, Tier 2 is actually not a 15 percent of projected cost for employee and spouse or employee with family.

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MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: It was actually reverse engineered to make up the difference of the freeze --

MR. SCOFIELD: That's correct.

CHAIRPERSON JAFFE: -- is the way I understood the explanation.

MR. SCOFIELD: Yes, that's correct. And it's based on current enrollment statistics of 29 percent of employees that do not have a spouse and 71 percent of employees that do have a spouse. So if you weight those -- the Tier 1 and the Tier 2 contributions you get back to the Step 1 number.

CHAIRPERSON JAFFE: Right. And does this envision this proposal, if we were ultimately persuaded or the parties ultimately adopted it, that this would be recalculated during each of these three years because if this were adopted and if your assumption for the reasons for

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proposing it are correct, one would expect that 56 percent family and 15 percent additional employee and spouse figure to drop?

MR. SCOFIELD: That's --

CHAIRPERSON JAFFE: Which would then reengineer with even higher numbers for those who are left in the category, right, because they'd be picking up all the shortfall in a smaller group?

MR. SCOFIELD: I think there's a couple ways, though, to look at that.

You know, in the short term, the contributions for the Tier 2 level will -- I mean, you can see how we've projected them at least here. They don't get exceedingly large. And the gap between Tier 1 and Tier 2 is not that large so as -- you know, we don't know how many spouses will drop due to this, but at some point they will.

CHAIRPERSON JAFFE: Does this

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calculation assume 71 percent spousal enrollment for all three years or does it do something else? That's really where I was trying to go.

MR. SCOFIELD: I understand.

Yes, I think in -- in reality, it would have to be recalibrated. I did not make any assumption for the change in the 29/71 for the purpose of this estimate.

CHAIRPERSON JAFFE: And on all of these, all I'm trying to do is understand the proposal.

MR. SCOFIELD: Absolutely.

CHAIRPERSON JAFFE: I'm not trying to indicate anything else --

MR. SCOFIELD: I understand.

CHAIRPERSON JAFFE: Fair enough.

Your observation that this is still a lot lower than the 450 from the surveys is largely a function of the difference in percentage cost share, right, of those plans?

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MR. SCOFIELD: Yes, and the degree of tiering also, because, you know, you saw how low the employee only contributions were with the benchmarks. You know, that in totality lets you charge more of families.

The thing we were trying to balance here is, you know, recognizing that the population has been at, you know, a flat contribution for quite a while and realizing also that if we put in a tiered contribution people with families would pay more, we were trying to, I guess you'd say, ease into it and, you know, not -- you know, to get it introduced, but not have it be too shocking. That's how we came up with this.

CHAIRPERSON JAFFE: And I can appreciate that, although the real impact is to actually make it greater than what a full 15 percent would be for those categories, right?

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MR. SCOFIELD: Excuse me?

CHAIRPERSON JAFFE: It would be greater than what a 15 percent would be for those categories alone because you're making up the difference of the freeze calculations for the singles?

MR. SCOFIELD: I think what happens when you go out over time and how many spouses leave the population, yeah, that would certainly lower the base cost to which the 15 percent would be applied to.

You know, it's my view that this would not cause a tremendous enrollment shift as it stands right now in -- in thinking that some shift would occur and the parties would reassess this during the next bargaining round with more updated information on what actually occurred with the shift -- you know, the potential shift in spouses.

CHAIRPERSON JAFFE: Let me shift gears a little bit, although stay on the

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spouse or non-spouse coverage aspect, if I can.

MR. SCOFIELD: Okay.

CHAIRPERSON JAFFE: Are the Carriers concerned about -- primarily about spouses who are enrolled in this plan because there's no extra cost to do so, but who are foregoing coverage from their employers, shifting the cost to the plan, or is this something that applies with equal rationale to spouses who are enrolled and who have no other coverage, they may not be employed at all? There you don't have a shifting of cost, but you do have costs.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: And I'm trying to understand whether the more focused problem is the one that's the primary one generating the proposal, if you know, or whether it's a question of overall cost, which is something different, at least

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analytically, right?

MR. SCOFIELD: Yes. So if this is the question, the proposal is that all spouses enrolled would create the Tier 2 contribution requirement. The goal certainly is that -- I mean, it's twofold, you know, to allocate costs more fairly. But the important reason to do that is, as you mentioned, if spouses have other coverage available, you know that -- and recognizing that our spousal enrollment is so much higher than every benchmark, it's at least in part due to this situation where there's no -- you know, no incentive not to enroll all your dependents.

CHAIRPERSON JAFFE: And are you aware of any data or studies, informal or formal in nature, that would suggest what proportion of the spouses currently enrolled in the plan, either out of the 15 percent employee and spouse or the 56 percent family, are spouses that have

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coverage elsewhere and have passed on it?

MR. SCOFIELD: I have researched that and considered that it could be, you know, upwards of half the spouses. But I also recognize that the railroad population, you know, is demographically maybe different than others. Maybe, you know -- the thing I don't know is whether the railroad population has more spouses than other coverage just in general, not even regarding the health plan. But -- and they may have fewer spouses that work. But I don't have any solid data on that.

CHAIRPERSON JAFFE: Fair enough.

So at least at the moment we can't quantify that aspect of the proposal --

MR. SCOFIELD: We can't, although in reviewing detailed claims data, we do see the presence of coordination of benefits that would indicate dual coverage. So we know that it exists, at least in the case where there's some dual

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coverage going on. We have no idea how many spouses forego their coverage to enroll in this plan.

CHAIRPERSON JAFFE: You anticipated my next question. So there it was.

There's really three categories, right --

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: -- those where spouses have coverage elsewhere and you're coordinating and those I assume the spouse's coverage is primary and you folks come in secondarily, right?

MR. SCOFIELD: Yes. And just thinking through that, those spouses must have a plan that also has a low contribution because why would you get double coverage when you have the railroad plan for no additional contribution. So they must be enrolled in other rich benefits as well is my guess.

CHAIRPERSON JAFFE: Fair enough.

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And in your review of other plans generally, have they addressed that problem by way of either spousal surcharge or in some other ways?

MR. SCOFIELD: I'm certainly aware of spousal surcharges. No one that I have ever worked with have -- has implemented one, although -- you know, this doesn't have the exact same effect but, you know, as you can see, we're isolating the spouse with the additional contribution, but as you mentioned, collecting all spouses rather than just those with other coverage available.

The trouble -- you know, the Carriers have discussed this quite significantly. The trouble with the spousal surcharge -- I don't know if you'd call it trouble, but it's kind of an honor system that is very difficult and, you know, unpleasant to police.

CHAIRPERSON JAFFE: Absolutely.

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MR. SCOFIELD: Yeah.

CHAIRPERSON JAFFE: Fair enough.

Just one more spousal issue and then I'm going to move to other areas of the proposal.

The high rates of spousal coverage in the plan, do you know whether that is something of longstanding fact or whether it is a more recent trend in terms of the percentages?

MR. SCOFIELD: I don't have longitudinal data for that, although I will tell you this, that the railroad covered member to employee ratio has always been on the high side. Back before 2010, the ratio was somewhere around 2.8 to 1. And then with the passage of the Affordable Care Act, and coverage of departments up to age 26, it added a considerable number of eligible dependents. And that's in large part why we're up to the 3.2, 3.25 level. But I do

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think it has been a longstanding phenomenon, but it's been since 2010 that it's as high as it is.

CHAIRPERSON JAFFE: Let me shift gears if I may, to another area.

MR. SCOFIELD: Sure.

CHAIRPERSON JAFFE: In the appendix of the materials that had been forwarded to the Board before our hearing today, at page 14 of the Appendix 2-1 for any of the counsel who want to follow, in your July 11th memorandum there's a note that under current plan provisions only 47.2 percent of employees reach the deductible. And I want to make sure that at least we understand what that means and don't have a misimpression.

Does that mean that because they haven't hit the deductible in the year, they receive no benefits from the plan or are there certain benefits that they do receive, even though they haven't hit the

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deductible? And if you could clarify which ones those are.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: Thank you.

MR. SCOFIELD: So the plan has two types of approach to services. Some services draw copay.

CHAIRPERSON JAFFE: Right.

MR. SCOFIELD: Other services draw a deductible and coinsurance. No services currently draw both. So office visits, you know, specialist's office, urgent care, emergency room, all pharmacy, those are all covered by copays. So an individual could have, say, a low -- like a $200 claim that is applied to the deductible, but they don't reach the -- the deductible limit, but have other services that would have copays apply to them.

CHAIRPERSON JAFFE: Okay.

MR. SCOFIELD: So that's not saying

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that the 46 or -7 percent don't get any benefits of the plan at all. They just haven't hit the deductible.

CHAIRPERSON JAFFE: I was simply trying to get it clear, because with the proposal you estimated that would drop to 40 percent --

MR. SCOFIELD: Yes, because the deductible is higher.

CHAIRPERSON JAFFE: -- that would reach it and 60 percent would not. I just needed to understand.

MR. SCOFIELD: Yep.

CHAIRPERSON JAFFE: Fair enough.

If somebody has not reached the deductible, are they eligible for drug benefits?

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: I would have thought that too, but I wanted to clarify.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: Fair enough.

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MR. SCOFIELD: The drug benefits and any service under the medical plan that draws a copay, those are completely --

CHAIRPERSON JAFFE: Right. And they all have copays. Got it.

MR. SCOFIELD: Yeah. For office visits and such things, yes.

CHAIRPERSON JAFFE: Let me shift gears, if I may, to the prescription drug proposal and to utilize advanced utilization management rules.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: And I had a couple of clarifying questions, if I may.

In your memorandum you list a number of drugs specifically because they were high cost and not covered. Trulicity, Ozempic, Dupixent, Vyvanse and Jardiance.

MR. SCOFIELD: The drugs in the middle box here where we said five out of

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the top ten drugs by plan spending, they're not implemented yet, yes.

CHAIRPERSON JAFFE: Are those all recently developed drugs so that the reason they weren't covered is because they didn't exist when the rules were initially adopted?

MR. SCOFIELD: Yes. So if you watch TV at all, you see these drug names on the commercials all the time.

CHAIRPERSON JAFFE: Sorry. Not so much.

MR. SCOFIELD: But if you did, you'd know all of those. You wouldn't know what they did, but you would have heard of them.

CHAIRPERSON JAFFE: I plead guilty. I looked them up so I would know what they did. Fair enough.

So under the existing program, unless the drugs are specifically listed, they don't receive the benefit of

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utilization management even if it's not advanced utilization management?

MR. SCOFIELD: Yes. I'll explain it as best I can, because I have to admit it is a little confusing.

So the rules went in back, you know, at the time frame of PEB 243. And at the time, Medco was the pharmacy benefit manager. The plans didn't adopt every single rule, but almost all of them. We were advised by at the time the clinician who was working with the plans and that clinician recommended most of the rules didn't think that a handful of them mattered that much. So that was what happened.

And then the way it's been administered over time -- and it must be part of a collective bargaining rationale somewhere -- new drugs generally do not get added to the -- to the rule list and it's -- and that's the case, yes. So most

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new drugs do not get this rule process applied to them.

CHAIRPERSON JAFFE: That's fine. And the proposal that you have relative to AUM would continue that, so that if there are new drugs that are for the first time approved by the FDA and prescribed by doctors in 2024, for example, whatever you adopt wouldn't be able to pick them up until the next go-round of bargaining or is this proposal one that would treat that differently and allow for some midterm analysis and treatment of those new drugs?

MR. SCOFIELD: Yes. So the care proposal, to be clear, it is to implement all the rules that are available to ESI today and, as new rules become available and ESI recommends them to the plan, to implement them as soon as is practical. I don't know if that means immediately in the middle of a year or at the start of the next plan year, but as soon as you can

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so we don't have this problem of having to have labor and management decide what to do and then they don't decide it and then we get into the situation where we are now where it just doesn't make any sense.

CHAIRPERSON JAFFE: Okay. And with respect to the cost aspects associated with advanced utilization management or even the current program, is the proposal one that would allow that to be changed by the pharmacy benefit manager or would the plan have to determine both the number of levels you had and then the dollar amounts of the copay for each of those levels? Because the AUM you have adds a new level of specialty drugs that I don't think exist currently and has a significantly higher copay or deductible for it, right?

MR. SCOFIELD: Well, I think it's two separate pieces. The Carrier proposal on the design -- I can go to it if you would like -- but it had -- it includes a

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fourth tier --

CHAIRPERSON JAFFE: I saw it.

MR. SCOFIELD: -- that would apply to specialty, although that is not structurally linked to the rules at all. The rules are separate and would -- I mean, you're right. You know, the rules apply largely to specialty medications. But that's on the prior authorization side. Other -- other rules, drug quantity management and step therapy, they apply more broadly to medications that have, you know, like on the step therapy, generic equivalents that are effective.

CHAIRPERSON JAFFE: Got it.

Still on drugs for the moment, although I'm close to being done with that. The copay assistance program, did you have any estimate of how much the savings would be to the plan or to participants if that were adopted?

MR. SCOFIELD: Well, there are

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different manufacturer copay programs that are out there. So the impact, I think, would vary significantly, depending on which one you used. But my familiarity with these, it works like this:

It doesn't apply to that many drugs, but the drugs that it does apply to are extremely expensive. And, you know, there are complicated plan design changes that are required to make it work. But the end result is that the employee copay would go to zero.

But I don't have any estimates presently on any specific copay assistance programs that we would look to. That would be something to have to fill in the blanks on.

CHAIRPERSON JAFFE: Fair enough.

BOARD MEMBER DEINHARDT: Can I ask why that copay assistance program has to be negotiated if it's just that employees don't have to pay anything and the plan

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doesn't have to pay anything?

MR. SCOFIELD: I don't want to get in trouble on this, but I think most things --

CHAIRPERSON JAFFE: It's not his area.

BOARD MEMBER DEINHARDT: Okay.

CHAIRPERSON JAFFE: Let me shift gears away from prescription drugs, if I may.

The 2020 and 2021 increases in cost that the fund has, in fact, experienced were fairly significant. And the question I'm going to pose, if you know -- and if you don't, just like the others, that's certainly an appropriate response too, Mr. Scofield.

How much of that is a function of COVID and related both care utilization, long case exposures, serious case exposures, dot, dot, dot? There's a whole series of things we could put in after

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that, right?

MR. SCOFIELD: Yeah. So as best as I can tell, the impact that COVID had on the plans is, of course, like everyone else. In the second quarter of 2020, costs went down because people were staying home. And, you know, there were a lot of predictions on what was going to happen. But now that it's gone or for so long, my view is that COVID has definitely contributed to the escalated cost of the plans. There's been a lot of, you know, COVID cases. You know, not all -- you know, certainly not all of them go to be large claim cases, but, yes, it has had, I think, a fairly substantial effect.

CHAIRPERSON JAFFE: And do the estimates take that into account and assume it's going to continue, not continue or it didn't really affect what assumptions you're making with respect to cost escalation?

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MR. SCOFIELD: It greatly affected assumptions. And the -- you know -- the parties, at least the NCCC, I know, spoke in great detail to the UnitedHealthcare senior actuaries. UnitedHealthcare does a lot of administrative functions for the plan that are separate from health benefit administration.

And we were in touch with the most knowledgeable actuaries on these topics. And at the time we had their best recommendations, but no one predicted that it would last as long as it did.

And so -- so to answer your question, we tried and I think, you know, like many, didn't get it quite right. But that happens all the time on stuff.

CHAIRPERSON JAFFE: Yes, it does. Fair enough.

Second cost question in the aggregate. Did you see an increased -- significantly increased number of people

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on COBRA following the initial furloughs and/or -- I'll use the word departures because I don't want to get into this whole quit thing in this question.

MR. SCOFIELD: No, not to my awareness.

CHAIRPERSON JAFFE: Okay. Fair enough.

Because I've read at least that they had very different experiences in terms of utilization for people on COBRA versus --

MR. SCOFIELD: Okay.

CHAIRPERSON JAFFE: I've read that there were some very significant differences in utilization from people who were participating on COBRA for a whole variety of reasons we don't need to address now. But if there were large numbers of people on COBRA, it could potentially have an aggregate effect of significance. And I was just asking --

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MR. SCOFIELD: It's possible, but I'm not familiar with that. I don't think it was a terribly important factor.

CHAIRPERSON JAFFE: That's fine.

The site of care management, a couple of questions, if I may, with respect to that as well.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: First, is there any estimate of a cost savings or, conversely, the costs of not adopting?

MR. SCOFIELD: So that's a tough one. So what we know is how many of these services occur in the outpatient setting. What we don't really know is how many of those services are in a geographic area where there actually is an available freestanding facility that could be used.

So I don't know the answer, but if you look to this and try to make assumptions about either how many additional copays you'd collect or, you

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know, better, how many would -- would shift services from the site of care that they're using on the outpatient hospital side to a freestanding facility, which we have done, in the modeling, you know, that we have done we've assumed $25 million of total savings to the plan.

But that is based on looking at all the utilization that we see, taking different assumptions of what we think could happen and, you know, it comes up with a number that we feel comfortable using, but admittedly, it's not clear.

CHAIRPERSON JAFFE: That's fine. And you gave me an order of magnitude anyway, which is fine.

With respect to site of care, just so I understand fully, I'm going to give what I hope is an okay, simple hypothetical just to kind of understand it a little bit better.

One of the site of care facilities

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might be a group of physicians that are performing surgery in their own offices, for example, at a clinic connected to their offices. Would the plan's expectation be if this were adopted that if I have a surgeon who only goes to the hospital that I would wind up paying the additional costs if I passed on a site of care for a different doctor who was running a clinic, so to speak?

You understand the question?

MR. SCOFIELD: I do. I do. So the site of care additional copay as proposed by the Carriers would apply that copay first if the member had reasonable access to a freestanding facility and chose to use the hospital instead. It wouldn't apply to anyone on inpatient or emergency room basis. So it's only applying to what you might call -- not elective, but where there's a choice of sites to choose from and they choose to go to the hospital,

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then the copay would apply.

CHAIRPERSON JAFFE: Got it.

So if there were medical reasons requiring it be done -- the procedure be done in the hospital, that wouldn't be --

MR. SCOFIELD: Yes. Our last exception is for situation-specific issues, yes.

CHAIRPERSON JAFFE: I'm in the homestretch.

BOARD MEMBER DEINHARDT: But under the Chairman's example, if you had a doctor that you were working with, a surgeon, and that surgeon only would do it in the hospital, you're going to be on the hook for the extra copay?

MR. SCOFIELD: Well, if there's a freestanding facility in your location and you have access to --

BOARD MEMBER DEINHARDT: But you can't use your own doctor?

MR. SCOFIELD: Well, other than in

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the situation-specific issues, because if it's -- I mean, this isn't all spelled out yet. But, you know, we've envisioned the issues that would arise with this. At the same time, we recognize the -- you know, what we see is what could potentially be a major source of waste. I think it's possible that it's just because employees don't know of their options in many cases. So --

BOARD MEMBER DEINHARDT: Okay. Thank you.

CHAIRPERSON JAFFE: And two more clarifiers, you'll be happy to hear. And thank you for the assistance.

With respect to competitive vendor bidding, is there anything in the proposal that addresses not changing the underlying coverages in any way? Because different health care providers or vendors of services, right, often approach similar situations in somewhat different, but

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perhaps, comparable or maybe not comparable ways, right?

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: So I don't know whether what was envisioned here was that it had to be at least as good or better in all aspects or whether it had to be comparable or whether there were no criteria at all affecting the ability of the plan trustees to change vendors with whatever the resulting impact was on the participants.

MR. SCOFIELD: I think the idea here would be to not infringe on the collectively bargained agreed to, you know, plan design and other features that are set forth in the collective bargaining agreement.

If you switch vendors from, you know -- like with the medical vendors, the large ones, you know, you might have a difference in provider network, but not a

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terribly huge difference in other administrative aspects.

So I think that what we envision is, you know, that would certainly be part of the bid criteria. If there was something that had to be changed that was so drastic from the current approach of an existing vendor, I think that would come into the decision process on whether that vendor could be utilized.

CHAIRPERSON JAFFE: Fair enough.

And the last one I have, I want to clarify I'm not asking you the legal question of who has to do any negotiation or the like. That's not your wheelhouse. I'm just asking what the proposal provides for.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: If we were inclined to adopt the -- keep the plan at 88 percent actuarial value and look at that at whatever the interval is, annually

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or otherwise, that may well require changes in plan design by definition.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: Is the proposal one that would allow the trustees to determine how to reach that, in short, what areas of plan design to change? That's question one. And then I have a second one in followup --

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: -- but it's with the same limitations.

MR. SCOFIELD: Yes. So if I understand correctly, this -- this is the Carriers' proposal for indexing. So the thing we're trying to accomplish with indexing is to avoid the erosion that occurs when you have the fixed dollar cost. There are multiple ways that you could offset erosion.

So another example of a way that you can do it, I worked with a large

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employer in the past that simply applied a trend-like increase to all their fixed dollar copays and deductibles and out of pockets. It accomplishes the same thing. It spreads the cost-sharing increase over more features, so it's -- so that -- so, for instance, the deductible out of pocket maximum increase would be less, but the copay increases would be something.

So this is the Carrier proposal, although admitting that there are other ways that this could be done if -- if desirable.

CHAIRPERSON JAFFE: And I was asking a slightly different question, although I appreciate the response.

MR. SCOFIELD: Okay.

CHAIRPERSON JAFFE: One can get -- if you need to reduce from some higher number to 88 in order to maintain that or avoid what you have labeled as erosion --

MR. SCOFIELD: Yes.

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CHAIRPERSON JAFFE: -- one aspect to get there is to focus on employee payments towards the health care that they're obtaining.

MR. SCOFIELD: Yes.

CHAIRPERSON JAFFE: The other is to go ahead and change the design of the plan in some other way that may not involve employee payments, right?

And my question is not what was desirable, not what was lawful, none of that. I parked all those on the side for purposes of my question. It's simply does this proposal leave that to the trustees to determine or is there some other mechanism for performing that benchmarking built into the proposal, if you know?

MR. SCOFIELD: I -- I think the way the Carriers have approached this achieving the 88 percent AV, that is a statement of what the plan design cost-sharing achieves.

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So it hadn't been contemplated that -- I mean, although the Carriers do have other proposals that save costs that you might call efficiency proposals -- like the site of care is a perfect example. The pharmacy drug rule is another efficiency proposal where, you know, you save money from the plan, but people don't have to pay more. So we have envisioned those.

But it -- to my knowledge, there's been no thought yet about offsetting or -- yeah, offsetting the 88 percent with some additional efficiency. That's not to say that that hasn't been thought of when I wasn't in the room though.

CHAIRPERSON JAFFE: Got it.

That's certainly enough for purposes of today. I thank you very much.

MR. SCOFIELD: Thank you.

CHAIRPERSON JAFFE: May I assume my Board members are good?

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Thank you very much, Mr. Scofield. And let me thank the rest of the room for indulging because I know I kept you later.

Mr. Munro, is there anything else that we were going to accomplish this evening before we stand in adjournment to 8:00 a.m. tomorrow?

MR. MUNRO: I certainly hope not, Mr. Chairman.

CHAIRPERSON JAFFE: With that, we're off the record.

Thank you, all.

(Thereupon, at 6:19 p.m., the proceedings were adjourned, to be reconvened at 8:00 a.m. on Tuesday, July 26, 2022.)

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CERTIFICATE OF NOTARY

I, MISTY KLAPPER, the officer before whom the foregoing arbitration was taken, do hereby certify that the proceedings which appear in the foregoing arbitration was duly taken by me in shorthand and thereafter reduced to typewriting by me; that said arbitration is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this arbitration was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Dated this ____ day of ______________, 2022.

____

Misty Klapper, RMR, CRR and
Notary Public in and for the
District of Columbia

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