

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)

Held at: Grand Hyatt Washington
1000 H Street, N.W.
Washington, D.C. 20001

VOLUME II

Monday, July 25, 2022

8:01 a.m. EST to 6:19 p.m. EST

Reported by Misty Klapper, RMR, CRR

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<p>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):</p> <p>DONALD J. MUNRO, ESQUIRE JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 (202) 879-3939</p> <p>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</p> <p>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</p> <p>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</p>	<p>TABLE OF CONTENTS</p> <table> <thead> <tr> <th>WITNESS</th> <th>PAGE:</th> </tr> </thead> <tbody> <tr><td>Brendan Branon</td><td>112, 495</td></tr> <tr><td>Lance Fritz</td><td>147</td></tr> <tr><td>Kevin Murphy</td><td>178</td></tr> <tr><td>Ken Gradia</td><td>225</td></tr> <tr><td>Jesse David</td><td>245</td></tr> <tr><td>Jerry Glass</td><td>288</td></tr> <tr><td>David Allen</td><td>322</td></tr> <tr><td>Judy Carter</td><td>353</td></tr> <tr><td>Gerard McCullough</td><td>379</td></tr> <tr><td>Jennifer Hamann</td><td>413</td></tr> <tr><td>B. Kelly Eakin</td><td>440</td></tr> <tr><td>Cindy Sanborn</td><td>462</td></tr> <tr><td>Dave Scofield</td><td>523</td></tr> </tbody> </table>	WITNESS	PAGE:	Brendan Branon	112, 495	Lance Fritz	147	Kevin Murphy	178	Ken Gradia	225	Jesse David	245	Jerry Glass	288	David Allen	322	Judy Carter	353	Gerard McCullough	379	Jennifer Hamann	413	B. Kelly Eakin	440	Cindy Sanborn	462	Dave Scofield	523
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<p>CONFIDENTIAL PROCEEDINGS</p> <p>CHAIRPERSON JAFFE: On the record, please.</p> <p>Good morning, everyone. We're ready to start the Carriers' case. At your convenience, Mr. Munro.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>1 Brendan Branon is the chairman of the</p> <p>2 National Railway Labor Conference and the</p> <p>3 principal spokesperson for the carriers in</p> <p>4 this bargaining round.</p> <p>5 CHAIRPERSON JAFFE: And I assume</p> <p>6 that counsel would prefer to have</p> <p>7 witnesses sworn in?</p> <p>8 MR. MUNRO: We hadn't discussed it</p> <p>9 but that's fine with us.</p> <p>10 CHAIRPERSON JAFFE: That's fine.</p> <p>11 May I ask the court reporter to swear in</p> <p>12 the witness please.</p> <p>13 Whereupon:</p> <p>14 BRENDAN BRANON,</p> <p>15 was called for examination, and, after being</p> <p>16 duly sworn, testified as follows:</p> <p>17 MR. BRANON: Okay. Thank you, Don.</p> <p>18 Good morning, members of the Board.</p> <p>19 As Don mentioned, I am Brendan Branon.</p> <p>20 I'm the chairman of the National Railway</p> <p>21 Labor Conference on behalf of the National</p> <p>22 Carriers Conference Committee and all the</p>																												

<p style="text-align: right;">Page 113</p> <p>1 Carriers represented by the Multiemployer 2 Railroad Coalition.</p> <p>3 I'd like to thank the PEB members 4 for your service. I'd like to thank the 5 NMB counsel as well for all of your 6 efforts. This is undoubtedly a matter of 7 great importance to the railroads and our 8 employees and we appreciate all of your 9 assistance.</p> <p>10 The purpose of my initial remarks 11 today are to provide the Carriers' 12 perspective on the round, to discuss our 13 priorities and to describe the proposals 14 that we believe reflect a reasonable 15 settlement.</p> <p>16 Railroads do work that matters. 17 We're the backbone of the freight 18 transportation industry and we are 19 critical to the economy and we are proud 20 of our employees who make the railroads 21 run every day. Railroad employees work 22 hard. They deserve the great pay and</p>	<p style="text-align: right;">Page 114</p> <p>1 benefits they receive. There's no dispute 2 about that. We look forward to reaching 3 agreements that will continue to maintain 4 the high standard of pay and benefits that 5 has attracted great people to this 6 industry for decades and will in the years 7 ahead.</p> <p>8 Now, we know the nature of 9 collective bargaining is such that 10 disagreements can be expected. And 11 nothing in the Carriers' case is intended 12 to diminish the importance or the 13 contribution of the industry's people to 14 our performance. And nothing that we 15 intend to say in these presentations 16 should be taken as a criticism of our 17 employees or their bargaining 18 representatives.</p> <p>19 In the heat of negotiations, as we 20 often know, disagreements arise. But we 21 should not lose sight of our shared 22 interest in the continued success of our</p>
<p style="text-align: right;">Page 115</p> <p>1 industry as we resolve these negotiations.</p> <p>2 In my initial remarks today I will 3 address four areas. I will discuss the 4 Carriers' priorities at the outset of the 5 bargaining round. I'll provide an 6 overview of the parties in the bargaining. 7 I will describe the Carriers' proposals, 8 as well as discuss the costing of the 9 parties' proposals.</p> <p>10 Now, when the round began, we 11 identified a number of priorities. First, 12 crew size. As you will hear shortly from 13 Mr. Fritz, the Union Pacific CEO, the 14 industry's ability to modernize is 15 critical to how -- is critical to our 16 success. And with the implementation of 17 positive train control, it is now possible 18 for the railroads to move to a new 19 operating model for the conductor where he 20 or she is deployed from ground base roles 21 rather than riding in the cattle 22 locomotive. This model is safe, it's more</p>	<p style="text-align: right;">Page 116</p> <p>1 efficient and will lead to quality of life 2 improvements for conductors.</p> <p>3 Second, health care. The Carriers 4 have maintained from the outset that we 5 need to continue to adjust plan design and 6 other provisions to encourage the 7 efficient use of benefits, to help 8 constrain health care cost inflation and 9 to better conserve our plan resources.</p> <p>10 Now, you will hear that the 11 Carriers' proposals are drastic, that 12 they're radical. That is simply not so. 13 The national railroad health care plan is 14 a platinum level plan and will continue to 15 be so under the Carriers' proposals. But 16 it cannot stay static either.</p> <p>17 Our proposals not only leave the 18 plans at the high end of unionized 19 benchmarks for health care, but they're 20 aligned with the type and extent of 21 changes negotiated and agreed upon and 22 ratified by our employees in prior</p>

<p style="text-align: right;">Page 117</p> <p>1 bargaining rounds.</p> <p>2 Third, work rules. The Carriers</p> <p>3 set out at the beginning of the round to</p> <p>4 modernize a range of work rules that we</p> <p>5 felt the time had come to address and</p> <p>6 where we could better adapt how we worked</p> <p>7 to modern resources or -- rather, modern</p> <p>8 processes and better match our resources</p> <p>9 with customer and operational demands.</p> <p>10 And lastly, compensation. From the</p> <p>11 outset we have proposed to reach an</p> <p>12 overall agreement, including fair</p> <p>13 increases that would maintain the wage</p> <p>14 premium that rail employees receive today</p> <p>15 versus peers. This would allow the</p> <p>16 Carriers to continue to reward, recruit</p> <p>17 and retain employees in the labor market.</p> <p>18 We believe our compensation proposal that</p> <p>19 we maintain today will achieve that</p> <p>20 result.</p> <p>21 Moving to a brief overview of the</p> <p>22 round. But before I do so, I'd like to</p>	<p style="text-align: right;">Page 118</p> <p>1 stress something. It is always our</p> <p>2 objective to reach voluntary agreements.</p> <p>3 We are disappointed that we've been unable</p> <p>4 to do so. We will remain focused</p> <p>5 throughout this entire process on reaching</p> <p>6 agreements though, and we look forward to</p> <p>7 working with our rail union counterparts</p> <p>8 to doing so promptly and fairly.</p> <p>9 As this slide shows, the Carriers</p> <p>10 formed a Multiemployer Coalition in this</p> <p>11 bargaining round represented by the NCCC,</p> <p>12 as has been the case for decades in</p> <p>13 national handling.</p> <p>14 The unions at the outset of</p> <p>15 bargaining formed two coalitions. Now,</p> <p>16 the bargaining with these coalitions took</p> <p>17 somewhat different paths throughout the</p> <p>18 round, but they're now maintaining an</p> <p>19 overall position with 14 separate work</p> <p>20 rule proposals.</p> <p>21 Starting with the CBC, the larger</p> <p>22 Coalition, there was an initial in-person</p>
<p style="text-align: right;">Page 119</p> <p>1 bargaining session in late February of</p> <p>2 2020. And at that meeting, the Carriers</p> <p>3 presented an overview of all of our</p> <p>4 positions, along with our detailed health</p> <p>5 and welfare proposals. Then the pandemic</p> <p>6 arrived and further in-person meetings</p> <p>7 were canceled.</p> <p>8 The CBC did not agree upon a</p> <p>9 virtual meeting thereafter for another</p> <p>10 five months, not until late July, where</p> <p>11 the Carriers presented our health and</p> <p>12 welfare proposal. Thereafter, there were</p> <p>13 only three more, unfortunately, virtual</p> <p>14 meetings for the remainder of that year,</p> <p>15 and the Carriers presented further detail</p> <p>16 in our health and welfare proposals and</p> <p>17 our work rule proposals.</p> <p>18 It was not until the spring of 2021</p> <p>19 when we received a complete set of what</p> <p>20 amounted to the Coalition's initial</p> <p>21 proposals. In those proposals were</p> <p>22 included 34 percent compounded increases,</p>	<p style="text-align: right;">Page 120</p> <p>1 the near elimination of every cost-sharing</p> <p>2 and cost restraint provision in the health</p> <p>3 care plan and hundreds of work rule</p> <p>4 proposals.</p> <p>5 Now, following the receipt of that</p> <p>6 initial package of proposals in the spring</p> <p>7 of 2021, we pursued various efforts</p> <p>8 through the remainder of the year to form</p> <p>9 working groups, to discuss costing, to</p> <p>10 determine how best to engage in bargaining</p> <p>11 on items of interest within a reasonable</p> <p>12 overall framework.</p> <p>13 There were no in-person meetings in</p> <p>14 this bargaining round with the CBC between</p> <p>15 that initial meeting in February of '21</p> <p>16 until August -- rather, February of '20</p> <p>17 until August of '21.</p> <p>18 Now, there was some engagement, as</p> <p>19 you will hear from some of our witnesses,</p> <p>20 on the Carriers' operating craft and</p> <p>21 scheduling proposals in the fall of '21,</p> <p>22 but many months passed between meetings.</p>

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<p>1 At the first meeting in 2022, in</p> <p>2 late January, the Carriers presented a</p> <p>3 specific economic proposal and Labor</p> <p>4 presented a revised comprehensive</p> <p>5 proposal.</p> <p>6 That proposal included the addition</p> <p>7 of a sixth year, 13 additional points of</p> <p>8 compounded GWI, taking their position from</p> <p>9 34 percent over five years to 47 percent</p> <p>10 over six years. And unfortunately, at</p> <p>11 that point we were further apart than when</p> <p>12 we had started bargaining two years prior.</p> <p>13 Thereafter, the large Coalition</p> <p>14 filed for mediation. We spent</p> <p>15 approximately two and a half months</p> <p>16 between the first substantive mediation</p> <p>17 discussion and the NMB's proffer of</p> <p>18 arbitration and little progress was made</p> <p>19 in those discussions.</p> <p>20 Now, critically, as reflected in</p> <p>21 this chart, throughout the entire</p> <p>22 bargaining round of the CBC Coalition,</p>	<p>1 there was, unfortunately, very little</p> <p>2 substantive bargaining on most of the</p> <p>3 Unions' paid leave and work rule proposals</p> <p>4 that had been maintained in this</p> <p>5 proceeding. For most of these proposals,</p> <p>6 as you can see, there was very little, if</p> <p>7 any, time spent that we can identify on</p> <p>8 examining the bargaining record and the</p> <p>9 type of discussions that you would expect</p> <p>10 in order to change detailed, complicated,</p> <p>11 costly work rule proposals and consider</p> <p>12 how those changes might affect other</p> <p>13 provisions, consider what other tradeoffs</p> <p>14 or possibilities might exist to address</p> <p>15 the underlying interest.</p> <p>16 For many of these proposals it was</p> <p>17 just a demand and a presentation made in</p> <p>18 March of 2021. The result at this point</p> <p>19 is an incomplete and insubstantial record</p> <p>20 that's lacking the intense, detailed give</p> <p>21 and take bargaining that is required in</p> <p>22 this context to make the type and extent</p>
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<p>1 changes that are proposed by the Unions.</p> <p>2 Turning to the Maintenance of Way</p> <p>3 SMART Mechanical Coalition. There were no</p> <p>4 bargaining meetings even scheduled before</p> <p>5 the pandemic began in March of '20 and a</p> <p>6 single virtual meeting was agreed to in</p> <p>7 April. Thereafter, there were no virtual</p> <p>8 meetings agreed to until late September.</p> <p>9 There were some sporadic virtual</p> <p>10 meetings in the fall of '20 and in those</p> <p>11 meetings the Carriers provided, again, our</p> <p>12 specific work rule and health care</p> <p>13 proposals.</p> <p>14 And from the outset, this Coalition</p> <p>15 as well, we sought ways to engage. But</p> <p>16 the position that was maintained by this</p> <p>17 Coalition was absolute, especially on</p> <p>18 health care, and none of the Carriers'</p> <p>19 proposals would even be entertained. This</p> <p>20 unfortunately made progress difficult and</p> <p>21 in the end unachievable.</p> <p>22 Moving to the summer of '21, this</p>	<p>1 Coalition then presented to us what they</p> <p>2 referred to as a comprehensive proposal.</p> <p>3 It included more than 40 percent in</p> <p>4 increases in annual labor costs, along</p> <p>5 with a host of other changes. And, again,</p> <p>6 it rejected every Carrier proposal in its</p> <p>7 entirety.</p> <p>8 Before we could even respond, a</p> <p>9 week later, the Coalition filed for</p> <p>10 mediation. We spent the fall meeting</p> <p>11 virtually on approximately a monthly basis</p> <p>12 with the mediator and searching for issues</p> <p>13 upon which we could engage and make</p> <p>14 progress, all to no avail.</p> <p>15 By early '22, frankly, the meetings</p> <p>16 had stalled. The Coalition demanded a</p> <p>17 proffer of arbitration and a release from</p> <p>18 arbitration -- a release from mediation.</p> <p>19 The NMB initially declined that request</p> <p>20 and there were no further meetings until</p> <p>21 May of this year.</p> <p>22 And at that those meetings in May,</p>

Page 125	<p>1 the Coalition simply merged its economic</p> <p>2 proposals with the coordinated bargaining</p> <p>3 Coalition positions, thereby actually</p> <p>4 significantly increasing the cost of the</p> <p>5 positions that it had previously</p> <p>6 maintained just a few months prior,</p> <p>7 putting us again, unfortunately, even</p> <p>8 further apart than when we had started.</p> <p>9 And again, similar to the CBC, when</p> <p>10 the bargaining record is examined, we can</p> <p>11 account for almost no meaningful</p> <p>12 substantive bargaining on the Unions' work</p> <p>13 rule proposals that remain on the table.</p> <p>14 And even on the topic of sick leave, where</p> <p>15 there's actually some discussion, the</p> <p>16 extent of that discussion really amounted</p> <p>17 more so to why the Labor Unions felt that</p> <p>18 a new and substantial sick leave program</p> <p>19 was necessary, not how it would actually</p> <p>20 work, not how it would interact with the</p> <p>21 existing statutory RUIA benefits, the</p> <p>22 existing contractual supplemental sick</p>	Page 126	<p>1 leave benefits, just a demand for a new</p> <p>2 and significant benefit.</p> <p>3 And when we raised the prospect of</p> <p>4 perhaps examining whether we could</p> <p>5 restructure the existing statutory RUIA</p> <p>6 benefits or supplemental sick leave</p> <p>7 benefits into a different form of sick</p> <p>8 leave like the one that's being demanded</p> <p>9 today, that suggestion was rejected.</p> <p>10 And while we understand why the</p> <p>11 Unions are making the demand and we</p> <p>12 understand the pandemic raised many new</p> <p>13 and pressing concerns, the record just</p> <p>14 lacks the foundation and basis upon which</p> <p>15 to simply impose three weeks of sick leave</p> <p>16 on top of the already existing sickness</p> <p>17 and absence benefits.</p> <p>18 Turning to crew size. As</p> <p>19 mentioned, the Carriers have maintained</p> <p>20 since the outset of bargaining that this</p> <p>21 is a top priority and we filed a national</p> <p>22 notice on SMART-TD that invited them but</p>
Page 127	<p>1 did not insist on national handling.</p> <p>2 We also filed local notices. And</p> <p>3 that kicked off a series of procedural</p> <p>4 objections from SMART-TD over the local</p> <p>5 notices that resulted in almost two full</p> <p>6 years of litigation and arbitration. But</p> <p>7 in the end, it was determined in August of</p> <p>8 '21 that the Carriers' local notices could</p> <p>9 proceed in almost every respect.</p> <p>10 And since then there has been</p> <p>11 negotiations, now each in mediation,</p> <p>12 ongoing since last September, Union</p> <p>13 Pacific, BNSF and Norfolk Southern. The</p> <p>14 most recent meetings occurred earlier this</p> <p>15 month and further meetings are scheduled.</p> <p>16 You will hear more about this</p> <p>17 tomorrow from both myself and Don. And to</p> <p>18 be clear, there's been no agreement that's</p> <p>19 been reached in these negotiations. But</p> <p>20 the important point is that they've been</p> <p>21 robust in our view. They've included</p> <p>22 multiple exchanges of frameworks from the</p>	Page 128	<p>1 Carriers for how the conductor</p> <p>2 redeployment program would work, including</p> <p>3 commitments from the Carriers covering</p> <p>4 critical issues, such as protection for</p> <p>5 current employees, scope rights for</p> <p>6 SMART-TD and provisions on how the</p> <p>7 transition would occur.</p> <p>8 These discussions have also been</p> <p>9 very helpful with key issues and</p> <p>10 suggestions identified by the labor</p> <p>11 representatives. We look forward to</p> <p>12 continuing these discussions and reaching</p> <p>13 a complete resolution of this issue from</p> <p>14 this bargaining round.</p> <p>15 I'm going to turn to a brief</p> <p>16 overview of the Carriers' proposals.</p> <p>17 Starting with compensation, as is</p> <p>18 reflected here, we propose 17 percent in</p> <p>19 general wage increases by July of 2024.</p> <p>20 This would be the highest GWI package</p> <p>21 achieved in national handling since the</p> <p>22 2005 round and it would provide double</p>

<p style="text-align: right;">Page 129</p> <p>1 digit, almost 11.4 percent increases, 2 effective as of the first of this month. 3 Importantly, our proposal includes 4 the payment of these wage increases in 5 full retroactively, resulting in an 6 average \$6,300 payout for each employee as 7 of July 1st. The proposal also includes a 8 signing bonus, \$1,000. On average, that 9 equals 1 percent of annual pay for our 10 employees currently, taking the total 11 projected lump sum and retro payouts upon 12 ratification as of July 1st of this 13 year -- it will only grow moving 14 forward -- to \$7,300. 15 And with our average rail 16 compensation of \$90,000 per year per 17 employee, the 11.4 percent increase will 18 mean on average rail employees earn 19 \$100,000 a year as of the effective date 20 of the Carriers' proposed agreement. 21 And why do we believe our 22 compensation proposal is fair? I'll start</p>	<p style="text-align: right;">Page 130</p> <p>1 with some historical markers. 2 Through good times and bad, 3 settlements on GWIs in this industry, what 4 we would call structural wages, have 5 ranged between 10 and 17 percent in modern 6 times. The Carriers' proposal in this 7 round is at the very top end of that 8 range. It's consistent with current labor 9 market fundamentals and it will maintain 10 our employees' existing wage premiums 11 versus their peers. 12 In contrast, as reflected in the 13 red bar on the right side of this chart, 14 the Unions' wage position is far outside 15 these historic norms and the pattern of 16 wage settlements in our industry. 17 The Carriers' proposal is also fair 18 and appropriate when put in context and 19 compared against on an average annual 20 basis other benchmarks in labor market 21 fundamentals. 22 First, on the far left is the</p>
<p style="text-align: right;">Page 131</p> <p>1 Personal Consumption Expenditure Price 2 Index. And you'll hear much more about 3 this from Dr. Jesse David in our 4 presentation today. This is the 5 appropriate inflationary measure to 6 consider in this context. It's the Fed's 7 true measure of inflation. 8 And even with everything we have 9 experienced in the last 12 months, the 10 PCE, taking what's already occurred in the 11 first two and a half years of this 12 bargaining round and projecting forward 13 for the next two and a half years, is 14 expected to average approximately 15 3 percent. 16 Now, second, the average annual 17 wage increases in other contract 18 settlements, this reflects an analysis and 19 assessment of literally hundreds of other 20 labor agreements that have been agreed to 21 between parties during the period of this 22 bargaining round, these also averaging</p>	<p style="text-align: right;">Page 132</p> <p>1 3 percent on an annual basis. 2 You put these two benchmarks 3 together, the proper form of inflation, 4 PCE, actual average labor settlements 5 across industries, averaged across the 6 five years of this agreement, the 7 Carriers' proposal stands up and holds its 8 own against these. 9 Again, in contrast, the Unions' 10 proposals far exceeds these benchmarks. 11 Turning to paid leave. Carriers 12 propose an additional day of paid leave to 13 be provided annually to each employee. As 14 a starting point, as you'll see on the 15 left side of this chart, the Carriers' 16 current paid leave benefits, including 17 vacation, holidays, personal leave days, 18 sickness benefits. And while they vary by 19 craft, in total they exceed and meet 20 existing benchmarks for paid leave. 21 We believe our proposal is a more 22 measured and appropriate change, both in</p>

<p style="text-align: right;">Page 133</p> <p>1 terms of these benchmarks and the 2 bargaining record because it's responsive 3 to the work-life balance interest the 4 Unions have raised. On its own, it's 5 equivalent to half a percent of general 6 wage increase and it serves as an 7 additional quid pro quo for the Carriers' 8 scheduling proposals.</p> <p>9 Turning to health care. This chart 10 summarizes our proposal and I won't go 11 through all this detail right here right 12 now. But the key point is the national 13 railroad health care plan is a premium 14 platinum level plan and the Carriers' 15 proposal will keep it. This is amongst 16 one of the best health care plans in the 17 country for employees and it will remain 18 so.</p> <p>19 But as I said at the outset, it 20 can't stay static either. Health care 21 plans routinely revolve and shift how 22 benefits are covered and delivered and how</p>	<p style="text-align: right;">Page 134</p> <p>1 costs are shared between employers and 2 employees. Our proposal does that here, 3 but it does it in a manner that is 4 consistent with benchmarks and it's 5 consistent with the type and scope of 6 changes that have been agreed upon and 7 ratified in prior bargaining rounds.</p> <p>8 Crew size. What is important to 9 know is that we are not asking this Board 10 to recommend any of the specific details 11 about how the redeployment would occur. 12 That is a topic that is best left -- the 13 details of that are best left to the 14 parties.</p> <p>15 Instead, as you'll hear further 16 tomorrow, in this proceeding our position 17 is that modernizing the role of the 18 conductor is critical and that technology 19 is in place now to do it safely and to do 20 it effectively and to do it in ways that 21 protects our employees and creates better 22 jobs with higher quality of life.</p>
<p style="text-align: right;">Page 135</p> <p>1 Our position is also consistent 2 with how PEBs have historically addressed 3 the question of crew size. It's to settle 4 on a process, a process that would flow 5 naturally from the local discussions that 6 have already occurred and are underway. 7 This would provide for negotiated 8 resolution of this issue coming from this 9 bargaining round.</p> <p>10 Importantly, the Board has full 11 authority to issue such a recommendation, 12 just as PEB 219 did with the arbitration 13 process depicted on this slide.</p> <p>14 Turning to work rules, we 15 originally had more than 20 proposals and 16 we saw a need to modernize, as I mentioned 17 at the outset, to provide more flexibility 18 in how we operate and schedule and assign 19 work. We've scaled that back 20 considerably.</p> <p>21 This slide represents and reflects 22 the 20 various work rule proposals that we</p>	<p style="text-align: right;">Page 136</p> <p>1 withdrew through the round and have 2 withdrawn in this proceeding.</p> <p>3 And why have we done that? Well, 4 in large part, because there was, 5 admittedly and unfortunately, little, if 6 any, substantive negotiations over these 7 proposals. There were no agreed upon quid 8 pro quos or other types of exchanges in 9 bargaining that would have produced 10 agreements on these topics on their own, 11 and we are not seeking to burden this 12 Board with the task of trying to discern 13 in your recommendations how the parties 14 should have settled on these issues.</p> <p>15 That, frankly, distinguishes the 16 position that the Carriers maintain in 17 this proceeding versus that of the Unions.</p> <p>18 And so what remains are the 19 Carriers' work rule proposals. It's a 20 single package with three related 21 components. These proposals have been 22 selected because they use modern</p>

<p style="text-align: right;">Page 137</p> <p>1 electronic systems in the case of 2 automated job bidding in particular to 3 handle the scheduling of operating crews. 4 Right now we're still using systems 5 and processes that are quite antiquated. 6 They integrate with these existing 7 processes and do not tear down or impose 8 some new system, importantly, on top of 9 what's already existing. They provide for 10 increased schedule flexibility and 11 certainty, more time off to be 12 incorporated along with our proposals in 13 an attempt to address the concerns that 14 have been raised by the operating crafts. 15 Lastly, these proposals are all 16 proven effective. There's some version of 17 each of these that is in place and working 18 effectively right now on the railroads. 19 It gives us the real-world -- real-world 20 experience to understand how these will 21 work. 22 Turning to costing, critical area.</p>	<p style="text-align: right;">Page 138</p> <p>1 It's how we account for the direct 2 financial impact of our proposals as well 3 as Labor's proposals. What I'm going to 4 review here today are summaries, but we 5 can provide the Board as much detail as it 6 desires. 7 Okay. As is reflected in this 8 chart, summary costing of the Carriers' 9 proposals, we will provide an increase in 10 compensation and benefit costs of 11 approximately \$5.7 billion over the 12 proposed five-year term in this agreement. 13 I won't read all the numbers here for you. 14 You may be wondering why do the Carriers' 15 health care costs go up more than a 16 billion dollars total, even under our own 17 proposals. 18 That's because all our proposals do 19 is moderate in a measured manner the 20 health care costs the Carriers have 21 experienced already in this bargaining 22 round and are projected to experience</p>
<p style="text-align: right;">Page 139</p> <p>1 moving forward. 2 We expect to be paying by 2024 3 almost \$400 million more per year for 4 health care for our employees than we did 5 at the outset of this round. Those are 6 real costs that go into the business and 7 reflect the increasing value of the health 8 care benefits that we are proposing. And 9 all that this chart does is reflect that 10 it's proper to account for that cost. 11 Turning to Labor's proposals. What 12 we see in contrast is almost \$15 billion 13 in additional labor costs over the 14 proposed five-year term of the agreement. 15 On wages alone, the Unions' 16 proposal includes more than \$10.5 billion 17 of additional costs over these five years. 18 And on benefits, whether you ascribe to 19 the view that maintaining status quo has 20 absolutely no cost, which is what the 21 Unions assert, or you recognize that the 22 cost of providing the current benefits</p>	<p style="text-align: right;">Page 140</p> <p>1 with no changes will be approximately \$1.7 2 billion more of the -- above the 3 pre-agreement baseline, there's really no 4 question that we're far apart and there's 5 no dispute. 6 On paid leave, this reflects the 7 Unions' sick leave and holiday demands. 8 Those costs alone exceed \$800 million a 9 year, more than the projected cost of all 10 annual health care inflation. 11 This is a considerable impact. It 12 needs to be fully accounted for. 13 Similarly, the Unions' work rule proposals 14 come with high cost, almost \$300 million, 15 in our view, annually by the end of the 16 agreement. 17 As we've discussed, none of these 18 demands, not a single one of them, come 19 with any offsets or quid pro quos or even 20 the willingness to consider the exchange 21 of an equivalent value of the wage demand 22 for the work rule proposals.</p>

<p style="text-align: right;">Page 141</p> <p>1 And I know that the Unions' costing 2 of their proposals is slightly different 3 than the costing of our proposals. But we 4 believe we understand what's driving a 5 large part of that variance. It's all 6 easily explainable. And regardless, 7 whether you use the factors or assumptions 8 that the Unions do or that the Carriers 9 do, there's no dispute that we're far 10 apart. Proportionally they are the same. 11 Any claims of a dispute about costing is 12 really just a diversion in our view. 13 What you're left with when you 14 compare at a summary level the costing of 15 the Carriers' and the Unions' proposals is 16 the significant gap represented on this 17 slide, almost \$9 billion over a five-year 18 period. 19 And on an annual basis, starting in 20 2024, the Unions' proposals would cost 21 more than \$3 billion more than the 22 Carriers' proposals. These costs will</p>	<p style="text-align: right;">Page 142</p> <p>1 carry on essentially in perpetuity. And 2 as you'll hear further from Ms. Hamann, 3 Union Pacific's CFO, these costs come with 4 significant risk and impact on the 5 business moving forward. 6 When you take a slightly different 7 look at the costing, what is represented 8 here is the GWI equivalent of the Carrier 9 and the Union proposal at the end of the 10 agreement. The \$3 billion gap between the 11 Carriers' costing on an annual basis is 12 reflected in the almost 30-point gap in 13 equivalent general wage increase value of 14 the two respective proposals. 15 Now, importantly, there are Union 16 proposals that have not even been costed, 17 including the proposal to abolish Carrier 18 attendance policies, create new scheduling 19 practices for the ops crafts. 20 It's at this point, based on the 21 level of the discussion, the absence of a 22 discussion, frankly, it's unclear how</p>
<p style="text-align: right;">Page 143</p> <p>1 those would impact costs. It would 2 assuredly be significant. 3 In closing, I'd like to leave the 4 Board with three numbers, 21.8. As we 5 just saw, this is the increase in GWI 6 equivalent total compensation in the final 7 year of the Carriers' proposed agreement. 8 This figure is at the high end of the 9 value provided in any five-year agreement 10 in national handling and it's consistent 11 with all the benchmarks and fundamentals 12 that should be followed, in our view, in 13 the Board's recommendations. 14 Next, \$38,000. This is additional 15 take-home pay, wages, that the average 16 rail employee would receive under the 17 Carriers' proposal. And what this means 18 is when you account for the \$7,300 that we 19 project in immediate lump sum and retro 20 payments as of July 1st of this year, 21 there's more than \$30,000 on average per 22 employee still coming in wages in the next</p>	<p style="text-align: right;">Page 144</p> <p>1 two and a half years. 2 And lastly, \$150000-plus. This is 3 the average annual value of the total 4 compensation of rail employees at the end 5 of this agreement, inclusive of wages, 6 paid time off value, health care, 7 retirement benefits. This means rail 8 employees will remain among the very best 9 paid and benefited employees of any 10 industry in the United States. 11 When the round started, rail 12 employees -- and we're proud of this -- 13 they ranked at the top 93 percent in total 14 compensation of U.S. workers. And when 15 the round ends under the Carriers' 16 proposal, they'll continue to rank among 17 the top 93 percent of total compensation 18 of U.S. workers. 19 We believe that reflects a Carrier 20 proposal that is fair. It does not 21 diminish. It does not expand. It 22 maintains this wage premium.</p>

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

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

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

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1 Pacific.

2 **CHAIRPERSON JAFFE:** And would the
 3 reporter please swear in Mr. Fritz.
 4 Whereupon:
 5 LANCE FRITZ,
 6 was called for examination, and, after being
 7 duly sworn, testified as follows:
 8 **MR. FRITZ:** Thank you, ma'am. And
 9 thank you, Board. I appreciate the fact
 10 that you've committed to and said yes to
 11 conducting this for us. And I look
 12 forward to having an end to this process.

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

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

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

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

14 **CHAIRPERSON JAFFE:** Thank you,
 15 Mr. Branon.
 16 I think we're good at the moment.
 17 We may have some later when you come back.
 18 Thank you, sir.

19 **MR. BRANON:** I'll be here all week.
 20 **MR. MUNRO:** Mr. Chairman, for my
 21 next witness I'd like to call Lance Fritz,
 22 the chief executive officer of Union

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

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

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

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

<p style="text-align: right;">Page 149</p> <p>1 of the hard work necessary to continue to 2 keep America's economy running. They 3 provide all of the necessities of our 4 lives. 5 Through the pandemic, they didn't 6 have an option to stay at home and work 7 from home when things like their children 8 couldn't go to school anymore and had to 9 stay home. The work of running a railroad 10 happens on the railroad. 85 percent of my 11 employee base had no option but to 12 continue to show up and work through the 13 pandemic. 14 And now, two and a half years 15 later, you know, that sounds like a 16 burden, but it doesn't sound like the 17 anxiety and the fear and -- and the 18 challenges and the hardship that actually 19 occurred during the period. And we 20 recognized our employees for that 21 sacrifice, for rolling up their sleeves 22 and continuing to keep the economy moving.</p>	<p style="text-align: right;">Page 150</p> <p>1 As a matter of fact, Union Pacific 2 at the end of 2020 provided a \$1,000 3 payment as a point of recognition for 4 every craft employee that had worked 5 through the pandemic year of 2020. 6 The reason why we did that wasn't 7 to make up for lost wages. It wasn't to 8 do anything other than to say we recognize 9 your sacrifice, we want to make sure you 10 know we see and recognize that and we 11 value you for it. 12 Given my experience in collective 13 bargaining, I understand that we will -- 14 management and our Union leadership will 15 see the same topics from very different 16 angles and we'll have very difficult 17 conversations about those topics. It's 18 happening right now in this year's 19 national. That has nothing to do with the 20 value that I see and believe in and 21 cherish in our employees. 22 So let's get into the first part of</p>
<p style="text-align: right;">Page 151</p> <p>1 our discussion this morning, where's the 2 railroad, where we came from and where are 3 we going. 4 There's -- it's indisputed that 5 railroads are in far better footing than 6 we were a decade, two, three, four ago. 7 We're in much better shape financially, 8 operationally from a safety perspective. 9 If you go back to what was really 10 the dawn of this Renaissance, the Staggers 11 Act in 1980, from that point forward we've 12 made fundamental changes in the railroad. 13 I'll talk a bit about them in a moment, 14 those driven by capital and process 15 improvement. 16 But this chart basically describes 17 statistically what happened. In essence, 18 we were free to compete. We were free to 19 price and go after business and -- and 20 innovate in an industry that prior to that 21 had been overregulated and stagnated. 22 And as a result, we had a better</p>	<p style="text-align: right;">Page 152</p> <p>1 service product and all of our 2 stakeholders ultimately benefited from it. 3 Our customers saw a 40 percent real 4 reduction in their rates between 1980 and 5 2020, 40 percent real rate reduction, 6 while their service product improved. 7 Our employees saw wages increase 8 over 100 percent, 107.5 percent during the 9 period. Our safety improved dramatically. 10 Personal injury rates dropped by 84 11 percent in this four-decade period. 12 It's indisputed that we are a much 13 safer, a much better industry and capable 14 of standing on our own two feet. We were 15 all facing dire consequences prior to 1980 16 and we all are in much better condition 17 today. And that didn't happen by 18 accident. It happened by the diligent 19 application of capital into the industry 20 and process improvement. 21 It's no secret that railroads are 22 very capital intensive. This chart</p>

<p style="text-align: right;">Page 153</p> <p>1 describes that perfectly. Compared to 2 most other industries, certainly all 3 manufacturing and industrial industries 4 but for one or two, we are substantially 5 more capital hungry. We invest six times 6 on a percent of revenue basis what U.S. 7 manufacturers typically invest. 8 If you look back over the last five 9 years, railroads, U.S. freight railroads, 10 have invested \$20 billion annually in 11 capital and operating maintenance to keep 12 the railroads in good operating condition. 13 These are large-scale investments. 14 If you go back over that last 15 40-year period, railroads have invested 16 fully 40 percent of their revenue dollars 17 back into the railroad. And all of that 18 is very consistent with current 19 administration priorities. The 20 administration has talked about building 21 back better, having a U.S. economy that's 22 founded on really strong infrastructure in</p>	<p style="text-align: right;">Page 154</p> <p>1 the United States. And we're part of 2 that. We're a fundamental part of that. 3 As a matter of fact, versus our 4 competition, we own and maintain our own 5 right-of-way. We do not rely on the 6 Federal Government to subsidize our 7 ability to serve the markets that we 8 serve. That's unique and it's an 9 important point. It's why we are so 10 capital-intense. 11 And that capital spending and those 12 operating improvements ultimately when we 13 look forward are about being a foundation 14 for growth. If you look over the last, 15 call it, decade, 15 years, we heard 16 yesterday from our -- from our Union 17 colleagues that the railroads have become 18 very, very profitable. And it's true. 19 We expanded our margins over the 20 last, call it, 15, 20 years and we did it 21 mostly through capital, some in pricing 22 for the value that we -- that we give to</p>
<p style="text-align: right;">Page 155</p> <p>1 our customers through better service 2 product and operational improvements. 3 We'll talk about all of that through 4 this -- through my presentation this 5 morning. 6 And that generated a lot of 7 long-term enterprise value. As we look 8 forward, that long-term enterprise value 9 from here won't be created by margin 10 expansion nearly to the extent that it's 11 going to need to be created by growth. 12 And this chart gives us hope. It 13 says there's growth opportunity out there. 14 Over the course of the next decade or two, 15 freight transportation demand is expected 16 to grow substantially in the United 17 States. 18 And there's opportunity and 19 optimism based on my conversations with 20 our customers. Right now, most all of our 21 large sophisticated customers are looking 22 to reduce their greenhouse gas emissions,</p>	<p style="text-align: right;">Page 156</p> <p>1 their intensity, either in absolute terms 2 or in relative terms. And we're a 3 solution for that. 4 Freight railroads emit about 5 one-quarter of the carbon and greenhouse 6 gas emissions than trucks for shipping the 7 same ton of freight, one-quarter. We're 8 three-quarters, 75 percent, less polluting 9 than trucks. 10 So when a customer converts part of 11 their supply chain from truck to rail, 12 they automatically are taking a step 13 forward in reducing their greenhouse gas 14 emissions. As a matter of fact, we have a 15 calculator that we provide every customer, 16 either real time or at periods of time 17 through the year, that share with them how 18 much greenhouse gas emissions they've 19 saved during the year. Last year we saved 20 our customers about 23 million tons of CO2 21 emissions. 22 And I also see an opportunity to</p>

<p style="text-align: right;">Page 157</p> <p>1 grow with our customers through our PSR 2 transformation. We'll talk about that in 3 a moment. But fundamentally we've changed 4 our operating strategy, our transportation 5 plan, to provide a better service product 6 on average and in most cases for our 7 customers. Not in every case, but in most 8 cases. 9 And as I talk to our customers, 10 they tell me hey, that's opening up the 11 door for us to show you more of our supply 12 chain. And it's happening for Union 13 Pacific. We are winning new business 14 every day in almost every market that we 15 serve. 16 And the last thing that enables our 17 growth is that our physical infrastructure 18 is in excellent condition. Our railroad's 19 in the best condition it's been in in 20 years, in decades. And it's on the basis 21 of strong targeted capital investment, 22 process improvement and making sure that</p>	<p style="text-align: right;">Page 158</p> <p>1 when we fix something, we fix it right the 2 first time and don't have to come back to 3 it. 4 And PSR has opened up a lot of 5 capacity on the railroad. I'll mention 6 this again in a moment, but we're running 7 about 25 to 30 percent fewer trains every 8 day. We're starting 25 to 30 percent 9 fewer trains every day. 10 We didn't do that through magic. 11 We did it by taking a very complex old 12 transportation plan that had unique, 13 special train starts for different 14 commodities, like an ethanol train or a 15 train of dried distiller grains, and we 16 commingled that back into the manifest 17 world, back into the shared commodity 18 train world. 19 That allowed us to -- to start 20 fewer trains because we commingled the 21 traffic and it shows up in train size. 22 Prior to this transformation, we were</p>
<p style="text-align: right;">Page 159</p> <p>1 running trains about 7,000 feet long and 2 today we run trains about 9,500 feet long. 3 And there's one last thing I want 4 to mention about our infrastructure being 5 in excellent shape. The American Society 6 of Civil Engineers gives a report card for 7 U.S. infrastructure. It's a widely quoted 8 report. Freight railroads are almost 9 always at the top of that list. Our grade 10 for last year was a B. Now, it would have 11 been an A, but for the fact that Amtrak 12 typically gets starved of its capital 13 needs specifically up in the Northeast 14 corridor every year. 15 Now, that looks like that was 16 changed in the infrastructure bill that 17 was signed last year, which is great. But 18 until that starts generating capital 19 investment in infrastructure excellence, 20 we're probably still going to be a B. But 21 freight rails are in great shape. 22 And as we look into the future,</p>	<p style="text-align: right;">Page 160</p> <p>1 capital investment is going to continue to 2 be required, as will innovation. And it 3 doesn't always take the form of physical 4 infrastructure. A lot of times in today's 5 world, it's taking the form of technology 6 and investments that enhance customer 7 experience. 8 On this chart in that first bucket 9 UPGo and Fast Gate, those are -- UPGo is 10 an app that truckers can use when they 11 enter our intermodal ramps -- intermodal 12 terminals. And it allows them to do 13 things like see a map of the terminal, 14 know where they're going to go pick up or 15 drop off their box. 16 Fast Gate allows them to go 17 paperless through the gate. They can get 18 on and off or intermodal terminal without 19 talking to anybody. It records a document 20 that allows them to submit to their 21 employee for pay. So they don't even have 22 to have any paperwork in their cab if they</p>

<p style="text-align: right;">Page 161</p> <p>1 so choose. It's an excellent tool and 2 it's making the time on ramp, on terminal 3 for truck drivers much lower than it used 4 to be. 5 That's a benefit for truck drivers. 6 They like to come to our ramps because 7 we'll process them quickly. And it's a 8 benefit for the supply chain. We're not 9 wasting their time. We can get maybe an 10 extra turn every couple of days that they 11 serve their customers. 12 Our competition isn't sitting still 13 either. Trucks are constantly looking for 14 ways to be better, more efficient, to 15 effectively compete against what railroads 16 do very well, which is large scale, bulk, 17 heavy goods economy support. 18 So things like autonomy and 19 electric trucks, electric trucks are a 20 little ways off. Autonomy is not. 21 Autonomy is within the next handful of 22 years for revenue service. We're an</p>	<p style="text-align: right;">Page 162</p> <p>1 investor in TuSimple. We're an investor 2 because we want a seat at the table and 3 see what's going on. We're going to see 4 if we can apply it for our own benefit to 5 expand our own supply chain with customers 6 and our knowledge tells us the technology 7 is real and it's coming. So we -- we have 8 got to continue to invest and innovate in 9 order to stay competitive. 10 And part of staying competitive is 11 staying cost competitive. Now, there's 12 something I mentioned at the beginning of 13 my discussion and that was we are 14 profitable. We're highly profitable. 15 We're generating a lot of cash. 16 That didn't happen by squeezing 17 every expense and making it work harder. 18 It happened by really sound capital 19 investment and process improvement. This 20 is a case in point. And it speaks to what 21 Don and Brendan have already said. 22 We're proud that our railroad Union</p>
<p style="text-align: right;">Page 163</p> <p>1 workers, our craft employees are well 2 paid. They're better paid than their 3 Union peers in most other industries. 4 That was true in 2005. It's even more 5 true in 2020. 6 And nobody on the Carrier side is 7 going to argue to try to shrink that 8 dramatically. That's not how we've 9 created such profitability in the industry 10 and it's not how we're going to create 11 growth in the industry going forward. 12 Winning requires capital investment 13 and it requires cost competitiveness and 14 it requires great employees. And that's 15 exactly what we have. We have great 16 employees who are in very good jobs, 17 another priority of this administration. 18 And we're right in the wheelhouse of that. 19 This slide shows you a quote from 20 what the White House priorities are and 21 what they're trying to accomplish and this 22 build back better and this labor-centered</p>	<p style="text-align: right;">Page 164</p> <p>1 economic recovery. And I take you to the 2 bottom paragraph where the President is 3 talking about ensuring that new jobs are 4 good jobs you can raise a family on and 5 you can ensure free and fair choice to 6 organize and bargain collectively. That's 7 a definition of railroad jobs. 8 We are unionized by law virtually 9 under the Railway Labor Act and they are 10 great paying jobs and for sure you can 11 raise a family, a great middle class 12 living, through railroad jobs. 13 I'm out on my railroad every week. 14 I probably talk to hundreds, if not 15 thousands, of employees every couple of 16 weeks, certainly in a month. And when I'm 17 on my railroad, the vast majority of my 18 employees tell me, hey, boss, I love my 19 job, I love the team that I'm working for 20 and I'm very proud to be part of Union 21 Pacific. 22 Now, let's set that aside. I also</p>

<p style="text-align: right;">Page 165</p> <p>1 would love, you know, this tool or this 2 isn't happening right and I want more of 3 it or less of it or this is happening 4 somewhere else and I think we should think 5 about it. That's because we have a very 6 open line of communication. 7 What my employees think is no 8 secret to me. I know exactly what they 9 think because they tell me every day. And 10 what they tell me is they love their jobs, 11 they love working for the railroad and 12 they specifically love working for Union 13 Pacific. 14 I've got a few examples for you. 15 Probably the most telling example of the 16 fact that our employees are not looking to 17 quit and leave in droves but instead are 18 looking to have their loved ones and 19 respected friends and family members join 20 them is that at the beginning of this year 21 we started an employee referral program. 22 Since the start of the year, we've</p>	<p style="text-align: right;">Page 166</p> <p>1 had out of our 33,000 employees, 8,000 2 referrals generate 1,000 job offers. 3 People who want to quit their company 4 don't invite others to join. It's been a 5 home run success, regardless of how we 6 look at it. 7 And then let me just share some 8 anecdotes with you. The two ladies on the 9 right, that's a mother-daughter 10 combination, Rolette and Kayla Sudds. 11 They work down in Houston, Texas. 12 I was out visiting Houston about 13 three months ago and I got to meet Rolette 14 and Kayla, more or less by chance. 15 Rolette has been with us since 2012. She 16 works in a terminal called Strang. It's a 17 very complex terminal. It requires our 18 best employees. 19 Every day, 600 cars come in and out 20 twice a day in a terminal that is 21 challenged by being landlocked. It's 22 critical. It's a cornerstone for our</p>
<p style="text-align: right;">Page 167</p> <p>1 Houston service unit. 2 Rolette is very proud that she 3 works there. She does a great job for us. 4 And when her daughter was looking for 5 stability so that she could raise her 6 family, Rolette thought hey, I think you 7 should consider coming to the railroad, I 8 think you can do the work and you're going 9 to have to get through the process, which 10 she did. 11 We hired her. She's been with us 12 for about six months. And what Kayla says 13 is, you know, I think we need more women 14 here. And I couldn't agree more, because 15 she thinks that -- the job is -- requires 16 attention to detail. It requires kind of 17 being on your feet, paying attention and 18 being careful. And she said that's 19 exactly what I have to do at home. 20 On the left-hand side, that's me 21 celebrating four employees that had 50 22 years of service this year. Every year at</p>	<p style="text-align: right;">Page 168</p> <p>1 our annual meeting the Board and I make a 2 very big deal of any employee that's had a 3 50-year service anniversary. Usually we 4 have four, six, eight, sometimes as many 5 as ten. We've never had a year with none. 6 We always have some to celebrate. 7 And in this group, it's kind of 8 unusual to have a 50-year employee as a 9 female. I'm looking forward to more. 10 Nancy Brice on the left-hand side there, 11 she is working an intermodal terminal for 12 us in L.A. 13 Johnathan Deckard, he works for us 14 in our shop in Palestine, Texas. 15 Greg Wahl is an engineer in 16 Bakersfield. He helped us with PTC, 17 positive train control, when we were 18 introducing it. 19 And Pancho, on the right-hand side 20 there, he works in Sparks, Nevada. He's 21 like Mr. Positive. Everybody loves 22 working with him.</p>

<p style="text-align: right;">Page 169</p> <p>1 So bottom line, we've got great 2 jobs. We've got people that want to work 3 here. There's hundreds, thousands of UP 4 employees who are related to each other. 5 It's very common in our industry. And 6 we're hiring like mad right now. 7 We've graduated 480 TE&Y already 8 this year. We're going to graduate 9 another 400 by the end of September. We 10 have over 500 in training. By the end of 11 the year we'll have hired and trained and 12 graduated 1,400 people. 13 It's not without heartburn. There 14 are parts of our railroad where it's very 15 difficult to hire employees. That's not 16 because they don't want to work for the 17 railroad. It's because there's nobody in 18 the labor pool. It's places like North 19 Platte, Nebraska that has an unemployment 20 rate of 1 percent. We have to actively 21 find ways to develop labor in a pool like 22 that because it's largely employed</p>	<p style="text-align: right;">Page 170</p> <p>1 currently. 2 Now, I'm going to touch on a couple 3 of things before I close. They're going 4 to be thematic. I heard them yesterday. 5 One is PSR, Precision Scheduled 6 Railroading, and the role it plays and the 7 other is our effort to redeploy conductors 8 from the cab of the locomotive to the 9 ground. 10 So let's start with PSR. PSR was a 11 fundamental transformation of our railroad 12 and virtually every railroad in the United 13 States and in Canada. And fundamentally 14 it's a change in how you design your 15 transportation plan. The idea is don't 16 touch and switch a car and stop a car if 17 you don't have to, try to commingle as 18 much traffic as you can because it gives 19 you more opportunity to move it deeper 20 into your network more frequently, use 21 your assets wisely and make sure you have 22 enough assets. Right?</p>
<p style="text-align: right;">Page 171</p> <p>1 And in that context, we've, as I 2 mentioned, fundamentally changed the 3 railroad. We took a railroad that on any 4 given day had 850 or 900 trains running on 5 it. Today a heavy day is 700 trains. 6 Maybe 650 or 600 is more like the number 7 it should be. In terms of train starts it 8 reflects that. 9 And the reason that can be is 10 instead of starting all these specialty 11 trains that are really hard to manage 12 because they're largely unscheduled, they 13 get released and then you've got to go 14 scrounge up power and crews for them. 15 In the manifest world, that's 16 largely a scheduled world. And we can 17 find runs, opportunities to move cars and 18 advance them into the network with great 19 frequency. 20 So we've fundamentally transformed 21 the railroad through PSR. That has 22 fundamentally removed work from the</p>	<p style="text-align: right;">Page 172</p> <p>1 railroad. That's why we've decreased our 2 job count so much, both in the industry 3 and at Union Pacific. 4 When you run 25 or 30 percent fewer 5 trains, you need 25 to 30 percent fewer 6 crews. When you switch fewer cars and 7 yards, you need fewer utility jobs and 8 switch jobs. When you maintain a 9 locomotive fleet that's 30 percent lower 10 than it used to be because you're not 11 running as many trains, you don't need as 12 many mechanics, diesel electricians, 13 diesel mechanics to -- to work on the 14 railroad. 15 I spoke about a similar issue in 16 the last PEB I was at, the PEB 243. The 17 topic there was the Union leadership said 18 we were overworking our employees. That's 19 why we had fewer head count. We -- same 20 amount of work and we just were working 21 them harder. 22 It just wasn't true. At that point</p>

<p style="text-align: right;">Page 173</p> <p>1 we had swapped capital for labor. Large 2 investment had automated a fair amount of 3 the jobs and that's where the jobs went. 4 This time around, it's about operation 5 improvement. It's about fundamental 6 transformation through PSR. 7 Our employees are not working 8 harder or being overworked. They work 9 hard already. The jobs are hard jobs. 10 You're outside, you're on call. But it's 11 no worse than it ever has been. As a 12 matter of fact, the jobs are safer and 13 more supported. 14 So let's talk about crew size. I 15 want to start with the foundation positive 16 train control. 17 PTC, positive train control, is 18 a -- it's a mandate that happened in 2008. 19 It's a technology platform that has 20 technology embedded on locomotives, in the 21 back office and on line of road. And 22 fundamentally it's designed to do only one</p>	<p style="text-align: right;">Page 174</p> <p>1 thing, stop trains. That's its design, 2 stop trains in four circumstances: 3 Don't let a train get past a red 4 signal. Don't let a train go into a work 5 zone that it's not authorized to get into. 6 Don't let a train go beyond its maximum 7 authorized speed. And don't let a train 8 take a route that is unintended, period. 9 But the technology forms a 10 foundation for doing so much more. And 11 one of the things it does is it takes the 12 work of the conductor in the cab of the 13 locomotive, which used to be and, to a 14 degree, still is, communicate with the 15 engineer, share what's going on, know 16 what's coming up in terms of workload for 17 the train and make sure the engineer is 18 well informed. 19 Well, the engineer is getting well 20 informed now largely through a screen that 21 PTC is involved. So we see an opportunity 22 to take the work of the conductor and</p>
<p style="text-align: right;">Page 175</p> <p>1 redeploy it from the cab of the locomotive 2 onto the ground, where that conductor's 3 work remains. 4 This chart, it's just a slide of a 5 couple of activities that are very typical 6 for a conductor's day, in tying hand 7 brakes, untying hand brakes to secure cars 8 or throwing a switch or lacing air hoses 9 if we're going to pick up or drop off 10 cars. 11 That work can be on the ground now. 12 And the beauty of doing that is threefold: 13 One, it can enhance safety. We can 14 do it safely and efficiently by putting 15 the employee on the ground because they 16 can turn into shift work. That's a 17 quality of life benefit and a safety 18 benefit. 19 Fatigue is one of the largest 20 concerns that our labor unions and 21 management share. By taking somebody out 22 of the cab of the locomotive and putting</p>	<p style="text-align: right;">Page 176</p> <p>1 them on the ground we turn them into shift 2 work. They can stay at home at night as 3 opposed to staying away from home 100 4 nights or more a year. 5 We're in the middle of negotiating 6 this. You heard that from Brendan this 7 morning. And it's a hard negotiation for 8 obvious reasons. But I'm -- I'm 9 optimistic that with continued hard work, 10 we can get something agreed to. It will 11 be a very attractive and lucrative 12 agreement if reached. And what we want 13 from you is the opportunity to continue 14 that negotiation on property. 15 So let me conclude. Railroads are 16 critical to the U.S. economy. We're 17 critical to the global economy. Our 18 employees, our craft employees, our Union 19 employees, are critical to getting that 20 job done. And we want them rewarded. 21 Our proposal does that. It has 22 market-based, reasoned and very fair</p>

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1 general wage increases. It has reasonable
 2 changes in work rules and a reasonable
 3 move really not towards the middle of the
 4 fairway on health and welfare plans, but a
 5 reasonable move to keep it at platinum or
 6 Cadillac and not let it get out of
 7 control.
 8 That proposal is also consistent
 9 with maintaining the role that railroads
 10 play in the United States, both in
 11 achieving the administration's objectives,
 12 as well as in helping us grow.
 13 I thank the Board for your
 14 attention. And if you have any questions,
 15 I'd be happy to address them.
 16 **CHAIRPERSON JAFFE:** I think we are
 17 in good shape, but thank you very much,
 18 Mr. Fritz.
 19 **MR. FRITZ:** Thank you, Chairman.
 20 **MR. MUNRO:** Mr. Chairman, with the
 21 Board's permission, we'll move on to our
 22 third witness.

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1 heard already from two people directly
 2 involved in the railroad industry.
 3 I'm an economist and I teach
 4 economics at the University of Chicago.
 5 And my goal in economics and teaching is
 6 to really do it from an applied
 7 perspective. And one of the industries
 8 that I've studied over time is the
 9 railroad industry.
 10 And I would like to try to bring an
 11 economic perspective to some of the
 12 discussions we've had so far and in
 13 particular, from a point of view of a --
 14 how we think about compensation. And my
 15 goal is to hopefully help the Board by
 16 providing a little bit of economics to
 17 help us think about these issues before us
 18 here today.
 19 So let me just go to an overview of
 20 my talk that I'm going to give. I have a
 21 tremor that makes it hard for me to use a
 22 clicker.

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1 **CHAIRPERSON JAFFE:** We'll do one
 2 more before our break. That's fine.
 3 **MR. MUNRO:** Thank you,
 4 Mr. Chairman.
 5 **CHAIRPERSON JAFFE:** Of course.
 6 **MR. MUNRO:** I'd like to call Dr.
 7 Kevin Murphy. He is our lead economist
 8 and will discuss the Carriers' view of
 9 compensation.
 10 **DR. MURPHY:** If it's okay with the
 11 Board, I could do it from here?
 12 **CHAIRPERSON JAFFE:** That's fine,
 13 Dr. Murphy. I will have the court
 14 reporter swear you in.
 15 **DR. MURPHY:** Okay. Thank you so
 16 much.
 17 Whereupon:
 18 KEVIN MURPHY,
 19 was called for examination, and, after being
 20 duly sworn, testified as follows:
 21 **DR. MURPHY:** Thank you so much.
 22 It's my pleasure to be here today. You've

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1 So I'm going to talk about three
 2 main topics: total compensation and why
 3 total compensation is the appropriate way
 4 to look at comparing the proposal before
 5 us today.
 6 Briefly, total compensation is what
 7 you should look at because that's what
 8 matters to both sides, both to the
 9 employers who have to pay the full bill
 10 and to workers who receive not just wages
 11 but other benefits from their jobs.
 12 Secondly, I'm going to talk about
 13 labor market considerations and in
 14 particular, how should we compare and how
 15 do workers in the railroad industry
 16 compare to other industries and also how
 17 do we think about some of the issues out
 18 there in the economy today.
 19 The situation or the state of the
 20 railroad industry, inflation, obviously
 21 top of mind for everybody, how does that
 22 factor into our discussions here today and

<p style="text-align: right;">Page 181</p> <p>1 also issues of the overall labor market 2 and what we expect here over the period of 3 the contract. 4 Finally, I want to talk a little 5 bit about the consequences of different 6 proposals and what they're likely to 7 generate in terms of the outcomes for 8 the -- the railroads and the workers, all 9 this done from an economic perspective. 10 So let me first talk about topic 11 number 1, total compensation. As I said 12 earlier, why do we focus on total 13 compensation, not just wages. The answer 14 is because that's what matters to both 15 sides. 16 Employers, when they look at how 17 much -- how many workers to hire or how 18 their bottom line is affected, it's 19 obviously affected by not just the wages 20 they pay, but also the cost of the health 21 insurance that they provide, the taxes 22 that they pay, for example, for Social,</p>	<p style="text-align: right;">Page 182</p> <p>1 insurance and things like that, and also 2 the cost of, say, personal, you know, paid 3 time off. Those all factor on the 4 employer side. 5 On the employee side, those same 6 things carry over; that is, workers 7 benefit from wages, but they also benefit 8 from health care plans and other non-wage 9 compensation. Personal time off or paid 10 time off is also a benefit from the 11 workers' side of the equation. 12 So let's look at the situation 13 we're at today in the railroad industry on 14 the next slide. And this is the picture 15 of where we are and I think you've seen 16 these numbers before. 17 If we look at the total 18 compensation, which, as I said, is the 19 appropriate benchmark, if we look at that 20 today for railroad workers as a whole, it 21 comes out to a little under \$61 per hour, 22 translates into a little over \$126,000 a</p>
<p style="text-align: right;">Page 183</p> <p>1 year. 2 As you can see on the left, wages 3 are about 60 percent of that, but there 4 are other significant elements as well: 5 retirement and unemployment benefits, 6 which obviously cost the employers and 7 benefit workers; health care -- health and 8 welfare benefits, that's another 9 16 percent; supplemental pay, such as 10 overtime pay, and paid time off. Those 11 are all components of the current basket 12 of compensation that we look at. 13 Now, that's where we're at. If you 14 think about well, how does that compare to 15 other industries and other workers, you've 16 heard a lot about -- about the railroad 17 premiums. I'm going to talk about that 18 next. 19 So in terms of the railroad 20 premium -- and this is -- this is all 21 drawing on the work of Jesse David, who is 22 going to talk about this in greater</p>	<p style="text-align: right;">Page 184</p> <p>1 detail. And I should mention that 2 everything I'm going to talk about here 3 today is going to be covered by other 4 witnesses. My goal is to kind of give you 5 an overview and tie it back to the 6 fundamentals of economics. 7 If we make a comparison to other 8 unionized workers, we've got the railroad 9 workers on the left -- as I stated, a 10 little under \$61 an hour in total comp. 11 So the railroad workers at \$61 an hour 12 compared to goods producing, 13 manufacturing, trade and transportation 14 and transportation warehousing, the 15 railroad workers compare favorably in 16 terms of total compensation. 17 That's also true in terms of wages, 18 but again, total comp is really what we 19 want to look at for purposes of these 20 types of comparisons. 21 In his analysis Jesse David is also 22 going to look at comparisons for other</p>

<p style="text-align: right;">Page 185</p> <p>1 groups of workers. You can go to the next 2 slide. As we said, based on that previous 3 slide, the premium relative to those other 4 groups of unionized workers, somewhere 5 between 2 percent, the smallest 6 difference, and 39, the biggest difference 7 in that chart.</p> <p>8 He also does a nice analysis in 9 looking at different occupations and 10 comparing the occupations in the railroad 11 industry to similar workers in other -- in 12 that occupation and other industries. He 13 gets much larger premiums, not 14 surprisingly, because this is a comparison 15 not just to Union workers, this is also 16 nonunion workers as well, between 59 and 17 114 percent.</p> <p>18 And finally, if you compare to 19 other industries, generally you'll see 20 pretty large differences, between 21 and 21 53 percent. The only exception is the 22 utility sector. And he in his report goes</p>	<p style="text-align: right;">Page 186</p> <p>1 into great detail trying to analyze that 2 where we still see a premium, but it's in 3 the single digits.</p> <p>4 So overall, what do we say, and I 5 think you've heard this before, railroad 6 workers are currently earning a 7 substantial premium. And my understanding 8 from looking at the proposal by the 9 Carriers is they have to look into 10 reducing that premium. That is, they're 11 looking to maintain the premium that their 12 workers enjoy today.</p> <p>13 And if you look at the next slide, 14 if you compare the proposals today that 15 the Carriers and the Unions have put on 16 the table relative to past proposals, the 17 Carriers' proposal of 3.3 percent in total 18 comp -- again, looking at total comp, the 19 right thing to look at, 0is actually at 20 the high end or higher than the average of 21 what we saw over 2005 to 2020, but are 22 pretty close. And at the same time, the</p>
<p style="text-align: right;">Page 187</p> <p>1 Coalition of Unions, they're proposing 2 about 6 percent in total comp as -- and 3 discussed by Jesse David in his report.</p> <p>4 I should point something out. The 5 6 percent does not include the increase in 6 paid time off. If you include the 7 increase in paid time off, that number is 8 going to go up to more than 7 and a half 9 percent. So that's actually, you know, a 10 bigger gap than even these figures show on 11 the Board.</p> <p>12 And as I said before, paid time off 13 is a component of both the cost and 14 benefits of the total compensation 15 package. So really, the difference is 16 even bigger than what we see here.</p> <p>17 All right. Of course, we can't 18 just look at where we are and where we've 19 been. We have to think about, you know, 20 what's the market like today and likely, 21 most importantly, where are we going to go 22 in the next couple of years.</p>	<p style="text-align: right;">Page 188</p> <p>1 Okay. So let's talk about that. 2 So how do you think about that? Well, 3 this is a collective bargaining agreement, 4 right? And collective bargaining is a 5 situation where an employer sits down with 6 their employees and try to negotiate a 7 deal that works for both parties.</p> <p>8 And you ask, well, what are the 9 forces that drive the deal and make the 10 deal work for both parties. On the one 11 hand, if we -- we have to think about 12 labor supply, are wages high enough to be 13 attractive to the workers and allow the 14 employer to recruit and retain workers. 15 That's sort of are wages high enough to 16 satisfy the objectives of both labor 17 and -- and the employers.</p> <p>18 On the other hand, we have to worry 19 if the wages are set too high, employers 20 will want to hire fewer workers and that 21 will reduce employment, make those 22 employers less competitive in the overall</p>

<p style="text-align: right;">Page 189</p> <p>1 marketplace, which isn't going to be good 2 on that end. So it's kind of a balancing 3 act. 4 I'm not saying that negotiated 5 wages in a collective bargaining agreement 6 are the same as a wages setting in a 7 market absent labor -- absent collective 8 bargaining. 9 What I'm saying is that the same 10 forces are at work. You have to think 11 about the supply side, are wages high 12 enough to attract and retain workers, and 13 you have to think about demand side, are 14 wages too high and will it discourage 15 employment and reduce the employers' 16 ability to compete. 17 So that's the purpose of my next 18 slide. The ideal place is what balances 19 these two things appropriately. On the 20 one hand, wages are high enough to attract 21 applicants and really reward the workers 22 for their efforts. And in this context,</p>	<p style="text-align: right;">Page 190</p> <p>1 that's about maintaining the premium where 2 it is today. 3 On the other hand, if you go too 4 high, that's going to raise costs, reduce 5 employment and output. And as I'll talk 6 about a little later in my talk, the 7 reality of both of these is important to 8 understand. 9 So let's go to the question of are 10 wages currently high enough and if 11 compensation is currently high enough to 12 attract and retain employees. This comes 13 from a report of David Allen. That -- 14 Professor David Allen is going to look at 15 the ability of the railroads to hire and 16 retain workers. 17 And what his analysis shows, as 18 shown on this chart, is that if we compare 19 the railroads in terms of applicants per 20 hire, we see they're dramatically higher 21 than the marketplace as a whole. That 22 tells us that even though they've gone</p>
<p style="text-align: right;">Page 191</p> <p>1 down, applicants per hire is down today in 2 '21 from where it was in '20, it's still, 3 at 42 and a half, much higher than what it 4 was in any industry -- in the industries 5 as a whole in previous years. 6 And if you look on the right in 7 terms of overall pay, railroad workers by 8 and large stay around. Okay? And you 9 might say well, geez, how does this jive 10 with what we heard yesterday about, you 11 know, them having difficulty hiring. And 12 you heard from, you know, the CEO of Union 13 Pacific this morning. There are issues 14 with hiring specific employees in specific 15 locations. Two things: 16 One is when we think about the 17 labor market today, it's really undergoing 18 two things that are related but different. 19 On the one hand, labor markets are tight. 20 But it's not tight enough that they're 21 having trouble hiring. They're still -- 22 overall, the level of wages are certainly</p>	<p style="text-align: right;">Page 192</p> <p>1 sufficient to generate a given number of 2 applicants. 3 But the labor markets are also 4 being disrupted by -- you know, there's a 5 lot of disruption going on. That is, 6 individual employees are deciding I want 7 to move to a different city, I want to do 8 a different job, I want to retire. This 9 world is a mess right now, right? It's a 10 tough -- it's a tough world right now. 11 All of us -- when I'm not talking, 12 I'm wearing a mask. It's not a fun world 13 to be in. And that's causing disruption. 14 And what happens when you have disruption 15 is you're going to get localized problems 16 where you're in a situation where enough 17 people have changed what they want to do 18 that you're having trouble hiring in those 19 places. 20 So the hiring problems are much 21 more localized. And if you have localized 22 hiring problems, raising wages across the</p>

<p style="text-align: right;">Page 193</p> <p>1 board is not a very effective solution 2 because most places you have plenty of 3 applicants. And raising wages is just 4 going to get you fewer hires because the 5 employees are going to demand less and 6 it's going to do very little to solve 7 those spot shortages. 8 Instead, the response you would 9 expect to see -- and, indeed, when you 10 heard the discussion yesterday from the 11 other representatives, what they are 12 seeing is in particular places there's a 13 bonus, \$12,000 or whatever the bonus is, 14 for hiring that particular worker. That's 15 what's going to happen to solve those 16 issues. 17 So when I look at the picture, I 18 say this is not really that at odds with 19 the kinds of evidence that people talk 20 about where there are problems in hiring. 21 And one of the problems where we have spot 22 problems in hiring, it's a pretty big</p>	<p style="text-align: right;">Page 194</p> <p>1 drag. Because if I need five people to do 2 a job and I can get four but not the 3 other, that creates -- that's a drag not 4 just for the employer, but also for those 5 other four workers who really may not even 6 get hired at that point. So, again, 7 that's the kind of thing that's not solved 8 by raising wages overall. 9 All right. So now let's go on and 10 talk about inflation. Now, I'm not a 11 macroeconomist, but I know enough about 12 inflation. And I think you've probably 13 heard this discussion many times in the 14 past. 15 Inflation fundamentally is about 16 too much money chasing too few goods. And 17 you can get that in two ways: 18 One, you can just have too much 19 money through either overly aggressive or 20 overly loose monetary and fiscal policy or 21 you can have too few goods. 22 We're getting inflation today right</p>
<p style="text-align: right;">Page 195</p> <p>1 now because of both. And when you have 2 too much money, what that tends to do is 3 drive up both wages and prices. And to a 4 first approximation, you might say too 5 much money is going to drive up both. 6 That really wouldn't affect real wages. 7 But when you have too few goods, 8 that's a real shock to the economy. 9 That's a change in the actual real part of 10 the economy. And those too few goods, due 11 to supply chain problems and other things 12 out there, are going to put downward 13 pressure on real wages. You're not going 14 to get prices -- wages rising with prices 15 because that -- that real shock is going 16 to lower real wages. 17 And that's exactly what we've seen 18 in the economy. If you look over the last 19 year and a half or so or two years, what 20 you're seeing is higher prices. That is, 21 prices are rising and wages are rising, 22 but real wages are going down because</p>	<p style="text-align: right;">Page 196</p> <p>1 wages are not keeping up. 2 And that's due in part to the thing 3 I talked about, which is there's a 4 negative real shock here where we've 5 actually seen too few goods. The ability 6 to produce goods today in the economy is 7 down. And that's going to lead to lower 8 real wages. 9 So now let me talk a little bit 10 about the history of real wages. This is 11 a chart of real wages over a little more 12 than four years' worth of time. And if 13 you look over this period as a whole, real 14 wage growth in the economy has been pretty 15 weak. This is studied and known by labor 16 economists for a long time. 17 The growth in real wages over this 18 period is about a third of a percent per 19 year. If we start in early '80s and 20 basically do a four-year growth, it turns 21 out to be about a third a percent per 22 year.</p>

<p style="text-align: right;">Page 197</p> <p>1 Most of the growth occurred in two 2 big periods. Most of the growth occurred 3 in the late '90s, when we had a very 4 strong economy overall. Also occurred in 5 the late teens, basically 2015 to 2019 or 6 2020, when, in fact, we had a very strong 7 economy. But overall, we've thought about 8 real wage growth about a third a percent 9 per year. 10 Now, if I look over the period of 11 the contract that's happened already, the 12 first two and a half years, real wage 13 growth in the economy is zero or down a 14 little bit. Real wages are a little lower 15 today probably than when we started in 16 2020. 17 Now you ask well, what do I think 18 about real wages for the period 2022 to 19 the end of the contract. It's really a 20 question is, do you think real wage growth 21 over that two and a half years is going to 22 be weaker or stronger than over this long</p>	<p style="text-align: right;">Page 198</p> <p>1 period as a whole. I think it's very hard 2 to look at the economy today and say we're 3 in a better than average position looking 4 forward. 5 A lot of headwinds out there. 6 Headwinds would include things like, you 7 know, the rising interest rates, prospect 8 of a recession, ongoing war in the 9 Ukraine, supply chain problems that are 10 persisting. 11 So I would say, you know, as an 12 economist, we'd be expecting relatively 13 modest or no real wage growth in the 14 economy over the next couple of years. So 15 we combine very little real wage growth up 16 till now in the contract period with low 17 expected real wage growth in the next few 18 years. I think it's fair to say something 19 close to no real wage growth in the 20 economy is -- is what I would expect. 21 And as you saw earlier today -- I 22 don't have a slide on it, but as you saw</p>
<p style="text-align: right;">Page 199</p> <p>1 earlier in the presentation today, if you 2 look at the other Union settlements, 3 they're coming in right about expected 4 inflation. And that's consistent with not 5 just in the economy as a whole, but 6 actually in the unionized sector as well, 7 an expectation of whittling away of real 8 wage growth. 9 Now, one reason for that is the 10 possibility of a recession. And -- but I 11 want to emphasize the discussion I just 12 had doesn't depend on there being a 13 recession. The real question is, is the 14 next couple of years kind of better than 15 average or worse than average. I think 16 there's very few things that you'd look at 17 and say boy, I think this is a better than 18 average time we're looking at over the 19 next few years. I think it's -- it's 20 probably a worse than average time, which 21 would cause you to revise down the 22 expected real wage growth from the maybe</p>	<p style="text-align: right;">Page 200</p> <p>1 average third a percent per year to 2 probably closer to zero. 3 Now let's talk about inflation. 4 What do we think about inflation? As I 5 said, we've experienced quite a bit of 6 inflation right now. Most of the 7 expectations about inflation -- and again, 8 this is going to be covered in more detail 9 by Jesse David in his -- Dr. Jesse 10 David -- in his presentation. 11 If you look at comparing different 12 kinds of bonds, inflation adjusted bonds 13 to non-inflation adjusted bonds, they give 14 us five-year inflation rates expectations 15 of about 2 and a half percent today. 16 What that means is the markets are 17 expecting inflation to go down from its 18 current very high levels. You can also 19 look at the next slide, which is consumer 20 expectations. They're a lot higher. 21 Consumers are a little less optimistic 22 than the bond market. They're taking</p>

<p style="text-align: right;">Page 201</p> <p>1 about 3.6 percent. So we've got 2 and a 2 half from the bond market and 3.6 from 3 consumers. 4 If you go to the next one, which 5 is -- this is ten-year inflation, this is 6 based on forecasters. They're thinking 7 2.8 percent. Again, that's ten years. 8 Probably push that up a little bit for the 9 nearer term, but nonetheless, I think 10 we're talking here 3, 3 and a half percent 11 based on these numbers. 12 And so let's put that together with 13 our proposals. So, again, these are the 14 proposals on the left. The historical 15 rate of increase in the prior contracts 16 was about 3 percent. The Carriers' 17 proposal comes in about 3.3 and the Union 18 Coalitions come in at 6.0. But, again, 19 that doesn't have the paid time off. That 20 number would be more like 7 -- 7 and a 21 half, almost 8 sometimes if you put that 22 in.</p>	<p style="text-align: right;">Page 202</p> <p>1 If you compare that to the PCE or 2 the CPI-U, again, as an economist, I would 3 say the PCE is a better measure of 4 inflation. I think the BLS and others 5 would agree with that. That would imply 6 that the Carriers' proposals offer modest 7 real wage growth, but I think that's 8 consistent with the first two and a half 9 years, where the economy has seen really 10 no real wage growth, and probably 11 negative, and it's consistent with the 12 expectations of what's going on. 13 In contrast, the Coalition's 14 proposal at 6 percent, not including the 15 personal paid time off, or 7 and a half 16 plus percent, including paid time off, is 17 implying real wage growth, which would be 18 increasing the premium that -- that 19 railroad employees enjoyed. 20 As I said, when we looked at 21 Dr. Allen's work on turnover and the 22 ability to recruit, there's nothing in</p>
<p style="text-align: right;">Page 203</p> <p>1 economics that says an overall increase in 2 the premium is needed on that dimension. 3 And this would be a very substantial 4 increase in the premium under the Unions' 5 total comp proposal. 6 One last thing -- it's kind of a 7 footnote, but something that I would at 8 least have in the back of my mind if I was 9 thinking about this issue. One thing 10 economists always worry about is inflation 11 expectations because if we get the 12 expectation of inflation, it's kind of a 13 self-fulfilling prophecy. 14 And one of the things that happens 15 if we were to set compensation growth 16 higher or too high, it would be fueling 17 inflation expectations. We'd be -- as a 18 very visible settlement, it would flow 19 back into that. I'm not saying that's the 20 major thing I would think about. It's 21 something I would have in the back of my 22 mind.</p>	<p style="text-align: right;">Page 204</p> <p>1 So those are the things I think 2 that I would say I think are the most 3 important things in thinking about the 4 settlement. We're in an environment of 5 lower real wage growth in the economy. 6 Consistent with other Union settlements, 7 that means to maintain the premium with 8 the economy as a whole, we should be 9 thinking about compensation growth roughly 10 in line with inflation. 11 Now we'll talk about some things 12 that I don't think are that important or 13 that have been misunderstood in how they 14 affect things. And here first I'm going 15 to talk about productivity. 16 Professor Eakin is going to talk 17 about productivity growth at length. I'm 18 just going to point out a couple of things 19 that kind of highlight what he's going to 20 talk about. So we'll go to the next 21 slide. 22 First, productivity growth, even</p>

<p style="text-align: right;">Page 205</p> <p>1 though it's often measured as labor 2 productivity, it's not fundamentally about 3 labor. And that's true in general, but 4 particularly true in the railroad industry 5 over the history that we've seen. 6 Over that post-Staggers Act period, 7 productivity growth came from two main 8 things: 9 In the early part, call it the 10 first 20, 25 years, the time from 1980 11 roughly to early 2000s, it was really a 12 period of where the industry rationalized 13 a lot of its network, got rid of less 14 efficient operations, was able to 15 consolidate the operations, improve 16 efficiency. 17 Economists like to think of that as 18 low-hanging fruit. Those were 19 inefficiencies that were there in the 20 marketplace that were eliminated, 21 generating tremendous productivity growth. 22 By the time we get to the 2000s, now</p>	<p style="text-align: right;">Page 206</p> <p>1 productivity became much more difficult. 2 That rationalization and other things had 3 taken -- you know, had kind of been run 4 out. 5 And you can see it in the data 6 where, in order to get further 7 productivity growth, the railroads had to 8 invest significantly more in capital. 9 And you see a rise in capital 10 investment in that later period. And with 11 that rise in capital investment, you're 12 going to get more output per worker, not 13 because each of the workers is doing more, 14 but because more capital is producing more 15 output, right? That is, you have more of 16 the capital producing the output over that 17 period. 18 So neither of those pieces have 19 really contributed to growth in a demand 20 for labor, the rationalization that we 21 needed fewer of that old, inefficient 22 capital and also fewer workers to work</p>
<p style="text-align: right;">Page 207</p> <p>1 with that old, inefficient capital. 2 The growth in capital investment in 3 the last couple decades has meant we can 4 produce more output using more capital, 5 but also that didn't increase the demand 6 for labor. 7 And that's an important feature, 8 because productivity growth at the 9 industry level doesn't really relate per 10 se to changes in industry level 11 compensation. And the reason is often 12 productivity growth actually reduces, 13 rather than increases, the demand for 14 labor. As we grow in productivity at the 15 industry level, that industry is going to 16 probably -- in many cases and certainly in 17 the railroad case, given the sources of 18 productivity growth, is going to actually 19 lead to lower demand for labor and, 20 therefore, no upward pressure on -- on 21 compensation. 22 Secondly, even when the demand for</p>	<p style="text-align: right;">Page 208</p> <p>1 labor is growing, that's -- you know, 2 that's going to affect how many workers, 3 so not so much how those workers get paid. 4 In contrast, productivity growth at 5 the economy level is related to 6 compensation. The major way in which an 7 economy increases its wealth and gets 8 richer is through productivity growth. 9 But at the industry level, the 10 relationships are the other way around. 11 Industry, for example -- and 12 there's been enormous productivity growth 13 that people often forget is agriculture. 14 The greater productivity growth in 15 agriculture has actually reduced the need 16 for farmers. There's actually fewer 17 farmers today because of that. 18 And the railroad industry has many 19 of those same forces at work: improved 20 technology, rationalization in network, 21 investments in capital. 22 Now, finally I get to the last</p>

<p style="text-align: right;">Page 209</p> <p>1 piece of my discussion, which is the 2 relationship between all the forces I just 3 talked about and profits. 4 Now, first off what we call profit 5 is not really all what economists would 6 think of as profit. Indeed, most of it is 7 not. Most of what we're calling profit is 8 actually return on capital. 9 And what I talked about earlier, 10 that the railroads have invested more and 11 more in capital, means that the returns on 12 those capital is going to go up, not 13 necessarily because the rate of return is 14 going up. There's just more capital 15 that's earning a return. 16 And that profitability that's come 17 about in a sense it reflects that greater 18 investment and greater efficiency. But if 19 you go back and look at the slide that was 20 put up this morning on output productivity 21 and -- and rates -- it was a chart that 22 had kind of flatlines before the Staggers</p>	<p style="text-align: right;">Page 210</p> <p>1 Act and everyone took off -- one of the 2 things you'll notice is that one of the 3 things that's really helped the railroads 4 is that they've been able to grow their 5 output. That is -- and how have they done 6 that? 7 They've done that by competing 8 successfully against other industries, 9 particularly trucks. With all the 10 emphasis on environmental and greenhouse 11 gases, that's becoming even more 12 important. Railroads have an advantage. 13 They're much less energy-intensive than 14 trucks. 15 But they have to compete to get 16 that business. And competing to get that 17 business depends on their costs, what 18 their costs are. And so one of the 19 dangers you have, you say well, geez, all 20 this productivity growth, all this 21 rationalization, that's reduced employment 22 and with -- and that's increased output</p>
<p style="text-align: right;">Page 211</p> <p>1 per worker, so maybe you should raise 2 wages. 3 Well, the answer is if you raise 4 wages you're going to accelerate that 5 decline in labor. You're not going to 6 arrest it, right, because you're going to 7 make the industry less competitive with 8 other industries like trucks. That's 9 going to reduce output. That's going to 10 reduce labor. 11 Secondly, you're going to 12 accelerate the substitution of capital for 13 labor. The higher the wage rates are and 14 the higher total compensation is, the more 15 you're going to encourage these firms to 16 substitute capital for labor. The net 17 effect of all that on capital is not 18 clear. 19 On the one hand, less output means 20 less capital. More substitution of 21 capital means more capital. So I can't 22 tell you which way capital is going to go,</p>	<p style="text-align: right;">Page 212</p> <p>1 but I can tell you for sure which way 2 labor is going to go. Labor is going to 3 go down because you're going to have less 4 output, less able to compete against other 5 industries and also an increase incentive 6 to substitute capital for labor. 7 So where does this leave us? I 8 think the following -- I'll go back and 9 stress some of the most important pieces. 10 Railroad workers earn a premium. 11 That premium is there and has been there. 12 That hiring data really tell us that -- 13 and retention data tell us that there's 14 really not a call for a broad increase or 15 decrease in that premium. 16 To do that, to accomplish a stable 17 premium, given the inflation we have today 18 and the relatively poor prospects in the 19 economy as a whole for real wage growth 20 really would call for something like 21 essentially maintaining the premium 22 through compensation increases roughly in</p>

<p style="text-align: right;">Page 213</p> <p>1 line with inflation. 2 Now, nobody has a crystal ball. I 3 don't have a crystal ball. I can't tell 4 you what's going to happen. You know, 5 inflation could come down faster than we 6 think. It could go -- stay more 7 consistent than we think. I think the 8 best we can do there is go with the 9 forecasts that are out there. Those are 10 the consensus view. 11 But on the other side, on the real 12 wage side, I think we have much stronger 13 reasons to believe that real wages are 14 going to continue to be challenged, 15 particularly given the -- the kind of 16 headwinds the economy faces. 17 Doesn't mean -- even if there's not 18 a recession, there's still significant 19 headwinds out there over the next two and 20 a half years. And we certainly know as a 21 factual basis that historically over the 22 first two and a half years of the</p>	<p style="text-align: right;">Page 214</p> <p>1 contract, real wage growth has -- has 2 been -- has been zero or even negative. 3 And finally, on the profit and 4 productivity side, it's true the industry 5 is in better shape than it's been. It's 6 gotten there through investments in 7 improving their operations and investing 8 in capital. 9 As discussed earlier today by Union 10 Pacific, we're sort of in that improving 11 operations mode today, not just investing 12 in capital, trying to cover up new ways -- 13 discover new ways to organize production, 14 to improve productivity. That's going to 15 help the industry compete against other -- 16 other -- other competitors like trucks. 17 And it will also provide a return on those 18 capital investments that the industry has 19 made to this point. 20 However, raising wages is -- even 21 in that environment, you don't want to say 22 simply because you're profitable that</p>
<p style="text-align: right;">Page 215</p> <p>1 raising wages, therefore, won't reduce 2 employment because you can afford it. 3 That's not how the world works. 4 When you raise wages, whether 5 you're profitable or not profitable, 6 higher wages will raise costs, make you 7 less effective for competing for business 8 the way you've -- you know, really what 9 accounts for the growth in the industry up 10 till today, growth in intermodal and 11 growth in other types of transportation 12 where the industry has become more 13 competitive and, at the same time, induce 14 more substitution toward capital. 15 So I think a combination of the 16 realities of the labor market, the 17 realities of the productivity and profit 18 side of the world I think, you know, tell 19 us, you know, a prudent, steady-as-you-go 20 process ought to be probably what 21 economics pushes us toward here, 22 maintaining the premium. That will</p>	<p style="text-align: right;">Page 216</p> <p>1 maintain the ability of Carriers to 2 attract and retain workers. 3 Doesn't mean there aren't problems 4 out there right now in different locations 5 in different spots for different jobs. 6 But that's not an overall compensation 7 issue. That's more this disruption that's 8 affecting many industries. 9 Even if I think about the 10 university, I mean, we have that same 11 issue right now. We have a lot of people 12 who have decided to take early retirement, 13 for example, because -- and it's not 14 because pay at the university isn't good 15 enough. It's because, you know, there 16 have been big changes in the economy and 17 some people say boy, this is too much of a 18 pain right now. 19 And some of that's going on in the 20 railroads, but that's going on across the 21 economy. But that's not really what's 22 going to -- that's not really a problem of</p>

<p style="text-align: right;">Page 217</p> <p>1 where is compensation. It's really a 2 problem of the disruption that the 3 pandemic and other things have generated 4 for -- for the world around us. 5 That's how I see the economics. 6 There will be a lot more detail on all 7 these points. Everything I talked about 8 today will be covered in one of the other 9 presentations that the Carriers' experts 10 will put forward. 11 I'm happy to try to answer any 12 general questions. I think if you have 13 specific questions about some of the 14 charts and other things I put forward, it 15 probably would be best to ask them of the 16 specific people who are going to talk 17 about those, whether that's Jesse David or 18 David Allen or Professor Eakin. 19 But hopefully what I've been able 20 to provide today is a little general 21 perspective on the different areas that my 22 talk covered.</p>	<p style="text-align: right;">Page 218</p> <p>1 Thank you so much. I appreciate 2 the opportunity to speak to you today. 3 CHAIRPERSON JAFFE: Thank you. 4 BOARD MEMBER DEINHARDT: I just 5 have one question. I think you said 6 there's a difference in the narrative 7 between the Carriers and the organization 8 on the supply and demand of labor issue. 9 You know, we heard a whole big story 10 yesterday about how difficult it is for 11 the Carriers to be hiring qualified people 12 and yet we hear from you that that's not 13 really the story. And your explanation is 14 that the difficulty in hiring is on kind 15 of a location by location and job title by 16 job title basis. And so you can't really 17 look at this 44, you know, applicants per 18 position because that's really an average. 19 Are you the person to give us more 20 detail and more data on that? Is there 21 any data on more a localized basis for 22 this challenge of finding qualified people</p>
<p style="text-align: right;">Page 219</p> <p>1 or, Mr. Munro, should I just be patient 2 and all will be revealed? 3 DR. MURPHY: I think on the very 4 specifics it probably would be better to 5 talk to some of the other people. But let 6 me try to distinguish between two parts of 7 it. 8 One is if you look at the turnover 9 of existing employees, you do see an 10 increase in turnover in many -- in all 11 industries that existing employees are 12 changing. 13 And that's this disruption part I 14 talked about. Many of those employees are 15 going to places that some pay less than 16 where they're at, not necessarily going 17 because they're getting paid more. It's 18 really -- you know, the pandemic has 19 upended many aspects of people's lives and 20 they've decided they want to do something 21 different. 22 So I'm not surprised in this</p>	<p style="text-align: right;">Page 220</p> <p>1 industry that you see some of that same 2 stuff going on. We see that across the 3 economy. I mentioned how that happens at 4 the university. 5 On the hiring side, if you're 6 thinking about the level of overall wages, 7 really the big issue that's between the 8 Carriers' proposal and the Union proposal 9 here, I think you want to look at the 10 broad statistics because the broad 11 statistics are really telling you about 12 the broad story. 13 Indeed, if you think about the 14 discussions we heard yesterday from the 15 Union on hiring, they mention well, geez, 16 you know, one of the things we see that 17 seems at odds with the figures that I have 18 here is the specific cases where they're 19 offering -- and for Chicago they're 20 offering more money for diesel mechanics 21 or, as we've talked about earlier, what 22 you need to do to hire people in western</p>

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1 Nebraska.

2 But those -- that's how you would

3 expect to deal with those kinds of issues,

4 right? They would be dealt with, with

5 where I have a problem. And raising wages

6 across the board is not going to be an

7 effective way to deal with that because

8 you're actually going to discourage hiring

9 for the places that have plenty of

10 applicants and do relatively little to

11 improve the situation, for example, where

12 you have little or no applicants on

13 specific jobs. It's just -- it's the

14 wrong cure for the issue.

15 And that's kind of true -- you

16 know, it's not just true in -- in

17 railroads. That's kind of what's going on

18 out there in the economy as a whole.

19 That's part of what's driving up prices,

20 for example. One of the things driving up

21 prices is people are saying, you know, I'm

22 having a hard time not just getting

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1 crafts? So if wage rates went up, for

2 example, you would presumably use fewer

3 engineers or you would use fewer

4 maintenance of way employees or the like?

5 **DR. MURPHY:** Yeah, I think there is

6 evidence that if you look at economic

7 studies of the railroad industry, you do

8 see evidence of that kind of capital,

9 particularly capital labor substitution.

10 This goes way back.

11 My thesis advisor, Sherman Rosen,

12 actually worked on Class I railroads and

13 looked at labor capital substitution in

14 Class I railroads. That's a really old

15 study, but I think people who have looked

16 at that empirically have found that kind

17 of relationship.

18 It's much greater in the long run

19 than in the short run. And, you know,

20 that kind of substitution is kind of some

21 of what we've seen over time, not so much

22 because labor has gotten more expensive,

Page 222

1 workers, I'm having a hard time getting

2 parts, I'm having a hard time getting lots

3 of things. And that's the disruption

4 element on the inflation side that's

5 really driving up the real cost of goods

6 and, therefore, driving down real wages.

7 But hopefully some of the other

8 witnesses will be able to address more of

9 the specifics of the kinds of areas where

10 they're having issues.

11 I have some anecdotes, but I don't

12 have data specifically on those jobs.

13 **BOARD MEMBER DEINHARDT:** Thank you.

14 **CHAIRPERSON JAFFE:** I'll follow up

15 on just one thing. Part of your

16 presentation as I followed it essentially

17 asserts that there's an elasticity with

18 respect to wage rates and necessarily

19 level of employment.

20 Do you have any evidence that

21 suggests that that is, in fact, the case

22 with respect to these Carriers and these

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1 but mostly because capital has gotten

2 cheaper. But those are just two sides of

3 the same coin, right?

4 It's -- it's -- you know, I could

5 switch from domestic cars to foreign cars

6 because domestic cars got more expensive

7 while foreign cars get cheaper. And so I

8 think the evidence from the literature

9 would support that type of elasticity

10 estimates.

11 **CHAIRPERSON JAFFE:** And it's your

12 belief that that's the case today, even

13 after all the substitution that's taken

14 place over the last 40 years?

15 **DR. MURPHY:** I think we're

16 continuing to see that substitution today.

17 So I would think that's still the case.

18 **CHAIRPERSON JAFFE:** Fair enough.

19 Thank you.

20 **DR. MURPHY:** Thank you very much.

21 **CHAIRPERSON JAFFE:** Off the record,

22 please. Take a break.

<p style="text-align: right;">Page 225</p> <p>1 (Thereupon, a brief recess was 2 taken.) 3 CHAIRPERSON JAFFE: Mr. Munro. 4 MR. EASLEY: Mr. Chairman, the 5 Carriers call for their next witness Mr. 6 Ken Gradia, former chairman of the 7 National Railway Labor Conference. 8 CHAIRPERSON JAFFE: May I ask that 9 Mr. Gradia be sworn in, please. 10 Whereupon: 11 KEN GRADIA, 12 was called for examination, and, after being 13 duly sworn, testified as follows: 14 MR. GRADIA: Good morning, 15 Mr. Chairman, Board members. 16 With your indulgence, I will 17 deliver my statement seated. I've already 18 asked counsel to handle the clicker. 19 Unlike Dr. Murphy, I cannot claim physical 20 problems, but rather technical 21 incompetence. So hopefully that will 22 correct any problems.</p>	<p style="text-align: right;">Page 226</p> <p>1 I appreciate the opportunity to be 2 here today with you. Let me give you a 3 bit of background of my history. 4 I started at the NRLC in 1984 and 5 retired June 19 -- or June 30, rather, 6 2019. Prior to that time I was an 7 attorney in various roles at the Federal 8 Railroad Administration. 9 In my nearly 35 years at the NRLC, 10 I was directly involved in seven 11 bargaining rounds, the first three as 12 labor counsel and director of labor 13 relations, the next two as vice chairman 14 and the final two as chairman of the NRLC. 15 Next slide, please. My purpose 16 here today is to walk the Board through a 17 very brief summary of the railroad 18 bargaining rounds over my time with the 19 NRLC and highlight the highest structural 20 wage increases that were negotiated in 21 each round. And when I say structural, I 22 am distinguishing between increases that</p>
<p style="text-align: right;">Page 227</p> <p>1 are rolled into the wage base and 2 obviously then compound over time versus 3 other types of payments that are not 4 rolled into the base, such as lump sums, 5 COLAs, et cetera. 6 While I will focus on structural 7 increases, I will also note nonstructural 8 increases in each of those rounds. I am 9 largely focusing on the structural 10 increases because, as you will see, the 11 parties during the last several rounds 12 have moved away from nonstructural 13 increases. 14 When I say the highest, I will 15 focus on the highest structural wage 16 increases in each round. 17 In the past three bargaining 18 rounds, national settlements have been 19 uniform across graphs. That's not always 20 been the case. As you will see, in 21 earlier rounds there have been variations 22 between the Unions.</p>	<p style="text-align: right;">Page 228</p> <p>1 I'm going to simplify my 2 presentation in a way that presents the 3 picture that is most favorable to the 4 Unions in each round. That means that 5 throughout my remarks, I will be focusing 6 on the highest GWI package and the 7 structural COLA that accompanied that 8 package. Therefore, I will highlight the 9 maximum total structural increases the 10 parties have agreed to since I began my 11 tenure at the NRLC for each of those 12 rounds. 13 Next slide. Now, as this Board 14 well knows, your mission is to assist the 15 parties in reaching a voluntary agreement. 16 We have up on the screen an excerpt from 17 the prehearing submission by the Unions. 18 And they quote PEB 222 in saying that 19 PEBs, in making recommendations, treat as 20 a critical ingredient their acceptability 21 by the parties. Now, we agree with that 22 point. I think that's exactly right.</p>

<p style="text-align: right;">Page 229</p> <p>1 Next slide. Here's a further 2 excerpt from that same submission. And 3 here I want to draw attention to that in 4 determining acceptability, a key component 5 is the reasonable expectations of the 6 parties, discerned by, among other things, 7 past bargaining. 8 Now, often in determining 9 acceptability PEBs have an opportunity to 10 look at pattern agreements. In this round 11 there is no pattern to reference. 12 We would submit that the parties' 13 extended history of actual settlements 14 over 35 years of bargaining through good 15 and bad times is the most compelling 16 evidence you will have before you for the 17 proper wage settlement in the dispute 18 before you. 19 Next slide, please. This is a 20 somewhat busy slide, but it captures all 21 of the bargaining rounds that I've been 22 involved in from 1985 all the way through</p>	<p style="text-align: right;">Page 230</p> <p>1 2015 and then at the bottom of the 2 Carriers' proposal. 3 As you move across the chart, 4 you'll see the range of GWIs. As I said, 5 in earlier rounds there were times where 6 there were different settlements, so you 7 have a range of GWIs. In others you have 8 uniform GWIs. 9 The COLA package with GWI 10 equivalents, these are COLAs that were 11 rolled into wages at various times. And 12 we've expressed them both in dollar 13 amounts and as a percentage. 14 The sum of those increases is shown 15 as the highest total structural increase 16 for each of those rounds. And then in the 17 last column to the far right are the 18 various nonstructural pieces of 19 compensation that were included in each of 20 those rounds. I'll go through all of that 21 in more detail in a moment. But this is a 22 handy reference to the range of what has</p>
<p style="text-align: right;">Page 231</p> <p>1 been actually agreed to. 2 And what you will see is that 3 history that's before you makes it clear 4 that there is a pattern of structural 5 increases that falls within a fairly 6 narrow range. 7 Now, in four of those rounds, the 8 national settlements were based on PEB 9 recommendations. It had wage packages 10 ranging from 10 to 17.7 percent. 11 I know that the Chairman and Member 12 Twomey will be familiar with at least some 13 of those PEBs based on their past service 14 in that capacity. 15 In the three non-PEB rounds, the 16 parties negotiated wage deals ranging from 17 12.5 to 17 percent. 18 And as you have already seen in 19 Mr. Branon's presentation, the Carriers' 20 proposal is at the upper end of this 21 range. The Coalition's proposal for that 22 contract is far outside these historical</p>	<p style="text-align: right;">Page 232</p> <p>1 norms. 2 Next slide, please. This is the 3 first of the seven rounds that I am going 4 to review. This is the 1985 round. It 5 followed two PEBs, one with the UTU, 6 another with many of the nonoperating 7 crafts. And this was really the first 8 round after implementation of the Stagers 9 Act, which was referenced in Dr. Murphy's 10 testimony. 11 At the beginning of the '85 round, 12 the financial health of the railroads was 13 still, I think could be accurately termed 14 as precarious. The highest structural GWI 15 increase in this round was 10.5 percent. 16 There was a structural COLA of 17 13 cents. And you see the percentage 18 equivalent there. The 1985 agreements 19 provided for a COLA, but the agreed-upon 20 formula did not produce any increase 21 during the term of the agreement. 22 However, the predecessor</p>

<p style="text-align: right;">Page 233</p> <p>1 agreements, that of the 1980 round, 2 provided that a portion of the COLA from 3 that round would remain as a balance in 4 the 1985 round and at that time was not 5 rolled into rates. 6 However, in the '85 agreements, the 7 parties agreed to roll that carryover 8 COLA, which is 13 cents, into the base 9 effective June 30, 1988 and, hence, the 10 total structural increase of 11.4 percent. 11 Now, there were lump sums agreed to 12 also in those contracts. They varied by 13 craft, anywhere from \$500 to \$1,800. And 14 the important point is that they were not 15 rolled into the wage base. 16 Next round is 1990. 1990 was a 17 watershed round. It resulted in PEB 219, 18 of which I think everyone in the room is 19 familiar. Those recommendations were 20 ultimately imposed by Congress on some 21 Unions. Others reached voluntary 22 agreements.</p>	<p style="text-align: right;">Page 234</p> <p>1 This round was heavily focused on 2 addressing the industry's financial 3 productivity challenges through major work 4 rule changes, productivity improvements 5 and health care changes. Those changes 6 affected every craft and resulted in 7 significant Carrier savings. 8 The highest GWI, it's not a range 9 here, but the highest GWI is 10 percent. 10 There were significant -- no COLA, but 11 there were significant sweeteners, a 12 gratification bonus of \$2,000. There were 13 lump-sum cost of living adjustments of 14 significant amounts, ranging from 3- to 15 about \$5,000, which were intended to 16 offset cost of living increases during the 17 period of the contract without 18 structurally changing rates. 19 This was also the round in which 20 the so-called Harris COLA was introduced. 21 The chairman of PEB 219, Bob Harris, came 22 up with the idea of a COLA that would come</p>
<p style="text-align: right;">Page 235</p> <p>1 into effect after the moratorium in any 2 particular round. The intent was to 3 encourage the parties through COLA 4 adjustments to reach earlier settlements. 5 The intent was once a settlement 6 was reached, that COLA would be eliminated 7 and supplanted, if you will, by the -- by 8 the agreed-to wage increases and then 9 replaced. A new Harris COLA would be put 10 into place for the following round. And 11 that became a feature of the parties' 12 agreements until they were permanently 13 eliminated in the 2005 bargaining round 14 for most crafts. There was a carryover 15 for a couple of crafts, but in the ensuing 16 round after that, they also were 17 eliminated and became a part of industry 18 lore. 19 This is one of the richest rounds 20 you will see in terms of nonstructural 21 sweeteners. And there's a variety of 22 reasons for that, which I won't get into,</p>	<p style="text-align: right;">Page 236</p> <p>1 but the PEB 219 package, if you will, of 2 changes included those sweeteners as part 3 of the creation of an acceptable deal, in 4 their view, to both sides. 5 Next slide, please. The 1995 round 6 followed three PEBs, 228, 229 and 230, one 7 of which Member Twomey chaired. The 8 highest -- there was a range of GWIs, 9 depending on craft. Highest was 14 10 percent. 11 There were also COLAs, structural 12 COLAs. The very first Harris COLA became 13 effective in July of 1995, produced 9 14 cents. Those agreements also provided for 15 a COLA effective in either December of '99 16 or July of 2000. 17 Regardless of the effective date, 18 that COLA produced 56 cents. The sum of 19 those two COLAs is the 65 cent figure that 20 you see, equivalent to 3.7 percent, with 21 the total structural increase 17.7 22 percent.</p>

<p style="text-align: right;">Page 237</p> <p>1 Now, there were ratification 2 bonuses depending on the craft. The \$400, 3 I believe was essentially for the non-op 4 crafts, 1 percent for the ops. And 5 that -- that's the full story of the '95 6 round. Again, you'll note the 17.7, which 7 is the high watermark of settlements that 8 you will see over the seven rounds. 9 Next slide, please. Year 2000, 10 voluntary settlements in that round. 11 There were some individualized 12 arbitrations, but ultimately voluntary 13 settlements. Again, you see there was a 14 range of GWIs from 9 to 12 and a quarter 15 percent. 16 The COLAs varied by craft. The 17 crafts that received the highest GWI 18 package received a structural COLA 19 increase of 27 cents, the 1.4 percent and 20 ultimately the 13.7. 21 All of the crafts in this round 22 eliminated the Harris COLA during that</p>	<p style="text-align: right;">Page 238</p> <p>1 round, but the effective date of the 2 elimination varied by craft. There were 3 also variations in what each of those 4 deals did with the Harris COLA. 5 In some cases, the Harris COLA was 6 permanently rolled into rates. Other 7 cases they were eliminated, rolled out. 8 In still others, they were eliminated, 9 rolled out of rates and recovered from 10 first -- from retroactive wage payments. 11 Now, to add to the complexity, the 12 BMW in this round negotiated structural 13 COLA-based increases in four contract 14 years. There's one GWI and then four 15 COLA-based increases. The end result of 16 all of that is that structural increases 17 varied substantially by craft and not all 18 COLAs were ultimately structural. 19 However, as I noted at the outset 20 of my comments, we focused here on the 21 highest GWI plus COLA package, which was 22 the 13.7 percent. All of the crafts in</p>
<p style="text-align: right;">Page 239</p> <p>1 this round negotiated for new Harris COLAs 2 beginning in 2005. 3 As I mentioned earlier, those were 4 largely eliminated in that round. There 5 was no payment of those COLAs, nor was 6 there any recovery. It is also the last 7 round before wage settlements started to 8 shift away from nonstructural compensation 9 sweeteners and toward more uniform GWI 10 settlements across craft. 11 Next slide. This takes us to the 12 2005 round. Again, no PEBs, a 13 voluntary -- voluntary settlements. 14 Highest GWI was 17 percent across the 15 board with crafts. 16 Now, there was no COLA at all, nor 17 were there any lump sums. And in fact, 18 this was the last time parties added a 19 COLA in a national wage settlement. 20 The vast majority of the Unions 21 eliminated and did not replace the 2000 22 Harris COLA. The two exceptions were UTU</p>	<p style="text-align: right;">Page 240</p> <p>1 and YDM. They did provide for a new 2 Harris COLA in the 2010 round, but 3 ultimately that was eliminated and not 4 replaced. So that was the end of the 5 Harris COLAs. 6 You'll note here that the 7 structural increase was 17 percent, 8 highest GWI package since 1980. It was 9 also backloaded. What the parties didn't 10 know at the time of the negotiation was 11 that there was going to be a market crash 12 as part of the 2007-2008 financial crisis. 13 When the market crashed and with a 14 backloaded contract, the industry 15 unexpectedly found itself in its most 16 precarious financial position since before 17 the 1980s and had little flexibility to 18 respond to the marketplace challenges that 19 faced them during this time. 20 Next slide. This is the 2010 21 round, which the Chairman will recall. I 22 will hesitate and avoid characterizing</p>

<p style="text-align: right;">Page 241</p> <p>1 what he remembers about it, but this is 2 the result. There's a range of GWIs, 14 3 to 15.6. Now, this was a round in which 4 there was a pattern or a lead settlement, 5 however one would characterize it, with 6 the UTU. That's the 14 percent. 7 And the rest of the Unions went to 8 PEB 243. And the outcome was the 15.6. 9 The difference between them was 10 monetization of certain pieces of the UTU 11 package. But the end result was the 15.6. 12 All of the bargaining units, with 13 the exception of UTU, received a 1 percent 14 ratification bonus to incentivize 15 ratification after the PEB. So that was 16 the -- the other piece -- nonstructural 17 piece of compensation, which takes us to 18 the last round before the current dispute, 19 which was the 2015 round. 20 There were no PEBs. These were -- 21 no arbitrations, except certain follow-on 22 arbitrations for discrete pieces of the</p>	<p style="text-align: right;">Page 242</p> <p>1 settlement. Highest GWI increase, 12.5 2 percent, no COLA, no other nonstructural 3 compensation. 4 Next slide. So to sum up, here is 5 the pattern displayed graphically. As you 6 can see, the range of settlements, highest 7 GWI, highest COLA and it's -- also plotted 8 against that is inflation utilizing the 9 PCE measure, which Dr. Murphy mentioned 10 and which will also be addressed in detail 11 by my next -- by our next witness, 12 Mr. David. 13 To the far right are the two 14 proposals that are before you, the 15 Carriers' proposal, which you can see, is 16 in range and the Coalition's proposal, 17 which is decidedly not in range, but well 18 out of step with historical pattern of 19 settlements. 20 You can also see that there's no 21 relationship between inflation and GWIs. 22 That's because, in my time at the NRLC at</p>
<p style="text-align: right;">Page 243</p> <p>1 least, the parties never really attempted 2 in bargaining to predict inflation and 3 then try to adjust structural GWIs to 4 reflect that. 5 They are, as you can see, at 6 various places and at various times 7 relative -- the settlements are relative 8 to inflation. 9 Now, the Carriers' proposal before 10 you, as you can see, would be one of the 11 richest wage settlements in the parties 12 post-Staggers bargaining history, but also 13 includes a \$1,000 ratification bonus, in 14 addition to the GWIs, which include a 15 hefty retroactive aspect to them. 16 Only one of the last three national 17 rounds has included a nonstructural 18 sweetener like that. So what do we draw 19 from all of this? As already stated, we 20 think that the Carriers' proposal is well 21 within this range of historical 22 settlements over the last seven rounds and</p>	<p style="text-align: right;">Page 244</p> <p>1 one of the richest wage settlements. 2 The Unions' proposal is not. Their 3 demand is far outside that range and would 4 set a marker and a precedent that is -- 5 has not been seen in the industry over the 6 history of modern rail bargaining. 7 And with that, I will be happy to 8 take any questions that the Board may 9 have. 10 CHAIRPERSON JAFFE: Thank you, 11 Mr. Gradia. 12 I think we're actually in good 13 shape. Thank you. 14 MR. GRADIA: Thank you very much. 15 MR. EASLEY: Mr. Chairman, the 16 Carriers' next witness is Dr. Jesse David. 17 DR. DAVID: I think I'll use the 18 podium. 19 CHAIRPERSON JAFFE: And if I could 20 ask the court reporter to please swear in 21 the witness. 22</p>

<p style="text-align: right;">Page 245</p> <p>1 Whereupon:</p> <p>2 JESSE DAVID,</p> <p>3 was called for examination, and, after being</p> <p>4 duly sworn, testified as follows:</p> <p>5 DR. DAVID: Thank you to the Board</p> <p>6 and really appreciate everybody's patience</p> <p>7 and consideration here for my talk, my</p> <p>8 piece of this process.</p> <p>9 I'm an economist and I was asked by</p> <p>10 the Carriers to evaluate the wages and</p> <p>11 total compensation of the Union members,</p> <p>12 both at the current point in time -- and</p> <p>13 I'm using 2020 as a benchmark for that --</p> <p>14 as well as the growth in those measures</p> <p>15 over several previous rounds.</p> <p>16 I do that by looking at a number of</p> <p>17 publicly available benchmarks and applying</p> <p>18 judgment and economic analysis to</p> <p>19 determine what might be deemed most</p> <p>20 comparable and what measures one might use</p> <p>21 to evaluate that comparability.</p> <p>22 Here we go. Overall, four</p>	<p style="text-align: right;">Page 246</p> <p>1 conclusions. Summarize those quickly.</p> <p>2 And some of this you've heard from some of</p> <p>3 the other witnesses. A lot of that data</p> <p>4 and some of that analysis came from my</p> <p>5 report. I'm going to dig into that in a</p> <p>6 little more detail.</p> <p>7 First, as of 2020, the railroad</p> <p>8 workers earned more than their peers in</p> <p>9 both wages and total compensation across</p> <p>10 all -- essentially all comparator</p> <p>11 industries and occupation groups that I</p> <p>12 analyzed. And by the way, I'm using 2020</p> <p>13 as the base year for this comparison.</p> <p>14 Obviously, any retroactive increase that</p> <p>15 comes out of this process would raise that</p> <p>16 premium exactly in proportion.</p> <p>17 Second, the growth in that</p> <p>18 compensation, the growth rate on an annual</p> <p>19 basis. It's expanded over the last three</p> <p>20 rounds over the last 15 years. That's the</p> <p>21 period I've analyzed. And the premiums</p> <p>22 have gone up because of the wage increases</p>
<p style="text-align: right;">Page 247</p> <p>1 and the increases in other components of</p> <p>2 total compensation.</p> <p>3 The rate of growth for the railroad</p> <p>4 workers' compensation over that period has</p> <p>5 been faster, again, than any of the other</p> <p>6 benchmarks that I evaluated.</p> <p>7 I also compare that compensation</p> <p>8 growth to what's happened with various</p> <p>9 measures of inflation and as been</p> <p>10 previewed to you, I'm going to discuss a</p> <p>11 little bit about what those different</p> <p>12 measures mean and what -- what relevance</p> <p>13 they might have to this process. And I</p> <p>14 find, of course, that the railroad</p> <p>15 workers' compensation has exceeded</p> <p>16 inflation under any measure substantially</p> <p>17 over the last 15 years, thereby increasing</p> <p>18 the purchasing power of that compensation.</p> <p>19 And then finally, I look at the two</p> <p>20 proposals and evaluate those, again,</p> <p>21 against publicly available information, in</p> <p>22 particular various measures of projected</p>	<p style="text-align: right;">Page 248</p> <p>1 inflation to give some sense of whether</p> <p>2 the premia and the rates of growth that</p> <p>3 we've seen in the past are going to be</p> <p>4 maintained.</p> <p>5 So let's dive right in. You've</p> <p>6 seen this one before. The total</p> <p>7 compensation as of 2020, obviously, again,</p> <p>8 before any retroactive increase, I created</p> <p>9 an annual numbers per -- per employee, on</p> <p>10 average, \$126,000 in total compensation</p> <p>11 and about \$90,000 in payroll, which is all</p> <p>12 of the cash payments, excluding the</p> <p>13 various insurance components and the</p> <p>14 retirement and tax components.</p> <p>15 I also calculated that on a per</p> <p>16 hour worked basis, which is the second</p> <p>17 column, about \$61 per hour in total comp</p> <p>18 and about \$43 an hour in cash payments, of</p> <p>19 which about 37 is straight wages.</p> <p>20 For the rest of my analysis, I'm</p> <p>21 going to focus on the hourly, the pay per</p> <p>22 hour worked and total compensation per</p>

<p style="text-align: right;">Page 249</p> <p>1 hour worked, rather than annual. It makes 2 more sense to do that in a benchmarking 3 context for a variety of reasons, the main 4 one being that the factors that affect 5 annual compensation are largely, or at 6 least to some extent, outside the control 7 of anyone in this room and certainly of 8 the Board, whereas hourly pay follows 9 directly from the GWIs and some of the 10 other elements of -- of compensation. 11 Again, we've seen this one. Wages 12 are the bulk of total compensation, but 13 there are very significant aspects of 14 compensation outside of wages that total 15 about 40 percent. I break it down this 16 way because some of the benchmark data 17 that I analyzed, which all comes from the 18 BLS, has a very specific definition of 19 wages and I attempted to take the data 20 from the railroads and parse out the 21 components that match what BLS calls wages 22 and leave in other elements of</p>	<p style="text-align: right;">Page 250</p> <p>1 compensation the parts that BLS calls 2 something else, for example, paid time 3 off. 4 Okay. So we've seen the average 5 about \$126,000 in total compensation, 6 about 90,000 in payroll. But that varies 7 quite a bit across the crafts, from a high 8 of about over \$150,000 of BLET to a low of 9 about \$100,000 at NCFO. 10 As you can see from this chart, the 11 bulk of the variation unsurprisingly is in 12 wages and the health components and the 13 retirement components very similar across 14 the crafts. But there's quite a wide 15 range, as everybody knows, within -- and 16 as well within the Unions as well. But 17 I'm going to be looking at the average for 18 my benchmarking purposes. 19 Okay. So let's start with total 20 compensation. The preview of my 21 results -- you've seen this already -- if 22 we're looking at all of the elements of</p>
<p style="text-align: right;">Page 251</p> <p>1 compensation, the \$61 per hour worked in 2 2020 before any retroactive increase. I 3 find that across all of the comparable 4 occupation groups, the railroad workers 5 earn substantially more, even greater than 6 double some of the -- the comparative 7 groups that I'm going to demonstrate for 8 you. 9 Across industries, so when you're 10 looking at employees of different 11 occupations across all of the relevant 12 industries, same thing. The railroad 13 workers are compensated more highly and 14 we've been calling that a premium in the 15 range of 20 to 53 percent across all the 16 comparable industries, with one exception, 17 which is actually quite informative to 18 this process, the highly specialized 19 utilities sector. 20 Workers there across all 21 occupations do earn slightly more, about 9 22 percent more than the railroad workers.</p>	<p style="text-align: right;">Page 252</p> <p>1 I'm going to talk a little bit about what 2 that tells us. 3 And then finally, the BLS -- and 4 these analyses are all coming from the 5 National Compensation Survey at BLS, which 6 is the source of the ECEC and ECI measures 7 that you may be familiar with -- does 8 provide an additional breakout for 9 unionized workers across various 10 industries, once again, the railroad 11 workers as of 2020 earning more in total 12 compensation than all of the unionized 13 groups, some as high as 40 percent more. 14 So let's look at some of the detail there. 15 The BLS in the ECEC provides a 16 couple dozen different alternatives to 17 look at subgroups within the overall U.S. 18 economy of employees. I extracted the 19 ones that I think are the most relevant. 20 I'm not going to say they're perfectly 21 relevant, but this is the best we can do 22 from the ECEC. If you want to get more</p>

<p style="text-align: right;">Page 253</p> <p>1 specific, we have to turn to another 2 survey. And I'm going to do that next. 3 Within occupation groups, the four 4 groups that I found that were most 5 relevant -- I've excluded, for example, 6 service industries, agriculture, that sort 7 of thing. We're left with occupations the 8 construction, extraction and natural 9 resource group; installation, maintenance 10 and repair; transportation and material 11 moving; and production occupations. So 12 these are all workers across the economy 13 aggregated by occupations spread across 14 industries. 15 When we aggregate those, we find 16 nobody is earning more than \$40 an hour on 17 average in terms of total compensation 18 compared to the 61 paid to the railroad 19 workers in 2020. And, again, that number 20 is going up. 21 So quite substantial premiums when 22 we're comparing total compensation against</p>	<p style="text-align: right;">Page 254</p> <p>1 the industry groups available in the 2 ECEC -- excuse me, the occupation groups. 3 We can also look at industry 4 groups, which means within certain types 5 of businesses looking at all occupations 6 within those businesses. That's what I 7 show here. 8 The \$61 per hour, again, total 9 compensation for the railroad workers 10 compares to the construction industry, 11 manufacturing industry and the 12 transportation and warehousing industry 13 very favorably, about \$20 premium compared 14 to all workers across all occupations in 15 those industries. 16 The ECEC provides one other cut at 17 the data where they look at only employees 18 in large firms, greater than 500 19 employees. It's a well-known fact in 20 labor economics that employees at those 21 types of firms tend to earn more. The 22 ECEC confirms that.</p>
<p style="text-align: right;">Page 255</p> <p>1 But even compared to those 2 employees at larger firms, which are, like 3 the railroads, large firms, still a 10 or 4 \$13 premium in the two industries, 5 manufacturing and the transportation 6 industry that the ECEC provides. By the 7 way, the railroad workers themselves are 8 part of the transportation industry in 9 this data. 10 Now, I mentioned there is one 11 industry that the ECEC provides that shows 12 higher total comp than the railroad 13 workers. And that's the relatively small 14 and highly specialized utilities industry, 15 in which total compensation is a little 16 bit under 10 percent higher than for the 17 railroad workers. 18 That's because there are a large 19 number of highly educated and highly 20 skilled occupations in the utility 21 industry that have no analog for the 22 railroads, in particular, for example,</p>	<p style="text-align: right;">Page 256</p> <p>1 electrical engineers. And the ECEC does 2 not allow you to pull those out in terms 3 of the data that they have. If you want 4 to do that, you have to go to the other 5 surveys, but those only look at wages as 6 opposed to total compensation. So I'm 7 going to do that next and we'll see that 8 once we control for occupations, that 9 negative premium for the utility industry 10 goes away. 11 And then I mentioned the last type 12 of benchmark provided in the ECEC for 13 total compensation is breakdowns within 14 industries by unionized workers. And we 15 find positive premiums across all of the 16 industry groups reported. The 17 transportation and warehousing industry is 18 relatively small -- and again, the 19 railroad workers are in that -- and much 20 larger compared to unionized workers in 21 the three other relatively comparable 22 industry groups for unionized workers in</p>

<p style="text-align: right;">Page 257</p> <p>1 that data. So very high premiums there. 2 Okay. So if we want to get a 3 better breakdown, a more fine breakdown of 4 industries and occupations to get groups 5 of workers that are truly more comparable 6 than those high level breakdowns in the 7 ECEC, we can only look at wages. Total 8 comp isn't -- the BLS doesn't track it at 9 that level. But if you look at wages, you 10 can dig down to six-digit SIC codes and 11 occupation codes that really give you a 12 fine look at groups of workers and provide 13 data on the characteristics of those 14 workers. 15 The characteristics that I examined 16 to determine comparability are the 17 following: 18 English-speaking proficiency is 19 one; education level, high school degree, 20 some college, college degree, et cetera; 21 tenure on the job. The railroad workers, 22 as I'm sure you know, have relatively high</p>	<p style="text-align: right;">Page 258</p> <p>1 tenure, but there are some other 2 industries out there that are in the same 3 ballpark, close to 15 years. And lastly, 4 the size of the firm, as I mentioned. 5 Railroads are large firms, so we want to 6 compare the railroad workers to workers at 7 other large firms. And the NCS that I 8 used for this -- excuse me -- the OEWS 9 survey provides that kind of detail. And, 10 by the way, lots more detail in my report. 11 Everything I'm talking about here is 12 coming directly from that document. 13 So when I look at wage premiums 14 across the comparables that I find, I once 15 again see positive premiums against every 16 group that I examined for the railroad 17 workers, ranging up to 49 percent when 18 looking across industry and generally 19 above 25 percent. So 25 percent would be 20 roughly \$9 an hour in terms of wages. 21 Find very similar when looking at 22 comparable occupation groups. There are</p>
<p style="text-align: right;">Page 259</p> <p>1 few that are similar to the railroad 2 workers with premium near zero, but all -- 3 roughly all positive, except for, perhaps, 4 one that's roughly zero, and some, again, 5 as high as 50 or 60 percent in terms of 6 wages. So let's dig into those examples. 7 Now, my process for finding what I 8 deem the most comparable industry and 9 occupation groups, I mentioned already 10 that I examined four measures of worker 11 characteristics and matched those up 12 against the railroad workers. The details 13 of that is in my report. 14 I also excluded part-time workers 15 and I excluded occupations that I think 16 everyone would agree have no relevance 17 here, for example, service-type 18 occupations, agricultural occupations and 19 a variety of other types of occupations 20 that have no analogs within the railroad 21 workers. The details of how I did that 22 process are included in my report.</p>	<p style="text-align: right;">Page 260</p> <p>1 After conducting those 2 comparability analyses, I found five 3 industries that matched the railroad 4 workers across all the four dimensions 5 within a fairly tight window: Education, 6 tenure, English-speaking proficiency and 7 size of firm. Those five industries are 8 here. 9 Air transportation, the airlines, 10 of course; couriers and messengers, the 11 UPSs and FedExes; the U.S. Postal Service, 12 which is treated as an industry by the BLS 13 in this survey; public sector, rail 14 transportation workers, Amtrak and other 15 local or regional passenger lines for 16 example; and the utility sector, which I 17 mentioned. 18 I'll jump right to the utility 19 sector first. We've got positive premium 20 across all of these in terms of wages, but 21 you can see that once controlling for 22 those factors that I discussed, in</p>

<p style="text-align: right;">Page 261</p> <p>1 particular, occupation types, we now see a 2 positive premium in the utility sector for 3 the railroad workers. It's relatively 4 small compared to the others, still 5 positive. 6 The other premiums are quite large, 7 as I mentioned, reaching 25 percent when 8 looking across the industries for these 9 most comparable groups. 10 I had a second set of industries 11 that were somewhat less comparable, for 12 example, matching on three of the four 13 criteria. I included those here. There's 14 more detail in my report. But once again, 15 positive wage premium across every one of 16 those industry benchmarks. They're mostly 17 manufacturing industries and 18 transportation-related industries. 19 I did a second set of comparisons 20 where I restricted my analysis to matching 21 individual occupations across all 22 industries to the individual crafts by ICC</p>	<p style="text-align: right;">Page 262</p> <p>1 Code within the railroad workers universe. 2 It's quite a detailed process and there's 3 a crosswalk in my report that you can see 4 that shows which occupations I matched 5 against the different crafts. 6 After conducting that and excluding 7 the part time and the other adjustments 8 that I made, I found once again positive 9 premia for the railroad workers in terms 10 of wages against all of these comparable 11 occupation groups. 12 When you take the weighted average 13 across all ICCs based on the distribution 14 of those workers within the railroads, we 15 find a premium of about \$8 an hour, 16 actually closer to \$9 per hour, about 25 17 percent. That's that final set of two 18 columns. 19 And before I move on from the 20 premia, I'd just like to say none of my 21 opinions bear on whether these premia are 22 appropriate or fair in the context that</p>
<p style="text-align: right;">Page 263</p> <p>1 we've heard discussing here. That's not 2 part of what I was asked to do. I'm just 3 presenting the numbers. And I'll talk 4 about the implications of what the 5 proposals mean for these premia, but 6 whether historically that's an appropriate 7 premia is not something I'm opining on. 8 One other issue to address in terms 9 of comparability across the groups is 10 region and location of the workers. We're 11 looking at dollars paid and we're talking 12 about increases, GWIs and we're talking 13 about inflation. We're discussing these 14 all in the context of what does -- the 15 salary and the benefits of the railroad 16 workers, what does it buy, right? What is 17 the standard of living that it provides? 18 And in order to get a fuller 19 picture of that, you also have to consider 20 the location of the workers, because the 21 cost of living varies quite a lot across 22 the United States. So I did one final</p>	<p style="text-align: right;">Page 264</p> <p>1 analysis here where I obtained cost of 2 living data by state. And that's what's 3 represented on the left-hand map, the 4 darker regions, unsurprisingly, those with 5 more expensive goods and services, higher 6 cost of living, California in the West, 7 New England in the Mid-Atlantic, with 8 lowest cost of living mostly in the South 9 and Appalachia and the Plains states, 10 unsurprisingly. 11 Well, interestingly, when you look 12 at the distribution of employment of the 13 railroads -- and unsurprisingly, of 14 course -- it's essentially flipped. Most 15 of the workers at the railroads relative 16 to the distribution across all U.S. 17 employment are in the center of the 18 country, not on the coasts. So that means 19 they're enjoying lower cost of living than 20 workers across the U.S. economy as a 21 whole. 22 And that's what's shown on this</p>

<p style="text-align: right;">Page 265</p> <p>1 right-hand chart here. Illinois and 2 Nebraska are the states that have the most 3 railroad workers relative to the average 4 distribution of all U.S. workers. And 5 there are very few railroad workers in 6 California and New York, again, relative 7 to the population and overall employment 8 in those states.</p> <p>9 The converse nature of these two 10 charts implies essentially an additional 11 premium of about 5 and a half percent for 12 the railroad workers. That is, on 13 average, they're enjoying a cost of living 14 that's about 5 and a half percent less 15 than workers across the U.S. as a whole. 16 So that's just another data point, a bit 17 of context to keep in mind when thinking 18 about these premia.</p> <p>19 So that was a static analysis as of 20 2020 before any retroactive increase. I 21 also looked at growth over a number of 22 years to see the rate of increase of those</p>	<p style="text-align: right;">Page 266</p> <p>1 wages and total compensation and, 2 therefore, those premia.</p> <p>3 I chose to examine a 15-year 4 period. Why did I do that? Well, the 5 average tenure of the railroad employees 6 is slightly under 15 years, which means 7 that the average worker is going to be 8 affected by what happens in this room and 9 in this bargaining round has already 10 experienced wage growth over that period.</p> <p>11 That covers three whole bargaining 12 rounds. It covers a couple of full U.S. 13 business cycles and it's a period where we 14 can get very consistent data from the BLS 15 without changing designations of 16 industries and occupations. So all of 17 those are the reasons that we're going to 18 look at a 15-year period.</p> <p>19 So what do we find? We find that 20 from '05 to '20 -- we've seen some of 21 these numbers already -- total 22 compensation and wages have grown for the</p>
<p style="text-align: right;">Page 267</p> <p>1 railroad workers at about 3 percent. Over 2 the last five years, that's the set of 3 columns on the right, closer to 2 percent. 4 And if that 1.89 for GWI over five years 5 seems a little low, that's of course 6 because we're running through 2020. We 7 don't have an increase yet for 2020. So 8 those numbers are going to go up. But 9 roughly the numbers to take from this are 10 about 3 percent over 15 years, about 11 2 percent over five years before any 12 retroactive increase.</p> <p>13 All right. So what's happening to 14 those benchmarks over the same period? 15 That's what I've got next here.</p> <p>16 First, the total compensation 17 analysis from the ECEC, let's take that 18 back 15 years, see what's happened to 19 those same industry and occupation groups.</p> <p>20 What you have here is the 21 occupation groups, 3 percent for the 22 railroad workers, between 1.7 and 2.97 for</p>	<p style="text-align: right;">Page 268</p> <p>1 the comparator groups from the ECEC. So 2 again, not only are we seeing positive 3 premia today, but we see a faster rate of 4 growth over the last 15 years for the 5 railroad workers. So if that continues, 6 obviously those premia are going to 7 continue to expand.</p> <p>8 Similar results from the ECEC for 9 total compensation when looking across 10 industry groups, 3 percent for the 11 railroad workers, roughly 1 and a half to 12 2.9 for the different groups of workers, 13 as designated by the BLS and the ECEC.</p> <p>14 Even the highly paid utilities 15 industry is seeing slightly slower growth 16 over a 15-year period than the railroad 17 workers. And, again, that's an 18 underestimate, that 3 percent, because 19 that's going to go up after this 20 bargaining round is settled.</p> <p>21 Union employees, what about them in 22 terms of total compensation? The same</p>

<p style="text-align: right;">Page 269</p> <p>1 groups tracked by the ECEC, all of them 2 have experienced slower rate of growth of 3 total compensation over a 15-year period, 4 in some cases 1 and a half percent lower 5 per year. 6 I did the same analysis -- so those 7 last three charts were total comp from the 8 ECEC. Now we can go and look at the same 9 surveys that I analyzed for just wages 10 with the finer breakdown by industry and 11 occupation groups. That's what we've got 12 here. 13 Again, roughly 3 percent over 14 15 years for the railroad workers, less 15 than that across every one of the industry 16 groups for wages. Some more than 17 1 percent less, all of them at least 18 slightly lower in terms of rate of growth 19 over 15 years. 20 Same result -- so that was the tier 21 one industries, most comparable as I 22 discussed. The less comparable but still</p>	<p style="text-align: right;">Page 270</p> <p>1 fairly close in terms of things like 2 tenure and education and size of firm, all 3 lower rates of growth over 15 years than 4 the railroad workers. Some are close, but 5 none match the 3.1 percent that the 6 railroad workers have experienced over 15 7 years. 8 So I mentioned there's some other 9 benchmarking we can do here. We've heard 10 a lot about inflation. Let's talk about 11 that. 12 Three measures tend to get the most 13 discussion. I'll focus on the middle one 14 first. That's probably -- the CPI-U is 15 probably the most commonly mentioned and 16 publicly discussed index. If somebody 17 says inflation, most people go right to 18 CPI-U. It's also called headline 19 inflation. There's a few other names for 20 it. 21 The CPI-U tracks urban 22 households -- that's the U -- which are</p>
<p style="text-align: right;">Page 271</p> <p>1 about 93 percent of the U.S. population. 2 And it's looking at the prices of goods 3 and services in a fixed basket of products 4 and services over a fairly long period of 5 time. The BLS doesn't update that very 6 often. 7 The CPI-W, the one on the bottom, 8 is a subset of the CPI-U that only covers 9 wage earners and clerical workers in urban 10 regions if they've been employed over some 11 roughly one-year period. That only covers 12 about 29 percent of the U.S. population. 13 So it's a relatively small subset and, 14 again, excludes rural workers. Same sort 15 of fixed basket issue as the CPI-U. 16 And then we go to the first one, 17 the PCE, which we've heard about. This 18 one has a number of differences from CPI. 19 First, it's the broadest set of goods and 20 services in the economy and one thing it 21 includes that the CPI does not, for 22 example, would be goods and services</p>	<p style="text-align: right;">Page 272</p> <p>1 consumed by households but not purchased 2 by households. And, in particular, health 3 benefits, for example, medical care, a lot 4 of that is provided for households, but 5 they don't pay for it. CPI doesn't cover 6 that, but the PCE does. 7 Another key issue about the PCE is 8 that it's dynamic. When prices change -- 9 let's say the price of beef goes up and 10 the price of chicken goes down. People 11 buy more chicken and less beef. That 12 means overall, the cost of living changes 13 less than you would guess if you kept that 14 basket of goods fixed. 15 The PCE adjusts more frequently and 16 so better reflects the actual purchasing 17 power based on people's real buying 18 habits. And for a variety of reasons, 19 including those, especially those, the PCE 20 is the Federal Reserve's preferred 21 measure. It's what the Federal Reserve 22 uses when it's targeting inflation. A lot</p>

<p style="text-align: right;">Page 273</p> <p>1 of other government agencies use it 2 because they believe it provides the best 3 measure of actual purchasing power. 4 Okay. So let's look at what's 5 happened to these indices over 15 years, 6 GWIs at about 2 percent, total 7 compensation about 2.3 percent -- excuse 8 me, this is a five-year analysis first; 9 I'll do the 15-year next -- so in the 10 ballpark of about 2 percent before any 11 retroactive increases over the last five 12 years through 2020. 13 During that same period, all three 14 measures of inflation well below that on 15 an annual basis, between 1 and a half and 16 1.8 percent per year. 17 The hexagons show the total, the 18 compounded effect of this spread, which 19 means that the real purchasing power of 20 the compensation has gone up by roughly 2 21 and a half to about 4 percent over five 22 years. So that's the increase in total</p>	<p style="text-align: right;">Page 274</p> <p>1 compensation relative to the various 2 measures of inflation over that same 3 five-year period, again, before anything 4 in 2020. 5 So that means the purchasing power 6 of the railroad employees has gone up by 7 those amounts in five years. 8 Similarly in a qualitative sense. 9 If we extend back to 15 years, again, 10 roughly the average tenure of the railroad 11 employees -- it's actually a little bit 12 less than that -- 3 percent for the GWIs 13 and total comp compared to less than 2 14 percent for inflation, whatever measure 15 you use over that period. If you compound 16 that spread over 15 years, you get an 17 increase in purchasing power on the order 18 of about 20 percent over 15 years. That's 19 a result of the last three bargaining 20 rounds, again, not counting 2020. 21 Okay. So with that context about 22 how we got to today over the last five</p>
<p style="text-align: right;">Page 275</p> <p>1 years or 15 years, I was also asked to 2 evaluate the proposals. 3 Won't go into the details here, but 4 the parts of the proposals that I analyzed 5 are what's in the top piece, the GWIs, 6 plus I was provided data on the expected 7 rate of growth of the health and welfare 8 component of compensation that was 9 performed by some other folks at the NCCC 10 or that they retained. And I combined 11 those two based on the relative weights of 12 those components to get an overall rate of 13 growth inherent in the two proposals for 14 the GWIs and the health and welfare. 15 I did not include what's in the 16 bottom piece, any of the additional time 17 off. I didn't include the lump sum. I 18 didn't include any of the other work rule 19 or craft changes, just the top two 20 components. 21 And here's what I found. Some of 22 these numbers should look very familiar.</p>	<p style="text-align: right;">Page 276</p> <p>1 In terms of the GWIs, there's a few 2 different ways to look at it. You could 3 just sum up the five increases. That's 4 the first column. Frankly, not that 5 useful, right, because wages compound. 6 That's the way it works. 7 If you do a simple compounding, 8 you're just multiplying the increases 9 without paying attention to when they 10 happen, you get the second column, 31 11 percent for the Unions, 17 percent for the 12 Carriers. 13 The most appropriate measure has to 14 account for the timing, however, because 15 I'm sure you've seen it, the two proposals 16 have GWIs coming in at different times. 17 2019 we had a mid-year increase. So if 18 you have a January 1 increase in 2020, 19 you're getting more than one year's worth 20 of increase because it's squeezed into six 21 months. 22 So you get a higher compounded</p>

<p style="text-align: right;">Page 277</p> <p>1 effect if you take that timing into 2 account. That's that third column, 33.2 3 percent for the Unions, 17.6 for the 4 Carriers, and I've annualized that in the 5 final column. So that first set of two 6 rows, just the GWIs. 7 I mentioned I was provided data for 8 the health care component. The growth 9 rates in that part of the compensation, 10 that's the next two rows, 35.6 percent 11 over five years for the Unions' proposal, 12 17.8 percent increase for the 13 Coalition's -- excuse me -- the Carriers' 14 proposal. 15 When you annualize those, you get a 16 little bit higher than the rate of growth 17 of just the wages. And if you blend those 18 two together to get an estimate of rate of 19 growth of total comp, that's the third set 20 of rows. And, again, excluding the PTO 21 and the other components, about 6 percent 22 for the Unions' proposal, 3.3 per year for</p>	<p style="text-align: right;">Page 278</p> <p>1 the Carriers' proposal. 2 And now let's compare that to what 3 we think might be happening with inflation 4 over the entire five-year period. The 5 most recent forecast from the CBO -- and I 6 think we've heard mention of the 7 Philadelphia Fed. They were very similar. 8 They both were based on information as of 9 May and they came out earlier this month. 10 Those two forecasts, including 11 actuals up through whenever the modelers 12 had data, come out to about 3 to 3 and a 13 half percent per year. 14 Now, there's a few issues to 15 discuss here. Like Dr. Murphy, I'm not a 16 macroeconomist. I'm not going to predict 17 inflation for you. But there are a few 18 things I know about how these estimates 19 are developed. 20 The CPI and the PCE are highly 21 affected by energy prices. And I think 22 we've seen in the last two months that</p>
<p style="text-align: right;">Page 279</p> <p>1 both of those things going up a lot. And 2 so we've had headline inflation as high as 3 9 percent, depending on how you measure 4 it. All of that increase in the last two 5 months has been due to energy prices. 6 I think Mr. Munro showed a chart 7 earlier yesterday which showed that when 8 you extract energy prices from these 9 inflation measures, it's actually going 10 down since February, four to five months 11 consecutive, what's called core inflation 12 is falling. 13 Now, core inflation is not 14 inflation. You still need -- if you have 15 dollars and you need to spend them to 16 live, you need to buy energy, so you care 17 about the headline inflation. 18 However, if you're trying to 19 predict what's going to happen next month 20 and next year, the core is a much better 21 measure because it excludes this highly 22 volatile energy component. That's</p>	<p style="text-align: right;">Page 280</p> <p>1 falling. 2 So given all that information, I 3 don't know that there's any particular 4 reason to take those forecasts and try to 5 guess how they might look different if we 6 did them today or tomorrow or whenever 7 this bargaining round ends. So for the 8 moment I'm sticking with those projections 9 that were developed in May and published 10 in July that give us 3 or 3 and a half 11 percent. 12 If you wanted to include the new 13 information that's come out in the last 14 month or two, those two could be perhaps a 15 half a percent higher. I've done some 16 math there. There's a lot of judgment 17 involved in how one would incorporate 18 that, but you could add a half a percent 19 to those if you felt that that transitory 20 increase, what we expect due to energy 21 costs, is not going to go away. It's at 22 least baked into the current price levels.</p>

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1 Now, it may go away, and that may be what
 2 the Fed and other forecasters are
 3 predicting. I don't know.
 4 So summarizing that, the GWIs at
 5 about 3.3, 5.9 percent for the two
 6 proposals, total comp very similar, 3.3
 7 for the Carriers, 6 percent annually for
 8 the Unions when you're accounting for the
 9 timing of the GWIs. You can compare that
 10 to inflation in the 3 to 3 and a half
 11 percent range, including both actuals
 12 through 2021 and the projections, possibly
 13 a half a percent higher if you wanted to
 14 take into account the spiking in energy
 15 that's occurred over the last few months.
 16 You can draw your own conclusions about
 17 how the two proposals compare to that
 18 projection.
 19 And that's the extent of my -- my
 20 work here today. Lots of details in the
 21 report and I'd be happy to answer any
 22 questions.

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1 in this bargaining round.
 2 So, yes, you could go and pull the
 3 rail numbers or at least -- OEWS has a
 4 rail sector. The ECEC has something at a
 5 higher level. But it wouldn't be drilling
 6 down to specifically the workers that
 7 we're looking at here.
 8 **CHAIRPERSON JAFFE:** Well, listed
 9 wage rates, for example, for engineers and
 10 conductors, right, is one category which
 11 would be fairly comparable --
 12 **DR. DAVID:** Within the OEWS, yes,
 13 not the ECEC. And I do -- if you go into
 14 my report and look at the specific
 15 occupation breakdown, which is the basis
 16 for those wage comparisons, I do it on a
 17 craft by craft basis and I include exactly
 18 those occupations that are obviously the
 19 most comparable. I mean, railroad
 20 engineers are as comparable as you can get
 21 to that craft within the railroad workers.
 22 Of course, you have to be a little bit

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1 **CHAIRPERSON JAFFE:** Thank you, Dr.
 2 David.
 3 I'm sorry. I have some by way of
 4 clarification.
 5 **DR. DAVID:** Sure. Of course.
 6 **CHAIRPERSON JAFFE:** You referenced
 7 the ECEC data for comparative purposes
 8 throughout the presentation. Is there a
 9 reason that you used that data for the
 10 comparator jobs and industries but didn't
 11 use the ECEC data that's there for rail
 12 when doing that comparison because the
 13 ECEC data for rail shows rates that are
 14 very different than the ones you were
 15 using for comparator purposes, right.
 16 **DR. DAVID:** Yes. So to be clear, I
 17 used ECEC for the total compensation
 18 comparisons. I used the OEWS for the wage
 19 comparisons.
 20 The reason there is that what they
 21 call rail includes a lot of other people.
 22 It's not just the 97,000 workers at issue

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1 concerned that you're comparing the same
 2 people to themselves, at least in part.
 3 So that's why I brought in other
 4 occupations as well.
 5 **CHAIRPERSON JAFFE:** Fair enough.
 6 And I had a couple of questions
 7 about the methodology in Table 1 of
 8 Exhibit 3, which was your full written
 9 report.
 10 **DR. DAVID:** I have it here. Sure.
 11 **CHAIRPERSON JAFFE:** Page 6.
 12 **DR. DAVID:** Okay.
 13 **CHAIRPERSON JAFFE:** For any using
 14 the Bates numbers, it's C000332.
 15 **DR. DAVID:** And that was actually
 16 one of my slides, so I may as well just
 17 pull that up at the beginning. This one.
 18 **CHAIRPERSON JAFFE:** Fair enough.
 19 The questions that I had related
 20 first to what's included in the
 21 constructive allowances and arbitraries.
 22 It looked like you took an aggregate

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1 number and then averaged it over all of
 2 the groups.
 3 **DR. DAVID:** That's right.
 4 **CHAIRPERSON JAFFE:** I did not know
 5 if there was significant variation on a
 6 group by group basis for that particular
 7 component, for example.
 8 **DR. DAVID:** Well, there's a huge
 9 variation because a lot of the crafts get
 10 zero for those sorts of things. So those
 11 numbers are for the operating crafts, the
 12 dollars that they're earning, but then
 13 spread across all 97,000 of the railroad
 14 workers.
 15 **CHAIRPERSON JAFFE:** And you chose
 16 2020. Was that year typical or were there
 17 some differences a result of both COVID
 18 impact on the operations of the Carriers
 19 and employees that made that a little bit
 20 different?
 21 **DR. DAVID:** Yes. So annual
 22 earnings looked somewhat different, but

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1 the payments was provided. I did the math
 2 to calculate it per hour. If that's going
 3 somewhere else, then, you know, that's --
 4 **CHAIRPERSON JAFFE:** Not troubled,
 5 just wanted to understand. That's all.
 6 **DR. DAVID:** Fair enough. The
 7 details about that was not part of what I
 8 analyzed.
 9 **CHAIRPERSON JAFFE:** And lump sum --
 10 **DR. DAVID:** Those are --
 11 **CHAIRPERSON JAFFE:** -- what does
 12 that refer to?
 13 **DR. DAVID:** What's the question?
 14 **CHAIRPERSON JAFFE:** I'm trying to
 15 figure out what a lump sum payment was
 16 that's referenced in the calculation.
 17 That's all.
 18 **DR. DAVID:** You know, again, I
 19 think probably one of the railroad
 20 witnesses can probably describe that
 21 better.
 22 **CHAIRPERSON JAFFE:** That works as

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1 hourly earnings were quite similar and --
 2 you know, for reasons that you could
 3 expect. In particular, for example, we've
 4 heard discussion about overtime. Well,
 5 overtime is -- the premium for that is in
 6 the supplemental pay, so that wouldn't
 7 affect the \$36 wage rate.
 8 It was a little bit different in
 9 2019. Broadly speaking, you see -- I
 10 think one of the charts we saw showed that
 11 trend. There was a little dip there, but
 12 the overall trend is fairly smooth.
 13 **CHAIRPERSON JAFFE:** And you
 14 included items like early retirement
 15 health. Those are payments made to folks
 16 who no longer are employed at the
 17 railroad?
 18 **DR. DAVID:** That's one that's
 19 probably better directed at one of the
 20 railroad folks.
 21 **CHAIRPERSON JAFFE:** Fair enough.
 22 **DR. DAVID:** The data in terms of

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1 well.
 2 I'm going to be happy to leave it
 3 at that then, if I may, Dr. David, but
 4 thank you very much.
 5 **DR. DAVID:** Thank you.
 6 **MR. EASLEY:** Mr. Chairman, the
 7 Carriers' next witness is Mr. Jerry Glass.
 8 **CHAIRPERSON JAFFE:** May I ask the
 9 court reporter to please swear in
 10 Mr. Glass.
 11 Whereupon:
 12 JERRY GLASS,
 13 was called for examination, and, after being
 14 duly sworn, testified as follows:
 15 **MR. GLASS:** Good morning. My name
 16 is Jerry Glass and I'm president of F&H
 17 Solutions Group, which is a national labor
 18 relations consulting firm headquartered
 19 here in D.C.
 20 My consulting practice is focused
 21 primarily on labor relations and
 22 collective bargaining. I have served and

<p style="text-align: right;">Page 289</p> <p>1 continue to serve as chief negotiator in a 2 variety of industries. I've negotiated 3 personally more than 300 collective 4 bargaining agreements in the airline, 5 aviation, education, passenger and 6 commuter rail, construction, media, 7 property management and manufacturing 8 industries. 9 A big part of our business, in 10 addition to the negotiations, is 11 conducting comparative analyses of 12 collective bargaining agreements in 13 various industries and providing analysis 14 on both labor negotiations and industry 15 settlements. 16 For context, let me just go through 17 the agenda of what I plan to discuss this 18 morning. 19 I'm going to provide an overview on 20 the current collective bargaining 21 agreement environment. I'm going to 22 review bargaining outcomes from the period</p>	<p style="text-align: right;">Page 290</p> <p>1 of 2005 to 2019 and compare those outcomes 2 to settlements in U.S. labor market and 3 comparable industries. 4 I'm also going to review the 5 current norms and trends that we're seeing 6 in collective bargaining based on publicly 7 available information on settlement 8 trends, as well as my firm's independent 9 analysis on over 500 collective bargaining 10 agreements in comparable -- in other 11 industries. 12 Finally, based on those collective 13 bargaining benchmarks, I'm going to 14 analyze the comparative proposals of the 15 parties to determine whether they're 16 consistent with current and historical 17 collective bargaining norms in the U.S. 18 So as everybody knows in this room, 19 we're entering our third year dealing with 20 the impact of COVID-19. And there is no 21 doubt, certainly in the bargaining that I 22 do, as well as certainly in this industry,</p>
<p style="text-align: right;">Page 291</p> <p>1 that COVID remains really the most 2 influential factor in collective 3 bargaining today. 4 Now, to be sure, employers are no 5 longer contending with government-ordered 6 shutdowns or large-scale absences due to 7 the COVID infection, nor are employers 8 actively engaged in collective bargaining 9 over the impact of COVID, you know, 10 whether it's paid, quarantine leave or 11 essential worker pay. Those issues have 12 largely fallen off the table and are no 13 longer actively negotiated. 14 Also, there is no longer the debate 15 over the effect of mandatory vaccinations 16 and that has left us as well. But there 17 are important lingering factors that 18 remain. 19 The greatest impact from a 20 collective bargaining standpoint is the 21 disruptive effect that COVID has had on 22 the labor market. This effect has</p>	<p style="text-align: right;">Page 292</p> <p>1 manifested itself in three ways that are 2 relevant to collective bargaining: 3 First, the labor market has 4 experienced a precipitous decline in labor 5 market participation at the beginning of 6 the COVID-19 pandemic. As businesses were 7 forced to close, employees were told to go 8 home or work from home and others left the 9 workplace due to COVID-19 infection or 10 exposure to COVID-19. 11 Second, after an initial wave of 12 both voluntary and involuntary 13 separations, economic activity has 14 rebounded and there has been a tremendous 15 spike in consumer demand, primarily for 16 consumer goods. 17 The uptick in demand has resulted 18 in an immediate need for employers to 19 recall and hire additional workers. 20 However, as explained in Dr. David Allen's 21 report, many workers who left the 22 workforce during COVID-19 have opted not</p>

<p style="text-align: right;">Page 293</p> <p>1 to return to work. So this has resulted 2 in a tremendous shortage of available 3 workers, which obviously negatively impact 4 employers, who are eager to expand and 5 grow their workforces and expand and grow 6 their businesses. 7 The worker shortage continues to be 8 a problem for the labor market today and 9 availability of qualified workers is 10 probably the most significant factor 11 affecting both Union and nonunion 12 workforces. 13 Third, COVID-19, when you couple 14 that with other world events, has caused 15 tremendous supply chain disruptions 16 throughout the world. And these supply 17 chain disruptions continue to be an issue 18 that affect employers throughout the U.S. 19 In fact, even now, supply chain 20 issues are being disrupted by the 21 continuing impact of COVID, the lingering 22 impact of COVID-19, as China has</p>	<p style="text-align: right;">Page 294</p> <p>1 implemented draconian lockdowns in places 2 like Shanghai, which obviously affect the 3 availability of consumer goods that are 4 imported from that part of the world. 5 Likewise, global supply chain 6 issues have been disrupted by the 7 spillover effects of the war in Ukraine. 8 And the nationwide worker shortage has 9 fueled those disruptions as employers from 10 all levels of the supply chain, from raw 11 materials to manufacturing to 12 transportation to retail sales, struggle 13 to keep up with the demand in the face of 14 the worker shortage. 15 So before I explain how these 16 market dynamics are affecting collective 17 bargaining agreements today, let me just 18 take a step back and provide some 19 historical context to the bargaining 20 history between the parties in this 21 proceeding. 22 You've heard from Ken Gradia this</p>
<p style="text-align: right;">Page 295</p> <p>1 morning and he's previously reviewed the 2 voluntary -- voluntarily negotiated 3 collective bargaining settlements between 4 the Carriers and the Coalition Unions from 5 the period of time of when the railroad 6 industry was deregulated. 7 I want to take just a couple of 8 minutes to put these settlements in 9 perspective by comparing these negotiated 10 agreements with collective bargaining 11 settlements in other industries and 12 include in that some of the trends that 13 I'm seeing. 14 So to make that assessment, I've 15 reviewed publicly available compensation 16 and employment data developed and 17 maintained by the Carriers, collective 18 bargaining settlement information 19 available from BLS, from the U.S. 20 Department of Labor, from the Cornell 21 School of Labor Relations, from BNA, 22 Westlaw, labor union websites and some</p>	<p style="text-align: right;">Page 296</p> <p>1 other sources, including my firm's very 2 substantial database of collective 3 bargaining agreements that we have in 4 multiple industries. 5 And I compared the wage settlements 6 agreed by the Carriers and the Coalition 7 Unions with wage settlements in other 8 industries to determine whether these 9 prior agreements are consistent with 10 prevailing collective bargaining trends in 11 the U.S. or whether those settlements 12 result in railroad workers losing ground 13 in comparison to other workers whose wages 14 and benefits are determined by collective 15 bargaining. 16 Now, it's worth noting that this 17 kind of comparison does have limitations 18 because it presents a bit of a distorted 19 view of the collective bargaining process 20 because settlements have tradeoffs. 21 There's going to be a round where the 22 primary consideration is wages. And so if</p>

<p style="text-align: right;">Page 297</p> <p>1 the Unions want higher wages, generally 2 there's an offset elsewhere in the 3 collective bargaining agreement, whether 4 it's increased flexibility for the Carrier 5 or increased contributions and changes in 6 plan design to health care. 7 So I didn't take that into account 8 and I'm solely focused for the purposes of 9 my presentation on -- on general wage 10 increases. And our focus specifically is 11 on structural wage increases. So our 12 analysis of the collective bargaining 13 agreements do not include COLA, which I 14 can tell you at least now are virtually 15 nonexistent in collective bargaining 16 agreements. Cost of living increases 17 and -- and COLA formulas have pretty much 18 gone by the wayside in virtually all U.S. 19 industries. 20 We also didn't include lump sum 21 payments. Again, we only compared the 22 general wage increases of these</p>	<p style="text-align: right;">Page 298</p> <p>1 agreements. And then I also want to note 2 that my analysis does not take into 3 account the starting point for wages 4 achieved through collective bargaining. 5 In other words, a 3 percent increase at a 6 higher base wage is going to produce more 7 in dollars than a 3 percent increase at a 8 lower base wage. 9 As Dr. Jesse David just explained, 10 railroad workers earn higher wages per 11 hour worked on average than unionized 12 workers in other industries. So even if 13 the Coalition Unions negotiate the same 14 percentage increase for their members, 15 this means a larger nominal wage increase 16 in comparison to employers who started 17 bargaining with a lower wage rate. 18 So with these qualifiers, let me 19 share my observations and conclusions 20 regarding the collective bargaining 21 agreement. 22 So first thing I want to do is look</p>
<p style="text-align: right;">Page 299</p> <p>1 at the collectively bargained general wage 2 increases from the period of 2005 to 2019. 3 Now, one thing I'll point out is that in 4 the freight railroad industry, the usual 5 duration of a contract is five years, 6 while under the National Labor Relations 7 Act in other industries, the normal 8 duration is three years. 9 For comparison purposes, we've 10 analyzed the last three voluntary 11 settlements in the freight rail industry 12 and we've done so for two primary reasons: 13 First is you're going to hear from 14 Dr. Kelly Eakin the freight rail industry 15 underwent a significant transformation in 16 the immediate aftermath of the Staggers 17 Act in 1980. 18 During this time there was massive 19 consolidation of the Carriers. There was 20 substantial improvement in the operational 21 and financial performance of the Carriers. 22 And there was significant reductions in</p>	<p style="text-align: right;">Page 300</p> <p>1 head count. By 2005 this transformation 2 was largely complete, so we've limited our 3 analysis to the time period between 2005 4 and beyond. 5 And then second, for comparison 6 purposes, the fact of the matter is 7 there's just a lot more information on 8 collective bargaining agreements from 2005 9 forward. 10 So we've heard from Dr. David that 11 over the last three bargaining rounds, 12 railroad workers have more than kept up 13 with their peers, including unionized 14 workers, and have expanded their existing 15 wage and total compensation premiums. 16 My -- my report and my conclusions support 17 that -- those comments from Dr. David. 18 Now, if you look at the chart that 19 I'm showing now, on a cumulative basis 20 railroad workers have achieved 21 approximately a 45 percent increase over 22 this 2005-2019 period, averaging 3 percent</p>

<p style="text-align: right;">Page 301</p> <p>1 a year.</p> <p>2 When you look at all settlements in</p> <p>3 all industries, it's about 40 percent</p> <p>4 cumulative over that time and about a</p> <p>5 2.7 percent average. And then when you</p> <p>6 look at just private nonmanufacturing,</p> <p>7 it's very similar to rail workers, about</p> <p>8 45 percent cumulative increase and about 3</p> <p>9 percent for the -- for the average.</p> <p>10 Now, when you look at the average</p> <p>11 annual general increases for rail workers</p> <p>12 during the last three bargaining rounds,</p> <p>13 the average turns out to be about 3</p> <p>14 percent. The highest you can see there is</p> <p>15 4 and a half percent and the lowest was 2</p> <p>16 percent, which occurred, I think, in 2010,</p> <p>17 2016 and 2017.</p> <p>18 You can also see that over this</p> <p>19 long period of time, these increases</p> <p>20 compared favorably with the results of</p> <p>21 collective bargaining in other industries.</p> <p>22 Now, when you look at wage</p>	<p style="text-align: right;">Page 302</p> <p>1 settlements and you view it by bargaining</p> <p>2 round, it shows that the average five-year</p> <p>3 settlement in the freight industry over</p> <p>4 the last three rounds was right about 15</p> <p>5 percent. It fluctuated from a high of 17</p> <p>6 percent in 2005 to 2009 and then 2015 to</p> <p>7 '19 it was 12 and a half percent.</p> <p>8 The 15 percent average exceeded the</p> <p>9 average for all industries, which was</p> <p>10 13.1 percent, but was nearly identical to</p> <p>11 the five-year average for private</p> <p>12 nonmanufacturing employers during this</p> <p>13 same time period.</p> <p>14 So this average represents, in my</p> <p>15 view, a very reasonable and justifiable</p> <p>16 benchmark for determining appropriate</p> <p>17 general wage increases in this round. In</p> <p>18 the Carriers' proposal of 16 percent,</p> <p>19 which is not compounded, those general</p> <p>20 increases are consistent with the patterns</p> <p>21 established in the last three bargaining</p> <p>22 rounds.</p>
<p style="text-align: right;">Page 303</p> <p>1 My analysis of available</p> <p>2 compensation data, government benchmarks</p> <p>3 and collective bargaining settlements</p> <p>4 doesn't substantiate the claims that the</p> <p>5 Coalition Unions have put forth that rail</p> <p>6 workers are falling behind their peers in</p> <p>7 other unionized industries as a result of</p> <p>8 recent collective bargaining settlements.</p> <p>9 So let's talk a little bit about</p> <p>10 recent settlement trends. So as I stated</p> <p>11 at the beginning of my presentation, the</p> <p>12 tight labor market has presented</p> <p>13 significant challenges for employers and</p> <p>14 labor unions engaged in collective</p> <p>15 bargaining agreements.</p> <p>16 Employers are struggling with</p> <p>17 recruitment. Staffing shortages have</p> <p>18 caused significant increases in overtime</p> <p>19 worked in a number of industries. And so</p> <p>20 as a result of that, employers are being</p> <p>21 presented with proposals of all sorts,</p> <p>22 seeking to improve work-life balance for</p>	<p style="text-align: right;">Page 304</p> <p>1 workers, such as additional holidays,</p> <p>2 vacation or paid time off.</p> <p>3 And many industries are negotiating</p> <p>4 incentives, whether they be signing</p> <p>5 bonuses or referral bonuses to attract and</p> <p>6 retain new workers. The freight industry</p> <p>7 in that regard is no different. And given</p> <p>8 the importance of the freight industry to</p> <p>9 the national economy, the Carriers face</p> <p>10 tremendous pressure to expand their</p> <p>11 workforces in response to the increases in</p> <p>12 demand for freight rail services.</p> <p>13 However, as explained by Dr. David</p> <p>14 Allen in his report, the Carriers have</p> <p>15 fared better than most U.S. employers, as</p> <p>16 the high wages and the generous benefits</p> <p>17 that are provided for in the railroad</p> <p>18 industry make these jobs more attractive</p> <p>19 for the limited number of job seekers.</p> <p>20 Despite the challenges which affect</p> <p>21 employers in all industries, collective</p> <p>22 bargaining settlements vary by industry</p>

Page 305	<p>1 and even within industry. So the lower</p> <p>2 wage earners are seeing the most</p> <p>3 significant wage growth, those in</p> <p>4 hospitality and the restaurant industry.</p> <p>5 Those wages have historically been low, so</p> <p>6 we're seeing the highest percentage</p> <p>7 increases in those two industries.</p> <p>8 And there's also been a trend to</p> <p>9 eliminate any two tier pay systems that</p> <p>10 are still in effect. And as you probably</p> <p>11 have seen over the past months, there were</p> <p>12 workers at both Kellogg's and John Deere</p> <p>13 that took strikes over these -- this issue</p> <p>14 in particular.</p> <p>15 And though wage settlements have</p> <p>16 trended upwards since 2020, the wage</p> <p>17 settlements generally have not kept up</p> <p>18 with inflation.</p> <p>19 The Consumer Price Index has been</p> <p>20 trending above 5 percent during the last</p> <p>21 two years, yet the average wage</p> <p>22 settlements have not kept up with the rate</p>	Page 306	<p>1 of inflation. Many wage -- excuse me --</p> <p>2 many recent settlements are utilizing lump</p> <p>3 sums as opposed to general wage increases</p> <p>4 to address the recent high inflation</p> <p>5 phenomenon.</p> <p>6 Now, when I look at the</p> <p>7 historical -- well, I should say the</p> <p>8 historical and prospective industry</p> <p>9 comparisons, and I've looked at the period</p> <p>10 2020 to 2024, the five-year trends for</p> <p>11 wage settlements during this period of</p> <p>12 time is a little bit higher than</p> <p>13 historical norms, but not -- not by a lot.</p> <p>14 And as I've mentioned, some</p> <p>15 industries have seen more significant</p> <p>16 changes in settlement trends. And those</p> <p>17 settlement trends come from two sources:</p> <p>18 They come from BNA, which averages</p> <p>19 the first, second and third year wage</p> <p>20 increases under collective bargaining</p> <p>21 agreements. And the other source is our</p> <p>22 own database of collective bargaining</p>
Page 307	<p>1 agreements where we've applied the same</p> <p>2 methodology to about 500 collective</p> <p>3 bargaining agreements we've surveyed and</p> <p>4 average wage increases in each year of</p> <p>5 those settlements broken down by industry.</p> <p>6 So as you can see, when you look at</p> <p>7 all settlements in the BNA, the five-year</p> <p>8 period between 2020 and 2024 produced a</p> <p>9 cumulative increase of 15.3 percent. When</p> <p>10 you look at private -- and by the way,</p> <p>11 that -- that average is about 3.1 percent</p> <p>12 per year for all settlements.</p> <p>13 When you look at private</p> <p>14 nonmanufacturing, it is higher, at 18.6</p> <p>15 percent or about 3.7 percent annually.</p> <p>16 But you can see that in both cases, the</p> <p>17 average annual general increases fell</p> <p>18 within a pretty narrow band of between 3.1</p> <p>19 and 3.7 percent.</p> <p>20 When you look at private industry,</p> <p>21 the five-year increase is 14.9 percent.</p> <p>22 When you look at the transportation</p>	Page 308	<p>1 sector, it's 15.4 percent, again, about</p> <p>2 3.1 percent a year. And then construction</p> <p>3 is the highest, at 19.4, or about 3.9</p> <p>4 percent a year.</p> <p>5 And settlements in the construction</p> <p>6 industry, which I'm very familiar with</p> <p>7 because I do bargaining in that industry,</p> <p>8 are really impacted by the tight labor</p> <p>9 market. That is the main reason why</p> <p>10 increases are slightly higher there. That</p> <p>11 industry is really looking at a pervasive</p> <p>12 shortage of skilled workers and it's</p> <p>13 aggressively recruiting new workers.</p> <p>14 Now, in evaluating the parties'</p> <p>15 wage proposals, I've applied the same</p> <p>16 basic methodologies to evaluate the</p> <p>17 proposals offered by the Carriers and the</p> <p>18 Coalition Unions to determine whether</p> <p>19 these proposals are consistent with</p> <p>20 current collective bargaining trends and</p> <p>21 wage settlements.</p> <p>22 So as you've seen previously -- and</p>

Page 309	<p>1 I know here the Carriers are proposing a</p> <p>2 cumulative increase of 16 percent over a</p> <p>3 five-year period, which consists of five</p> <p>4 increases ranging from 2 to 6 percent,</p> <p>5 plus a \$1,000 lump sum payment.</p> <p>6 Under this proposal, the rail</p> <p>7 workers would receive an immediate 11</p> <p>8 percent pay increase plus back pay for the</p> <p>9 retro period of 2020 and 2021.</p> <p>10 By comparison, the Coalition</p> <p>11 Unions' proposals has a cumulative</p> <p>12 increase of 28 percent over the five-year</p> <p>13 period, and that consists of five</p> <p>14 increases ranging from 4 to 8 percent,</p> <p>15 with the majority of those increases</p> <p>16 frontloaded so rail workers would receive</p> <p>17 a 20 percent increase plus back pay for</p> <p>18 the retro period of 2020 and '21.</p> <p>19 I want to note here that the labor</p> <p>20 cost impact is also greater. And I don't</p> <p>21 know that this has been focused on much.</p> <p>22 But the Carriers' proposed increases occur</p>	Page 310	<p>1 in July of each year and the Coalition</p> <p>2 Unions' proposals are effective on January</p> <p>3 1st of each year, which will actually</p> <p>4 result in a slightly higher increase for</p> <p>5 the Coalition Unions' proposals, because</p> <p>6 that increase is in effect for the full</p> <p>7 12-month period as opposed to splitting</p> <p>8 and weighting it between two six-month</p> <p>9 periods.</p> <p>10 When you look at collective</p> <p>11 bargaining agreement settlements for this</p> <p>12 same period of 2020 to 2024, the Carriers'</p> <p>13 proposal, as you can see, is much more</p> <p>14 consistent with prevailing norms. The</p> <p>15 average general increase in recent</p> <p>16 collective bargaining settlements is 15.3</p> <p>17 percent for all settlements. And that's</p> <p>18 consistent with the 15-year trend of 15</p> <p>19 percent for the freight rail industry.</p> <p>20 The average settlement for all</p> <p>21 private nonmanufacturing employers is</p> <p>22 slightly higher, at 18.6 percent, but it's</p>
Page 311	<p>1 only a half a point above the Carriers'</p> <p>2 proposal in each year of the five-year</p> <p>3 agreement.</p> <p>4 So based on those metrics, the</p> <p>5 Carriers' proposal is comparable to</p> <p>6 settlements being reached by private</p> <p>7 employers and service, not production</p> <p>8 employees in those industries. The</p> <p>9 Coalition Union proposal is not.</p> <p>10 When you look at comparisons to</p> <p>11 benchmarks, the really extraordinary wage</p> <p>12 demands of the Coalition Unions cannot be</p> <p>13 justified by what is taking place in other</p> <p>14 collective bargaining agreements. And by</p> <p>15 contrast, when you look at this, it's</p> <p>16 clear that the Carriers' proposal is right</p> <p>17 in the sweet spot of where settlements are</p> <p>18 in other industries.</p> <p>19 So collective bargaining</p> <p>20 settlements in all other industries, as I</p> <p>21 pointed out in that period, is 15.3</p> <p>22 percent, or just under 3.1 percent. For</p>	Page 312	<p>1 private manufacturing, it's 18.6, or about</p> <p>2 3.7 a year. The Carriers' proposal is at</p> <p>3 16 percent, which is 3.2 percent per year.</p> <p>4 The Coalition's proposal is about</p> <p>5 10 percent higher than the highest</p> <p>6 available benchmark for recent</p> <p>7 settlements.</p> <p>8 Let me just close by saying that I</p> <p>9 concluded that the Carriers' proposals</p> <p>10 most likely approximate the terms of a</p> <p>11 voluntary settlement based on my</p> <p>12 experience in bargaining hundreds of</p> <p>13 collective bargaining agreements. The</p> <p>14 Carriers' proposal is consistent with</p> <p>15 recent settlements in the industry, as</p> <p>16 well as current settlement trends.</p> <p>17 And I cannot find any data or</p> <p>18 information suggesting that the higher</p> <p>19 wage demands of the Coalition Unions are</p> <p>20 consistent with any collective bargaining</p> <p>21 benchmarks or trends.</p> <p>22 Thank you. And I'll take any</p>

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1 questions that you might have.

2 **CHAIRPERSON JAFFE:** Thank you,

3 Mr. Glass.

4 **BOARD MEMBER DEINHARDT:** So I just

5 have a couple of questions.

6 You had mentioned that the CPI is

7 trending over 5 percent over the past few

8 years. And in Dr. David's proposal we

9 have numbers -- CPI numbers up to 2020 and

10 then we have forecasted inflation numbers

11 for 2020 to 2024 that are more in the 3 to

12 3 and a half percent range.

13 So I'm wondering where the

14 difference lies with your numbers of over

15 5 percent and his numbers of 3 to 3 and a

16 half, which he said could be 3 and a half

17 to 4.

18 **MR. GLASS:** Right. Let me ask

19 Dr. David to first answer that.

20 **DR. DAVID:** Can I speak here?

21 The 3 to 3 and a half includes two

22 years, 2020 and 2021, which are actuals.

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1 2 and a half. If you add all those

2 together, you get an average of about 3 to

3 3 and a half.

4 Did that come through?

5 **MR. GLASS:** And just by comparison

6 to what Dr. David said, my comment on the

7 5 percent was just over the past two years

8 as opposed to a longer period of time, so

9 much more recent higher inflation.

10 **BOARD MEMBER DEINHARDT:** Okay. The

11 other question I had was about page -- the

12 chart on page 10.

13 **MR. GLASS:** I'm sorry.

14 **BOARD MEMBER DEINHARDT:** The chart

15 on page 10, I'm looking at wage settlement

16 trends.

17 Do you have any information on

18 these different settlements, when the

19 settlements were reached? I'm just

20 wondering if there's a difference in

21 settlements that were reached in 2020 or

22 2021 that extended to 2024, as opposed to

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1 And in those years we were under 2

2 percent. So when you take 2022, which is

3 forecasted at about 6, and then 4 and then

4 3 and you average that with like a 1 and a

5 2, that's what gets you the numbers in the

6 range of 3 for the five-year average.

7 So that's not a full forecast. Two

8 of those years are actuals and then three

9 of them are a forecast.

10 **BOARD MEMBER DEINHARDT:** Can you

11 just give me those numbers again for those

12 five years? And these are CPI numbers?

13 **DR. DAVID:** Well, I'm going from

14 memory here but the CPI-U, if that's what

15 we want to talk about -- and PCE would be

16 anywhere from 1 to 3 percent less or maybe

17 a half a percent in some years. We're

18 looking at probably about 3 to 3 and a

19 half percent total in 2020 and 2021. So

20 it averaged under 2 percent per year.

21 And then we've got about 6 in 2022

22 and then about 4 or 3 and a half and then

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1 ones in, say, late 2021 and year-to-date,

2 in this year, that extended backwards and

3 forwards.

4 **MR. GLASS:** So I can answer that

5 question based on my own collective

6 bargaining that I've done.

7 Settlements reached in -- first

8 off, there weren't a ton of settlements

9 reached in 2020 as a result of the

10 pandemic. That really stifled collective

11 bargaining across all industries because

12 nobody was meeting face to face and what

13 little negotiations were being done were

14 being done remotely.

15 But there was so much uncertainty

16 as to what was going to happen and when

17 the economy was going to rebound there

18 just weren't a lot of settlements.

19 The more recent settlements --

20 well, even -- so if you look at

21 settlements in 2020 and 2021, they were

22 obviously lower because of the uncertainty

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1 surrounding the economy.
 2 Settlements that have occurred in
 3 2021 and 2022 have been a little bit
 4 higher, but not a ton higher. And the
 5 reason for that is while the labor market
 6 has been extremely tight, there's still a
 7 lot of caution from employers as to what's
 8 going to happen, what's the aftereffect of
 9 COVID, as well as now worrying about a
 10 possible recession in 2023.
 11 So, again, what employers are doing
 12 is that general wage increases are
 13 remaining somewhat moderate, but the lump
 14 sum payments or like a signing bonus or
 15 something like that are a little bit
 16 higher than I've seen historically.
 17 **BOARD MEMBER DEINHARDT:** Thank you.
 18 **CHAIRPERSON JAFFE:** And if I could
 19 piggyback on that if I may, is it possible
 20 for us to get some of the underlying
 21 contract by contract data? And the reason
 22 I make that request as well is the same

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1 **MR. GLASS:** Yes. They both tell
 2 you when they were reached and the
 3 duration.
 4 **CHAIRPERSON JAFFE:** Fantastic. I
 5 hadn't seen it and that didn't mean it
 6 wasn't there. We've received a lot.
 7 Fair enough. Thank you.
 8 **MR. GLASS:** Okay.
 9 **CHAIRPERSON JAFFE:** Thank you,
 10 Mr. Glass.
 11 **MR. GLASS:** Thank you, Mr. Jaffe.
 12 **CHAIRPERSON JAFFE:** Is the plan to
 13 break for lunch?
 14 **MR. MUNRO:** Mr. Chairman, yes,
 15 we're happy to break for lunch now, if the
 16 Board would prefer. I believe our next
 17 witness is available, but I'd suggest a
 18 lunch break.
 19 **CHAIRPERSON JAFFE:** Ms. Roma, do
 20 you have a preference one way or the
 21 other?
 22 **MS. ROMA:** Whatever is convenient

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1 thing that Member Deinhardt noted. We
 2 have multi-year contracts with annual
 3 lanes, as it were, with respect to what
 4 the percentages are. And it would be
 5 interesting to see if there were any
 6 trends built into the data set when you
 7 don't use averages.
 8 **MR. GLASS:** Yeah. So I think,
 9 Brian, we've submitted the Excel
 10 spreadsheet, right?
 11 **MR. EASLEY:** I don't believe so.
 12 **MR. GLASS:** Okay. We're going to
 13 provide you with that underlying data.
 14 I've got an Excel spreadsheet that lays
 15 out by industry over that period of time,
 16 so we'll provide that to you.
 17 **CHAIRPERSON JAFFE:** Thank you.
 18 Will that also note when the
 19 agreements were reached and how many
 20 years --
 21 **MR. GLASS:** Yes.
 22 **CHAIRPERSON JAFFE:** Perfect.

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1 for the Board.
 2 **CHAIRPERSON JAFFE:** Is the next
 3 witness still Mr. Allen?
 4 **MR. MUNRO:** Yes.
 5 **CHAIRPERSON JAFFE:** So you're
 6 estimating about 25 minutes?
 7 **MR. MUNRO:** Yes, sir.
 8 (Thereupon, a discussion was had off
 9 the record.)
 10 (Thereupon, at 11:51 a.m., a lunch
 11 recess was taken.)
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1 AFTERNOON SESSION (1:04 p.m.)
 2 **MR. EASLEY:** Good afternoon,
 3 Mr. Chairman and members of the Board.
 4 The next six witnesses from the Carriers
 5 will be presented in pairs by subject
 6 matter. And the first such pairing
 7 consists of Dr. David Allen from the
 8 Neeley School of Business at Texas
 9 Christian University and Ms. Judy Carter,
 10 who is vice president and chief human
 11 resources officer at Burlington Northern
 12 Santa Fe.
 13 **CHAIRPERSON JAFFE:** Thank you very
 14 much.
 15 May I ask the reporter, please, to
 16 swear in both witnesses.
 17 Whereupon:
 18 DAVID ALLEN AND JUDY CARTER
 19 were called for examination and were duly
 20 sworn by the reporter.
 21
 22

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1 One being to look at and evaluate
 2 recent data and metrics related to
 3 recruitment and retention indicators and
 4 try where I can to connect them with some
 5 external benchmarks to give a frame of
 6 reference.
 7 And the other is to think about the
 8 role of compensation in these issues
 9 and -- and the extent to which
 10 compensation is playing a major role in
 11 the recruiting and retention challenges
 12 that we've been talking about and whether
 13 really, the incremental difference between
 14 the proposals is something that I think is
 15 necessary for attracting and retaining the
 16 necessary talent.
 17 So beginning sort of with the end
 18 in mind, just a quick review of what I
 19 would say are some of the primary
 20 conclusions that I drew from looking at
 21 the various sources of data are that the
 22 job openings do continue to attract a

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1 Whereupon:
 2 DAVID ALLEN
 3 was called for examination, and, after being
 4 previously duly sworn, testified as follows:
 5 **DR. ALLEN:** All right. Good
 6 afternoon. Thank you for having me. I
 7 will do my best to keep you all awake in
 8 the after-lunch portion of the program.
 9 But my name is David Allen. I'm a
 10 business school professor at the Neeley
 11 School at TCU and also at the University
 12 of Warwick in the U.K.
 13 By way of background, broadly
 14 speaking, my research and teaching focuses
 15 on human capital, human resource
 16 management, the flow of people into and
 17 out of organizations, really with
 18 particular focus on why people change
 19 jobs, why they might quit one job or take
 20 another job. And so I've been asked in
 21 this case by the Carriers to really focus
 22 on two main things.

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1 sufficient number of applicants; that
 2 recent recruiting and hiring challenges
 3 are largely a function of broad economic
 4 trends more so than carrier specific
 5 issues; that job tenure at the railroads
 6 is quite long and turnover rates, at least
 7 voluntary turnover rates, remain quite low
 8 in comparison to most benchmarks in the
 9 economy; and, again, recent upticks that
 10 we've seen in attrition are a function of
 11 broader economic trends more so than
 12 Carrier-specific issues; and then finally,
 13 my conclusion that the compensation and
 14 benefit levels are not likely to be the
 15 most important factors driving these
 16 decisions.
 17 I will try not to be too repetitive
 18 with what we've discussed already about
 19 economic conditions, but I think it's --
 20 in the context of recruiting and retention
 21 it's worth talking about these issues.
 22 I'm sure everyone has heard the terms, The

<p style="text-align: right;">Page 325</p> <p>1 Great Resignation, The Great Reshuffle, a 2 variety of terms. But just recognize that 3 employers are currently facing a pretty 4 challenging labor market. So mobility is 5 high, job vacancies are high. Lots of 6 firms are having difficulties acquiring 7 the human capital that they need. 8 In this particular graph this is 9 voluntary quits in the economy as a whole. 10 And so what you can see there is a very 11 sharp drop right at the beginning of the 12 pandemic. Those people in the face of 13 that uncertainty, if they had a job, 14 they're very unlikely to give it up. But 15 then you pretty quickly see a sharp 16 rebound and then these increasing quit 17 rates that have been deemed The Great 18 Resignation. 19 So what we find there is a couple 20 of things going on that account for that. 21 As the economy rebounded and firms 22 attempted to staff back up by recalling</p>	<p style="text-align: right;">Page 326</p> <p>1 workers or hiring new workers, they found 2 themselves faced with two interrelated 3 challenges. 4 One is I think the economic 5 activity rebounded much more strongly or 6 quickly than people anticipated. And so 7 the firms really needed to -- to ramp up 8 faster than expected. 9 But then there's also been a 10 decrease in the labor force. There are 11 many workers who left the labor force and 12 then, for a variety of reasons, opted not 13 to return to work. And there's lots of 14 reasons that might be the case. 15 Some had still health concerns 16 about the pandemic. Some were happy with 17 the government support they were getting. 18 We see potentially a shift in some 19 people's priorities, for example, 20 opportunities to work from home, balance 21 work and family things becoming a bit more 22 important.</p>
<p style="text-align: right;">Page 327</p> <p>1 And so for all of those reasons -- 2 although, as we've also heard, many 3 economists now think that we're heading 4 into what's likely to be a recessionary 5 period. But in the immediate term right 6 now and in the near market, there's 7 still -- it's a challenging market with 8 labor shortages, increased demand for 9 labor and elevated amounts of turnover. 10 So as I think about this in terms 11 of both the attraction of talent and the 12 retention of the talent that we already 13 have, on the attraction side we're seeing 14 lots of firms, including the railroads, 15 they're really trying to ramp up their 16 hiring efforts. And in many cases there 17 are some upward pressure on wages in the 18 economy as a whole. And then you see 19 these much more targeted efforts to where 20 there are specific challenges. Firms are 21 doing things that we've heard about, like 22 hiring bonuses and the like.</p>	<p style="text-align: right;">Page 328</p> <p>1 On the retention side we are seeing 2 still elevated quit rates, people leaving 3 for other positions, often increasing 4 their compensation when they do, although 5 part of what I'm going to talk about is 6 that a lot of the research on why people 7 change jobs suggest that it's a bit 8 misleading in most cases to focus on 9 compensation, that actually for most 10 people, their level of pay and their 11 satisfaction with pay are relatively 12 weaker predictors of their likelihood to 13 quit. 14 What we often see actually in 15 practice is that somebody will become 16 dissatisfied with the workforce and there 17 are -- with their working relationship and 18 they'll search for something else. And 19 most people would prefer to search for 20 something that pays at least as well as 21 what they've got now before they actually 22 quit.</p>

<p style="text-align: right;">Page 329</p> <p>1 And so then when they leave, it's 2 easy to say I'm leaving to take a higher 3 paying job as opposed to, for example, 4 saying well, I'm leaving because my boss 5 is a jerk to me, which is what led me to 6 search in the first place. 7 But I'll cover a little bit more of 8 that research. But the larger point is 9 that the decision to leave a job is a 10 really complex one. And we often include 11 dozens of variables in our research trying 12 to predict that. And as I said, they 13 suggest that pay is a relatively weaker 14 predictor of turnover. 15 In terms of the Carrier-specific 16 data that I looked at -- so recall the two 17 things I'm trying to examine are 18 recruitment and retention indicators of 19 various kinds and then potentially the 20 role of compensation in making those 21 decisions. 22 So to answer the first one, I used</p>	<p style="text-align: right;">Page 330</p> <p>1 voluntary quit data and some employee 2 tenure data and hiring data submitted by 3 the six Class I Carriers to look at 4 various metrics for that. 5 I requested data from 2015 to 6 current to where it makes sense to perhaps 7 look at some trends over time as it 8 relates to that. I tried where I could to 9 also identify some benchmarks that I could 10 use to give a frame of reference for that. 11 The benchmarks are necessarily a bit 12 coarse. They're not perfect. Every 13 industry is a bit unique. It has their 14 own characteristics. But, nevertheless, 15 drawing primarily from the Bureau of Labor 16 Statistics, I present some benchmark data 17 to try to look at those questions. 18 To answer the second one and 19 thinking about, well, what has the role 20 been in pay in people's quit decisions 21 primarily, it's really, I think, important 22 to be cautious about relying too much on</p>
<p style="text-align: right;">Page 331</p> <p>1 anecdotal data. I think those -- those 2 examples can be illustrative of things 3 that are going on. But I think it's 4 really easy to find examples of people who 5 really love their job or really hate their 6 job, people who are leaving for a higher 7 paying job, someone who is leaving 8 mid-career. 9 I tried to find some ways that I 10 could systematically look at the 11 reasons -- just if you'll bear with me for 12 a minute, just thinking about sort of the 13 fundamentals of theory and research on why 14 people quit jobs, it's important to keep 15 in mind that there's two intertwined 16 things going on there. 17 One is the desire to leave a job, 18 which is often driven by internal factors, 19 of which pay could be one, but there are 20 many others that can drive that desire to 21 leave. 22 But that's not sufficient. You</p>	<p style="text-align: right;">Page 332</p> <p>1 also have to think about these issues in 2 terms of the ease of leaving or the 3 ability to leave as well. And that is 4 often driven by these more external 5 market-based factors, such as how many 6 opportunities are out there and how good 7 those opportunities are relative to where 8 you currently are. 9 So in trying to get at this issue, 10 I requested some data on exit interviews 11 as one metric for thinking about what are 12 the reasons that people are giving for why 13 they're leaving. And so I have some data 14 there to share with you. 15 And then I also identified a social 16 media site called glassdoor.com that 17 collects employee sentiment about their 18 employers. 19 So I'll give some more reasons for 20 why I looked at glassdoor.com in 21 particular and draw some conclusions about 22 what it says about what current railroad</p>

<p style="text-align: right;">Page 333</p> <p>1 employees are saying anyway about their 2 employers. 3 So I'll start with -- this is an 4 example of one of the hiring benchmarks 5 that I used. So five of the Carriers 6 submitted data on job vacancies and 7 applicants and hires that I used to 8 calculate an average number of applicants 9 per hire. And I had data from 2017 10 through 2021 on this. 11 And so a couple things from -- from 12 the graph. This graph is an average 13 across all the Carriers. So it's a bit of 14 a general summary. You can see that there 15 is a significant jump in 2020 -- which is 16 not unexpected, as people were uncertain 17 and trying to find jobs and organizations 18 were hiring less -- and then a sharp drop 19 in 2021, although it's really in some ways 20 back to -- closer to prior levels, but a 21 significant drop as the opposite is 22 happening.</p>	<p style="text-align: right;">Page 334</p> <p>1 So there are lots of opportunities 2 out there for people and the firms are 3 trying to ramp up their hiring. So the 4 denominator in those applications for hire 5 is going to be -- is going to be going up. 6 And so you can see that there are 7 dozens of applicants for hire still for 8 the railroads, even though they're 9 experiencing greater challenges than they 10 have in past periods. Again, in the 11 search for benchmarks, I found a variety 12 of sources suggesting various ranges for 13 what does it take in order to -- to fill a 14 job. And I found ratios of anywhere from 15 3:1 to 25:1. 16 And so even at the higher end of 17 that, the railroads are still attracting 18 sufficient applicants in -- across -- 19 across the board. 20 Another thing that you might see in 21 this particular chart in looking for a 22 benchmark for applicants for hire, I</p>
<p style="text-align: right;">Page 335</p> <p>1 looked at some data that's published by 2 the BLS in their JOLTS survey, which is 3 the Job Openings and Labor Turnover Survey 4 that they do. And so they -- they collect 5 data on job seekers in the economy 6 relative to number of open positions. And 7 so that's the -- the short red bar in the 8 graph is just and indicator in the broad 9 economy as a whole what does it look like 10 in terms of the number of job seekers per 11 open position. 12 So you can see the differences 13 there and you can also see the same 14 pattern going on in the larger economy, 15 where in 2020, that ratio more than 16 doubled. And then in 2021, it went back 17 to where it had been and even a little 18 bit -- so less than half, because it's the 19 same pattern that you're seeing in the 20 railroads that we're seeing in the larger 21 economy. 22 So my conclusion from this is that</p>	<p style="text-align: right;">Page 336</p> <p>1 while the Carriers on a whole are in some 2 cases with some jobs having difficulty 3 filling them, they're still attracting 4 sufficient applicants to fill their jobs 5 broadly speaking. And the trends to me 6 look like they're similar to what's going 7 on in the broader labor market. 8 So this decline that we're seeing 9 from 2020 to 2021 is more a function of 10 the labor market and not some dramatic 11 change in how attractive the Carriers' 12 jobs might be. 13 This graph looks at tenure as 14 another indicator of sort of how 15 attractive the carrier jobs are over the 16 long run. And so this is, by Carrier, the 17 average tenure of their workforce at the 18 beginning of 2022. 19 So a couple of things that I would 20 comment on from this is, one, in the 21 abstract, in general, the average tenures 22 are quite long, range from just under 13</p>

<p style="text-align: right;">Page 337</p> <p>1 years to just under 19 years. 2 And to try to get some comparison 3 for -- I mean, it looks long to me, but 4 for some comparison, I again went to the 5 BLS data. Every other year they collect a 6 supplemental survey called the Current 7 Population Survey. One of the things they 8 measure on that survey is employee tenure. 9 And so the red line in that chart 10 is from the 2020 data, which is the most 11 recent data that has been released from 12 the CPS, the median -- and, again, that's 13 across private sector employers -- for the 14 economy as a whole was 3.7 years. 15 That particular source does include 16 a breakout by industry. So I looked at 17 the transportation and warehousing 18 industry and the median was 3.9 years. It 19 doesn't break out by occupation. I looked 20 at the transportation and material moving 21 as an occupational sector and it was 3.3 22 years. So all in the same range and all</p>	<p style="text-align: right;">Page 338</p> <p>1 much shorter than what we see in the 2 railroads. 3 So my conclusion from this is that 4 generally speaking over the long run, 5 these appear to be relatively attractive 6 jobs because people stay in them for a 7 long time. 8 Perhaps the issue in the broader 9 economy that's gotten the most attention 10 is this Great Resignation. And so this 11 chart is an example of some of the 12 analysis using quit rates from the -- from 13 the Carriers. 14 So I have data from all six of the 15 Carriers here. These are voluntary quits 16 in this particular case. So this is not 17 involuntary terminations. It's not 18 layoffs and retirements are not in this 19 data. This is people who voluntarily just 20 quit their job. 21 And you can see the cluster of 22 lines along the bottom is -- are the quit</p>
<p style="text-align: right;">Page 339</p> <p>1 rates from 2015 to 2021 for the Carriers, 2 annualized quit rates, and -- so again, 3 you can see a couple things here looking 4 at -- at these data. 5 One is that -- I mean, just in 6 general, I would characterize these quit 7 rates as very low. Prior to 2021, all 8 pretty much below 5 percent annually, 9 which is, just in a broad sense, a very 10 low turnover environment. 11 You do see over the time frame here 12 a slight upward trend in quit rates and 13 then a slightly sharper uptick from 2020 14 to '21 as we've entered this period of 15 increased quits called The Great 16 Resignation. 17 So again, in order to try to put a 18 larger frame of reference around this, I 19 compared it with data from JOLTS on 20 voluntary quits in the economy as a whole. 21 This particular line is transportation and 22 warehousing industry sector that I deemed</p>	<p style="text-align: right;">Page 340</p> <p>1 to be most comparable, although if you -- 2 if you look at broader comparison of the 3 economy as a whole, the quit rates are 4 even higher. 5 But what you can see from -- what I 6 take away from looking at this is that -- 7 well, one, it confirms that the quit rates 8 of the Carriers remain very low. 9 But then secondly, if you think 10 about the upward trend and the uptick from 11 2020 to 2021, the pattern is the same as 12 what's going on in the larger economy. 13 And if anything, the uptick is milder in 14 the railroads than in this broader 15 industry sector. 16 So again, if -- in my opinion, if 17 there were something significantly 18 changing in terms of the relative 19 attractiveness of carrier jobs, we would 20 expect this gap to be narrowing in some 21 way as opposed to staying -- staying 22 constant or perhaps even widening a little</p>

<p style="text-align: right;">Page 341</p> <p>1 bit.</p> <p>2 And so you can see from that I</p> <p>3 didn't find any evidence in the Carrier</p> <p>4 data that -- that employees are quitting</p> <p>5 in droves. That data went through 2021.</p> <p>6 This chart just sort of follows up on the</p> <p>7 most recent period. So this is from</p> <p>8 January to May of the current year. And</p> <p>9 you can see the JOLTS so far voluntary</p> <p>10 quits and the Carriers.</p> <p>11 And if you look at this with the</p> <p>12 data that came from before, you see that</p> <p>13 these -- it's sort of leveling off, which</p> <p>14 is kind of what I would expect from the</p> <p>15 broader economy. So we're still in this</p> <p>16 elevated quit area, but I think that</p> <p>17 there's a -- that going forward, it is</p> <p>18 likely to probably start to level off at</p> <p>19 some point.</p> <p>20 This other piece was trying to get</p> <p>21 at the question of so it's a relatively</p> <p>22 low turnover, high tenure environment.</p>	<p style="text-align: right;">Page 342</p> <p>1 But people are quitting and they are</p> <p>2 leaving, so are there ways that we can</p> <p>3 sort of systematically try to assess the</p> <p>4 reasons for people leaving.</p> <p>5 And so as I mentioned earlier, one</p> <p>6 of the ways I did this was I requested</p> <p>7 exit interview data. So two of the</p> <p>8 Carriers -- it was CN and CSX -- had that</p> <p>9 data and were able to share -- share with</p> <p>10 me so I could sort of systematically look</p> <p>11 at what the exit interview data said.</p> <p>12 So, for example, for CN, they asked</p> <p>13 individuals in their exit interview to</p> <p>14 identify the top two reasons for their</p> <p>15 leaving. And they have one choice that's</p> <p>16 compensation/benefits and another that's</p> <p>17 my pay and benefits. And together, those</p> <p>18 were selected by only 11 percent of the</p> <p>19 respondents as among the top two reasons</p> <p>20 for resigning.</p> <p>21 Similarly, CSX provided this exit</p> <p>22 interview data where base pay was one of</p>
<p style="text-align: right;">Page 343</p> <p>1 the categories and benefits was a</p> <p>2 category. And for the base pay category,</p> <p>3 4.3 percent of the respondents indicated</p> <p>4 that that was their top reason for leaving</p> <p>5 and for benefits it was 1.3 percent. So</p> <p>6 the exit interview data anyway suggests</p> <p>7 that compensation and benefits are not the</p> <p>8 primary reasons that employees are</p> <p>9 leaving.</p> <p>10 I mentioned I tried to look at some</p> <p>11 social media sentiment. I chose</p> <p>12 glassdoor.com. If you're not familiar</p> <p>13 with it, this is a social media site and</p> <p>14 their primary purpose is to give employees</p> <p>15 a forum where they can rate and make posts</p> <p>16 about their employer.</p> <p>17 And so because that's what it's</p> <p>18 focused on, I thought it was a good source</p> <p>19 for this information. It also -- it</p> <p>20 allows employees to post anonymously, so</p> <p>21 hopefully they can be honest. And also,</p> <p>22 employers can't edit or remove any of the</p>	<p style="text-align: right;">Page 344</p> <p>1 ratings that are provided for them.</p> <p>2 So employees can give an overall</p> <p>3 rating. They can also rate their employer</p> <p>4 in terms of six workplace factors, one of</p> <p>5 which is compensation and benefits. And</p> <p>6 so I looked for each of the Carriers for</p> <p>7 the ratings on these workplace factors.</p> <p>8 And in every case among the six factors,</p> <p>9 compensation and benefits was the most</p> <p>10 highly rated workplace factor that the</p> <p>11 employees rated the Carriers on on this</p> <p>12 site.</p> <p>13 The ratings on compensation and</p> <p>14 benefits ranged from 3.2 to 3.8 out of 5.</p> <p>15 And just for reference, the way the</p> <p>16 ratings are designed, that means that on</p> <p>17 average, the employees rated themselves as</p> <p>18 okay or satisfied with compensation and</p> <p>19 benefits. So in no case was it the two</p> <p>20 categories below or dissatisfied or very</p> <p>21 dissatisfied with compensation and</p> <p>22 benefits.</p>

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1 Again, my purpose here was to
 2 attempt to provide some analysis about the
 3 extent to which it looks like compensation
 4 and benefits are driving the quit
 5 challenges that we're seeing. And from
 6 what I could tell, which is consistent
 7 with the larger literature on why people
 8 change jobs, comp and benefits is a
 9 relatively minor driver.

10 So then just sort of -- sort of
 11 wrapping up, we know that there are
 12 significant challenges still. So we're
 13 still having increased attrition from The
 14 Great Resignation. We're still having
 15 high demand for labor. We're still having
 16 a need to hire rapidly in a situation
 17 where -- I know the Carriers are trying to
 18 hire rapidly in a situation where it takes
 19 a significant amount of time in many cases
 20 to get people hired and on board and
 21 trained and ready to go.

22 And so from my perspective, it's

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1 that there are a sufficient number of
 2 applicants for these jobs, in fact, double
 3 what might be the standard for what
 4 sufficient is, why is it that we're still
 5 hearing this narrative some, purportedly
 6 from leaders of the Carriers, saying we
 7 can't fill these jobs, we don't have
 8 enough people? If they have enough
 9 applicants, why don't they have enough
 10 people to hire?

11 **DR. ALLEN:** So my answer would be
 12 twofold to that. One is part of it is the
 13 time lags involved, and so they have not
 14 been able to -- to catch up with -- with
 15 the demand yet. But then probably the
 16 broader answer goes to a question that you
 17 asked this morning in that what I
 18 presented here was a broad average. So
 19 there's going to be ranges for that.

20 And so what -- what you're likely
 21 to see is that in some jobs, they're
 22 having not as many challenges with hiring,

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1 not surprising that we're seeing an uptick
 2 in quits, although my assessment of the --
 3 the data is that it is not as dramatic in
 4 the Carriers as you might see elsewhere.
 5 And we're seeing challenges in terms of
 6 hiring as well. And I'd be surprised not
 7 to see those things, given what's going on
 8 in the larger economy. But I think
 9 they're a function of the larger labor
 10 market. And I think as conditions change,
 11 if we enter a recessionary period, I think
 12 they're likely to cool off.

13 So, you know, my perspective is
 14 that I think it makes sense to be very
 15 thoughtful and strategic about what we do
 16 in terms of committing to compensation
 17 increases in the future.

18 And I believe that that is the
 19 extent of my presentation. So thank you.
 20 I'm happy to answer questions.

21 **BOARD MEMBER DEINHARDT:** So I'm
 22 still trying to understand. If you say

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1 but then there are going to be some
 2 locations or some jobs where it is more
 3 challenging, and so they're having to
 4 resort the types of things that we've
 5 heard of, like significant hiring bonuses
 6 and those types of challenges.

7 **BOARD MEMBER DEINHARDT:** Do we have
 8 any more vertical data, I guess -- I mean,
 9 deeper data to show those kind of
 10 differences?

11 **DR. ALLEN:** So I did not analyze
 12 the hiring data by location or by job
 13 type. I was looking at the broader
 14 trends. I imagine the Carriers could
 15 probably give you a better picture of
 16 maybe where they're having the biggest
 17 challenges.

18 **BOARD MEMBER DEINHARDT:** All right.
 19 Thank you.

20 **CHAIRPERSON JAFFE:** I have three
 21 brief ones, if I may, maybe four,
 22 Dr. Allen.

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1 **DR. ALLEN:** Okay.

2 **CHAIRPERSON JAFFE:** In your data

3 that categorized voluntary quits, if an

4 employee was on furlough, recalled and

5 then declined recall, is that part of the

6 voluntary quit or not part of the

7 voluntary quit?

8 **DR. ALLEN:** Not part.

9 **CHAIRPERSON JAFFE:** Okay. And do

10 we know how significant that group of

11 employees was in the time frame that you

12 were looking at?

13 **DR. ALLEN:** On the furlough recall?

14 **CHAIRPERSON JAFFE:** Furlough recall

15 that the employee says no, thank you.

16 **DR. ALLEN:** I'm afraid I don't have

17 the answer to that.

18 **CHAIRPERSON JAFFE:** I'm not

19 troubled. I just need to understand.

20 The JOLTS data -- I don't mind

21 acknowledging I wasn't familiar with it

22 before I read your report.

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1 else?

2 **DR. ALLEN:** What you said. So that

3 was more closely tied to number of

4 applicants and then hires --

5 **CHAIRPERSON JAFFE:** And if I'm an

6 applicant and I send in an E-mail to the

7 Carrier and the Carrier has 20 vacancies

8 in that job category, am I deemed to have

9 applied -- that one person is deemed to

10 have applied to all 20 or is it counted

11 some other way for purposes of calculating

12 the applicant per job ratio that you've

13 set forth?

14 **DR. ALLEN:** So in the data that I

15 used, it was tied to a specific job

16 posting. So they would have to -- they

17 would be for a specific job posting, not

18 just one for -- for all 20 of them.

19 **CHAIRPERSON JAFFE:** Right. But did

20 they accept electronic applications, as

21 many places do, or not?

22 **DR. ALLEN:** I can't say how the

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1 Is that done, as you described it,

2 on an aggregate basis so that if the

3 economy as a whole has 20 million

4 vacancies and there are 30 million people

5 looking for work, that gets you a JOLTS of

6 1.5?

7 **DR. ALLEN:** Well, I mean, they're

8 sampling, you know, households and

9 businesses to get those data. But, yes,

10 that's the gist of it, is an aggregate

11 just count of --

12 **CHAIRPERSON JAFFE:** So it is not

13 purporting to be an average of the number

14 of applicants seeking individual jobs?

15 It's an aggregate economic measure of

16 available jobs on the one hand and

17 applicants on the other?

18 **DR. ALLEN:** That's right.

19 **CHAIRPERSON JAFFE:** Okay. And the

20 information that we contrasted that with

21 for the Carriers, those were targeted

22 individual applicants to jobs or something

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1 Carriers classify who is an applicant --

2 **CHAIRPERSON JAFFE:** Perfect. That

3 covered that one.

4 And the third question I had is you

5 indicated that it's your belief from what

6 you studied that compensation was not as

7 significant a factor with respect to

8 recruitment or retention.

9 And I wanted to ask the question,

10 if it turns out that one or more Carriers

11 are paying new hires at the full job rate

12 rather than at the initial hire rate,

13 would that not suggest that there was at

14 least a belief on their part that the new

15 hire rate wasn't attractive enough to get

16 the people to come on board and perform

17 the work?

18 **DR. ALLEN:** That's hard -- that's

19 hard for me to answer. I will say my own

20 just sort of work in this area leads me to

21 believe that most -- many people believe

22 that compensation is a primary driver

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1 in -- in attrition decision, even though
 2 the data doesn't really support that. But
 3 I'm not sure I can speak to what the
 4 Carriers think.
 5 **CHAIRPERSON JAFFE:** And that's fair
 6 enough too. Happy to leave it at that.
 7 We're in good shape, I think.
 8 Thank you, Dr. Allen.
 9 **DR. ALLEN:** Thank you.
 10 Whereupon:
 11 JUDY CARTER
 12 was called for examination, and, after being
 13 previously duly sworn, testified as follows:
 14 **MS. CARTER:** Give me a second to
 15 get mask off and glasses on.
 16 Good afternoon. Just to remind you
 17 I'm Judy Carter. I work at BNSF and I've
 18 been at BNSF Railroad for 16 years. Three
 19 years ago I became the vice president and
 20 chief human resources officer and have
 21 responsibility for retention and
 22 attraction of the talent across our

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1 and supply chain and we do that while
 2 operating our network 24 by 7, 365 with
 3 very talented folks. We pride ourselves
 4 through this environment. You have to be
 5 a tough-minded optimist who rises daily to
 6 challenges that our network provides to
 7 us, including many forces that come from
 8 Mother Nature.
 9 We like to say that railroading is
 10 an outdoor sport and we can't always
 11 predict what's going to happen on any
 12 given day. We foster a culture where
 13 safety is our absolute highest priority
 14 and we provide a work environment with the
 15 right tools and resources so that our
 16 employees can work free from accidents and
 17 injuries.
 18 We have a strong track record of
 19 process improvements that increases
 20 safety, efficiency and customer
 21 satisfaction. We celebrate a very rich
 22 heritage of over 170 years, and we also

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1 railroad.
 2 So like Professor Allen, I share
 3 the belief that railroad jobs are still
 4 good, attractive jobs. And I'm hopeful
 5 based on your questions for Professor
 6 Allen I'll be able to give some context
 7 into what BNSF is seeing in this space.
 8 So in my time here today we'll talk
 9 about how we attract, how we recruit, how
 10 we retain and some anecdotes about what
 11 we're seeing in our organization, what
 12 we're hearing from our employees. So
 13 that's what I'll do in my time here.
 14 I know from your backgrounds you're
 15 probably very familiar with BNSF, but I
 16 thought I'd give you a little bit of
 17 context around just kind of what we stand
 18 for, what our values are and how we -- how
 19 we view our employee workforce.
 20 We say at BNSF that railroad is a
 21 high calling and it certainly is. We are
 22 critical to the nation's infrastructure

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1 keep our eyes very focused on our
 2 promising future.
 3 Employees across BNSF have a sense
 4 of pride, of excellence in their work and
 5 feel a mutual responsibility for their own
 6 safety and the safety of others.
 7 And to echo what you have heard
 8 already today from both Brendan and Lance,
 9 we value our employees at BNSF and
 10 appreciate all the work they have done
 11 through the pandemic and beyond.
 12 So let's get into recruiting and
 13 retention. One of my jobs is to oversee
 14 our recruiting and staffing function. In
 15 that oversight, I continue to see a very
 16 high demand for railroad jobs, even in the
 17 current tight labor market. And we'll
 18 talk a little bit about some of the
 19 questions you had around how it works at
 20 BNSF, based on some of the industry data
 21 that Professor Allen shared with you.
 22 So we do have an online electronic

<p style="text-align: right;">Page 357</p> <p>1 process for our postings. And when jobs 2 are posted, they have a number to them for 3 requisition. And we track those 4 applicants against that requisition. So 5 when we count the number of applicants for 6 any given job, we're tracking it against 7 the requisition for how many people posted 8 to that job.</p> <p>9 But to address what you just 10 brought up, Chairman, there is the 11 capability for our staffing to see that if 12 there are candidates that may be qualified 13 for other jobs in certain locations to 14 start to adjust and move those around 15 where they can say, okay, not this job, 16 but maybe this job, based on how we're 17 dynamically hiring. But that wouldn't 18 change the original count as to what -- 19 how many applicants applied for that 20 particular requisition.</p> <p>21 So as we move through the process, 22 we screen those applicants. We assess the</p>	<p style="text-align: right;">Page 358</p> <p>1 candidates through normal interview 2 processes. We have assessments that we 3 put candidates through. And then once 4 they get through that, they get a job 5 offer, which starts our background checks, 6 our medical processes and assessments all 7 the way to the job offer.</p> <p>8 The conditional job offer turns 9 into a final offer letter. The candidate 10 accepts that and then they come on board. 11 They're considered hired at that point. 12 They come on board and have to go through, 13 obviously, a certain amount of training 14 depending on their craft that impacts how 15 long it takes to actually have that 16 employee being productive with boots on 17 the ground in the particular job that they 18 are hired for.</p> <p>19 So what have we seen in 2022 from a 20 hiring perspective? So this chart takes 21 you through the first six months of the 22 year where we've seen about 1,250</p>
<p style="text-align: right;">Page 359</p> <p>1 employees being put into agreement 2 positions across our network. I will say 3 that we have been in a very dynamic 4 situation, a hiring situation, and 5 responding to the changes and the 6 tightness of the labor markets in certain 7 geographies over time.</p> <p>8 And so we meet weekly. There's a 9 team of workforce folks who meet weekly to 10 manage -- and you can see on the chart 11 that it is dynamic on how we are able to 12 get them through the process I just 13 described. So we're paying attention to 14 how things are changing across our hiring 15 locations over time. And I'll get into 16 that a little bit more here in a minute.</p> <p>17 So for the jobs that you're seeing 18 here that we've hired for, about 1,200, we 19 received over 46,000 applications from 20 external applicants. So to Professor 21 Allen's point, there was about 36 external 22 applicants per craft hire at BNSF. We</p>	<p style="text-align: right;">Page 360</p> <p>1 received about 4,000 more internal 2 applications. So overall, there was about 3 an average 42 applicants per craft hire.</p> <p>4 So that shows that overall, our 5 demand for jobs at BNSF is still high. 6 But the question remains is hiring harder 7 than it used to be in prior years 8 pre-Great Resignation.</p> <p>9 And the answer to that is yes. We 10 have told the FTB, as you all referenced, 11 that this is a very tough labor market, 12 especially in certain of our geographic 13 locations and for certain of our 14 positions.</p> <p>15 But as was just explained, we are 16 doing much better than other employees. 17 And so while it feels harder to us or some 18 of my folks in my HR community at BNSF, 19 the hardest it's been in quite some time, 20 we know that overall we're still doing 21 very well and our jobs are still very 22 sought after.</p>

<p style="text-align: right;">Page 361</p> <p>1 And so while the applicant per hire 2 ratio is different than what it was a few 3 years ago, part of that reason could be 4 because of our hiring initiatives. Our 5 2022 hiring plan is higher than it's been 6 in several years. So it's comparable to 7 about 2018, which is our -- in the last 8 five years our high watermark in terms of 9 how many people we were hiring. During 10 that year we saw 34 external applicants 11 per hire, which is right in line with what 12 we're say seeing today in 2022.</p> <p>13 Aside from the numbers, our overall 14 applicant pool remains very strong. In 15 particular, we're the most proud of our 16 relationship with the military. One in 17 five BNSF employees is a military veteran. 18 29 percent of our 2022 nonmanagement new 19 hires is former military. And this year 20 we have hired veterans into top -- I'm 21 sorry -- into nonmanagement positions in 22 23 of our states. Our top states for</p>	<p style="text-align: right;">Page 362</p> <p>1 military recruits are Illinois, Washington 2 and Texas. And we're very proud of that.</p> <p>3 So with this strong pool in mind, 4 let me explain a little bit about why 5 we're using hiring incentives. If demand 6 is so strong, why do we have to use hiring 7 incentives?</p> <p>8 The answer to that is that we're 9 competing for labor across the western 10 half of the country. Competitors in some 11 of these geographic markets are offering 12 hiring incentives where there are very 13 tight labor pools. You heard some 14 examples of that earlier today, and 15 Nebraska in particular is an area where 16 we're seeing that extremely tight labor 17 pool. We've seen it in the Pacific 18 Northwest, Minnesota, Montana, North 19 Dakota and California.</p> <p>20 I'll give you some examples of what 21 we're seeing from our competitors that 22 we're trying to remain competitive with on</p>
<p style="text-align: right;">Page 363</p> <p>1 incentives. We're seeing for CDL drivers 2 for Penske about 5- to \$10,000 being 3 offered as a hiring bonus. AT&T is 4 offering about \$10,000 for installation 5 technicians. And John Swift is offering 6 \$2,500 for experienced drivers.</p> <p>7 So you see there's a breadth of 8 range there of what the incentives are 9 based on the tightness of the labor market 10 and the type of job being recruited for.</p> <p>11 BNSF is also offering market 12 incentives in those geographies where this 13 labor market is particularly competitive, 14 but from a career perspective, railroad 15 jobs in my belief do not require a hiring 16 bonus to remain competitive overall. And 17 the overall lifetime compensation and 18 benefits that we offer, we are, and have 19 always been, at the high end of the 20 market, as you've heard from many of our 21 experts here today.</p> <p>22 And in those particular geographic</p>	<p style="text-align: right;">Page 364</p> <p>1 areas where we are seeing competition, 2 some of these applicants may be looking 3 for the short-term benefits of a 4 particular job. What I mean by that is 5 they may take that hiring bonus and work 6 at that company for a few years, but then, 7 when they're looking at their longer term 8 career, which we'll talk about in a little 9 bit about railroad tenure, they will come 10 back to railroads that offer that 11 long-term career perspective once this 12 labor market perhaps adjusts.</p> <p>13 So let's talk a little bit about 14 employee retention. Just like recruiting, 15 success in retaining our employees is 16 critical, as it ensures we have an 17 experienced workforce and reduces the 18 costs associated with recruiting and 19 training a workforce in a high turnover 20 environment.</p> <p>21 Our strongest retention tool by far 22 is our great package of compensation and</p>

Page 365	<p>1 benefits, of which you've heard a lot</p> <p>2 about here today. Operations craft</p> <p>3 employees earn between 80- and \$120,000 a</p> <p>4 year and a subset of those can earn</p> <p>5 considerably more.</p> <p>6 We offer best-in-class medical,</p> <p>7 dental, vision and life insurance,</p> <p>8 including some very specific benefits</p> <p>9 around second opinion services and centers</p> <p>10 of excellence for medical care.</p> <p>11 In addition to all of that, we</p> <p>12 offer robust support for our BNSF</p> <p>13 families, including education and mental</p> <p>14 health benefits, referrals for</p> <p>15 consultants, sleep consultants, wellness</p> <p>16 challenges to stay physically fit,</p> <p>17 maternity and new parent care and</p> <p>18 excellent employee assistance program</p> <p>19 benefits.</p> <p>20 We continue to invest in our</p> <p>21 employees' well-being and development</p> <p>22 through these wellness programs, which</p>	Page 366	<p>1 offer fitness and gym discounts, on-site</p> <p>2 health clinics to have preventative care</p> <p>3 and on-site vaccination clinics post</p> <p>4 pandemic and continuing into flu season.</p> <p>5 Our employees are eligible for railroad</p> <p>6 retirement benefits after 30 years of</p> <p>7 service, their eligibility based on age,</p> <p>8 and they also have access to a 401(k)</p> <p>9 program.</p> <p>10 So all of these benefits offer</p> <p>11 quite a competitive package that our</p> <p>12 employees talk about. Professor Allen's</p> <p>13 point on GlassDoor, that rating for BNSF</p> <p>14 is highest in the compensation and</p> <p>15 benefits area.</p> <p>16 So let's talk a little bit about</p> <p>17 tenure. The quality of our jobs and</p> <p>18 benefits shows up in our average tenure</p> <p>19 data. BNSF's Union-represented employees</p> <p>20 have an average tenure of about 14 years,</p> <p>21 which is more than triple that of other</p> <p>22 transportation workers and double that of</p>
Page 367	<p>1 members of the workforce with similar</p> <p>2 educations.</p> <p>3 We also see the dedication to our</p> <p>4 workforce through our years of service.</p> <p>5 We talked about that earlier with UP's</p> <p>6 data. We look at 40 years of service or</p> <p>7 more and you can see over time we have a</p> <p>8 substantial number of employees who retire</p> <p>9 with 40 years of service.</p> <p>10 Railroad Union jobs are also so</p> <p>11 good that oftentimes folks that convert</p> <p>12 from being a Union employee to a</p> <p>13 management employee decide to go back to</p> <p>14 the craft for many of the reasons that we</p> <p>15 talked about here and the great</p> <p>16 compensation and benefits offered.</p> <p>17 Professor Allen talked a little bit</p> <p>18 about quits and I'll give you the BNSF</p> <p>19 data on voluntary quits by tenure. We</p> <p>20 know, as we talked about earlier,</p> <p>21 railroading is a very challenging</p> <p>22 environment. It's outdoor. It's 24/7.</p>	Page 368	<p>1 It's 365. And as we are able to attract</p> <p>2 people, once they are with us for a while</p> <p>3 they, realize it's simply not for them and</p> <p>4 they don't like it.</p> <p>5 So it may take a little bit -- as</p> <p>6 you see the drop-off here, it may take a</p> <p>7 little bit for someone to work through the</p> <p>8 seasons of the outdoor sport before they</p> <p>9 realize that, no, this is not a career I</p> <p>10 want to continue in.</p> <p>11 And that's how it's been for</p> <p>12 decades. We've seen this drop-off in the</p> <p>13 very early stages of your career and then</p> <p>14 it levels off where if someone stays with</p> <p>15 us past five years, they're probably not</p> <p>16 going to leave and they're going to keep</p> <p>17 their career with BNSF.</p> <p>18 So, for example, in 2022 the vast</p> <p>19 majority of employees who voluntarily</p> <p>20 resigned, nearly 80 percent of those had</p> <p>21 less than ten years' experience with us.</p> <p>22 And over half had less than five years'</p>

<p style="text-align: right;">Page 369</p> <p>1 experience with us. But we lose very few 2 people once they've worked for us for more 3 than that three- to five-year period. 4 They're very unlikely to leave after ten 5 years of service. 6 So we've talked a little bit about 7 the massive walk-outs and people who are 8 leaving in droves, so I wanted to give you 9 a sense of the comment that you all heard 10 at the STB and will probably hear more 11 about. 12 There's data that we have for the 13 resignations and at BNSF from all crafts 14 and all tenure levels for this year is 15 about 1,300. So that's an attrition rate 16 of about 4 percent. In today's market and 17 as I'm getting out post-COVID meeting with 18 my industry peers and people outside the 19 railroad industry, that is a jaw-dropping 20 percentage that they hear when they say 21 man, I wish that could be us. Folks are 22 seeing much higher attrition rates,</p>	<p style="text-align: right;">Page 370</p> <p>1 especially in this labor market. 2 So while that's higher than it's 3 been historically, it's hardly suggestive 4 of we're having a mass exodus of people. 5 The overall attrition, which includes 6 retirements and terminations, for this 7 year is about 9 percent. So this means 8 that while some people are resigning 9 instead of leaving through retirements and 10 other means, it's not a flood of people 11 headed toward the exits at BNSF. 12 To build on what Professor Allen 13 said, there's another point I'd like to 14 emphasize, is that we don't have any 15 evidence that the resignations that we're 16 seeing are primarily attributable to 17 compensation. It's not reflected in what 18 we hear anecdotally. We also pay 19 attention to comments on social media and 20 other forms of communication and we just 21 don't see that compensation and benefits 22 is being listed as a primary driver. To</p>
<p style="text-align: right;">Page 371</p> <p>1 the contrary, it's often cited as one of 2 the best things about working at BNSF. 3 My colleagues later will go into 4 our new Hi Viz attendance policy, but I 5 just wanted to touch on it at a high level 6 to tell you what I'm seeing. 7 We've heard specific criticism in 8 the media around our attendance policy. I 9 would say that most of this criticism, 10 based on the data we're seeing, is unfair 11 and doesn't reflect the overall employee 12 view of our new attendance policy. 13 Our leaders across our network have 14 talked to many employees about this new 15 policy and most have stated it is working 16 for them. In fact, a long-term locomotive 17 engineer that I was having a conversation 18 with said that there were no problems with 19 the policy at all. In fact, she said 20 railroading is a choice. We know how 21 operationally this has to work. You have 22 to expect to travel. You have to expect</p>	<p style="text-align: right;">Page 372</p> <p>1 to be available. That's just the nature 2 of the job. 3 So those voices are very common and 4 reflective of our retention rates, but the 5 critical voices that are complaining about the 6 policy are quite loud and getting a lot of 7 attention. 8 As you'll see here and with -- my 9 colleague goes into more data on Hi Viz, about 10 96 percent of our employees are currently in 11 compliance, which is much better, actually, than 12 under our previous attendance policies. So we 13 actually expect that there will be less 14 discipline under this new approach going forward. 15 The last couple of comments I want to 16 make is talk about the nature and quality of life 17 and work-life balance at BNSF. 18 It continues to show us that these 19 are very good jobs and that there is the ability 20 to have work-life balance as a BNSF railroader. 21 Union employees get paid 11 days of holiday pay 22 and five weeks of vacation per year, depending on</p>

<p style="text-align: right;">Page 373</p> <p>1 their years of service.</p> <p>2 The work hours are simply just not</p> <p>3 what the Unions claim. Our data shows, as you</p> <p>4 can see here, about an average 34 hours a week in</p> <p>5 2020. And that number went down to 33 per week</p> <p>6 this year. Of course, those are averages and</p> <p>7 some of our employees do work much more than</p> <p>8 that.</p> <p>9 It's also important to emphasize that</p> <p>10 work hours are not the same thing as</p> <p>11 availability. If you're in an assigned service,</p> <p>12 you have to be available to work. And that is</p> <p>13 acknowledged in the compensation, but there's not</p> <p>14 a problem of overall and overreaching overwork.</p> <p>15 On the nonoperating side what we see</p> <p>16 is about 42 hours per week. They have scheduled</p> <p>17 work and, for the most part, many of them do not</p> <p>18 have the requirement to travel regularly like our</p> <p>19 operating crafts. So these are the key</p> <p>20 indicators that these remain very good jobs.</p> <p>21 One thing I'd like to build on that</p> <p>22 my colleague Lance at UP mentioned was two issues</p>	<p style="text-align: right;">Page 374</p> <p>1 that prove that BNSF is still a great place to</p> <p>2 work.</p> <p>3 One is the same type of referral</p> <p>4 program that UP has. Just as an anecdote, about</p> <p>5 a month ago in Dilworth, Minnesota, my HR team</p> <p>6 interviewed about eight candidates for a position</p> <p>7 there. Seven of those had been referred by</p> <p>8 current -- two IME employees. And that's</p> <p>9 something that we're seeing a lot of, existing</p> <p>10 employees referring people that they know and</p> <p>11 care for into our workforce.</p> <p>12 The second is that BNSF is a</p> <p>13 generational family railroading experience. We</p> <p>14 have so many of our railroaders who are related</p> <p>15 to each other and who have grown up in the</p> <p>16 railroad together.</p> <p>17 One of those families is from Minot</p> <p>18 and Dilworth. The dad worked for us and three of</p> <p>19 his four sons came to work for us and then three</p> <p>20 of their sons joined us and that was all on the</p> <p>21 TY&E side.</p> <p>22 The other story is a three-generation</p>
<p style="text-align: right;">Page 375</p> <p>1 railroad family, where we've had 75 years of</p> <p>2 someone in the family working for BNSF. And we</p> <p>3 saw this with a grandfather who started in</p> <p>4 engineering. His two sons came to work for us.</p> <p>5 One was an exempt employee, one was a scheduled</p> <p>6 employee and a local chairman. And then one of</p> <p>7 his grandsons came to work in our legal</p> <p>8 department and two other family members on the</p> <p>9 TY&E side. So it's just striking that, you know,</p> <p>10 folks really don't send their kids and grandkids</p> <p>11 to work for companies that they don't like and</p> <p>12 haven't benefited from.</p> <p>13 Lastly, I'll cover the technological</p> <p>14 improvements and capital investments we've made</p> <p>15 to, make railroading easier and safer. One such</p> <p>16 example is called WorkforceHub, which is an</p> <p>17 application that allows employees to view their</p> <p>18 standing on the board and train lineup</p> <p>19 information very easily from any mobile device.</p> <p>20 We developed this in consultation</p> <p>21 with our employees across the system and</p> <p>22 continually enhance this application based on</p>	<p style="text-align: right;">Page 376</p> <p>1 employee feedback. Some of the things that our</p> <p>2 employees are able to benefit from in this</p> <p>3 application is that every 15 minutes, BNSF takes</p> <p>4 all of our known events and uses them to help</p> <p>5 predict when an employee is likely to be called</p> <p>6 to work so that that employee has better</p> <p>7 estimates of when they may be called.</p> <p>8 It also allows for text messages</p> <p>9 communication, rather than phone, so that the</p> <p>10 employee is able to get that on their personal</p> <p>11 cell phone, rather than calling and potentially</p> <p>12 waking up other family members who may be</p> <p>13 resting.</p> <p>14 And finally, it allows employees to</p> <p>15 easily access several BNSF systems at once so</p> <p>16 they can view all of their information in the</p> <p>17 portal, whether that be attendance data,</p> <p>18 compensation data or other information that</p> <p>19 they're needing.</p> <p>20 And then my final point that we're</p> <p>21 very proud of is that BNSF is an award-winning</p> <p>22 company and has been recognized externally in</p>

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1 many different ways around our work environment,
 2 whether that be for new graduates, for our
 3 development program, for how we develop our
 4 employees through our training programs.
 5 I mentioned our strong relationship
 6 with the military community and we've been
 7 recognized for that, as well as a lot of
 8 different diversity awards for best employers for
 9 women, a diversity award and we have people of
 10 color awards for our Indigenous STEM
 11 professionals and our corporate Chamber of
 12 Commerce in Fort Worth.
 13 So it's worth emphasizing that we
 14 worked really hard to make BNSF a work
 15 environment where people are proud to join and
 16 proud to stay. We've had lots of achievements in
 17 our opportunities for our female employees and
 18 our people of color employees and that has been
 19 one of our priorities that we've worked on for
 20 several years. And I'm very happy to say we're
 21 making progress there and we're being recognized
 22 for that progress.

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1 Whereupon:
 2 GERARD McCULLOUGH
 3 was called for examination, and, after being
 4 previously duly sworn, testified as follows:
 5 **DR. McCULLOUGH:** So my name is
 6 Gerard McCullough and I'm emeritus
 7 professor of applied economics at the
 8 University of Minnesota.
 9 The railroad industry has -- the
 10 Carriers have asked me to analyze industry
 11 economics with a focus on prospects of the
 12 industry for the next decade. Basically
 13 I'll talk about where the industry has
 14 been very briefly, talk about where it is
 15 now, again, very briefly, and then focus
 16 in more detail on where the industry is
 17 going economically.
 18 So by way of introduction, in 1976
 19 Congress ordered the U.S. Department of
 20 Transportation to report on the status of
 21 the U.S. freight railroad system. The
 22 1978 DOT report was called A Prospectus

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1 So that's all I have to cover for you
 2 today. So I'm happy to take any questions you
 3 have.
 4 **CHAIRPERSON JAFFE:** Thank you,
 5 Ms. Carter.
 6 I think we're in good shape, but
 7 thank you very much.
 8 **MS. CARTER:** Thank you.
 9 **MR. EASLEY:** Mr. Chairman, our next
 10 pair of witnesses will be discussing
 11 railroad industry economics. And they
 12 would be Dr. Gerard McCullough and
 13 Jennifer Hamann from Union Pacific
 14 Railroad.
 15 **CHAIRPERSON JAFFE:** Could we swear
 16 in the witnesses, please.
 17 Whereupon:
 18 GERARD McCULLOUGH AND JENNIFER HAMANN
 19 were called for examination and were duly
 20 sworn by the reporter.
 21
 22

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1 for Changes in the Freight Railroad
 2 Industry and it presented a dire picture
 3 of the industry.
 4 It characterized it, as, quote, in
 5 the worst economic condition of any
 6 privately operated mode of transportation.
 7 And that's not the picture that I'm going
 8 to present here.
 9 My findings in my report are that
 10 the railroads are financially healthy
 11 today, but staying that way is not
 12 guaranteed. My conclusions, now through
 13 2030, railroads must focus on market
 14 expansion and cost control.
 15 Next slide. So I'd first like to
 16 do a little bit of introductory economics
 17 before getting into the details. And to
 18 do that, the example I chose -- and this
 19 is not product placement, I'm not doing an
 20 advertisement for Minnesota. It just
 21 happens that this works, that railroads
 22 are -- what I want to show is that

<p style="text-align: right;">Page 381</p> <p>1 railroads are multi-product firms and 2 capital intensive. And the example I 3 found is a yard in Staples, Minnesota, 4 which is a couple of hours north of Twin 5 Cities. 6 And I think that illustrates the 7 two key dimensions of railroad economics. 8 And the first is that railroads are -- 9 now, this is the jargon of economics -- 10 multi-product firms. And that simply 11 means they serve many different markets. 12 So for context, if we take a look 13 at that slide, starting at the right, 14 there are three oil trains lined up and 15 those are carrying oil. In this case they 16 could be carrying chemicals. 17 Then next to that we have the 18 silver-topped train. Those are multi-rack 19 auto cars. So they're carrying finished 20 automobiles. 21 Next to that we have a train of 22 covered hoppers. They're carrying grain,</p>	<p style="text-align: right;">Page 382</p> <p>1 another multi-rack auto car carrying 2 finished automobiles, and then an open 3 hopper train carrying coal, and then 4 finally on the far left the train carrying 5 intermodals. 6 So again, all of those are 7 different markets that railroads serve. 8 All of those have different cost 9 characteristics, different demand 10 characteristics, but they all contribute 11 to the viability of the railroads. 12 And that's one of the things I want 13 to stress as I get into this, that that 14 multi-product nature, those different 15 markets and the variety of the markets is 16 going to become more important in the 17 coming decade. 18 The second point then is that 19 railroads are capital intensive. And to 20 provide context on that, if you look at 21 all of those trains lined up, they're all 22 waiting to get on a single track which</p>
<p style="text-align: right;">Page 383</p> <p>1 runs to the east. And those oil trains 2 are carrying shale oil to refineries in 3 the east. 4 That being a single-track line 5 means that when those trains have to go 6 back to the west, most of them will have 7 to go back on that single-track line, 8 okay? And again, the congestion here is 9 caused by shale oil. 10 And what happened -- and this is 11 BNSF in this case -- is that in 2008 the 12 entire railroad industry shipped 9,500 13 carloads of shale oil. By 2014, which is 14 when this picture was taken, the industry 15 was shipping 493,000 carloads of shale 16 oil. So that was a new discovery. 17 And that put pressure on railroads 18 which have -- in this case had a network 19 set up to handle coal, grain, maybe 20 intermodal, now having to carry a lot of 21 shale oil, okay, which meant they need to 22 raise a lot of capital and take time to do</p>	<p style="text-align: right;">Page 384</p> <p>1 the adjustments that they have to do to be 2 able to carry that freight without 3 congestion. 4 Next slide. So that's the basic 5 economics I want us to keep in mind, which 6 is they are multi-product firms that are 7 capital intensive. Now I'll do one slide 8 very quickly on history. 9 In my report I began with 1830. 10 And the idea there is that in 2030 11 railroads, the freight railroads will be 12 celebrating their 200th anniversary. 13 Lance Fritz this morning started at 1980, 14 and I think that's a good point for me to 15 start too. 16 And -- and the point there is that 17 up -- in fact, right before 1980, in the 18 1970s there was a big railroad bankruptcy, 19 which maybe some of us in this room 20 actually remember, all of us in this room 21 heard about, which was the Penn Central 22 bankruptcy. That then threatened to</p>

<p style="text-align: right;">Page 385</p> <p>1 spread beyond the eastern part of the 2 United States to the Midwest and that 3 forced Congress and the administration to 4 act. 5 And the action they took -- this 6 was the Carter administration who looked 7 at the problem and said, you know, the 8 problem with these bankruptcies is not 9 really a problem that government can 10 solve. It's a problem that the railroads 11 have to solve. But they can only solve it 12 if the regulatory framework is changed. 13 So the Carter administration -- 14 actually, they were building on work that 15 had been done by the Ford administration, 16 so it was actually a bipartisan effort. 17 The Staggers Act was passed. As Lance 18 Fritz described it this morning, it was 19 successful. It worked. Railroads 20 responded by rationalizing their networks 21 and increasing the efficiency of their 22 operations.</p>	<p style="text-align: right;">Page 386</p> <p>1 And I think that's point one that I 2 would like to make, which is the policies 3 that were developed in the 1980s, which 4 still prevail, have worked. 5 Next slide. So the evidence of 6 that, first evidence of that is that 7 shippers have benefited. What I'm showing 8 here is a diagram which the Surface 9 Transportation Board puts together on a 10 regular basis, which is an index of rail 11 rates. And it's an index which is 12 inflation adjusted, so it gives us a real 13 sense of how rates are behaving. 14 And you can see looking at this 15 index here that this is -- between 1985 16 and 2020, there's actually been a 30 17 percent reduction in real railroad rates. 18 And that's to the benefit of shippers. 19 Lance said this morning that if I go back 20 to 1980 -- and he was right -- it goes 21 to -- well, it's a 40 percent difference 22 between 1980 and 2020.</p>
<p style="text-align: right;">Page 387</p> <p>1 And actually Kevin Murphy talked a 2 little bit about this earlier. If we look 3 at the kind of steep downward slope of 4 this line between -- in the back part of 5 the 20th century, that's the period at 6 which the railroads were really doing 7 rationalization. The network in this 8 period dropped from about 160,000 miles to 9 120,000 miles. 10 And then as we move into the early 11 part of the 21st century, that 12 rationalization ends. The railroad system 13 stabilized at about 118,000 miles. 14 Railroads are still dealing with 15 increasing input cost. At this point the 16 price of fuel is going up, so you see the 17 uptick in rates. But still between '85 18 and 2020, there's a 30 percent reduction 19 in the rates that they're charging to the 20 shippers. 21 Next slide. Again, the 1980 22 policies have worked. We also see that</p>	<p style="text-align: right;">Page 388</p> <p>1 workers, managers and shareholders have 2 all benefited. So the first line here is 3 operating revenue. Turns out that real 4 operating revenue if we go between 1980 5 and 2019 -- again, this is in 6 inflation-adjusted terms -- doesn't really 7 change. Okay? 8 Now, remember, rates are going 9 down, so the output actually increased 10 quite dramatically. The number of 11 ton-miles produced increased, but the real 12 revenue stays pretty much the same. It 13 then drops off, as expected, with COVID-19 14 in 2020. 15 Operating expenses though, this is 16 what saved the industry, this is where the 17 Staggers Act was right, okay, operating 18 expenses, because of multifactor 19 productivity gains -- and, they were, 20 again, described this morning by other 21 witnesses -- caused the operating expenses 22 to drop from 70.84 billion down to 49.38</p>

<p style="text-align: right;">Page 389</p> <p>1 billion in 2019. And that -- that 2 explains the next line, which is the 3 increase in net income. 4 Average annual employee 5 compensation -- again, real terms, 0also 6 increased, as did the return on equity. 7 I'll come back to that at the end. 8 So again, the 1980 policies have 9 worked for shippers, for workers, for rail 10 executives and for shareholders. 11 Next slide. So now this is where I 12 get to the more important charge that I 13 had, which was to talk about the future. 14 And so I think these next two slides are 15 the most important. 16 If we were talking about the 17 industry earlier -- and it's great fun to 18 talk about the history of the railroad 19 industry and its relationship to the 20 United States economy and how, at least in 21 the late 19th and early 20th century, 22 railroads drove economic growth and</p>	<p style="text-align: right;">Page 390</p> <p>1 economic growth drove the railroads. 2 That's not the case anymore. 3 I think to understand certainly the 4 next decade and future decades of rail -- 5 of the performance of the railroad 6 industry, it's the macroeconomics which is 7 going to drive the railroad industry. 8 So the point of departure for the 9 analysis that I did -- excuse me. The 10 point of departure from my analysis 11 here -- and I'm not a macroeconomist like 12 Kevin Murphy. I'm not a macroeconomist. 13 So I -- I went to S&P Global, which is a 14 well-reputed macroeconomic forecasting 15 firm, and also actually is the firm that 16 was chosen by the U.S. DOT to do its 17 freight analysis forecasts. And so they 18 do the macroeconomic forecasts for the 19 DOT. The DOT then incorporates them into 20 its planning and it distributes that 21 freight analysis framework to state and 22 local planners. They have a good</p>
<p style="text-align: right;">Page 391</p> <p>1 reputation. They know what they're doing. 2 And we asked them, then, to do a 3 macro forecast in July of 2022 and then 4 translate that into what the freight 5 market was going to look like over the 6 coming decade. So some quick details 7 about the forecast. 8 Their assumptions are what you 9 would expect based on what you read about 10 now in the -- in the business press, 11 that -- that energy prices are expected to 12 increase based a lot on what's going on 13 overseas. The COVID-related fiscal 14 injections are expected to end and 15 monetary policy is expected to become 16 stricter. 17 Taking all of that into account and 18 many other factors -- and here are the 19 three numbers that I think matter: 20 S&P global predicted that the rate 21 of GDP growth, gross domestic product, on 22 an annual basis, so the annual growth of</p>	<p style="text-align: right;">Page 392</p> <p>1 gross domestic product -- actually, their 2 period was between 2019 and 2030 -- was 3 going to be 2.32 percent, right, which is 4 slow. And actually, the next couple of 5 years we're expected to be flatter and 6 then pick back up to sort of the normal 7 3 percent type average. So that's the 8 beginning point of what's happening in the 9 macroeconomy. 10 They then -- and now they're 11 looking across all of these different 12 commodities that are relevant to railroads 13 and their prediction is that the growth of 14 the overall freight market -- so that's 15 all modes -- was going to be 0.5 percent 16 per year between 2019 and 2030. 17 And so if you look at that bar 18 chart that I have up now, that's what 0.5 19 percent annual growth looks like. It's 20 hard to see. Okay? And we see that it's 21 highways to start and then the orange 22 piece is all of rail, so that's carload</p>

<p style="text-align: right;">Page 393</p> <p>1 plus intermodal. And actually most of 2 that is intermodal. And then the blue 3 part is water here. Actually, air doesn't 4 show up. Air would be in the air. It's a 5 little white blip across the top. 6 So 0.3 is the second -- 0.5 is the 7 second important number. But the really 8 important number for our purposes is that 9 the S&P prediction of the growth of the 10 rail market is 0.3 percent a year between 11 2019 and -- and 2030. All right? 12 When we were being taught that it's 13 important to save money, I think a lot of 14 us heard the rule of 72, which was ask the 15 bank what the interest rate is going to be 16 and divide that into 72 and that will tell 17 you how fast your money is going to 18 double. So if it's 6 percent -- I'm 19 giving away my age now. So if you divide 20 6 into 72 it will take 12 years for your 21 money to double. If you divide 3 into 72 22 it will take -- if it's a 3 percent</p>	<p style="text-align: right;">Page 394</p> <p>1 interest rate, that's 24 years. If you 2 divide .3 into 72 that says that the 3 railroad freight market will double in 240 4 years. 5 Now, obviously, that's not what S&P 6 is forecasting. They wouldn't try to 7 forecast out that far. But again, it 8 gives us a sense that this is not a 9 dynamic market that we're looking at. 10 Okay? 11 So let's go to the next slide. And 12 by the way, so I'm sure that knowledgeable 13 railroad people here listening to this 14 will say well, you're talking about the 15 growth of tons of freight and railroads 16 don't ship tons, they ship ton-miles. 17 Okay? So to really make sense of this, we 18 should be looking at ton-miles or when we 19 ship these things -- when we produce 20 ton-miles, we receive revenue. So we need 21 to know what the revenue is going to be as 22 well.</p>
<p style="text-align: right;">Page 395</p> <p>1 I would say yes, that's true, 2 certainly. And there are -- in my report 3 I talk more about -- about those 4 categories. But it's still the fact that 5 the economy -- and I think S&P is right 6 here -- produces tons of goods. Right? 7 And so no matter how they then 8 translate into shipments, the railroads 9 have to compete for those tons. And they 10 will have to continue to compete for those 11 tons of freight. 12 So now this next -- so that 0.3 is 13 a somewhat frightening number, but the 14 really frightening part of that is if you 15 look in detail at what is the composition 16 of that market, right -- and when I went 17 through the tonnage predictions or tonnage 18 projections which S&P provided, if you 19 notice, in 20 -- in 2019, which was an 20 actual, about 71 percent of those tons 21 were bulk tons. So these were commodities 22 that would move: coal; some percent of the</p>	<p style="text-align: right;">Page 396</p> <p>1 chemical; grain that would move in bulk 2 commodities, which we saw in that Staples, 3 Minnesota freight yard. And 29 percent 4 were what I would characterize as truck 5 competitive commodities. 6 So that's paper, intermodal 7 especially, food products, right, where 8 railroads are in very tough competition 9 with trucks to get that traffic. 10 Now, again, the frightening part is 11 that when you shift over to 2030, notice 12 that the bulk component now is 65 percent 13 and the truck competitive component is 35 14 percent. And that's not a small amount if 15 you think what percent of the 71 do I have 16 to change to get to 65. If I still had 17 grad students, I would have asked one of 18 the grad students to do that. But that's 19 about 9 percent. Okay? 20 And the shift in truck competitive 21 from 29 to 35 actually means that the 22 truck competitive piece is going up by</p>

<p style="text-align: right;">Page 397</p> <p>1 about 21 percent. So the market which 2 railroads are going to face in 2013 is 3 significantly more competitive than the 4 market that they faced in 2019. 5 And it's even a little bit more 6 scary, because when S&P Global does its 7 estimation, it assumes that trucks have 8 the same competitive capabilities in 2019 9 with rail that they have in 2030. So it 10 assumes that the mode shares don't change. 11 And the Chairman asked earlier about 12 elasticity of substitution capital to 13 labor. 14 S&P -- and I think they're right 15 here -- don't try to estimate across 16 elasticity between rail and truck. And 17 having tried that before myself in my 18 career, you just don't have the data to do 19 that in a realistic way. So they make 20 what I think is the safe -- well, they 21 make the assumption for projection 22 purposes that the mode shares don't</p>	<p style="text-align: right;">Page 398</p> <p>1 change. All right? 2 But that says railroads are going 3 to have to run just to be able to stand on 4 this, okay, because this 35 percent is 5 going to be -- this is going to be a more 6 competitive traffic mix than they have in 7 2019. 8 Next slide. And part of the reason 9 for being concerned about this is that 10 this is not going to be a statically 11 competitive market. Okay? So for one 12 thing, yes, there's limited overall growth 13 in the potential market for railroad 14 traffic, but if we look at the picture on 15 the left, the kind of trucks that 16 railroads are going to be competing with 17 are probably going to be better. 18 We heard again this is morning from 19 Lance Fritz that autonomous trucks are 20 very close and we also have seen in our 21 own work that most of the -- the large 22 manufacturers are working very hard to get</p>
<p style="text-align: right;">Page 399</p> <p>1 to electrically driven trucks. And that 2 combination of autonomy and electric 3 motivation means that their cost structure 4 is going to be about 15 to 25 -- once 5 they -- and this includes even having to 6 pay for these more expensive trucks. 7 They're going to be significantly cheaper 8 to operate. So that's number one in terms 9 of the competitive future. 10 And then the second point is that 11 if you looked at that 0.5 percent growth 12 in the overall freight markets, that means 13 that truckers are going to be competing 14 more viciously with each other. So it's 15 going to be even harder for railroads to 16 penetrate into those markets. 17 And then I do talk about this more 18 in the report, but there's also -- 19 certainly if you've seen the recent 20 hearings in April by the STB -- the 21 Surface Transportation Board in terms of 22 rail regulation, there's every reason to</p>	<p style="text-align: right;">Page 400</p> <p>1 believe that the STB is going to be more 2 aggressive in regulating railroads than 3 they have been in the past. 4 Next slide. So to summarize that 5 really -- actually three points. But 6 first, looking on the left, again, at 7 these containers that -- that for 8 railroads to compete with trucks, they 9 will be competing with -- in a market 10 where it's already more competitive. And 11 that means that they're going to have to 12 control rates. They can't, I don't think, 13 rely on rate increases to make up the 14 difference in any way. All right? 15 It's pretty hard to imagine 16 increasing your share of these markets by 17 increasing your rates. Right? So the 18 pressure is going to be there's going to 19 be downward pressure on rates. 20 And then the second point, if we go 21 back to Staples, Minnesota, what was 22 happening there is reconfiguring</p>

<p style="text-align: right;">Page 401</p> <p>1 operations in a network to move oil 2 instead of coal and grain. Here you're 3 talking about reconfiguring a network to 4 move intermodal containers rather than 5 coal and grain. And certainly that's 6 going to involve significant capital 7 investment. 8 And so the -- and then the third 9 factor, which is another thing to worry 10 about -- this has also been mentioned -- 11 the S&P May 2022 forecast did not forecast 12 a recession. But, like good economic 13 forecasters, they covered themselves and 14 said that for 2023 and 2024 they see 15 basically flat economic activity with some 16 pickup in '25 and beyond. 17 And the history is that railroads 18 don't do well with downturns. And even 19 recent -- they've gotten better if you 20 look over the past decades. But in the 21 2007-2009 Great Recession, revenue dropped 22 by 22.4 percent. Net income dropped by</p>	<p style="text-align: right;">Page 402</p> <p>1 20.7 percent. In 2020, the COVID-19 2 recession, revenue dropped by 3 11.1 percent, net income by 11.4 percent. 4 So these factors you're going to 5 have to do price discipline. It's going 6 to be expensive to invest and to 7 reconfigure the network and there's still 8 this possibility of a significant 9 downturn. 10 That all says to me -- that all 11 says to me that what railroads must do is 12 control their operating costs. Nothing 13 else to do but that, right? It's the only 14 way to go, is to control the operating 15 costs and keep prices down and to have 16 capital available. 17 So if nothing -- I think what I've 18 proved now is that economics is, in fact, 19 the dismal science. But there's actually 20 a more positive story that one could tell 21 here, and I think this is a real story. 22 And that is that railroads have the</p>
<p style="text-align: right;">Page 403</p> <p>1 potential -- again, Lance Fritz mentioned 2 this this morning -- to help some of the 3 critical national problems, to help solve 4 some of our critical national problems. 5 So one way of looking at that from 6 an economic point of view is to say okay, 7 let's assume -- and we can only do this by 8 way of assumption -- that railroads 9 actually are more than successful in 10 competing in these markets and that 11 10 percent of the truck share shifts over 12 to rail. All right? 13 So if we could take 10 percent of 14 the trucks that are on the highway now and 15 shift them over to rail, what would be the 16 effect? A safer way of doing that 17 economically is to say what if in the last 18 decade, so between 2011 and 2020, we took 19 10 percent of the combination trucks out 20 there on the highway and move them on to 21 the rail network. And we did that 22 simulation. I had help from Cambridge</p>	<p style="text-align: right;">Page 404</p> <p>1 Systematics on that. And we actually had 2 a set of cost estimates that had been done 3 by the Congressional Budget Office by 4 David Austin. 5 So a 10 percent of diversion of 6 freight from truck to rail 2011 to 2020, 7 but in real 2020 dollars would have saved 8 shippers 23.4 billion over the past decade 9 because of the reduction in cost, 10 generated 13.2 billion in highway 11 congestion and accident costs. 12 So these are the so called external 13 effects, the advantage of moving from a 14 more energy-intensive to a less 15 energy-intensive mode and a safer mode, 16 right, where you don't have to share your 17 ton-miles with automobile drivers. It 18 would have generated \$4.6 billion a year 19 in reduced highway maintenance cost. So 20 that's the fiscal effect. And then 21 finally, it would have reduced 22 environmental costs, particulate emissions</p>

<p style="text-align: right;">Page 405</p> <p>1 and greenhouse gases, which is a major, 2 major issue, by \$7.5 billion a year. 3 That pretty much finishes what I 4 think the Carriers were asking me to do. 5 There's one more point that I want to 6 make. I think Jennifer Hamann is going to 7 talk in more detail and with more 8 expertise and more direct experience about 9 this, but from an economic standpoint, it 10 has concerned me that -- you don't want to 11 exaggerate the level of railroad 12 profitability. We hear these large 13 numbers of 25 percent profit ratios and 14 operating ratios, they're dropping down to 15 65 percent. And that's -- that's leading 16 to outlandishly high profits. 17 The problem with that is that 18 that's talking about profitability without 19 taking capital expenses into account. Net 20 income doesn't include capital expenses. 21 Net -- net income includes depreciation, 22 right, but it doesn't include the capital</p>	<p style="text-align: right;">Page 406</p> <p>1 expenses. 2 And in the railroad industry -- and 3 I looked at that -- over the past decade 4 the amount the railroads spent on 5 depreciation average was about \$5 billion 6 a year and the average in capital expenses 7 was \$10.5 billion a year. 8 So to simply use that simple profit 9 ratio of net income to total income is -- 10 is -- distorts the real level of 11 profitability. 12 Economists certainly would prefer 13 that you look at the net income in terms 14 of the assets that were used to generate 15 that income. So if you do it in terms of 16 return on assets, the average for the 17 railroads in 2020 was 6.7 percent. 18 Average across S&P 500 firms is 3 to 10 19 percent. 20 So railroads are right about the 21 middle in terms of what I would consider 22 profitability, return on assets. You</p>
<p style="text-align: right;">Page 407</p> <p>1 could also look at it in terms of the cost 2 of getting shareholders to invest in the 3 railroad, which is the return on equity. 4 Okay? And there again, railroads were at 5 10.6 percent return on equity and for S&P 6 500s, the average there is 10 to 7 15 percent. 8 So certainly not outrageous in the 9 level of profitability. 10 So next slide. So this is not a 11 yard in Staples, Minnesota by any 12 standards. This actually is a yard in 13 Texas. And I'll end this on a personal 14 note. 15 I actually as a younger person was 16 an analyst -- a special assistant at 17 the -- at the U.S. DOT in the Federal 18 Railroad Administration when we basically 19 built the case for the Staggers Act. 20 And the question -- one of the 21 questions we were dealing with there was 22 how could the railroads make up what</p>	<p style="text-align: right;">Page 408</p> <p>1 looked like 2- to \$3 billion -- and this 2 was in 1980 dollars -- in deferred 3 maintenance that they had accrued over the 4 past couple of decades under regulation. 5 And again, the conclusion was that they 6 were capable of doing that, but only with 7 regulatory reform. 8 If I were at the -- I'm not 9 interested in this, but if I were at the 10 FRA today, I would say there is a study 11 that's worth doing, which is what will it 12 take railroads to have the capital 13 available to make the kinds of network 14 configurations that they have to make to 15 compete in this market that they're going 16 to be facing over the next 10 -- 10 to 20 17 years. 18 And I don't think it's necessary 19 for the FRA to do that because I think the 20 railroads are capable of doing that within 21 themselves right now. But it certainly 22 involves keeping operating costs in line.</p>

<p style="text-align: right;">Page 409</p> <p>1 CHAIRPERSON JAFFE: Thank you, 2 Dr. McCullough. 3 DR. McCULLOUGH: Thank you. 4 CHAIRPERSON JAFFE: Just a few 5 clarifiers, if I may, for my education. 6 DR. McCULLOUGH: Yes. 7 CHAIRPERSON JAFFE: On slide 6 one 8 of the rows was labeled Average Employee 9 Compensation. Where did those numbers 10 come from? 11 DR. McCULLOUGH: Yes. Those are 12 numbers from the Association of American 13 Railroads. 14 CHAIRPERSON JAFFE: Second, I think 15 you indicated that it was almost 16 impossible to conceive of rates being 17 increased by the Carriers. 18 DR. McCULLOUGH: That would be the 19 rates to -- that they're going to be using 20 to compete with trucks, right? 21 CHAIRPERSON JAFFE: Right. But 22 aren't trucks currently undergoing</p>	<p style="text-align: right;">Page 410</p> <p>1 pressures, both from fuel cost increases 2 and labor cost increases, such that 3 they're charging their customers more 4 money? 5 DR. McCULLOUGH: That's true. 6 CHAIRPERSON JAFFE: So why can't 7 the Carriers, if there was a need to do 8 so, do the same thing? 9 DR. McCULLOUGH: So I think the 10 Carriers -- the primary factor in the 11 Carriers' competition with trucks is the 12 flexibility and the level of service of 13 the trucks. 14 And so I think they're not just 15 doing -- it's not pure price competition 16 in terms of what the Carriers are 17 charging. And by that I didn't mean that 18 railroads would have to lower rates. I 19 think their existing rates -- they would 20 not be able to aggressively increase their 21 existing rates and compete effectively. 22 CHAIRPERSON JAFFE: For reasons</p>
<p style="text-align: right;">Page 411</p> <p>1 other than price? 2 DR. McCULLOUGH: For reasons of the 3 difference in service levels, the service 4 advantages that trucks have. 5 CHAIRPERSON JAFFE: Given your 6 indication that this is an extraordinarily 7 capital intensive industry and business, 8 how significant an impact on the operating 9 costs would take place if there was an 10 increase in wage costs? 11 DR. McCULLOUGH: I -- that's not a 12 subject that I looked into in terms of my 13 requests. There are other people who do 14 that. 15 CHAIRPERSON JAFFE: That's fine. 16 That's always an acceptable answer. 17 And the last question I had is with 18 respect to your reference to investments 19 and capital improvements and the like, are 20 the profit numbers that we've been looking 21 at net of those expenditures? 22 DR. McCULLOUGH: It depends on what</p>	<p style="text-align: right;">Page 412</p> <p>1 ratio you're looking at. So -- so the 2 operating expenses don't include the 3 capital expenditures. That's right. 4 CHAIRPERSON JAFFE: The operating 5 expenses don't, but the corporate profit 6 numbers would already have -- 7 DR. McCULLOUGH: So the net -- sp 8 operating expenses do not include the 9 capital expenditures. And, therefore, the 10 net income, which is basically the 11 difference between operating revenue and 12 operating expense, does not include those 13 expenditures. 14 CHAIRPERSON JAFFE: Got it. Thank 15 you for the clarifications. 16 We're in good shape. Thank you, 17 Dr. McCullough. 18 DR. McCULLOUGH: Thank you. 19 CHAIRPERSON JAFFE: Welcome. We're 20 ready for you. 21 22</p>

<p style="text-align: right;">Page 413</p> <p>1 Whereupon: 2 JENNIFER HAMANN 3 was called for examination, and, after being 4 previously duly sworn, testified as follows: 5 MS. HAMANN: Good afternoon. Thank 6 you, Chairman Jaffe, Members Deinhardt and 7 Twomey. My name is Jennifer Hamann. I'm 8 the CFO of Union Pacific and it's my 9 pleasure to talk to you today. There's 10 essentially three points that I want to 11 talk to you today and they all relate -- 12 so there's three points I'd like to cover 13 today and they all relate to the concept 14 of risk. 15 First, I'd like to build on some of 16 what Mr. -- Professor McCullough testified 17 to today by outlining some of the 18 significant and ongoing risks that the 19 rail industry faces to future success. 20 Next, I would like to talk about 21 the relationship between risk and employee 22 compensation and our labor spend.</p>	<p style="text-align: right;">Page 414</p> <p>1 And then finally, I'll address the 2 role that risk plays in the capital 3 markets and, in particular, profit 4 distributions such as share buybacks and 5 dividends. 6 So to start with, we'll take a step 7 back for a moment and look at the bigger 8 picture. And as both Lance earlier and 9 Professor McCullough just discussed, the 10 rail industry is very capital intensive. 11 We think of our business in terms of five 12 critical resources. Four of the five 13 require capital investment. And the 14 fifth, of course, is why we're here today. 15 And I'll address the critical role of our 16 employees in just a moment. 17 But I'd like to start with the 18 capital assets. Shown on this slide is 19 the historic cost to acquire these assets. 20 And because of the long life of our 21 assets, the replacement cost is much, much 22 higher. And that really goes to the point</p>
<p style="text-align: right;">Page 415</p> <p>1 that Professor McCullough was just making 2 about the difference between depreciation 3 that flows through our income statement 4 and then the actual capital investments 5 that we make. 6 So if you think about it -- we'll 7 start with locomotives. Union Pacific 8 owns or leases roughly 7,500 locomotives. 9 And it's on the books today for an 10 acquisition cost of 9.4 billion. If we 11 were to replace that fleet today, 12 conservatively it would cost about three 13 times that amount using conventional 14 technology. 15 If we, though, were to invest in 16 more emissions-friendly technology, that 17 number likely goes up even more. As an 18 example, in January Union Pacific 19 committed to purchase 20 battery electric 20 locomotives, low horsepower switching 21 locomotives. We plan to run those in two 22 yards, so we also need to equip those</p>	<p style="text-align: right;">Page 416</p> <p>1 yards with the charging infrastructure to 2 run those locomotives. We believe that 3 investment will cost us \$100 million for 4 just those 20 locomotives and the 5 associated charging infrastructure. 6 Our freight car fleet totals more 7 than 50,000 cars. And that's on the books 8 for a cost of \$2.2 billion, with an 9 average age of over 30 years. So we're 10 actually in the process of replenishing 11 parts of that fleet today. In 2022, Union 12 Pacific plans to invest \$252 million. And 13 that's up threefold from what we spent in 14 2021 in terms of freight car acquisitions. 15 Of course, the largest area of 16 investment is our track, which includes 17 over 42,000 main line and second main line 18 miles, as well as nearly 9,000 miles in 19 our yards and terminals. This investment 20 is on the books for \$57 billion -- excuse 21 me, there's a B there -- \$57 billion. But 22 with a useful life of roughly 50 years,</p>

<p style="text-align: right;">Page 417</p> <p>1 again, that very much understates the 2 current costs. 3 So these are big numbers, maybe 4 interesting numbers, but the question you 5 might be asking yourself is well, so what? 6 Well, the so what is that we make 7 annual capital investments. Union Pacific 8 will invest \$3.3 billion in 2022 alone. 9 And these investments are predicated on 10 long-term demand. 11 We make big risky bets in order to 12 compete in an ever-changing marketplace, 13 but one that has no guarantees of success. 14 For instance, because we are a 15 derived demand industry, we are especially 16 vulnerable to recessions and other 17 economic shocks. When industrial output 18 falls, that has as impact on our business 19 levels. For instance, when housing starts 20 to decline, that flows through in terms of 21 fewer carloadings of lumber, less 22 carloadings of roofing granules, all the</p>	<p style="text-align: right;">Page 418</p> <p>1 way down to fewer container loads of home 2 furnishings. 3 The start of the pandemic further 4 illustrated how economic shocks are 5 visited on our railroad, where we saw our 6 loadings fall 20 percent over the course 7 of just 60 days. 8 And even in a robust economy with 9 strong demand, we see consumer preferences 10 changing, as people are wanting to spend 11 more on experiences versus goods and more 12 of their paycheck is going to health care 13 and internet services. 14 No different than other industries, 15 we have to compete to both keep existing 16 customers as well as to win new customers. 17 And as you've heard mentioned today, that 18 competition for freight is increasing as 19 the cost structure of some of our 20 competitors is changing. And autonomous 21 trucks is a prominent example here of how 22 competitors' costs could be much lower</p>
<p style="text-align: right;">Page 419</p> <p>1 going forward. And, as Lance mentioned 2 earlier, also, rails must fund our own 3 infrastructure. The infrastructure of our 4 competitors, trucks and barges, are paid 5 for by the taxpayers. 6 Another change in our industry that 7 we're dealing with are supply chain 8 disruptions. And this is obviously a 9 phenomena we're all familiar with. But 10 whether it's impacting the microchip 11 supply for automobiles, driver 12 availability for the trucking industry, 13 port capacity chassis supply, these all 14 ultimately have an impact on our business, 15 on our cost structure and on our ability 16 to serve our customers. 17 We also face risks from regulatory 18 and legislative actions, causing us to 19 periodically adjust our business strategy 20 to respond to those changes. As a 21 regulated industry, we're subject to 22 regulations that impact everything from</p>	<p style="text-align: right;">Page 420</p> <p>1 how we inspect our track and our equipment 2 to potentially forcing us to share our 3 privately owned and maintained rail 4 infrastructure with another railroad. 5 Truck size and weight and emission changes 6 could impact the rail industry as well. 7 Finally, the demand for rail 8 service is not steady. Between 2014 and 9 2021, Union Pacific's carloadings fell 16 10 percent. And as we sit here today, 11 roughly halfway through 2022, our 12 carloadings are still not back to 13 pre-pandemic levels. 14 Now, this decline in carloadings is 15 not a function of rail service. Instead, 16 it is a result of changing markets and 17 demand. And so building a little bit off 18 of Professor McCullough's testimony about 19 diversity, I'd like to share with you a 20 couple of recent examples with Union 21 Pacific. 22 And the first is with coal. Coal</p>

<p style="text-align: right;">Page 421</p> <p>1 used to be the single largest commodity 2 hauled by the railroad industry. Between 3 1999 and 2009, as our coal loadings were 4 rising and there was more demand for us to 5 move increasing numbers of trains out of 6 the Southern Powder Basin of Wyoming, we 7 invested more than \$1 billion to double 8 track and, in some cases, triple track our 9 railroad and the joint line that serves 10 the mines. 11 Unfortunately, this investment 12 coincided with a surge in natural gas 13 supply, as well as rising concerns about 14 carbon emissions. And the result of that? 15 Well, for Union Pacific, our coal 16 carloadings peaked in 2008 at just over 17 2.3 million carloads and at that time 18 represented 25 percent of our book of 19 business. 20 In 2021, those loadings had dropped 21 by roughly 67 percent, or only now 770,000 22 carloads and roughly 10 percent of our</p>	<p style="text-align: right;">Page 422</p> <p>1 book of business. 2 Now, in an effort to mitigate the 3 impact of the falling coal carloadings, we 4 did have an opportunity to ship products 5 related to the booming shale oil and gas 6 play, moving frack sand from Minnesota and 7 Wyoming -- excuse me -- Minnesota and 8 Wisconsin to Texas. Over the course of 9 seven years, from 2009 to 2016, we 10 invested \$200 million to support this 11 business, but again, only to see the 12 market move away from us. 13 As drillers substituted local brown 14 sand for white sand, our frack sand 15 loadings fell by more than 70 percent, 16 from a peak in 2014 of 250,000 loads down 17 to less than 75,000 loads in 2021. 18 Now, the last point I want to make 19 on this is something that Judy Carter also 20 mentioned. And that is in addition to the 21 risks of running a railroad I just 22 described, we are an outdoor sport. So in</p>
<p style="text-align: right;">Page 423</p> <p>1 addition to market risks, Mother Nature 2 plays a role. And this impacts both our 3 ability to provide service to our 4 customers when lines have severed by flood 5 or fire, but it also has an impact to our 6 business levels when you consider the 7 impact of drought on crop supply. 8 Now, in addition to the capital 9 assets that we've just discussed, our rail 10 employees are critical to the industry's 11 success. And as Lance, Brendan and Judy 12 all described, it's our great workforce 13 that enables us to leverage our capital 14 assets. It's the crews that drive and 15 maintain our locomotives. It's the boots 16 on the ground that inspect our track, 17 maintain bridges and signal systems and 18 it's the people that switch our cars, 19 process garnishments, ensure accurate 20 payroll and do all the myriad of 21 activities that are necessary and 22 completed successfully each and every day</p>	<p style="text-align: right;">Page 424</p> <p>1 by our craft professionals that help us 2 effectively serve our customers. 3 But the price of that labor must be 4 competitive. We believe our employees 5 should be well paid for the role that they 6 play. And as you heard from Dr. David, 7 Mr. Glass and others, our employees are 8 well compensated. But I think it's fair 9 to note that there is a difference between 10 the compensation of our agreement and our 11 nonagreement employees. And it's 12 different in a couple key respects, but it 13 goes back to the role of risk. 14 While labor costs are often 15 considered to be variable, that is true 16 only insofar as we can change head count. 17 Wage and benefit costs are baked into the 18 collectively bargained agreements for five 19 or six years. And once that is set, we 20 cannot impact those costs other than to 21 alter head count. 22 And we are today being asked to</p>

<p style="text-align: right;">Page 425</p> <p>1 lock in significant increases in labor 2 rates at the same time that there is 3 tremendous uncertainty in the marketplace. 4 By contrast, nonagreement employees often 5 have compensation that fluctuates due to 6 economic and performance cycles. So 7 company performance, good and bad, 8 ultimately drives their compensation, at 9 least in part. 10 For managers and other nonagreement 11 personnel, this compensation model is 12 aligned with how I just talked about 13 capital investment and how I'll talk about 14 shareholder returns in just a moment. In 15 other words, they are exposed to risk. 16 For example, during the pandemic, 17 Union Pacific's executives and our board 18 of directors took a 25 percent pay cut for 19 several months. In addition, our 20 nonexecutive managers took one week of 21 unpaid leave for three months. 22 Additionally, we reached agreements with</p>	<p style="text-align: right;">Page 426</p> <p>1 three of our crafts, representing about 2 4 percent of our workforce, to participate 3 in salary reduction or unpaid leave, 4 allowing us much-needed flexibility, but 5 more importantly avoiding significant 6 furloughs for those employees. 7 Of course, that's not the only 8 driver of our nonagreement pay. There are 9 other factors that play into it, including 10 the market for various skills, but risk is 11 a component. 12 Unionized employees have elected a 13 different model. They do not want the 14 same degree of risk in their compensation 15 in the event of a downturn but then cannot 16 be expected to get higher compensation 17 when the company does well. 18 It is different, of course, if they 19 were to negotiate for profit-based 20 compensation. Then it would be fair for 21 them to expect to do more when the company 22 does well.</p>
<p style="text-align: right;">Page 427</p> <p>1 The other exception is that at 2 least at Union Pacific, Union employees 3 have an opportunity to invest in Union 4 Pacific stock either through their 401(k) 5 plans or through our employee stock 6 purchase plan, which comes with a generous 7 40 percent company match. And that's 8 available -- it's been available for 9 almost a year now, a little over a year, 10 and we already have 23 percent of our 11 unionized workforce who is participating 12 in that plan and therefore is 13 participating in the company's performance 14 through those plans. 15 This next slide illustrates the 16 very point that unionized wages are not 17 connected to company performance. It 18 compares the financial performance of 19 Union Pacific to labor cost increases over 20 the most recent contract cycle. 21 Between 2015 and 2019, our 22 carloadings declined more than 13 percent.</p>	<p style="text-align: right;">Page 428</p> <p>1 Now, there were numerous reasons, 2 certainly the falloff in coal and frack 3 sand that I just discussed, as well as 4 lower North American auto production and 5 then the impact of tariffs on Chinese 6 imports. 7 With that reduced business level, 8 we acted as best we could to mitigate the 9 impact of lower loadings, but we still had 10 a decline in our operating income of 2.4 11 percent. During this time, the wage and 12 benefit costs guaranteed to our Union 13 labor force totaled 147.7 percent, well in 14 excess of our company performance. 15 As I look ahead, I see two large 16 disconnects between the Union wage ask and 17 what we see ahead for the rail industry 18 and the broader economy. 19 First, while there will be 20 opportunities for growth, as Professor 21 McCullough explained, growing freight rail 22 volumes is not going to be easy.</p>

<p style="text-align: right;">Page 429</p> <p>1 And second, we are entering a time 2 when many are forecasting a recession. 3 Just to put a few specifics around that, a 4 recession is technically defined as two 5 consecutive quarters of GDP decline. 6 In the first quarter of 2022, GDP 7 declined 1.6 percent. Now, we don't have 8 final numbers for the second quarter of 9 2022 yet, but most estimates say that it 10 is going to decline. In fact, IHS Markit, 11 who is a recognized service for business 12 information, is forecasting that the 13 second quarter GDP will actually be down 14 even more than first quarter, at minus 15 1.8 percent. And IHS Markit is 16 forecasting that for 2023 and 2024, GDP 17 will likely be under 2 percent in both of 18 those years. 19 So then when I look at the Union 20 wage ask from the Unions as being a 28 21 percent increase over the five-year 22 period, or effectively a 31 percent</p>	<p style="text-align: right;">Page 430</p> <p>1 increase when you consider the impact of 2 compounding, the 14.7 percent that I 3 showed on the prior slide and this 50.1 4 percent represents the total increase in 5 benefits or the total ask. 6 So in other words, they are asking 7 for more than three times more in this 8 round of what they received in the prior 9 round. Large fixed rate increases that 10 occur contemporaneously with the onset of 11 inflation are problematic for both sides. 12 As our costs increase, more employees will 13 be at risk of furlough. 14 Now, the last area of risk that I 15 want to discuss is the capital markets. 16 UP and the other Class Is are participants 17 in the capital markets in two ways. We 18 have stock or equity that is held by our 19 owners. We are not owned by management. 20 We are not owned by our board of 21 directors. We have independent 22 shareholders. We also have public debt</p>
<p style="text-align: right;">Page 431</p> <p>1 that is held by various external parties. 2 Now, the participants in the 3 capital markets, both debt and equity, do 4 so because of an expectation for a return. 5 They put capital into the market, but they 6 take a risk when they do so. They do so 7 prudently and generally after weighing 8 tradeoffs between risk and reward. 9 For instance, with debt investors, 10 they generally take on less risk because 11 they're offered regular interest payments. 12 And depending on the quality of the debt 13 that they're investing in, they have a 14 high likelihood that at the end of the 15 debt period, they will receive their 16 principal back. 17 On the equity side, there's 18 generally considered to be a higher risk 19 in the form of potential for capital loss; 20 in other words, decline in stock prices, 21 but with potentially higher rates of 22 return.</p>	<p style="text-align: right;">Page 432</p> <p>1 And equity investors have two ways 2 basically then that they can earn a 3 return. One is through a dividend and the 4 other is then by selling the stock that it 5 purchased, again, hopefully at a higher 6 price. As a public company, we have the 7 benefits of the access to the public 8 markets. But that also comes with the 9 expectation of providing returns to our 10 investors. 11 In terms of accessing the capital 12 markets, any suggestion that we don't need 13 to because of our free cash flow is simply 14 incorrect. I routinely go to the debt 15 capital markets. Cash flow is not smooth. 16 And so in a company like ours, we need to 17 access the market in support of our 18 operations and the capital investments 19 that we've been describing today. 20 I think it's also important to 21 point out why we go to the debt markets 22 more regularly versus issuing equity.</p>

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<p>1 This is done because debt is generally a</p> <p>2 more economical source of funds. And as</p> <p>3 with all of our efforts to be cost</p> <p>4 competitive, we want to finance our</p> <p>5 investment activities in a way that</p> <p>6 optimizes our capital structure. With our</p> <p>7 equity owners, they expect to receive</p> <p>8 distributions of our profits. And we do</p> <p>9 this through stock buybacks and dividends.</p> <p>10 Now, my understanding from</p> <p>11 listening to yesterday's opening arguments</p> <p>12 is that there's a perception that rails</p> <p>13 disproportionately distribute profits to</p> <p>14 their shareholders versus redirecting some</p> <p>15 of that money to labor. That logic fails</p> <p>16 to consider two things.</p> <p>17 And the first is how we prioritize</p> <p>18 our uses of cash and capital. And just to</p> <p>19 level set, this listing of priorities that</p> <p>20 I'm about to share with you is something</p> <p>21 that we talk routinely with our owners</p> <p>22 about, with our shareholders. And that is</p>	<p>1 that the first dollar goes back into the</p> <p>2 railroad. We do that to invest for</p> <p>3 safety, for service and to grow.</p> <p>4 Next we pay competitive wages and</p> <p>5 benefits for our employees. We pay our</p> <p>6 suppliers for their goods and services and</p> <p>7 we pay our tax bills to local, state and</p> <p>8 federal entities. Then and only then do</p> <p>9 we distribute our profits to our owners in</p> <p>10 the form of dividends and share buybacks.</p> <p>11 The second fact that's ignored when</p> <p>12 stating that we disproportionately favor</p> <p>13 shareholders is the reality of the capital</p> <p>14 markets that I just described and the</p> <p>15 expectations of a publicly held company</p> <p>16 and the role of risk and returns on</p> <p>17 investment. Many companies pay dividends</p> <p>18 and also have programs to repurchase their</p> <p>19 own stock.</p> <p>20 As evidence of that, in an article</p> <p>21 in The Wall Street Journal a couple of</p> <p>22 weeks ago they reported that the S&P 500</p>
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<p>1 companies paid out a record \$140.6 billion</p> <p>2 in dividends in the second quarter of 2022</p> <p>3 and that that was a 14 percent increase</p> <p>4 from the second quarter of 2021.</p> <p>5 Additionally, stock buybacks by the</p> <p>6 S&P 500 companies hit a record of</p> <p>7 \$972 billion during the 12 months ended</p> <p>8 March 31st. And that was more than double</p> <p>9 the 499 billion that had been paid out the</p> <p>10 previous 12-month period. So these</p> <p>11 methods of returning profits are not only</p> <p>12 expected by shareholders, they are the</p> <p>13 norm.</p> <p>14 Now, as I said at the onset, risk</p> <p>15 plays a role in the capital markets. And</p> <p>16 to illustrate the downside risk impacts</p> <p>17 that can be seen from market participants,</p> <p>18 unfortunately, we don't have to look very</p> <p>19 far.</p> <p>20 As this slide shows you, as of</p> <p>21 July 22nd, which was last Friday, UP stock</p> <p>22 was down 15 percent. The S&P Transport</p>	<p>1 Index was down 15 percent. And the S&P</p> <p>2 500 was down 17 percent.</p> <p>3 These declines effectively</p> <p>4 eliminated any stock price appreciation</p> <p>5 gained over the last 18 months, as the</p> <p>6 markets are off to their worst start in 50</p> <p>7 years. Now, there are a variety of</p> <p>8 reasons, many have been mentioned here</p> <p>9 today, in terms of inflation, recession</p> <p>10 fears, but the why doesn't really matter.</p> <p>11 It is the reality of the market and</p> <p>12 it further illustrates the inherent risk</p> <p>13 borne by market participants. Generally</p> <p>14 speaking, a company's financial</p> <p>15 performance is reflected in how its stock</p> <p>16 is valued in the market. Deviations in</p> <p>17 that performance, either due to market</p> <p>18 sentiment or investor expectations, can</p> <p>19 then be grounds for shareholders to demand</p> <p>20 action, which is commonly referred to as</p> <p>21 activism and something that our industry</p> <p>22 has not been immune from.</p>

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<p>1 Another recent example where market</p> <p>2 risks impacted UP shareholders was in</p> <p>3 2020, with the pandemic hitting the global</p> <p>4 economy and, as I mentioned, our business</p> <p>5 levels. We cut our share buyback program</p> <p>6 by 36 percent versus 2019 levels and only</p> <p>7 increased our dividend distributions by 1</p> <p>8 percent.</p> <p>9 Market participants are rational</p> <p>10 and they understand risk. But no rational</p> <p>11 investor would make an investment without</p> <p>12 the potential for and, over the long run,</p> <p>13 the expectation of a return on that</p> <p>14 investment. And given the risks that</p> <p>15 investors take, it is completely rational</p> <p>16 to expect that they would have more upside</p> <p>17 potential than stakeholders who accept</p> <p>18 less risk.</p> <p>19 And this is the same point I made</p> <p>20 with respect to the variable compensation</p> <p>21 for employees. If labor tied compensation</p> <p>22 to company performance, then it would be</p>	<p>1 taking on the risk of poor outcomes and so</p> <p>2 it could expect then more upside as well.</p> <p>3 If it does not take that risk, then it is</p> <p>4 a different story.</p> <p>5 So then in keeping with the theme</p> <p>6 of risk, I'd like to leave you with just a</p> <p>7 couple of thoughts. Union Pacific has</p> <p>8 been in existence for 160 years. Over</p> <p>9 that time, the various management teams,</p> <p>10 employees and shareholders of our company</p> <p>11 have witnessed many changes, navigated</p> <p>12 uncertain times and faced many risks.</p> <p>13 And looking ahead, I see no reason</p> <p>14 to think that the future will be much</p> <p>15 different. In fact, by all accounts, the</p> <p>16 pace of change and the risk in business</p> <p>17 has increased. So to stay relevant and to</p> <p>18 stay competitive, we must be agile. We</p> <p>19 look forward to reaching an agreement that</p> <p>20 will pay our employees a good wage for a</p> <p>21 good job, but those wages should be</p> <p>22 consistent with the market.</p>
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<p>1 UP and the other Class I railroads</p> <p>2 should not be required to pay</p> <p>3 higher-than-market rates for labor for a</p> <p>4 fixed five-year term that limits</p> <p>5 flexibility, raises business risk and</p> <p>6 impedes our ability to remain cost</p> <p>7 competitive.</p> <p>8 Market participants, the</p> <p>9 shareholders of the Class Is, have in some</p> <p>10 years gotten greater rewards than our</p> <p>11 employees. But that's because of risk.</p> <p>12 And as I just illustrated, those gains</p> <p>13 aren't guaranteed.</p> <p>14 So thank you for your time and I'd</p> <p>15 be happy to take any questions if you have</p> <p>16 anything.</p> <p>17 CHAIRPERSON JAFFE: Thank you very</p> <p>18 much. We're in good shape.</p> <p>19 MS. HAMANN: Thank you.</p> <p>20 MR. EASLEY: Mr. Chairman, I think</p> <p>21 I would suggest a short break at this</p> <p>22 time.</p>	<p>1 CHAIRPERSON JAFFE: Sure. Fine.</p> <p>2 Off the record, please.</p> <p>3 (Thereupon, a brief recess was</p> <p>4 taken.)</p> <p>5 MR. EASLEY: Mr. Chairman, our next</p> <p>6 pair of witnesses will be Dr. Kelly Eakin</p> <p>7 and Ms. Cindy Sanborn from the Norfolk</p> <p>8 Southern Corporation. They'll be talking</p> <p>9 about railroad productivity and safety.</p> <p>10 CHAIRPERSON JAFFE: Thank you.</p> <p>11 Could we please get the witnesses</p> <p>12 sworn in.</p> <p>13 Whereupon:</p> <p>14 B. KELLY EAKIN AND CINDY SANBORN</p> <p>15 were called for examination and were duly</p> <p>16 sworn by the reporter.</p> <p>17 Whereupon:</p> <p>18 B. KELLY EAKIN</p> <p>19 was called for examination, and, after being</p> <p>20 previously duly sworn, testified as follows:</p> <p>21 DR. EAKIN: Good afternoon. My</p> <p>22 name is Kelly Eakin. I'm executive vice</p>

<p style="text-align: right;">Page 441</p> <p>1 president of Christensen Associates. On 2 behalf of the Carriers, I have prepared a 3 report on issues of productivity and labor 4 compensation. My purpose today is to 5 summarize that report. 6 Let me begin by stating the key 7 findings of my report. The six key 8 findings are: 9 One, freight ton-miles per hour 10 worked, the Unions' measure of 11 productivity, is an incomplete, inaccurate 12 and misleading measure. 13 Two, as an empirical matter, there 14 is no correlation between changes in an 15 industry's productivity and employee 16 compensation. That is, industry 17 productivity is not a basis for 18 compensation. 19 Three, factors other than labor 20 explain the railroad productivity changes. 21 Four, consistent with a competitive 22 marketplace the vast majority of</p>	<p style="text-align: right;">Page 442</p> <p>1 productivity improvements have gone to 2 customers in the form of lower prices for 3 freight shipments. 4 Five, railroad productivity 5 improvements have been declining in recent 6 years. 7 And six, future productivity gains 8 will require substantial investment in 9 infrastructure and technology. 10 Above-market compensation increases could 11 reduce funds for that capital investment 12 and impede future productivity growth. 13 These findings lead me to the 14 fundamental conclusion that productivity 15 changes in the railroad industry do not 16 provide a basis for determining 17 compensation for railroad workers. 18 Total factor productivity is the 19 correct measure of an industry's 20 productivity. Total factor productivity, 21 also called multifactor productivity, is 22 the comprehensive measure used by the U.S.</p>
<p style="text-align: right;">Page 443</p> <p>1 Bureau of Labor Statistics to monitor 2 productivity into major sectors of the 3 economy and individual industries. 4 Productivity measures how 5 effectively inputs are converted into 6 outputs. That is inputs, plural. A 7 meaningful measure of productivity must 8 consider the combined impact of all 9 inputs, not just labor. 10 Total factor productivity is a 11 superior measure of productivity because 12 it obeys the fundamental definition of 13 productivity. That is, getting more for 14 less is an increase in productivity. 15 In contrast, the Unions' measure, 16 output per hour worked by looking at only 17 one input, is inaccurate and can falsely 18 indicate an increase when productivity has 19 actually declined and vice versa. 20 Total factor productivity captures 21 the combined influence of all inputs. 22 Total factor productivity is a consistent</p>	<p style="text-align: right;">Page 444</p> <p>1 measure. When more output is obtained 2 from less total input, total factor 3 productivity indicates an increase in 4 productivity. That is, total factor 5 productivity obeys the fundamental 6 definition of productivity. 7 In addition to considering all 8 inputs, total factor productivity also 9 captures the joint influences on economic 10 growth of technological change, efficiency 11 improvements in terms of scale, economies 12 of density and other factors. 13 I used total factor productivity to 14 analyze the performance of the railroad 15 industry since it was partially 16 deregulated by the Staggers Act in 1980. 17 The red line in this figure shows the 18 railroad's total factor productivity while 19 the blue line represents the total factor 20 productivity in the private sector of the 21 economy. 22 This figure shows that the</p>

<p style="text-align: right;">Page 445</p> <p>1 post-Staggers railroads have substantially 2 outperformed the rest of the economy, 3 averaging 2.2 percent productivity growth 4 per year while the private sector of the 5 economy averaged less than 1 percent per 6 year. 7 But there are really three 8 productivity stories here. The first 9 story is the productivity spurt 10 immediately following deregulation when 11 the railroads averaged 4.7 percent 12 productivity growth per year. 13 The second story is the 14 productivity slowdown, 1996 to 2008, when 15 the railroads averaged annual productivity 16 improvement of 2.4 percent. 17 And the third story is of the 18 current productivity decline since 2008, 19 as railroad productivity has decreased by 20 an average of 1.3 percent per year. 21 I will return to the productivity 22 slowdown and decline in a few minutes.</p>	<p style="text-align: right;">Page 446</p> <p>1 Now, my first key finding is that 2 the Unions' representation of railroad 3 productivity is incomplete, inaccurate and 4 can be misleading. The Unions' measure is 5 freight ton-miles per hour worked. But 6 this -- this is an incomplete and, 7 therefore, inaccurate measure of 8 productivity. 9 By focusing on only labor, the 10 measure completely ignores the other 11 inputs used in production. For example, 12 when there's simply a substitution of 13 other inputs for some labor, then the 14 Unions' measure would indicate 15 productivity increase when, in fact, 16 there's been none. The net result of the 17 inaccuracy is that the freight ton-miles 18 per hour worked overstates the increase in 19 railroad productivity between 1980 and 20 2020 by more than 100 percent. 21 This discrepancy is not trivial. 22 As shown in this graph, the inaccuracy of</p>
<p style="text-align: right;">Page 447</p> <p>1 the Unions' measure is particularly 2 noticeable during the recent period of 3 productivity decline. The top series is 4 the index of the Unions' measure and the 5 lower series is the total factor 6 productivity index since 2008. 7 Not only does the Unions' measure 8 overstate productivity, but it also 9 misleads by indicating that productivity 10 has increased by 15 percent when it has 11 actually declined substantially since 12 2008. 13 Furthermore, the Unions' measure 14 could be misinterpreted. Using the common 15 term labor productivity for freight tons 16 per -- freight ton-miles per hour worked 17 can leave the impression that this is 18 Labor's contribution to productivity. 19 This is simply wrong. 20 More than 40 years ago, the 21 Committee on National Statistics for the 22 National Academies cautioned that measures</p>	<p style="text-align: right;">Page 448</p> <p>1 of output per hour of labor input are 2 subject to misinterpretation by users who 3 may incorrectly associate changes in these 4 measures solely with the changing skill 5 and effort of the workforce. 6 And the Bureau of Labor Statistics 7 regularly publishes, most recently April 8 28th of this year, its longstanding 9 disclaimer that measures of output per 10 hour worked is -- in an industry do not 11 measure the specific contribution of labor 12 to growth in output. Despite these 13 warnings, this is precisely the flawed 14 measures that the Unions put forth. 15 My second key finding is that 16 industry productivity and labor 17 compensation are not correlated. As 18 Dr. Murphy explained this morning, 19 compensation growth is determined by the 20 more general labor market and not by 21 productivity growth that occurs in any 22 particular industry or at any particular</p>

<p style="text-align: right;">Page 449</p> <p>1 employer.</p> <p>2 Furthermore, increases in</p> <p>3 productivity do not mean that the firm or</p> <p>4 industry has the ability to pay</p> <p>5 above-market wages. Competitive market</p> <p>6 pressures may cause productivity gains to</p> <p>7 be passed on to customers through lower</p> <p>8 prices.</p> <p>9 An example that we are all familiar</p> <p>10 with -- an example that we're all familiar</p> <p>11 with is the computer equipment market.</p> <p>12 That industry has achieved tremendous</p> <p>13 productivity improvement passed through to</p> <p>14 consumers in lower prices for</p> <p>15 substantially increased computing power</p> <p>16 while real compensation per worker in the</p> <p>17 industry has decreased.</p> <p>18 An examination of the empirical</p> <p>19 evidence confirms that there is no</p> <p>20 connection between productivity and</p> <p>21 compensation paid in an industry. What we</p> <p>22 have on this graph is a plot of the</p>	<p style="text-align: right;">Page 450</p> <p>1 average annual growth rate of total factor</p> <p>2 productivity on the horizontal axis</p> <p>3 against the average annual growth in real</p> <p>4 hour -- real hourly total compensation on</p> <p>5 the vertical axis.</p> <p>6 For the 86 industries comprising</p> <p>7 the U.S. manufacturing sector, this covers</p> <p>8 the period 1987 to 2019. Each dot</p> <p>9 represents an industry. The data are</p> <p>10 collected from the U.S. Bureau of Labor</p> <p>11 Statistics. If there were a connection</p> <p>12 between industry productivity and</p> <p>13 compensation, then industries with greater</p> <p>14 productivity growth would tend to have</p> <p>15 greater compensation growth and those with</p> <p>16 slower productivity growth would have</p> <p>17 slower growth in compensation.</p> <p>18 That means on this graph if there</p> <p>19 were a trend, we would expect to see the</p> <p>20 dots along a straight line going up and to</p> <p>21 the right. But as you can see, the data</p> <p>22 are all over the place. Many high</p>
<p style="text-align: right;">Page 451</p> <p>1 productivity growth industries have low</p> <p>2 compensation growth and vice versa.</p> <p>3 In fact, there is no statistical</p> <p>4 correlation between industry productivity</p> <p>5 growth and compensation growth. And I</p> <p>6 also note even using the Unions' measure,</p> <p>7 similar analysis shows there is no</p> <p>8 connection or statistical correlation</p> <p>9 between output per hour worked and</p> <p>10 compensation growth in an industry. This</p> <p>11 is not a new or a controversial finding.</p> <p>12 Over 60 years ago, the noted</p> <p>13 economist Solomon Fabricant did a similar</p> <p>14 analysis of 80 manufacturing industries</p> <p>15 between 1899 and 1953. He arrived at the</p> <p>16 same conclusion, that there is a</p> <p>17 negligible relation between an industry's</p> <p>18 productivity growth and compensation</p> <p>19 growth.</p> <p>20 Now, let me turn to my third key</p> <p>21 finding, factors other than labor explain</p> <p>22 railroad productivity improvements.</p>	<p style="text-align: right;">Page 452</p> <p>1 The post-Staggers productivity boom</p> <p>2 was caused by many factors unrelated to</p> <p>3 labor effort or skill. Specifically the</p> <p>4 productivity gains came from increased</p> <p>5 traffic volumes, reduction of</p> <p>6 inefficiencies and technological advances.</p> <p>7 Additionally, market flexibilities</p> <p>8 and managerial efficiencies enabled by</p> <p>9 deregulation allowed substantial network</p> <p>10 consolidation and reduction in employment.</p> <p>11 Traffic volume, and particularly the shift</p> <p>12 in product mix toward western coal and</p> <p>13 intermodal traffic, was central to the</p> <p>14 productivity improvements.</p> <p>15 Deregulation facilitated the</p> <p>16 consolidation of network and the</p> <p>17 abandonment of uneconomic routes.</p> <p>18 Technological improvements in locomotives</p> <p>19 and tracks have allowed heavier, longer</p> <p>20 trains to go farther distances. The</p> <p>21 average train in 2020 was 13 percent</p> <p>22 longer, had 72 percent more total weight</p>

<p style="text-align: right;">Page 453</p> <p>1 and went 60 percent farther than in 1980. 2 Other technological changes, 3 particularly in electronic track and 4 equipment inspection, have led to 5 operational efficiencies and improved 6 safety. Much of the technological 7 improvement has been embodied in new 8 equipment that performs functions labor 9 used to perform. 10 The substitution of capital for 11 labor, coupled with negotiated changes in 12 work rules, allowed substantial reduction 13 in employment. All of these factors 14 combined to enable the railroads to 15 exploit economies of density. The 16 railroad productivity story is about 17 density, not labor. 18 Density is simply the ratio of 19 output to network size. In this graph, 20 output is revenue ton-miles represented by 21 the red line. Revenue ton-miles almost 22 doubled between 1980 and 2008, but has</p>	<p style="text-align: right;">Page 454</p> <p>1 declined by almost 20 percent since 2008. 2 Network size is miles of road, 3 shown by the black line. Miles of road 4 have steadily declined, such that today 5 there is little more than half the miles 6 of road in 1980. Density, the ratio of 7 output to network size, is given by the 8 green line. 9 Between 1980 and 2008, railroad 10 traffic density more than tripled. By 11 getting more traffic on a smaller network, 12 average costs decreased markedly. But the 13 increase in density -- the increases in 14 density have reversed in recent years, 15 decreasing by 17 percent since 2008. 16 This is what is behind the 17 productivity slowdown. Thus, I conclude 18 that it is factors other than labor, 19 primarily density factors, that explain 20 the railroad productivity changes. 21 This brings me back to the 22 productivity slowdown which likewise has</p>
<p style="text-align: right;">Page 455</p> <p>1 resulted from factors unrelated to labor. 2 As I mentioned a few minutes ago, railroad 3 productivity growth began slowing around 4 1996 and has actually been in a decline 5 since 2008. That is, in recent years, 6 rail productivity growth has turned 7 negative and not kept pace with 8 productivity in the broader economy. 9 The basic explanation behind the 10 productivity decline is that traffic 11 density has decreased, the rate of 12 technological advances has lessened and 13 opportunities for reducing inefficiencies 14 have become harder to find. 15 This bar chart shows that key 16 drivers of railroad productivity had 17 substantially lower annual rates of growth 18 after 1996 than they had in the first 16 19 years following the enactment of the 20 Staggers Act. 21 The slowing rate of employment 22 reduction represents the largest</p>	<p style="text-align: right;">Page 456</p> <p>1 differential between the boom and the 2 slowdown periods. The other factors in 3 this chart, ton-miles, miles of road, 4 length of haul and train weight, all 5 contribute directly to the measure of 6 density. 7 The recent period of productivity 8 decline largely results from loss of 9 economies of density as revenue ton-miles 10 have been decreasing substantially while 11 the reduction in miles of road has been 12 small. 13 Taken all together, the slowdown in 14 these factors has slowed and actually 15 reversed the improvements in traffic 16 density. In a nutshell, the recent 17 decrease in traffic density is the 18 productivity slowdown story. Furthermore, 19 over time, the pace of technological 20 advance seems to have slowed and the 21 opportunities for weeding out 22 inefficiencies are fewer than in the</p>

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<p>1 earlier years.</p> <p>2 To summarize, it appears the low</p> <p>3 hanging fruit of deregulation has been</p> <p>4 picked. The implication for future rail</p> <p>5 productivity growth, which I will -- this</p> <p>6 has implications for the future rail</p> <p>7 productivity growth, which I will discuss</p> <p>8 in a minute.</p> <p>9 But first I would like to briefly</p> <p>10 touch on how the railroad productivity</p> <p>11 achieved thus far has been distributed</p> <p>12 among the stakeholders. This brings me to</p> <p>13 the next key finding, productivity</p> <p>14 improvements have been passed through to</p> <p>15 consumers.</p> <p>16 We have a pretty good picture of</p> <p>17 the extent and the sources of productivity</p> <p>18 improvements, but where have those rail</p> <p>19 productivity gains gone? The answer is</p> <p>20 that competitive pressures have passed the</p> <p>21 vast majority of productivity gains on the</p> <p>22 customers in the form of lower freight</p>	<p>1 rates. Adjusted for inflation, freight</p> <p>2 rates have decreased by more than</p> <p>3 40 percent since 1980.</p> <p>4 The productivity gains that have</p> <p>5 been retained by the railroads have</p> <p>6 allowed the industry to regain its</p> <p>7 financial health and make necessary</p> <p>8 capital improvements to foster future</p> <p>9 productivity growth. This reinvestment of</p> <p>10 the railroad's share of productivity is</p> <p>11 demonstrated in this figure.</p> <p>12 These outcomes, lower rates to</p> <p>13 consumers, a healthy industry and</p> <p>14 sufficient investment to maintain the rail</p> <p>15 system and promote future productivity,</p> <p>16 are precisely the goals and hopes</p> <p>17 expressed by President Carter when he</p> <p>18 signed the Staggers Act.</p> <p>19 Now, I return to the implications</p> <p>20 that productivity slowdown has for future</p> <p>21 productivity growth. This brings me to my</p> <p>22 final key finding.</p>
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<p>1 Future productivity requires</p> <p>2 substantial capital investment. The</p> <p>3 opportunities that deregulation presented</p> <p>4 to reduce inefficiencies and find new</p> <p>5 market flexibilities have largely been</p> <p>6 realized. Likewise, increased traffic</p> <p>7 density is more difficult to achieve and</p> <p>8 is currently moving in the wrong</p> <p>9 direction.</p> <p>10 So what's left? What is left is</p> <p>11 the primary driver of future railroad</p> <p>12 productivity as technological change, much</p> <p>13 of which is embodied in new capital</p> <p>14 equipment. Achieving future productivity</p> <p>15 growth commensurate with that and the rest</p> <p>16 of the economy will require railroads to</p> <p>17 keep reinvesting in new capital that</p> <p>18 embodies technological advances.</p> <p>19 Requiring the Carriers to pay</p> <p>20 above-market compensation because of past</p> <p>21 productivity would impede future</p> <p>22 productivity growth. First, it would</p>	<p>1 decrease the Carriers' ability to sell</p> <p>2 finance capital investment. And second,</p> <p>3 it would decrease the incentive to make</p> <p>4 those investments, as the net benefit to</p> <p>5 the Carriers of any future productivity</p> <p>6 would be less. Accordingly, above-market</p> <p>7 compensation would have adverse</p> <p>8 consequences for continued productivity</p> <p>9 improvements.</p> <p>10 I close my presentation by</p> <p>11 summarizing my key findings. The Unions'</p> <p>12 measure of productivity is flawed. It is</p> <p>13 inaccurate, inconsistent and can be</p> <p>14 misinterpreted. The superior measure is</p> <p>15 total factor productivity, which is a</p> <p>16 complete, consistent and it obeys the</p> <p>17 fundamental definition of productivity.</p> <p>18 But the theory in evidence showed</p> <p>19 that the industry's productivity does not</p> <p>20 provide any basis for compensation</p> <p>21 determination. This conclusion is</p> <p>22 well-founded in labor economics and the</p>

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1 empirical evidence shows conclusively that
 2 there is no connection between an
 3 industry's productivity and employee
 4 compensation.
 5 The railroad productivity story is
 6 one of economics of density, not labor.
 7 Density economies were substantial in the
 8 early years after the Staggers Act, but
 9 are moving in the wrong direction in
 10 recent years. Most of the productivity
 11 gains have gone to customers. Those
 12 retained by the railroads have been
 13 reinvested in new technology and
 14 infrastructure that are essential for
 15 future productivity growth.
 16 These findings lead to my
 17 fundamental conclusion. Productivity
 18 improvements in the railroad industry do
 19 not provide a basis for determining
 20 compensation for railroad workers.
 21 Thank you.
 22 **CHAIRPERSON JAFFE:** Thank you, Dr.

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1 CSX and Conrail service. And my mother
 2 had 32 with CSX and predecessor companies
 3 as well. So I've been immersed in the
 4 railroads at a very young age and have
 5 spent my career almost exclusively in the
 6 operating department. And it's a pleasure
 7 to address you all here today on this very
 8 important matter.
 9 Today I intend to provide some
 10 real-world context to Dr. Eakin's
 11 testimony by discussing two main areas,
 12 productivity and safety.
 13 With respect to productivity, I
 14 will be -- I will explain different
 15 sources of increased productivity for
 16 railroads and walk through some
 17 technological investments that have
 18 enabled railroads to operate more
 19 efficiently. I will also explain why it
 20 is imperative for the railroad industry to
 21 be able to continue making substantial
 22 developments into the future and I will

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1 Eakin.
 2 We are in good shape. Thank you
 3 very much, sir.
 4 **DR. EAKIN:** Okay.
 5 Whereupon:
 6 CINDY SANBORN
 7 was called for examination, and, after being
 8 previously duly sworn, testified as follows:
 9 **MS. SANBORN:** Good afternoon. I'm
 10 Cindy Sanborn. I'm executive vice
 11 president and chief operating officer for
 12 Norfolk Southern Corporation. I've been
 13 in the railroad business for 35 years.
 14 While only having worked for NS for two
 15 years, I spent 30 years with CSX in
 16 primarily operating roles. I spent three
 17 and a half years at Union Pacific and then
 18 moved over to Norfolk Southern in
 19 September of 2020.
 20 I come from a railroad family. My
 21 parents both worked for the railroad. My
 22 father had 27 years, with a combination of

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1 preview what technology investments we
 2 will bring to life that will increase both
 3 productivity and safety.
 4 Safety, of course, is a top
 5 priority of railroads. In the second
 6 section of my remarks I will explain the
 7 link between productivity and safety and
 8 how some specific advancements in
 9 investments we have made to increase
 10 productivity have also improved safety for
 11 our employees and the public.
 12 First, railroads must be
 13 competitive in the transportation
 14 marketplace. This is true in many areas,
 15 such as service, and to be an investable
 16 entity. But I'm going to focus on the
 17 competitive landscape in terms of
 18 productivity.
 19 The introduction of autonomous
 20 trucks and electric trucks are a direct
 21 threat to railroads, as each of these
 22 emerging technologies threaten the

<p style="text-align: right;">Page 465</p> <p>1 economic advantages that rail has over 2 trucks. Each of these technologies are 3 becoming more and more commercially 4 viable, as Lance and others have noted in 5 this proceeding. 6 Second, our customers demand that 7 we improve upon the methods of moving 8 goods on our network, providing real-time 9 shipment visibility, as well as reliable 10 service product. We represent a 11 climate-friendly mode of transportation 12 and many of our customers see great value 13 in rail. But in order to provide that 14 value, we must be productive so that we 15 can charge a competitive price. 16 Providing a competitive service 17 product at a competitive price must be 18 accomplished. The good news is I don't 19 know many excellent service organizations 20 that are not -- that are not also 21 productive. And rail is no different. 22 Third, productivity is about more</p>	<p style="text-align: right;">Page 466</p> <p>1 than profit. It is also about safety. We 2 are constantly looking to marry the best 3 of automation and labor so that we can 4 more effectively utilize our highly 5 trained workforce. 6 There are areas where machines are 7 more effective than people to do a 8 repetitive, routine job and can detect 9 things that a person cannot. There are 10 areas where a person prioritizes, plans 11 and completes necessary work. Their 12 skills are critical to our success. 13 It is this intersection of 14 automation and -- automation supervised 15 and supported by a person we are embarking 16 upon as technology evolves. I talk about 17 putting our employees in roles that 18 reflect their highest and best use and 19 I'll provide some examples later. 20 At a high level, there are several 21 areas railroads target to increase 22 productivity. One is process, constantly</p>
<p style="text-align: right;">Page 467</p> <p>1 developing new processes that will yield 2 fluidity across -- and avoid congestion 3 across our network. One example would be 4 operating plans, changes in volumes, 5 changes in origin to destination pairs, 6 changes in capability within our yards and 7 terminals. 8 Another area would be operating 9 practices, the operating rules that we 10 employ and require of our employees and 11 the technology incorporating those rules. 12 Second is work rules, whether at 13 the local or national level. One topic 14 you will hear about in subsequent 15 presentations is conductor redeployment. 16 But I'll make a few comments here. 17 Following the point that I made 18 earlier about finding the highest and best 19 use of our employees, we need to move -- 20 have the ability to move conductors and 21 through freight service out of the 22 locomotive cab and reposition them on the</p>	<p style="text-align: right;">Page 468</p> <p>1 ground where their work occurs. This can 2 be done safely. 3 This would also increase 4 productivity. And it would increase more 5 work schedule certainty and work-life 6 balance as ground-based conductors would 7 be home after their shift, something we 8 often hear about from our existing 9 employees and certainly from our newer 10 employers that have less seniority. 11 Third is technical investments. 12 These investments have rapidly accelerated 13 in recent years. They're crucial to 14 improving railroad efficiency and 15 enhancing safety. And I will speak to 16 this starting on the next slide, but first 17 let me talk for a moment about capital 18 investments in general. 19 Capital investments are tied to 20 return that stems from improvements in the 21 investment provided. We have invested in 22 better materials. The metallurgy of rail</p>

<p style="text-align: right;">Page 469</p> <p>1 today and the chemistry involved in 2 creating the metallurgic composition is so 3 much better than what we've had in the 4 past. 5 Infrastructure and equipment, 6 longer sidings to support longer trains 7 that was the result of technology 8 investments in locomotives. 9 We have AC technology on board our 10 locomotives. It improves the ability for 11 the locomotive wheel to adhere to the 12 track and pull heavier loads. It is also 13 much easier and simpler to maintain. 14 Distributed power, having 15 locomotives distributed throughout the 16 train in different portions of the train, 17 maybe in the middle, maybe towards the 18 rear, those locomotives controlled by the 19 lead locomotive and the engineer on the 20 lead locomotive to manage what we call 21 in-train forces and allow us to move 22 actually more traffic than we could prior</p>	<p style="text-align: right;">Page 470</p> <p>1 to the introduction, managing those 2 in-train forces. 3 Energy management systems tied into 4 our dispatching system to ensure optimal 5 fuel efficiency as trains are dispatched 6 across the railroad. 7 Each of these investments allows us 8 to maximize our employees' performance 9 without compromising safety and, in many 10 cases, enhancing safety. 11 When I think about the progress 12 railroads have made with respect to 13 productivity generated by technology, I 14 think of three buckets: automation, 15 mobility and predictive analytics. 16 In many cases technology 17 investments also improve processes. So 18 think of these concepts interchangeably as 19 I describe them to you. But one point I 20 want to make really clear. None of these 21 investments rely on employees working 22 harder or longer. It is not just true of</p>
<p style="text-align: right;">Page 471</p> <p>1 the specific examples that I will discuss, 2 but of any product difficulty improvements 3 more generally. 4 You will notice the advances we 5 have made enable employees to work smarter 6 and more efficiently. When new systems 7 and equipment come on line that require 8 our employees to learn new skills, we 9 train them to be sure they are 10 knowledgeable and capable of using it. 11 I'm now going to spend the next 12 three slides going into some examples of 13 each of these areas. 14 The first one is automation. It's 15 a great example as it relates to our track 16 maintenance personnel. It is an important 17 function for us to dump ballast rock on 18 the track because ballast rock is what 19 keeps track infrastructure safe for 20 trains. The rails are securely fastened 21 to ties and the ties are embedded in rock 22 that keeps it from moving as ambient</p>	<p style="text-align: right;">Page 472</p> <p>1 temperatures fluctuate across seasons, 2 across geographies and during even the 3 course of the day. 4 And this is a very historical 5 example of actually how the track is 6 surfaced back many, many years ago. Much 7 of this has already been automated. But 8 what I want to talk about is how we 9 actually put the -- put the ballast rock 10 off the track in order for mechanized 11 equipment to come and put a surface or a 12 leveling of that track in place, which is 13 good maintenance practices and allows us 14 to maintain our speeds. 15 If you look at this particular 16 picture, this shows an actual ballast 17 train. It shows its being unloaded. And 18 you can see where the dust is in this 19 picture. That particular car door is open 20 and ballast is flowing out of the car 21 along the track. So we distribute ballast 22 utilizing our own trains.</p>

<p style="text-align: right;">Page 473</p> <p>1 In the employee's hand, and the 2 very first employee you see, in his right 3 hand is a control device that allows him 4 to control the opening and closing of the 5 doors in order for -- on each individual 6 car, one subsequent to the other -- in 7 order to unload ballast rock. 8 In order to do this, this train has 9 to literally operate at walking speed. So 10 this employee can keep up with where the 11 ballast is being placed and closing the 12 doors at the appropriate time. So imagine 13 the amount of time that it takes to unload 14 ballast rock ahead of a team that's going 15 to come out and surface or install ties. 16 And we do that over thousands of miles at 17 track at NS every year. 18 The change is in a completely 19 different, more automated capability. 20 This is also a ballast train. You don't 21 see any personnel around it because it is 22 using two new components that we've added</p>	<p style="text-align: right;">Page 474</p> <p>1 into the technology of unloading these 2 cars. One is GPS and having access to GPS 3 coordinates. 4 Those GPS coordinates indicate 5 where switches are, where road crossings 6 are, where railroad crossings at grade 7 are. And any other track features, 8 detection systems and detectors knows 9 where those locations are and does not 10 dump ballast where it shouldn't be dumped 11 based on those GPS coordinates. 12 We also have a series of -- it's 13 called LiDAR. It's a very, what I call in 14 very layman's terms, sophisticated radar 15 which takes measurements of how the 16 ballast is actually formulated along the 17 tracks before the ballast is unloaded. We 18 can figure out what that cross section of 19 ballast looks like that is existing and 20 figure out how much ballast literally we 21 would need in order to allow for enough 22 ballast to raise a track and create that</p>
<p style="text-align: right;">Page 475</p> <p>1 surface. 2 So those two pieces, GPS and LiDAR, 3 allow this train to operate at speeds up 4 to 30 miles an hour, with doors opening 5 and closing to distribute the rock in the 6 amount needed at the precise location 7 where it's needed. 8 At NS alone we have reduced in 2020 9 the demand that we thought we needed for 10 ballast by 10 percent because we could 11 more accurately place it where it was 12 needed along the trackside and not put too 13 much down where we didn't need it and 14 enough where we did need it. 15 So this takes our employees to a 16 place where they're able to actually 17 perform the technical functions. This is 18 actually under one of the rail cars and/or 19 locomotives that have the technology and 20 see the picture of the ballast section. 21 This is what -- we have technically 22 qualified employees that do this type of</p>	<p style="text-align: right;">Page 476</p> <p>1 work to help set up for the performance of 2 the ballast train ahead of our surfacing 3 teams. 4 The next example is mobility. And 5 we all see this in our personal lives, the 6 joke of I have an app for that. We are 7 also converting that as a real-time, very 8 important component of our company as well 9 and for the industry as a whole. You can 10 see some screenshots of examples of 11 putting information in the hands of our 12 employees by company-provided devices. In 13 our case at NS, it is an iPhone. 14 Before we would have paperwork that 15 we needed to do or employees would have to 16 come to on-duty and off-duty locations and 17 interact with computers at fixed locations 18 in order to show their time off or to talk 19 about or declare what kind of work they 20 had done during the course of their shift 21 or no real-time updates and any other 22 interaction had to be done by company</p>

<p style="text-align: right;">Page 477</p> <p>1 radio.</p> <p>2 So as we've distributed the phones,</p> <p>3 we have developed apps to install on the</p> <p>4 phone. You can see in the screenshot in</p> <p>5 the lower right, that's a screenshot of</p> <p>6 our mobile rail tool used by our</p> <p>7 transportation employees to be able to</p> <p>8 interact at customer locations, report</p> <p>9 their work, what cars they picked up, what</p> <p>10 cars they set off and now actually being</p> <p>11 able to use it on freight trains as well,</p> <p>12 grain trains that are spotted, coal trains</p> <p>13 as opposed to individual cars.</p> <p>14 It gives real-time information,</p> <p>15 both for us and our customers, and reduces</p> <p>16 paperwork and transcribing paper or</p> <p>17 documenting from the computer paper</p> <p>18 information. It enables employees to</p> <p>19 spend their time doing the work, not</p> <p>20 typing into a computer or copy</p> <p>21 instructions onto paper.</p> <p>22 Also in the picture the upper</p>	<p style="text-align: right;">Page 478</p> <p>1 right-hand screenshot shows a shot of our</p> <p>2 internal social media application called</p> <p>3 FORGE. It allows us to communicate more</p> <p>4 effectively with our employees on a</p> <p>5 platform that is familiar and demanded by</p> <p>6 our newer generation.</p> <p>7 I will tell you a quick story about</p> <p>8 another application that we've used called</p> <p>9 a mobile track authority. It is used by</p> <p>10 our employees that need to access a track</p> <p>11 to inspect -- we call them track</p> <p>12 inspectors -- need to have access to the</p> <p>13 track and they need to get permission for</p> <p>14 that access so that they know that there's</p> <p>15 no trains in there and no way for them to</p> <p>16 be -- for trains to come in on them so</p> <p>17 that they can actually take a slot of the</p> <p>18 railroad and be able to do -- perform</p> <p>19 their role.</p> <p>20 We've recently -- prior to the</p> <p>21 changes with the app that we provided, you</p> <p>22 would normally need to call the train</p>
<p style="text-align: right;">Page 479</p> <p>1 dispatcher at a centralized location,</p> <p>2 request time on the track between two</p> <p>3 points that you needed to inspect. And if</p> <p>4 you were able to get track time, you would</p> <p>5 literally copy down those instructions.</p> <p>6 You would repeat those instructions. You</p> <p>7 would get confirmation that those</p> <p>8 instructions were correct. It was</p> <p>9 necessarily redundant to make sure that we</p> <p>10 didn't have errors in the copying of the</p> <p>11 information. It was a safety mechanism</p> <p>12 that was very, very important to us. So</p> <p>13 we religiously followed that process.</p> <p>14 Now with the mobile track</p> <p>15 authority, we're able to communicate</p> <p>16 wirelessly from a device in the field that</p> <p>17 the track inspector has to the train</p> <p>18 dispatcher. It actually inputs and</p> <p>19 creates the track authority for the</p> <p>20 dispatcher to approve or not approve or to</p> <p>21 adjust and then it communicates again</p> <p>22 electronically back to the tool.</p>	<p style="text-align: right;">Page 480</p> <p>1 I recently hi-railed with a track</p> <p>2 inspector and I asked him, could you show</p> <p>3 me how that works and tell me what you</p> <p>4 think. And he was absolutely enthusiastic</p> <p>5 about the capability of the tool that he</p> <p>6 had, the certainty of the information that</p> <p>7 he knew was available. And he also had a</p> <p>8 screen -- screenshots of the actual</p> <p>9 dispatching screens that our dispatchers</p> <p>10 look at to be able to organize his time</p> <p>11 around when he knew trains weren't in the</p> <p>12 area and he would have a lot higher</p> <p>13 probability of getting track time. And</p> <p>14 when he knew he couldn't get track time,</p> <p>15 he would be out doing other things he</p> <p>16 could spend his time doing that were</p> <p>17 productive for him and for the company.</p> <p>18 He showed me how it works. He</p> <p>19 talked about how input from employees was</p> <p>20 used to make a more -- or find the tool.</p> <p>21 And our adoption rate in that tool, both</p> <p>22 from the dispatcher and from our employees</p>

<p style="text-align: right;">Page 481</p> <p>1 in the field, is in excess of 90 percent. 2 It has been a very, very successful 3 endeavor. 4 Slide 8, this is an area where we 5 just scratched the surface in predictive 6 analytics. It's about performance 7 monitoring and fixing equipment or defects 8 before a break or defect becomes evident. 9 Before we would change out 10 equipment or material based on time or 11 cumulative workload. Think about gross 12 ton-miles or maybe a combination. 13 Employees would visually look for defects 14 on equipment in a yard where the equipment 15 is static and not in motion. They inspect 16 for many things, one of which is condition 17 of wheels in our mechanical department. 18 Defective wheels can lead to costly 19 derailments. 20 So the change has been that we are 21 predicting wheel wear based on readings 22 from wayside detectors. We're using</p>	<p style="text-align: right;">Page 482</p> <p>1 strain gauges in detection equipment on a 2 trackside. An example is a wheel impact 3 load detector, or WILD. Load detectors 4 like the strain gauge are right here in 5 the left-hand picture. They are in 6 service at multiple locations across the 7 North American rail network. It is an 8 electronic data collection device that 9 measures vertical wheel forces by a rail 10 mount and strain gauge, which you can just 11 see on the lower right-hand corner of that 12 picture, and measures impact forces caused 13 by damaged wheels. 14 This technology has a significant 15 impact not only on safety, but maintenance 16 and repair costs because it can improve 17 the service life of wheel sets. It can 18 detect defects that a human eye cannot see 19 and a static environment in a yard where 20 we otherwise would look for these defects. 21 Since it finds defects sooner, before the 22 wheels are condemnable, cars can be routed</p>
<p style="text-align: right;">Page 483</p> <p>1 to a shop at a more convenient time for 2 repair. 3 The picture on the right-hand side 4 shows track mounted -- shows the interior 5 picture of what those -- the technology 6 looks like and actually in a box track 7 side and is co-located with equipment and 8 monitors those strain gauges. 9 So employees can now concentrate on 10 repair. Trains are less likely to 11 experience a defect requiring a car to be 12 set out along the line of road due to 13 defective wheels. This reduces employees 14 from having to make repairs on line of 15 road instead of in the yard or shop 16 environment. We use our employees' skills 17 to make repairs and technology to find 18 what needs to be repaired. This also 19 supports our customers whose car is 20 delayed far less. 21 Another example of this is in our 22 NS track department, where we are using</p>	<p style="text-align: right;">Page 484</p> <p>1 models, machine learning and data science 2 to predict rail wear in curves. Anytime 3 you're looking for wear in rail you will 4 find it accelerated in curves. And this 5 is because as rail cars and engines go 6 down the track, they want to go straight. 7 When they encounter a curve, they're going 8 to start to turn and pivot and you'll find 9 that that rail on the high side, if you 10 were to think of it being super elevated, 11 will wear first. And it depends on 12 curvature and it depends on tonnage in 13 many respects. 14 So they are more tedious to repair 15 because you go from this curve and it may 16 be several miles before you get to another 17 curve that you need to change rail. We 18 try to use the existing rail for as long 19 as it is economically possible and 20 obviously safe to do so. 21 So we have pulled data together 22 over many systems to analyze these</p>

<p style="text-align: right;">Page 485</p> <p>1 patterns, to see if we can find common 2 denominators that help us understand how 3 the rail is wearing and how can we extend 4 its life.</p> <p>5 This has allowed us to look ahead 6 and predict how rail wear will -- how rail 7 will wear over five years using these many 8 systems. We've adjusted our curve rail 9 program to only replace a rail that had to 10 be replaced based on this information. 11 This freed up resources to install more 12 rail on straight track where we have more 13 demand for rail renewal presently at NS.</p> <p>14 We are much more productive in 15 installing rail on straight track. 16 Considering both curve and straight or 17 tangent rail renewal, we will install more 18 rail this year on NS than we have since 19 1995. We will not need more people to do 20 this. We will utilize our existing 21 employee base. There will be a time when 22 we have more curve rail to replace than we</p>	<p style="text-align: right;">Page 486</p> <p>1 do today. We will allocate the resources 2 to do so, but we will know we are 3 replacing the right rail at the right 4 time.</p> <p>5 As Dr. Eakin's data indicated, the 6 productivity increases resulting from 7 existing technologies are leveling off. 8 This means railroads need to continue to 9 innovate to increase efficiency, which 10 will require significant capital 11 investments. There are no free upgrades.</p> <p>12 A couple of examples include 13 building out our platform that PTC, or 14 positive train control, has provided us. 15 You can see the PTC console on some of the 16 equipment that we have and utilize for PTC 17 in the left-hand picture.</p> <p>18 PTC, as you know, was a 19 congressional unfunded mandate to install 20 a collision avoidance system across the 21 industry, requiring billions in 22 investment, 1.8 billion for NS alone.</p>
<p style="text-align: right;">Page 487</p> <p>1 This PTC platform has enabled a new era of 2 capabilities that are still being 3 harvested requiring investment.</p> <p>4 One example would be locomotive 5 health monitoring, where locomotives 6 detect mechanical issues before they 7 occur, the ability to instrument our 8 water -- water pressure, water 9 temperature, oil pressure, oil temperature 10 and finding signatures that will allow us 11 to understand where we're seeing component 12 failure before that component fails.</p> <p>13 Another example is moving block to 14 replace a fixed -- our fixed block 15 signaling system. This in essence creates 16 a safe zone around a train, allowing for 17 trains to run closer together, creating 18 capacity for more trains as we grow our 19 business.</p> <p>20 Final example which you see on the 21 right is helix, which is an NS system 22 currently in production for maintenance of</p>	<p style="text-align: right;">Page 488</p> <p>1 way employees. This picture shows the 2 digital representation of the augmented 3 reality that the NS team will see in the 4 future as they use this tool in the field.</p> <p>5 It consolidates all information in 6 one shared location and visually depicts 7 the status of a job, meaning work job, and 8 data associated with repairs to our 9 workforce holding the device.</p> <p>10 The enhanced data that is gathered 11 trackside by our field teams will help 12 improve our understanding of defects -- of 13 a defect's root cause, helping us predict 14 future occurrences.</p> <p>15 These examples will fundamentally 16 change the way we manage our teams, our 17 workload, inventory and assets. It will 18 require less paperwork, more time making 19 repairs and less time documenting them and 20 a clear understanding of all repairs that 21 our employee can make in the area, 22 reducing redundant travel time.</p>

<p style="text-align: right;">Page 489</p> <p>1 Turning to safety. As I have said, 2 many of the technological advances not 3 only lead to improved efficiency but also 4 to improved safety of our workers and the 5 public. Safety is of paramount concern of 6 all operating executives in our industry. 7 We have an obligation to run safe and 8 secure operations for our employees, 9 communities and our customers.</p> <p>10 As with productivity, much of the 11 improvement in safety is due to the large 12 capital investments that have been made in 13 infrastructure, equipment and technology 14 over the years. Data from the Federal 15 Railroad Administration indicates that for 16 the Class I rail industry, the overall 17 train accident rate has decreased 18 significantly and consistently since 1980 19 and the injury rate for employees is 20 relatively low, compared with other 21 industries, including trucking, airlines, 22 agriculture and construction.</p>	<p style="text-align: right;">Page 490</p> <p>1 These are tremendous safety 2 successes driven by the industry's 3 sustained investment in infrastructure, 4 advancement of safety technology and 5 modernization of operating practices. So 6 here's some examples of what's next.</p> <p>7 Here you see on the left-hand 8 picture is another -- is a wayside 9 detector. It inspects components as 10 trains pass by. We looked at a WILD 11 detector in detail earlier, but there are 12 plenty of other detection systems on our 13 network. The next generation of this is 14 using machine vision to observe a passing 15 train. This technology can photograph a 16 moving train and provide incredible 17 detail.</p> <p>18 The technology can also interpret 19 the images of the defects, which you see 20 in the right-hand picture. It can detect 21 components under rail cars and find 22 defects that a human eye would likely</p>
<p style="text-align: right;">Page 491</p> <p>1 miss.</p> <p>2 We also have automated track 3 inspection -- it is similarly important -- 4 cameras on locomotives or rail cars 5 finding geometry defects as the train 6 passes over the track. A big value here 7 is getting the data under load versus 8 exclusively depending on visual inspection 9 by a hi-rail vehicle putting much less 10 weight or load on the track while passing 11 over. So the cameras are actually seeing 12 how the track interacts with the train as 13 it operates over.</p> <p>14 The data is sent wirelessly to 15 inspectors in an office environment where 16 data is reviewed and planning begins to 17 initiate repairs. It will still be 18 necessary to make visual inspection by 19 employees, but not at the same frequency 20 currently required, freeing up time for 21 employees to make repairs found by the 22 automated equipment. This also frees up</p>	<p style="text-align: right;">Page 492</p> <p>1 track capacity for trains instead of 2 reserving track time for hi-rail vehicles 3 to pass and do inspections.</p> <p>4 In both cases, employees fix the 5 defects that are found by detection 6 systems. These systems can find more than 7 we can with the human eye and our people 8 are -- our people are effectively used to 9 make repairs using our employees to the 10 highest and best use.</p> <p>11 So to wrap up, productivity 12 improvements will be challenged and come 13 at a cost. As Dr. Eakin has noted, we 14 have already done most of what can be done 15 easily and without huge investments and/or 16 changes to old work rules that don't fit 17 modern operations and modern technology.</p> <p>18 Importantly, neither current 19 productivity improvements nor those we 20 still hope to achieve require employees to 21 work harder. To the contrary. Our goal 22 is to utilize highly trained, dedicated,</p>

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1 prideful workforce alongside targeted
 2 technology to improve employee safety,
 3 quality of life and service to our
 4 customers.
 5 Putting our employees to work in
 6 their highest and best use, we can do both
 7 and make the railroad more productive and
 8 make jobs better for our employees.
 9 Thank you.
 10 **CHAIRPERSON JAFFE:** Thank you,
 11 Ms. Sanborn.
 12 I think we're in good shape, but
 13 thank you for the presentation.
 14 We're going to take a relatively
 15 quick break, so 10 stretching to 15,
 16 really make it 15 this time so that we can
 17 get you all out of here at an appropriate
 18 hour this evening.
 19 Thank you.
 20 (Thereupon, a brief recess was
 21 taken.)
 22 **MR. MUNRO:** Thank you,

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1 Whereupon:
 2 BRENDAN BRANON
 3 was called for further examination, and,
 4 after being previously duly sworn, testified
 5 as follows:
 6 **MR. BRANON:** Okay. Thank you
 7 members of the Board and thank you
 8 everybody for bearing with us through a
 9 long day. We have two more presentations
 10 and then we are, as Don mentioned,
 11 planning to wrap for the day.
 12 So the purpose of my second
 13 presentation is to provide a high level
 14 overview of the health care environment
 15 and discuss how our national railroad
 16 health care and benefit plans operate.
 17 I will provide an overview of our
 18 proposals. Mr. Scofield will discuss them
 19 at some further length. Before I do so,
 20 though, I'd like to make a point.
 21 Health care in the United States is
 22 constantly changing. And in order to

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1 Mr. Chairman. The Carriers would now like
 2 to move into our health care presentation.
 3 Because of witness availability issues,
 4 we're going to be splitting that
 5 presentation over this afternoon and first
 6 thing tomorrow.
 7 But for today, I'd like to call
 8 back first Mr. Branon to explain the
 9 Carriers' proposals and then we have Dave
 10 Scofield, who is our health care actuary.
 11 **CHAIRPERSON JAFFE:** May I ask that
 12 Mr. Scofield be sworn in, please. And
 13 I'll just remind you, Mr. Branon, you're
 14 still under oath so we don't need to
 15 administer the oath again.
 16 **MR. BRANON:** Absolutely.
 17 Whereupon:
 18 DAVE SCOFIELD
 19 was called for examination and was duly sworn
 20 by the reporter.
 21
 22

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1 contain escalating costs and best position
 2 our members to engage with the healthcare
 3 system, we must routinely make changes to
 4 plan design and administrative practices
 5 so that the plans can evolve and adapt
 6 along with the healthcare system.
 7 Maintaining the status quo is
 8 neither an appropriate nor an acceptable
 9 outcome. Doing so simply leaves no
 10 constraints on the plan's escalating costs
 11 and fails to keep pace with changes in the
 12 market. But this does not mean,
 13 importantly, that the plan will change
 14 what it has always been, which is a great
 15 plan with great benefits in the market
 16 that provides our employees with high
 17 quality and affordable health care.
 18 I thought I'd start discussing our
 19 approach to the proposals that we maintain
 20 in this proceeding. We've identified the
 21 issues that we see along with proposed
 22 solutions in forming our proposals.

<p style="text-align: right;">Page 497</p> <p>1 First, as is demonstrated in this 2 slide, the plan's cost-sharing is out of 3 step with benchmarks and this contributes 4 to the plan's inability to restrain costs. 5 Accordingly, we propose changes to move 6 towards these benchmarks. 7 Second, the cost-sharing 8 continually erodes over time. A solution, 9 as we see it, is to annually index 10 cost-sharing provisions within the plan. 11 Third, we have a very high 12 dependent enrollment figure and we'll 13 discuss this a bit further. What this 14 means is that for every employee on our 15 plans on average, the plans cover an 16 additional dependent above benchmark 17 levels. And this is largely because we 18 have a single-tier structure. So we have 19 proposed to introduce a two-tier 20 contribution structure. 21 Fourth, our pharmacy programs 22 are -- unfortunately, they're inefficient,</p>	<p style="text-align: right;">Page 498</p> <p>1 they're outdated and they're ineffective. 2 So we are proposing to adopt updated 3 pharmacy rules, both now and ongoing. And 4 you will hear how this is the standard 5 approach among plan administrators, plan 6 sponsors and employers around the country. 7 And last, fifth, the Carriers and 8 the Unions' financial interests with 9 respect to sponsoring and administering 10 the plans are not aligned. Therefore, 11 what that results in is basic standard 12 administrative changes that are available 13 and that are widely maintained throughout 14 the industry, throughout many industries. 15 They're just not implemented under our 16 plan. 17 And one way we see to begin to 18 address that in this structure and in this 19 environment is to add a provision 20 requiring periodic rebids of the many 21 vendors involved in delivering plan 22 benefits under the national railroad</p>
<p style="text-align: right;">Page 499</p> <p>1 health and benefit plans. 2 As an overview, I'll just take a 3 minute to briefly describe our plan 4 structure. I know, Mr. Chairman, you're 5 very familiar with it from your past 6 experience on PEB 243. 7 We have two medical plans, the 8 national plan and a UTU plan which is the 9 predecessor organization of SMART-TD. 10 They have identical designs. They're 11 jointly administered by representatives of 12 the Carriers and the Unions. They cover 13 approximately 325,000 members. That 14 includes 100,000 employees, roughly, and 15 the remaining members are the dependents 16 of the covered employees. 17 There are two options in the plan. 18 There's the MMCP, which is a PPO design 19 that covers approximately 90 percent of 20 our plan members, and a separate CHCB 21 design, which is an indemnity design 22 that's only available under our plan</p>	<p style="text-align: right;">Page 500</p> <p>1 structure in rural areas where the -- 2 where the MMCP benefits and network 3 benefits are not readily accessible just 4 because of the distribution of health care 5 providers. That has the remaining 6 approximately 10 percent of members 7 enrolled under our plan. 8 There are, as you see here depicted 9 on the slide as well, pharmacy benefits, 10 mental health, substance abuse benefits. 11 The plans collectively are, in turn, 12 funded by a payment rate that is 13 calculated on a per employee per month 14 basis in which all Carriers who are 15 participating in the plans pay on a 16 monthly basis, as well as employee 17 contribution, which under the national 18 agreements are -- have been fixed at \$229 19 per month since July 2016. 20 So as is reflected in this chart, 21 the plan has experienced and is projected 22 to experience significant increases in</p>

<p style="text-align: right;">Page 501</p> <p>1 plan cost. At this point, looking forward 2 to 2026, we project that the payment rate 3 per employee per month under our plan will 4 exceed \$2,500 on a monthly basis. What 5 that means is on an annual basis, the 6 health care cost per employee will exceed 7 \$30,000. That's almost 55 percent more in 8 2026 than it was in 2020.</p> <p>9 Yet what we see in the Unions' 10 submissions submitted to this Board is the 11 assertion that the Carriers' health care 12 costs have actually gone down. That's 13 just not the case. And what we show here 14 is escalation, along with the freeze in 15 employee contributions. When you account 16 for that moving forward under the 17 Carriers' proposal, it would provide that 18 the Carriers' portion of the contribution, 19 which is the payment rate less the 20 employee contribution, would increase more 21 than 60 percent by 2026. That's just a 22 six-year period during the term of the</p>	<p style="text-align: right;">Page 502</p> <p>1 agreement that the parties are discussing. 2 In our view, this is what we mean when we 3 say our costs are increasing.</p> <p>4 So turning to history, this slide 5 displays a key point. And I won't review 6 all the text here. It summarized the 7 changes that were agreed upon by the 8 parties participating in this proceeding 9 and ratified by the membership of these 10 labor organizations in the prior two 11 rounds.</p> <p>12 We have a history of adopting 13 meaningful changes in agreements. As I 14 said, I won't review these details, but as 15 is depicted from the 2010 bargaining 16 round, the net effect of the changes that 17 were agreed upon were equivalent to 18 roughly five points of cost-sharing 19 reduction from the Carriers' portion of 20 the total cost share. And in the 2015 21 round, the net effect of the changes that 22 were agreed upon reflect approximately</p>
<p style="text-align: right;">Page 503</p> <p>1 four points of cost share shift. 2 Now, it may seem, adding these two 3 together, that at this point the Carriers' 4 cost share shift after the changes that 5 were agreed upon in the prior two rounds 6 should be nine points lower than they were 7 going into the 2010 round. But that's not 8 the case. And in fact, at this point, as 9 we sit here today, the Carriers' total 10 cost-sharing under the health care plans 11 is exactly where it was prior to the 2010 12 round. And that's because of a phenomena 13 that we refer to as erosion.</p> <p>14 And as is reflected here in this 15 chart, the value of the Carriers' 16 negotiated and agreed-upon cost share 17 changes has eroded. And that's because of 18 two things. It's because of health care 19 cost inflation and it's because of the 20 fixed dollar provisions and contributions 21 currently in our plan design. 22 In the Carriers' view, this two</p>	<p style="text-align: right;">Page 504</p> <p>1 steps forward, two steps back approach 2 should change. Without the ability to 3 build upon the changes that have been made 4 in prior rounds, the plans will 5 continually fall behind overall trends in 6 the health care industry and will limit 7 the Carriers' willingness to consider 8 enhancements of new programs and services.</p> <p>9 So how do the Carriers propose to 10 address this issue? Well, we propose to 11 address it through what we call indexing.</p> <p>12 As I mentioned, the Carriers' cost 13 share proportion under the health care 14 plans erodes because of fixed dollar plan 15 provisions like we have had since 2019 and 16 fixed employee contributions like we've 17 had since 2016.</p> <p>18 The Carriers are proposing to 19 return to an historic 15 percent 20 calculation to determine employee monthly 21 contributions. And what this slide 22 reflects is that between the period 2007</p>

<p style="text-align: right;">Page 505</p> <p>1 and 2019, roughly covering most of the 2 three bargaining rounds preceding this 3 round, by virtue of the historic formula 4 in place and the limited application of 5 caps that were in effect and that applied 6 under the calculations each year annually 7 under the plan, the employee contribution 8 reflected approximately 15 percent, 9 somewhere roughly on average between 14 10 and 15 percent. And that was the case all 11 the way up until the beginning of this 12 round.</p> <p>13 And what we see on this slide is 14 that beginning in 2020 at the beginning of 15 this round, that share of the Carrier 16 total payment rate that was reflected -- 17 that is reflected by the \$229 per month 18 that employees currently pay has begun to 19 drop precipitously. It is now less than 20 12 percent in 2022 and it is projected to 21 drop if the Unions' proposal were adopted 22 to 9 percent by 2026. And it would only</p>	<p style="text-align: right;">Page 506</p> <p>1 presumably continue to drop from there if 2 that framework remained in place 3 thereafter.</p> <p>4 In 2026 if it were 9 percent, that 5 would reflect one-half of the benchmark 6 employee cost share represented by 7 contributions of 18 percent that you'll 8 hear Mr. Scofield discuss further in his 9 benchmarking presentation.</p> <p>10 So shifting gears a little bit, but 11 staying on the topic of cost-sharing in 12 general, alternative subject of actuarial 13 value or AV, AV is the percentage of 14 covered expenses paid on average by the 15 plan at the point of service. The 16 balance, as we refer to the percentage, 17 the balance of that percentage to 100 18 percent is what the employee or the member 19 pays in terms of co-payments, deductibles, 20 coinsurance, et cetera.</p> <p>21 So AV in our lingo is a measure of 22 a benefit plan's design. And this is</p>
<p style="text-align: right;">Page 507</p> <p>1 without regard to an employee 2 contribution, which I'll get to in a 3 second.</p> <p>4 So currently the railroad plan's AV 5 is 92 percent. And for reference, a 6 platinum level plan is defined as a plan 7 having an AV of 90 percent less two -- I'm 8 sorry -- or less four or plus two. So 9 that provides a range of 86 to 92 percent 10 providing the definition of a platinum 11 plan from an AV perspective.</p> <p>12 At 92 percent, we're at the very 13 top end of that platinum range. And when 14 the round began, the railroad plan was at 15 90 percent. So just in the last two-plus 16 years, the AV of the plan itself has also 17 eroded two points.</p> <p>18 So when you put the AV together, 19 along with the employee contribution 20 percentage that we reviewed just a couple 21 slides previously, it brings you to the 22 total cost share calculation. And as is</p>	<p style="text-align: right;">Page 508</p> <p>1 reflected here, the 92 percent AV which 2 provides the 8 percent employee remainder, 3 along with the 12 percent employee 4 contribution, derives the total railroad 5 employee cost share split of 80/20.</p> <p>6 When the prior bargaining round was 7 resolved, the 2015 bargaining round was 8 resolved, the effect of those changes -- 9 while there were things moving at 10 different points of time, but the effect 11 of those changes was a targeted overall 12 Carrier cost share of 76 percent.</p> <p>13 And before I move on to a brief 14 overview of our proposals, I'd like to 15 turn and just discuss briefly some matters 16 related to the plan's administrative 17 practices.</p> <p>18 As I mentioned before, the plans 19 are jointly administered by 20 representatives of the Carriers or the 21 Unions. The NCCC is the Carriers' 22 representative and the labor organizations</p>

<p style="text-align: right;">Page 509</p> <p>1 have representatives for the two 2 respective plans as well. 3 So in the Carriers' view, over the 4 years we've proposed many basic and 5 routine administrative changes to the 6 plans. But often the Unions impose these 7 changes. And in our view, they rely on 8 excessively low thresholds and 9 justifications for rejecting what are 10 sensible and appropriate changes. 11 And why do we say that? It's 12 because many of the things that we are 13 proposing are the exact same sort of 14 things that other plan sponsors and 15 administrators are applying themselves to 16 other health care plans. 17 And why do those plan sponsors and 18 administrators -- I guess administrators 19 in this context -- why do they make those 20 changes? Well, they make them to adapt to 21 the evolving healthcare system, to adopt 22 new programs offered by claims</p>	<p style="text-align: right;">Page 510</p> <p>1 administrators, the health care insurance 2 providers, if you will. 3 And the result is under our plan 4 structure, when we are unable to make 5 sensible administrative plan changes that 6 the Carriers bear nearly 100 percent of 7 the increasing plan costs. Our members 8 don't benefit from any of the changes. 9 And we believe that this is driven in 10 large part by the lack of a joint 11 financial interest on the part of the plan 12 administrators in controlling plan 13 spending. So our proposals in part are 14 designed to address this in a very small 15 respect. 16 Turning to a brief overview of the 17 Carriers' health and welfare proposals. 18 The key point in all of this is that the 19 Carriers' proposed changes in this 20 bargaining round, when you net everything 21 together, would reflect a 6 percent shift 22 in the cost share from 80/20 to 74/26, a</p>
<p style="text-align: right;">Page 511</p> <p>1 result that we believe is fully consistent 2 with the types of changes agreed upon in 3 prior rounds. 4 So what are the proposals? So 5 first I'll start at the top with those top 6 two boxes, benefit design change and 7 employee contribution level. 8 The Carriers are proposing plan 9 design changes and there are specifics 10 associated with this in the sort of 11 appendix of our position. But we are 12 proposing plan design changes that would 13 achieve an actuarial value under our plan 14 in 2023 of 88 percent. 15 And as you can see on this slide, 16 we are proposing to restore the 15 percent 17 historic calculation to the employee 18 contribution rate as determined by the 19 Carriers' payment rate. 20 These changes will maintain 21 platinum level benefits. They'll maintain 22 member cost-sharing that's lower than</p>	<p style="text-align: right;">Page 512</p> <p>1 Union-represented benchmarks. And as 2 you'll hear from Mr. Scofield in 3 particular, lower than the benchmarks that 4 the Unions presented to us in this 5 bargaining round but which they now 6 ignore. 7 These proposals are also consistent 8 with our recent settlements and they 9 provide a direct and continual incentive 10 for the joint administration of the plans 11 to restrain health care cost inflation 12 going forward. 13 They will also -- just by virtue of 14 how we have proposed and designed them, 15 they will address the erosion issue 16 because they'll automatically index to 17 maintain the established cost-sharing 18 levels. 19 Second, contribution tiering. We 20 propose to add a second tier to the 21 employee contribution structure. Our plan 22 is almost unique, if not unique, at least</p>

<p style="text-align: right;">Page 513</p> <p>1 to our knowledge, in that we only have a 2 single enrollment tier, considering how 3 large of a plan we are. And whether you 4 are covering yourself as a result or 5 covering your spouse or covering your 6 dependents as well, every employee pays 7 the same monthly contribution amount. 8 And although the vast majority of 9 employers when you look at the surveys 10 have at least three, if not four, tier 11 contribution structures, we are only 12 proposing the incremental step of adopting 13 initially a two-tier contribution 14 structure where, if it's spouses enrolled 15 under the plan, there would be a higher 16 contribution rate. But if you just enroll 17 yourself and your dependents, you would 18 remain under our proposal in 2023 at the 19 existing 229 contribution, that monthly 20 contribution rate. 21 We are proposing this for a couple 22 reasons. First, it's standard in the</p>	<p style="text-align: right;">Page 514</p> <p>1 marketplace. It better allocates costs 2 between and among the members of the plan. 3 And it encourages spouses, admittedly, to 4 enroll in their employers' plans, which 5 would thereby directly begin to address 6 one of the principal drivers of additional 7 costs in the railroad plans, that high 8 level of dependent enrollment. 9 Third, annual indexing. As I've 10 mentioned, we propose to adjust the plan 11 design features, but to do so in a manner 12 that it maintains the agreed-upon 13 cost-sharing levels. This would address 14 the erosion issue and it's no different 15 than what typical employers do every year 16 under the plans that they sponsor. They 17 make adjustments to maintain desired total 18 cost share levels. 19 Continuing on with the review of 20 the proposals. We propose to update 21 pharmacy utilization management rules. 22 We're doing this for a number of reasons.</p>
<p style="text-align: right;">Page 515</p> <p>1 We believe we need to be following what 2 our plan's pharmacy benefit managers 3 recommend now and in the future going 4 forward. That's what the vast majority of 5 employers do. 6 Our current pharmacy utilization 7 programs date from 2012. They haven't 8 changed. Despite massive changes in the 9 prescription drug and pharmacy benefit 10 industries, we are literally ten years 11 behind where we should be on these 12 programs. 13 Importantly, modern and updated 14 pharmacy utilization management programs 15 would promote the safe and cost effective 16 delivery of pharmacy benefits to our 17 members to ensure they get the right drug 18 at the right time and in the right 19 quantity. This includes adopting the 20 appropriate set of programs like prior 21 authorization, step therapy, quantity 22 management and things like an advanced</p>	<p style="text-align: right;">Page 516</p> <p>1 opioid management program, things that 2 most, if not -- you know, vast majority of 3 employers do with their plans because they 4 leave those decisions to the experts at 5 the pharmacy benefit management programs. 6 Our plan doesn't currently do that. 7 We believe these are very sensible 8 and appropriate programs. They reflect 9 the market approach. And this is also not 10 something that we as plan sponsors or plan 11 administrators would directly participate 12 in, in these decisions. The programs, as 13 they set up by the PBMs, are driven by 14 experts, medical experts, who determine 15 how and why to best structure the way in 16 which pharmacy benefits are administered 17 to members under these benefits. 18 Next, site of care management. The 19 Carriers propose a program that encourages 20 the use of freestanding facilities rather 21 than costly outpatient hospital settings 22 for certain procedures and services.</p>

<p style="text-align: right;">Page 517</p> <p>1 These type of facilities provide much more 2 efficient costs and they often produce 3 better health outcomes. 4 This is a perfect example of how we 5 believe we can partner in plan design 6 changes to drive cost avoidance through 7 structuring incentives for members to make 8 better decisions about how, and in this 9 case specifically where, to best engage 10 with the health care system. 11 Next, competitive vendor bidding. 12 Okay. The Carriers propose to require 13 periodic bidding of all plan vendors. We 14 have a broad set of vendors who are 15 engaged by the plans to deliver the robust 16 set of services that our members receive 17 and enjoy and then bargain for under the 18 plans. 19 And frankly, we don't think that 20 this is something that should have to be 21 hardwired into the plan. It's something 22 that administrators do routinely all the</p>	<p style="text-align: right;">Page 518</p> <p>1 time to rebid vendors. You're not going 2 to get the best price for the services in 3 this market unless you're routinely 4 rebidding these services. But it is an 5 example and one that would be effectively 6 transparent to members of administrative 7 practices in which we struggle to get 8 agreements in the regular course of 9 business. 10 And last, and certainly not least, 11 the Carriers are also proposing to enhance 12 several existing benefits, things that we 13 have not done in many, many rounds, 14 covering autism, hearing, hospice 15 benefits, as well as increases to dental 16 and vision coverages. These are the types 17 of enhancements that reflect investments 18 in the plans that we can and will continue 19 to do when we achieve the right overall 20 approach on an ongoing basis to addressing 21 health care cost inflation going forward. 22 As the market evolves, we evolve and we</p>
<p style="text-align: right;">Page 519</p> <p>1 evolve in ways in which we can further 2 invest in the plan. 3 Finally, the Carriers are also 4 proposing a prescription drug copay 5 assistance program. Programs such as this 6 would reduce copays on certain drugs to 7 zero dollars under our proposal while 8 maintaining plan cost. Mr. Scofield will 9 discuss this further, but you're asking 10 how do you do this. Well, when you work 11 with the PBMs, you can structure such a 12 program to provide win-win outcomes for 13 employees under certain conditions and for 14 certain medications to get those 15 appropriate drugs for no copay and it 16 saves the employee and it saves the plan. 17 In conclusion, as we've considered 18 what our proposals would be and should be 19 at this stage of the process, one of the 20 things that we've done is we've considered 21 how prior PEBs have addressed the same or 22 similar issues. And we feel, frankly, at</p>	<p style="text-align: right;">Page 520</p> <p>1 least certainly in our modern history, 2 that there's no better example of this 3 than what PEB 243 did. And as is 4 reflected in this chart, our proposals 5 today align with much of the reasoning 6 that PEB 243 applied in recommending a 7 settlement based on the company's 8 proposals in 2011. 9 So as you'll see here, first the 10 Carriers' proposals rely on benchmarking 11 to establish appropriate cost-sharing 12 levels. In PEB 243, the Board relied 13 heavily on the same type of benchmarking 14 that the Carriers provide here, 15 particularly the Kaiser Family Foundation 16 survey. 17 Second, the changes that the 18 Carriers propose will restrain the growth 19 of cost. Again, in 243, the Board 20 explained that the Carriers' proposals 21 were necessary there to restrain 22 increasing health care costs.</p>

<p style="text-align: right;">Page 521</p> <p>1 Third, the Carriers' total proposed 2 cost share change of six points is 3 consistent with the outcome in prior 4 rounds, including in PEB 243. 5 Fourth, the Carriers' proposals 6 include benefit enhancements and shared 7 savings as we've structured our overall 8 approach. PEB 243 supported the same type 9 of quid pro quo nature of the Carriers' 10 proposals. And there, not every proposal 11 that the Carrier made has shifted cost and 12 not every proposal that the Carriers are 13 making here will shift cost either. 14 So fifth -- and you'll hear further 15 about this from Dr. Dana Goldman tomorrow, 16 who is one of our planned health care 17 expert witnesses -- modeling using the 18 plan's own data establishes that our 19 proposals will reduce utilization, but to 20 do so without a negative impact on health 21 care. Similarly, PEB 243 cited the 22 Carriers' expert analysis favorably in</p>	<p style="text-align: right;">Page 522</p> <p>1 this regard. 2 And sixth, the Carriers are 3 proposing to address inadequate pharmacy 4 management rules. In PEB 243 the 5 introduction of pharmacy management rules 6 were supported by the Board. 7 So in conclusion, this is a summary 8 of the reasons why the Carriers believe 9 our proposals are not only fair and 10 appropriate, but why they're necessary in 11 the current environment to ensure the 12 plans remain consistent with benchmarks, 13 to continue to provide great benefits to 14 our employees, but to do so in a more cost 15 effective overall manner that better 16 restrains health care cost inflation in 17 the future. 18 Mr. Scofield is going to testify 19 after me. I mentioned Dr. Goldman is 20 going to testify tomorrow as well. And 21 I'm happy to take any questions from the 22 Board.</p>
<p style="text-align: right;">Page 523</p> <p>1 CHAIRPERSON JAFFE: I would 2 normally pose some, Mr. Branon, but I 3 think I'd prefer to hear from Mr. Scofield 4 and then perhaps some of them, because of 5 his status as actuary, if nothing else, 6 may be more appropriate for him. If not, 7 there will certainly be an opportunity for 8 you or someone else on your side to 9 address the questions that we pose. 10 MR. BRANON: Absolutely. Fair 11 enough. 12 CHAIRPERSON JAFFE: Thank you, sir. 13 Whereupon: 14 DAVE SCOFIELD 15 was called for examination, and, after being 16 previously duly sworn, testified as follows: 17 MR. SCOFIELD: Good afternoon, 18 Mr. Chairman and members of the Board. My 19 name is Dave Scofield and I'm happy to be 20 here today. I'm a consultant and an 21 actuary. I previously worked with the 22 consulting firm Willis Towers Watson for</p>	<p style="text-align: right;">Page 524</p> <p>1 about 35 years and now have my own 2 consulting firm. I've supported the NCCC 3 and the NRLC since 1995 and I've been 4 involved in the last four bargaining 5 rounds, including arbitrations and PEB 6 proceedings. 7 I'll address two topics today, 8 first the benchmarking analysis and the 9 results and second the details of and 10 rationale for the Carriers' health and 11 welfare proposals. 12 You will hear the word benchmarking 13 a lot this week, in fact, this afternoon. 14 Simply put, to benchmark is to evaluate or 15 check something in comparison to a 16 standard. And a standard is an idea or 17 thing used as a measure, norm or model in 18 comparative evaluations. 19 The benchmarking report in the 20 Carriers' submission was authored by me 21 and Ian Duncan. Ian is a renowned actuary 22 professor and thought leader in all</p>

<p style="text-align: right;">Page 525</p> <p>1 aspects of risk assessment. The written 2 support and submission includes many 3 details. This afternoon I will address 4 the highlights and key takeaways from that 5 report. 6 The key features benchmark -- 7 excuse me. The written report in the 8 submission includes many details. This 9 afternoon I will address the highlights 10 and key takeaways from that report. 11 The key features benchmarked the 12 importance of these features as they 13 contribute to cost and the high level 14 results are shown on this slide. 15 Benefit design richness measured by 16 the actuarial value, or AV, in combination 17 with employee contribution cost-sharing, 18 define the total cost-sharing of a health 19 care benefit. Total cost-sharing, in 20 combination with average family size or 21 covered members per employee, drive plan 22 costs per employee.</p>	<p style="text-align: right;">Page 526</p> <p>1 The railroad plans exceed 2 benchmarks in each of these areas, whether 3 considering Nonunion or Union plans. In 4 using terminology created by the 5 Affordable Care Act, or ACA, and now 6 commonplace in modern health care 7 vernacular, the plans are at the highest 8 end of the platinum coverage level and 9 will soon exceed that level. 10 I'll now go through the details of 11 these findings. This slide summarizes the 12 cost-sharing benchmarks related to 13 actuarial value, the employee contribution 14 percentage share and the total cost share. 15 Each chart shows four bars: the broad 16 benchmark, the union benchmark and two 17 references to the railroad plan value. 18 The 2022 railroad value is shown, 19 as well as the projected 2026 railroad 20 value. The projected 2026 railroad value 21 is important for the Board's consideration 22 because this represents where the railroad</p>
<p style="text-align: right;">Page 527</p> <p>1 plan value will be in 2026 if changes are 2 not made in this round. 3 The 2026 railroad value reflects 4 the estimated impact of erosion that 5 occurs with the passage of time, as 6 Mr. Branon explained earlier. We chose 7 2026 because that is the earliest possible 8 year that changes likely could next be 9 made, given the railroad bargaining cycle. 10 The railroad plan AV exceeds the 11 benchmarks. Member contribution 12 cost-sharing as a percentage of plan costs 13 reflected in the middle box is far lower 14 than benchmarks and will soon be at or 15 below 50 percent of those benchmarks. 16 Similarly, considering the combination of 17 AV and member cost-sharing -- member 18 contributions, excuse me -- in other 19 words, total cost share -- the plan will 20 soon be at or around 50 percent of that 21 benchmark as well. 22 A critical point for the Board to</p>	<p style="text-align: right;">Page 528</p> <p>1 consider is this: 2 The Union plan benchmarks shown 3 here were primarily taken from the same 4 exact surveys -- same exact survey sources 5 that the Unions presented to the Carriers 6 during two and a half years of bargaining 7 from 2020 through early 2022. The Kaiser 8 Family Foundation survey, the National 9 Compensation Survey and the Willis Towers 10 Watson Financial Benchmark survey were 11 each referenced by the Union bargaining 12 coalitions in a number of meetings. 13 As recently as January of this 14 year, just six months ago, the 86.5 15 percent Union AV benchmark on this screen 16 before you was presented by the CBC 17 Unions' expert to the Carriers as an 18 appropriate benchmark for Union employees. 19 Now, in their submission from last week, 20 the Unions have disregarded the benchmarks 21 they presented during bargaining and have 22 now taken a new approach. I will address</p>

<p style="text-align: right;">Page 529</p> <p>1 this new approach shortly.</p> <p>2 In addition to the benefit values</p> <p>3 just considered, here are benchmark</p> <p>4 comparisons related to plan enrollment and</p> <p>5 annual plan cost per employee. The</p> <p>6 railroad plans have a covered member to</p> <p>7 employee ratio far higher than benchmarks.</p> <p>8 This is a result of two factors, the</p> <p>9 richness of the benefits, which certainly</p> <p>10 entices members to enroll, but also the</p> <p>11 extremely rare one-tier contribution --</p> <p>12 one-tier employee contribution which</p> <p>13 creates no barrier whatsoever for</p> <p>14 employees to enroll additional dependents.</p> <p>15 According to Willis Towers Watson,</p> <p>16 the railroad covered member to employee</p> <p>17 ratio is in the top 1 percent of their</p> <p>18 survey. The top 1 percent. And the</p> <p>19 combination of the higher than benchmark</p> <p>20 benefit value and higher than benchmark</p> <p>21 enrollment levels drives the annual cost</p> <p>22 per employee to far exceed all benchmarks.</p>	<p style="text-align: right;">Page 530</p> <p>1 A second critical point for the</p> <p>2 Board to consider in this regard -- is in</p> <p>3 regard to the representation of plan cost.</p> <p>4 The Carriers have shown you in their</p> <p>5 submission, as well as in Mr. Branon's</p> <p>6 presentation, plan cost metrics on a per</p> <p>7 capita basis or, more specifically, on a</p> <p>8 per employee basis.</p> <p>9 Using a per capita measurement is a</p> <p>10 universal standard for conveying cost</p> <p>11 information regarding the population</p> <p>12 covered by a health plan. It's a</p> <p>13 universal standard. For example, on a per</p> <p>14 employee basis, the plan cost has</p> <p>15 increased by about 35 percent from 2015 to</p> <p>16 2021, or about 5 percent per year.</p> <p>17 Clearly costs are going up.</p> <p>18 The Unions, however, have crafted</p> <p>19 their argument on the fiction that costs</p> <p>20 are going down. Just one example of this</p> <p>21 is Cheiron's statement on page 1 of their</p> <p>22 report. They state that the Carrier</p>
<p style="text-align: right;">Page 531</p> <p>1 health care cost change between 2015 and</p> <p>2 2021 is a decrease of 4.7 percent, not the</p> <p>3 35 percent that it actually is.</p> <p>4 So how did the Unions get this</p> <p>5 number? They disregard the universal</p> <p>6 standard per capita costs and look only at</p> <p>7 aggregate costs. And they do this</p> <p>8 consistently throughout the report. Not</p> <p>9 only is this highly unusual, it's</p> <p>10 extremely misleading. Plan trend or any</p> <p>11 other qualitative -- excuse me --</p> <p>12 quantitative health plan performance</p> <p>13 metric is always made on some form of per</p> <p>14 capita basis.</p> <p>15 Here's another point to consider:</p> <p>16 Notice that when describing</p> <p>17 railroad employee health care costs and</p> <p>18 how much they claim that those costs have</p> <p>19 grown over recent years, Cheiron reflects</p> <p>20 that on a -- well, a per capita basis. If</p> <p>21 they were to reflect the employee cost</p> <p>22 increase on an aggregate basis like they</p>	<p style="text-align: right;">Page 532</p> <p>1 did when describing Carrier health care</p> <p>2 cost changes, employee costs would also</p> <p>3 decrease over that same time frame.</p> <p>4 So why does Cheiron use a per</p> <p>5 capita when considering employee cost</p> <p>6 changes and aggregate when considering</p> <p>7 Carrier cost changes? I don't know the</p> <p>8 answer, but I can guess, I suppose. I</p> <p>9 urge the Board to ignore any reference to</p> <p>10 plan cost change over time that is</p> <p>11 expressed in the aggregate and is not</p> <p>12 presented on a per capita basis.</p> <p>13 Admittedly, sometimes it's hard to tell</p> <p>14 the cost basis from the comments in the</p> <p>15 Cheiron report.</p> <p>16 To understand the Carrier proposal</p> <p>17 for employee contributions and tiering it</p> <p>18 is very important to consider benchmarks</p> <p>19 for tiering and how monthly contributions</p> <p>20 for those tiers are typically applied.</p> <p>21 We present here two key benchmarks</p> <p>22 to recognize. First, it is nearly</p>

<p style="text-align: right;">Page 533</p> <p>1 universal to apply a tiered contribution 2 such as structured because employees 3 covering more dependents will likely have 4 higher costs and should contribute more 5 toward their health care than an employee 6 with no dependents. 7 That arrangement allocates costs 8 more fairly, as Mr. Branon mentioned 9 earlier. Far and away the most common 10 tier structure is four-tier. You can see 11 that on the left-hand side of the page 12 showing the breakdown of how tiering 13 works. This is a broad-based PwC survey 14 and not one respondent in their entire 15 survey reported a one-tier contribution 16 structure. 17 Second, it is also nearly universal 18 for the tiering to reflect a buy-up for 19 the coverage of a spouse. That buy-up 20 cost for spousal coverage, as highlighted 21 by the red ovals, is in the range of 150 22 to \$200 per month. This practice is</p>	<p style="text-align: right;">Page 534</p> <p>1 employed to encourage spouses to enroll in 2 their own employer's health care plans. 3 Note that the PwC survey is a broad-based 4 survey, while the Willis Towers Watson 5 data reflects unionized employees. 6 The lack of spousal buy-up 7 contribution drives the high levels of 8 dependent enrollment we see in the plans 9 and, by extension, a very high level of 10 cost. In short, in large part because it 11 costs nothing additional to enroll a 12 dependent or spouse or child, employees do 13 so at a rate that far exceeds all 14 benchmarks. 15 Finally, note the level of employee 16 contributions on the right-hand side of 17 this page, particularly for family 18 coverage, which can be described as 425 to 19 \$450 per month. This is based on 2021 -- 20 excuse me. This is based on 2021 survey 21 data. So for purposes of comparison to 22 the current railroad environment and the</p>
<p style="text-align: right;">Page 535</p> <p>1 Carrier proposals that you'll see, we can 2 assume that these amounts would rise to 3 around 450 or \$500 per month by 2023. 4 We focus so heavily on family 5 coverage because actual plan census data 6 shows that 55 percent of current railroad 7 employee -- the current railroad employee 8 population -- would be enrolled at the family 9 level. 10 Health care benchmarks presented in 11 the Carriers' submission were taken from 12 the largest, most respected sources 13 available. The seven surveys on the left 14 side of this page are routinely used for 15 this exact purpose for benchmarking 16 efforts. The Carriers also benchmarked 17 against certain features of the Federal 18 Employees Health Plan, which is the 19 largest employer-sponsored plan in the 20 world. 21 The right side of this page shows 22 the survey sources that present data for</p>	<p style="text-align: right;">Page 536</p> <p>1 the health care benefits for Union 2 employees. And while the Carriers 3 continue to view the broad survey 4 benchmarks to be the most representative 5 for the purpose at hand, we consistently 6 present the Union benchmarks for 7 completeness. The Unions themselves 8 describe three of these four surveys, as 9 shown in the red font, during negotiations 10 as good benchmarks for Union workers, that 11 is, until the submissions prior to this 12 proceeding. 13 Unions have now departed from the 14 benchmarking approach they used during 15 negotiations. In the Unions' submission, 16 the Board will see that the Unions are now 17 claiming two new things. 18 First, they suggest that a proper 19 AV benchmark be determined by 11 commuter 20 rail organizations. 21 Second, that status quo is the 22 post-pandemic standard, meaning that no</p>

<p style="text-align: right;">Page 537</p> <p>1 change to health care cost-sharing is now 2 the standard. No change. We will address 3 these one at a time, first regarding the 4 benchmark comprised of 11 computer rail 5 organizations. 6 The Unions have cherry-picked these 7 11 individual employer plans to offer at 8 least one plan option that has a high AV. 9 Probably not a coincidence. Benchmarking 10 is not the right description for what the 11 Unions are doing here. 12 Not only do the Unions cherry-pick 13 the employers with high AV plans, they 14 also cherry-pick the plans within the 15 benefit offering for those employers that 16 use -- that they use as comparators. 17 Almost all of the employers here have 18 multiple benefit options that employers -- 19 that employees can choose from, and it 20 appears that the highest AV plan option 21 was selected as the benchmark every time. 22 What should we call this? Cherry-picking</p>	<p style="text-align: right;">Page 538</p> <p>1 within cherry-picking? Who knows? 2 Just to give an example, the 3 Cheiron analysis claims to have selected 4 the plan option most like MMCP; in other 5 words, one would think, a PPO. But for 6 the Los Angeles MPA, Cheiron's report 7 shows the plan data for an HMO with a 8 99 percent AV when the L.A. MPA also 9 offers a PPO that, at quick glance, 10 appears to have an AV much lower than the 11 HMO. 12 The next point, there's nothing 13 unique about these 11 organizations with 14 regard to crafts like electricians, 15 machinists, boilermakers, sheet metal 16 workers, et cetera. The broad-based 17 survey would be a more appropriate -- 18 would be more appropriate for these 19 multi-industry trades. 20 Third, these 11 organizations are 21 regional and concentrated in urban areas. 22 The Carriers have very few employees in</p>
<p style="text-align: right;">Page 539</p> <p>1 many of these locations. This type of 2 geographic disparity is important. The 3 plan should be compared, at least in part, 4 to employer plans that cover a nationwide 5 workforce. 6 And lastly, it's only 11 employers. 7 In our view, that doesn't come close to 8 constituting what one would consider a 9 benchmark for this purpose. The Board 10 should recognize the value, breadth and 11 appropriateness of the benchmarked sources 12 used by the Carriers for health care 13 benchmarking just as it did in PEB 243. 14 With respect to their status quo 15 argument, the Unions provided the board 16 with 17 MOUs, or memorandum of 17 understanding, that contained very little 18 information regarding health care 19 benefits. For the most part, those MOUs 20 simply state that participation in health 21 and welfare benefits will continue or 22 contains other vague language related to</p>	<p style="text-align: right;">Page 540</p> <p>1 benefits. 2 The Unions have not provided the 3 underlying CBAs or the underlying plan 4 documents. In any event, the Board should 5 not -- should note the following: 6 With respect to several of the MOUs 7 provided, it does not appear that the 8 relevant Unions actually negotiate over 9 benefit design, meaning that the plan 10 sponsor can change benefits at any time. 11 This clearly does not establish a market 12 approach of status quo. 13 For instance, a few of the MOUs 14 relate to participation in a 15 Taft-Hartley-like design, whereby the 16 Union simply bargains for participation in 17 the fund and the amount that the employer 18 contributes to the fund. These MOUs 19 indicate that contributions will remain 20 the same unless increases are needed, but 21 the language is referring to the employer 22 contribution, not the employee</p>

<p style="text-align: right;">Page 541</p> <p>1 contribution. The underlying CBA in this 2 case explicitly gives the fund the 3 discretion to change the plan design and 4 to increase employee contributions. 5 Clearly no guarantee of status quo. 6 Others involve participation in a 7 state-run health plan that covers all 8 state employees. The Unions don't even -- 9 don't negotiate for these benefit designs 10 either. Again, this is not a guarantee of 11 status quo. 12 Also, a couple of the MOUs provide 13 for participation in the national railroad 14 plan, the one we're speaking about this 15 week. In a few minutes I will go through 16 the details of the Carriers' health and 17 welfare proposals, which clearly do not 18 reflect status quo. 19 In summary, hand-picked MOUs for 20 small railroads where governmental 21 agencies that say very little about health 22 and welfare benefits are not enough to</p>	<p style="text-align: right;">Page 542</p> <p>1 establish that maintaining the status quo, 2 i.e., no cost-sharing increases, is the 3 norm. 4 Avoiding erosion -- here we go. A 5 final consideration before we move on to 6 the Carrier proposals is in regard to 7 erosion. Mr. Branon earlier described the 8 phenomenon of the erosion that occurred 9 with fixed dollar cost-sharing features. 10 Conceptually this is not an issue unique 11 to the railroads. The phenomenon of 12 erosion affects all plans. 13 However, other plans avoid erosion 14 by making annual changes to employee 15 contributions and benefit design features. 16 A couple of points of evidence among many 17 others available are provided here. 18 The left-hand chart shows the 19 maintenance of and, in fact, a slight 20 decline in the employer portion of total 21 health care -- the employer portion of 22 total cost share over time. This is from</p>
<p style="text-align: right;">Page 543</p> <p>1 a longitudinal look from 2015 to 2021, 2 using the broad-based results from the 3 annual Willis Towers Watson survey. 4 The right-hand chart shows the 5 maintenance of and, in fact, the slight 6 decline in the employer portion of plan 7 cost-sharing reflecting employee 8 contributions over time. This is from the 9 National Compensation Survey data 10 developed by the Bureau of Labor 11 Statistics, again for the time frame 2015 12 to 2021. 13 Significantly, this survey reflects 14 cost-sharing for unionized workers. It is 15 clear that employers, both Union and 16 Nonunion, make changes to their health 17 care plans to maintain cost-sharing 18 percentages over time. 19 To summarize the benchmarking 20 findings, the plans have lower member 21 cost-sharing than all benchmarks and are 22 at the platinum level and rising. The low</p>	<p style="text-align: right;">Page 544</p> <p>1 cost one-tier contribution drives extreme 2 spouse enrollment and plan cost. Plan 3 changes are made less frequently than is 4 common among other employers. And as 5 such, the plans suffer from erosion that 6 other employers avoid by making annual 7 changes. 8 Lastly, plan costs exceed all 9 benchmarks. And as Mr. Branon pointed out 10 earlier, Carrier costs have and would 11 certainly continue to rise sharply under 12 status quo. Certain of these costs have 13 not been declining under any reasonable 14 interpretation. 15 This concludes my discussion of 16 benchmarking. I'm going to move to the 17 Carrier proposal unless the Board would 18 like to ask some questions on benchmarking 19 now. 20 CHAIRPERSON JAFFE: Be happy to 21 hold them, if you don't mind, for when 22 you're done so that we don't piecemeal it</p>

<p style="text-align: right;">Page 545</p> <p>1 inappropriately.</p> <p>2 MR. SCOFIELD: Okay. Sure.</p> <p>3 CHAIRPERSON JAFFE: Thank you.</p> <p>4 MR. SCOFIELD: So now the Carrier</p> <p>5 proposals.</p> <p>6 As Mr. Branon described, the</p> <p>7 Carriers have seven health and welfare</p> <p>8 proposals. I will go into the details of</p> <p>9 each of these and also present the</p> <p>10 rationale for each of them as well.</p> <p>11 The current plan benefits and the</p> <p>12 Carrier-proposed benefits for 2023 are</p> <p>13 shown here. This is also included in the</p> <p>14 Carriers' submission. The columns show</p> <p>15 MMCP in network, MMCP out of network,</p> <p>16 which comprise the PPO plan and CHCB</p> <p>17 features.</p> <p>18 These proposed 2023 features were</p> <p>19 developed to result in an 88 percent</p> <p>20 actuarial value. For this calculation we</p> <p>21 used a sophisticated pricing model based</p> <p>22 on actual plan cost data for 2021, the</p>	<p style="text-align: right;">Page 546</p> <p>1 framework for which has been used by both</p> <p>2 parties for pricing design changes over</p> <p>3 the past couple of bargaining rounds.</p> <p>4 All proposed benefit features are</p> <p>5 shown here, except as noted by the</p> <p>6 asterisks in the row related to certain</p> <p>7 outpatient procedures. I will address</p> <p>8 those asterisks in a few moments when I</p> <p>9 discuss the Carrier proposal for site of</p> <p>10 care management.</p> <p>11 The rationale for the Carriers'</p> <p>12 proposed plan design -- so I went through</p> <p>13 its benchmarking. The 86.5 is highlighted</p> <p>14 and the Carriers' proposed 88 percent is</p> <p>15 also shown. That 88 percent is still at</p> <p>16 the platinum level and is still higher</p> <p>17 than the benchmarks. Note that as</p> <p>18 Mr. Branon said, the platinum level of</p> <p>19 coverage is defined by the Center for</p> <p>20 Medicare and Medicaid Services, or CMS, as</p> <p>21 a health plan with an AV of 90 percent</p> <p>22 with an acknowledged allowed range of plus</p>
<p style="text-align: right;">Page 547</p> <p>1 2 percent to minus 4 percent. So the</p> <p>2 platinum level range is 86 percent to 92</p> <p>3 percent. The Carrier proposed 88 percent</p> <p>4 is well within that definition.</p> <p>5 I'll also note that at the time</p> <p>6 that the Unions presented the 86.5 percent</p> <p>7 AV Union benchmark during the last</p> <p>8 bargaining meeting before mediation began,</p> <p>9 they also presented another benchmark</p> <p>10 based a much smaller cohort, the Willis</p> <p>11 Towers Watson survey. This additional</p> <p>12 benchmark reflected a transportation Union</p> <p>13 cohort, or, in other words, a subset of</p> <p>14 the larger Union cohort. That AV</p> <p>15 benchmark was 87.9 percent. The Carrier</p> <p>16 proposal at 88 percent is consistent with</p> <p>17 that figure.</p> <p>18 The Carriers' proposal for employee</p> <p>19 contributions is to develop the</p> <p>20 contributions through a two-step process.</p> <p>21 First, apply the historical 15 percent</p> <p>22 employee contribution formula that, as</p>	<p style="text-align: right;">Page 548</p> <p>1 Mr. Branon described earlier, was used</p> <p>2 under the plans during the time frame of</p> <p>3 2007 to 2016. This produces a dollar</p> <p>4 amount representing 15 percent of the</p> <p>5 Carrier total monthly payment rate.</p> <p>6 The second step is to separate that</p> <p>7 dollar amount into tiered contributions.</p> <p>8 This slide on the screen shows how the</p> <p>9 15 percent formula works.</p> <p>10 This reflects the calculation that</p> <p>11 was used the last time the 15 percent</p> <p>12 formula was applied under the plans. We</p> <p>13 simply add up the Carrier monthly payment</p> <p>14 rates for medical, dental, vision and life</p> <p>15 and AD&D insurance and take 15 percent of</p> <p>16 that Carrier total payment rate.</p> <p>17 In 2026 that yielded \$228.89 --</p> <p>18 Mr. Branon's presentation rounded it to</p> <p>19 229 -- per employee per month. As was</p> <p>20 described earlier, this contribution</p> <p>21 amount is still in effect today.</p> <p>22 The rationale for this employee</p>

<p style="text-align: right;">Page 549</p> <p>1 contribution proposal is benchmarking and 2 our past practice. This slide shows the 3 broad survey benchmarks the FEHB result 4 and the Union survey results. Note that 5 each of the separate Union surveys shows 6 18 percent employee cost share on 7 contributions. 8 As I noted before, three of these 9 Union surveys were referenced by at least 10 the CBC Unions during negotiations. Those 11 surveys are shown in the red box. The 12 Carrier proposal of 15 percent is less 13 than each benchmark. 14 The Carrier proposals to develop a 15 two-tier contribution after the 15 percent 16 formula is applied to develop the initial 17 one-tier contribution amount, akin to the 18 development of the \$228.89 cents we just 19 discussed, would be based on the Carrier 20 2023 payment rates. Note that we since 21 don't yet know the 2023 payment rates, the 22 employee contributions on this slide are</p>	<p style="text-align: right;">Page 550</p> <p>1 all estimates. These rates won't be 2 finalized until the fall. Actual 2023 3 employee contributions will be developed 4 once those final rates are known. 5 Tier 1 contributions would apply to 6 employees that do not choose to enroll 7 their spouse in the plan. Employees can 8 enroll any dependent children that they 9 have. For this tier, the Carriers propose 10 to maintain the current \$228.89 employee 11 contribution today. 12 The Tier 2 contribution would apply 13 to employees that do choose to enroll 14 their spouse. Similar to Tier 1, 15 employees that have dependent children 16 could also enroll them in this tier. Tier 17 2 will have a higher contribution than 18 Tier 1. And together, the two 19 contributions will balance to the 20 composite rate based on the percentage of 21 employees with and without a spouse. 22 So, for example, in the 2023</p>
<p style="text-align: right;">Page 551</p> <p>1 column, \$295 is the result of the 2 15 percent formula. The Tier 1 3 contribution is a given at \$228.89. And 4 then based on the proportion of employees 5 with and without a spouse, you can 6 determine the \$321 as the Tier 2 7 contribution. 8 So you can see the difference 9 between Tier 1 and Tier 2 is a spousal 10 buy-up monthly contribution. The buy-up 11 monthly contribution for adding a spouse, 12 as shown here, is \$92 for 2023 and \$137 by 13 2025. 14 During the benchmarking 15 presentation I noted that the typical 16 buy-up for spousal coverage is 150 to \$200 17 per month. The plans will get there 18 gradually under this approach. And note 19 that the projected Tier 2 contributions 20 here are far lower than the 450 to \$500 21 that are typically charged for family 22 coverage per the benchmarks we looked at</p>	<p style="text-align: right;">Page 552</p> <p>1 earlier. 2 The rationale for the two-tier 3 contribution proposal is benchmarking, 4 plus an additional cost and enrollment 5 component. The benchmarking evidence is 6 clear. Tiered contributions are a nearly 7 universal practice, as is applying a 8 contribution buy-up for spousal coverage. 9 Under the railroad plans, spouses 10 have the highest cost per member among 11 employee spouses and children. And if a 12 spouse is working, they will likely have 13 health coverage available through their 14 own employer. Note that 71 percent of 15 employees under the plans currently cover 16 a spouse. For reference, under the 17 benchmark plans, spousal enrollment was 18 only 45 percent in the broad-based 19 populations and 51 percent for Union 20 populations. 21 The Carriers make their annual 22 indexing proposal in order to avoid the</p>

<p style="text-align: right;">Page 553</p> <p>1 erosion in the AV that would otherwise 2 occur over time if the cost-sharing were 3 static. The Carriers' indexing proposal 4 is specifically to increase the MMCP in 5 network individual deductible by \$50 per 6 year and the out of pocket maximum by \$500 7 per year, beginning in 2024. 8 The index amounts -- the index 9 amounts of deductibles and out of pocket 10 maximums for MMCP in network family 11 coverage, MMCP out of network coverage and 12 CHCB coverage will be determined by 13 maintaining the existing relationship to 14 the MMCP in network coverage. 15 For instance, the MMCP in network 16 family deductible is twice the individual 17 deductible. Therefore, the annual index 18 amount for the family deductible will be 19 \$100; in other words, two times \$50. 20 The rationale for the Carriers' 21 indexing proposal is threefold. They will 22 maintain the bargained for AV on an</p>	<p style="text-align: right;">Page 554</p> <p>1 ongoing basis, creating similar results to 2 the typical employer that is able to make 3 changes each year to avoid erosion. 4 Second, changes will be more 5 gradual than if they were made only every 6 five years, as has historically been the 7 case in our bargaining process. 8 And lastly, it will eliminate the 9 inequity that exists today where the 10 Carriers have no way to recapture the 11 value of health and welfare changes 12 between the time the round begins and the 13 date changes are effectuated. For 14 instance, this round began January 1, 15 2020. If some changes are made January 1, 16 2023, the Carriers get no value for 2020, 17 2021 and 2022 and no way to recapture this 18 value. This contrasts inequitably to the 19 retro wage amounts that employees 20 typically receive. 21 Mr. Branon mentioned the pharmacy 22 utilization or UM programs in the</p>
<p style="text-align: right;">Page 555</p> <p>1 Carriers' proposal. The Carriers feel 2 very strongly about this, and so I'm going 3 to go through this in quite a bit of 4 detail. 5 The Carriers propose to update the 6 pharmacy UM program. To be clear, the 7 Carriers are not proposing anything new, 8 but simply to expand upon the rules we now 9 have. The rules, both current and 10 proposed updates, fall into three 11 categories. 12 The first is prior authorization. 13 Prior authorization is a process through 14 which the prescriber must get 15 authorization from ESI to prescribe 16 certain medications. The problem is that 17 many medications developed since 2012 for 18 which a rule is available at ESI and would 19 be important for member safety have not 20 been introduced. This makes no sense. 21 I'll give you a couple of examples. 22 Anti-inflammatory medications are</p>	<p style="text-align: right;">Page 556</p> <p>1 used to treat rheumatoid arthritis. Two 2 important drugs that are subject to prior 3 authorization today are Humira and Enbrel. 4 The authorization process simply confirms 5 that the drugs are not being prescribed 6 for an off-label use, which is a use that 7 is not approved by the FDA, or not being 8 used in combination with another biologic, 9 which can be dangerous. 10 Otezla and RINVOQ, two new drugs, 11 they do the same thing as Enbrel and 12 Humira, have the same safety concerns, but 13 the plans do not require prior 14 authorizations for them. But they should. 15 Again, this makes no sense. 16 A second example relates to 17 diabetic medications like Trulicity and 18 Ozempic. There are, again, rules that 19 could apply but that do not, despite 20 ECI's, the plan's pharmacy benefit 21 manager, recommendation to put a rule in. 22 Authorization here confirms that the</p>

<p style="text-align: right;">Page 557</p> <p>1 patient is over 18 because these drugs can 2 damage internal organs in younger people 3 and to confirm that it's being used to 4 treat type 2 diabetes, not type 1. These 5 drugs are not made to treat type 1 6 diabetes. 7 The two other rule categories are 8 step therapy, which requires that a 9 patient try an initial medication before 10 moving on to another, and finally, drug 11 quantity management, which just ensures 12 the dosage prescribed is at FDA-approved 13 levels and at a cost effective strength. 14 The Carriers are also proposing a 15 program that includes prior authorization 16 and drug quantity management specifically 17 for opioid medications. It's called the 18 advanced opioid management program. 19 Contrary to what the Unions have 20 asserted in their submission materials, 21 the opioid epidemic is not under control 22 and it's getting worse. Our country</p>	<p style="text-align: right;">Page 558</p> <p>1 suffers 100,000 overdose deaths a year, 2 70 percent of which are from opioids. 3 This AOM program supports safe prescribing 4 of opioids and gives members essential 5 resources in the event that dependency 6 develops. 7 The Unions have pointed out that 8 the opioid program would not save the plan 9 money. Fair enough, but the Carriers 10 nevertheless feel that this program is 11 important to support the safe prescribing 12 of opioids. 13 But to be perfectly clear, this 14 program will save lives. Determining 15 which drugs are subject to UM rules should 16 be an activity that is part of standard 17 administrative practice. The Carriers 18 have tried to work with the Unions outside 19 of bargaining on an administrative 20 approach on this issue, but the Unions 21 have not been cooperative and the process 22 is a slow one.</p>
<p style="text-align: right;">Page 559</p> <p>1 Accordingly, the Carriers urged the 2 board to recommend that all existing UM 3 rules be implemented and that all future 4 UM rules recommended by ESI be approved. 5 ESI, after all, has an expert committee of 6 physicians and pharmacists that are best 7 suited to determine which drugs should be 8 subject to UM. 9 The rationale for the pharmacy UM 10 proposal is the current program is 11 outdated. It reflects rules that were in 12 place by the predecessor company to ESI 13 when it was implemented back in 2012. The 14 program is also ineffective. Five of the 15 top ten drugs by plan spending have rules 16 available that have not yet been 17 implemented by the plans. That represents 18 10 percent of total pharmacy spending. 19 Also, most of ESI's customers have 20 UM rules to impact twice as many 21 prescriptions as the plans have. Pharmacy 22 rules are designed to help members. They</p>	<p style="text-align: right;">Page 560</p> <p>1 avoid unwanted outcomes, control cost 2 while using safe and effective medications 3 and provide needed resources. 4 Next, the Carriers are proposing 5 what we call the site of care management 6 program. For context, certain services 7 can be in some cases provided at either a 8 hospital or a freestanding facility. The 9 problem is that the hospital setting is 10 far more expensive and can lead to poorer 11 health outcomes primarily due to 12 infection. The way to address this 13 situation is to give members the 14 information and the financial incentive to 15 select the appropriate site of care. 16 The Carriers are proposing prior 17 authorization and specific additional 18 copays for the use of an outpatient 19 hospital setting when a more efficient and 20 safer setting is available. Our goal is 21 that members will avoid the additional 22 copay and will receive information from</p>

<p style="text-align: right;">Page 561</p> <p>1 the medical vendors explaining where the 2 available freestanding facilities are. 3 And one important note: 4 If a plan member seeks prior 5 authorization and there's not a 6 freestanding facility within a reasonable 7 distance of that employee's home, they 8 will be approved to receive the service in 9 the hospital setting without the 10 additional copay. The prior authorization 11 here is not authorizing the use of the 12 hospital setting, just whether the 13 additional copay applies or not. 14 The reason the Carriers are 15 proposing the site of care management 16 program is clear, and this slide speaks 17 for itself. Everyone probably can't read 18 this, but we show three groupings of bars. 19 The bar on the left shows the cost in an 20 outpatient hospital setting. The bar on 21 the right shows the cost in a freestanding 22 facility.</p>	<p style="text-align: right;">Page 562</p> <p>1 The plans have high utilization in 2 each of these service categories in a 3 hospital setting. The cost disparity is 4 very striking. Under the Carrier's 5 proposal, plan members who go to a 6 freestanding facility will not only avoid 7 the additional copays, they will also pay 8 significantly less in coinsurance. 9 There are several third-party 10 vendors who provide services to the plan. 11 With the exception of pharmacy and care 12 management services, both of which have 13 been bid within the last five years, none 14 of the vendors have ever faced a 15 competitive bid for services from the 16 plan. 17 As Mr. Branon mentioned earlier, 18 conducting periodic competitive bids for 19 plan service providers is administrative 20 practice. Most employers conduct rebids 21 every three to five years to ensure that 22 fees are consistent with the market.</p>
<p style="text-align: right;">Page 563</p> <p>1 However, the Unions have shown very 2 little interest in participating in 3 administrative practices that are intended 4 to avoid wasteful spending. Accordingly, 5 the Carriers propose an ongoing 6 requirement to conduct competitive bids 7 for all plan vendors. 8 Here are the details: 9 Either co-chair of the plan 10 committee -- that is, labor and 11 management -- can request a rebid once 12 every standard contractual term, usually 13 three to five years, depending on the 14 vendor. The plan committees will then 15 conduct the rebid and decide either to 16 stay with the incumbent or transfer to a 17 new vendor. 18 If the Carrier and Union 19 representatives of the committees disagree 20 over the results of the rebid, either 21 party can request a decision from a 22 neutral. The parties will then implement</p>	<p style="text-align: right;">Page 564</p> <p>1 the selection. Of course, any savings 2 from the competitive bid will be shared 3 with plan members through the 15 percent 4 contribution formula. 5 Now, in their submission, the 6 Unions appear to argue that the Carriers 7 are attempting to somehow negate a 8 determination made in a prior arbitration 9 that involved alignment of the current 10 medical vendors, alignment meaning where 11 in the U.S. those medical vendors are 12 available to plan members. That is not 13 what the Carriers are proposing. 14 What the Carriers are proposing 15 here is simply to require the same type of 16 periodic competitive bid for all plan 17 vendors that normally would be considered 18 routine. This is a basic aspect of 19 responsible plan management. 20 Finally, the Carriers are proposing 21 to improve upon existing coverages and 22 adding new programs to reduce prescription</p>

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1 drug costs for members and the plans.
 2 First, on the medical benefit,
 3 limitations related to autism spectrum
 4 disorder would be removed and applied
 5 behavioral analysis be covered, subject to
 6 standard medical management procedures.
 7 And maximum coverage dollar limits for
 8 hearing benefits and hospice benefits
 9 would be increased to market levels.
 10 Second, under the pharmacy benefit,
 11 the plans would adopt a copay assistance
 12 program. Under this program, the plans
 13 take advantage of manufacturer coupons to
 14 lower the member copay to zero on certain
 15 drugs and use the remaining value of the
 16 coupon to reduce the plan's cost.
 17 Finally, under both the dental and
 18 the vision benefits, annual limitations
 19 and allowances will be increased to market
 20 levels. The specific dollar increases are
 21 noted in the Carriers' health benefit
 22 submission.

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1 confirm that at least I understand some of
 2 the assumptions that are baked into that
 3 proposal.
 4 **MR. SCOFIELD:** Yes. So --
 5 **CHAIRPERSON JAFFE:** With respect to
 6 the Tier 1 --
 7 **MR. SCOFIELD:** Yes.
 8 **CHAIRPERSON JAFFE:** That is an
 9 uncapped 15 percent based on the
 10 projections of cost?
 11 **MR. SCOFIELD:** Yes. That's the
 12 Carriers' proposal.
 13 **CHAIRPERSON JAFFE:** Okay. And that
 14 assumes no changes to the existing plan at
 15 all or it assumes some or it assumes full
 16 adoption of the Carriers' proposal?
 17 **MR. SCOFIELD:** This assumes full
 18 adoption of the Carriers' proposal.
 19 **CHAIRPERSON JAFFE:** Okay.
 20 **BOARD MEMBER DEINHARDT:** Can I make
 21 sure I understand the question?
 22 **CHAIRPERSON JAFFE:** Please feel

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1 If the Board were to recommend the
 2 Carrier health and welfare proposals in
 3 totality, the result will be a high value
 4 H&W benefit package. It would reflect
 5 platinum benefits, below 15 percent
 6 employee contribution cost-sharing, modest
 7 employee contribution tiering, pharmacy
 8 rules to protect members, site of care
 9 management to promote safe and efficient
 10 care delivery and vendor bids to ensure
 11 proper pricing of services.
 12 Thank you. Those are my prepared
 13 remarks.
 14 **CHAIRPERSON JAFFE:** Thank you,
 15 Mr. Scofield.
 16 I'm not going to say I have a few
 17 because I have more than a few. And I'm
 18 going to apologize up front. There's a
 19 lot of material you covered and a lot of
 20 areas.
 21 Let me start with the slide on
 22 page -- Slide 14, if I can. I'd like to

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1 free to. Go right ahead.
 2 **BOARD MEMBER DEINHARDT:** You said
 3 Tier 1 is uncapped or Step 1?
 4 **CHAIRPERSON JAFFE:** Step 1.
 5 **MR. SCOFIELD:** Step 1, yes, the
 6 15 percent application to the total
 7 Carrier monthly payment rate.
 8 **BOARD MEMBER DEINHARDT:** Okay.
 9 Well, when you're talking about your Tier
 10 1 --
 11 **CHAIRPERSON JAFFE:** That was me.
 12 **BOARD MEMBER DEINHARDT:** -- an
 13 employee without a spouse, your proposal
 14 is that it would stay capped at the --
 15 **MR. SCOFIELD:** Actually, that's
 16 true. Yes, that's true.
 17 **BOARD MEMBER DEINHARDT:** Okay. I
 18 got it.
 19 **CHAIRPERSON JAFFE:** I used the
 20 wrong word and, in fact, he understood me.
 21 **BOARD MEMBER DEINHARDT:** Now I
 22 understand.

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1 **CHAIRPERSON JAFFE:** By me. My
 2 apologies.
 3 **BOARD MEMBER DEINHARDT:** Thank you.
 4 **CHAIRPERSON JAFFE:** Okay.
 5 Did you have projections on what an
 6 uncapped 15 percent would look like if
 7 there were no changes to plan design?
 8 **MR. SCOFIELD:** I do not have that
 9 done, but it's easy enough to come up
 10 with, yes, sir.
 11 **CHAIRPERSON JAFFE:** Fair enough.
 12 Let me shift to now the Tier 1,
 13 Tier 2 -- Step 2 --
 14 **MR. SCOFIELD:** Yes.
 15 **CHAIRPERSON JAFFE:** -- to use the
 16 right label.
 17 By freezing the category of
 18 employee or employee and dependent
 19 children at the 228.89, if I followed the
 20 explanation, Tier 2 is actually not a
 21 15 percent of projected cost for employee
 22 and spouse or employee with family.

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1 proposing it are correct, one would expect
 2 that 56 percent family and 15 percent
 3 additional employee and spouse figure to
 4 drop?
 5 **MR. SCOFIELD:** That's --
 6 **CHAIRPERSON JAFFE:** Which would
 7 then reengineer with even higher numbers
 8 for those who are left in the category,
 9 right, because they'd be picking up all
 10 the shortfall in a smaller group?
 11 **MR. SCOFIELD:** I think there's a
 12 couple ways, though, to look at that.
 13 You know, in the short term, the
 14 contributions for the Tier 2 level will --
 15 I mean, you can see how we've projected
 16 them at least here. They don't get
 17 exceedingly large. And the gap between
 18 Tier 1 and Tier 2 is not that large so
 19 as -- you know, we don't know how many
 20 spouses will drop due to this, but at some
 21 point they will.
 22 **CHAIRPERSON JAFFE:** Does this

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1 **MR. SCOFIELD:** Yes.
 2 **CHAIRPERSON JAFFE:** It was actually
 3 reverse engineered to make up the
 4 difference of the freeze --
 5 **MR. SCOFIELD:** That's correct.
 6 **CHAIRPERSON JAFFE:** -- is the way I
 7 understood the explanation.
 8 **MR. SCOFIELD:** Yes, that's correct.
 9 And it's based on current enrollment
 10 statistics of 29 percent of employees that
 11 do not have a spouse and 71 percent of
 12 employees that do have a spouse. So if
 13 you weight those -- the Tier 1 and the
 14 Tier 2 contributions you get back to the
 15 Step 1 number.
 16 **CHAIRPERSON JAFFE:** Right. And
 17 does this envision this proposal, if we
 18 were ultimately persuaded or the parties
 19 ultimately adopted it, that this would be
 20 recalculated during each of these three
 21 years because if this were adopted and if
 22 your assumption for the reasons for

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1 calculation assume 71 percent spousal
 2 enrollment for all three years or does it
 3 do something else? That's really where I
 4 was trying to go.
 5 **MR. SCOFIELD:** I understand.
 6 Yes, I think in -- in reality, it
 7 would have to be recalibrated. I did not
 8 make any assumption for the change in the
 9 29/71 for the purpose of this estimate.
 10 **CHAIRPERSON JAFFE:** And on all of
 11 these, all I'm trying to do is understand
 12 the proposal.
 13 **MR. SCOFIELD:** Absolutely.
 14 **CHAIRPERSON JAFFE:** I'm not trying
 15 to indicate anything else --
 16 **MR. SCOFIELD:** I understand.
 17 **CHAIRPERSON JAFFE:** Fair enough.
 18 Your observation that this is still
 19 a lot lower than the 450 from the surveys
 20 is largely a function of the difference in
 21 percentage cost share, right, of those
 22 plans?

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1 **MR. SCOFIELD:** Yes, and the degree
 2 of tiering also, because, you know, you
 3 saw how low the employee only
 4 contributions were with the benchmarks.
 5 You know, that in totality lets you charge
 6 more of families.
 7 The thing we were trying to balance
 8 here is, you know, recognizing that the
 9 population has been at, you know, a flat
 10 contribution for quite a while and
 11 realizing also that if we put in a tiered
 12 contribution people with families would
 13 pay more, we were trying to, I guess you'd
 14 say, ease into it and, you know, not --
 15 you know, to get it introduced, but not
 16 have it be too shocking. That's how we
 17 came up with this.
 18 **CHAIRPERSON JAFFE:** And I can
 19 appreciate that, although the real impact
 20 is to actually make it greater than what a
 21 full 15 percent would be for those
 22 categories, right?

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1 spouse or non-spouse coverage aspect, if I
 2 can.
 3 **MR. SCOFIELD:** Okay.
 4 **CHAIRPERSON JAFFE:** Are the
 5 Carriers concerned about -- primarily
 6 about spouses who are enrolled in this
 7 plan because there's no extra cost to do
 8 so, but who are foregoing coverage from
 9 their employers, shifting the cost to the
 10 plan, or is this something that applies
 11 with equal rationale to spouses who are
 12 enrolled and who have no other coverage,
 13 they may not be employed at all? There
 14 you don't have a shifting of cost, but you
 15 do have costs.
 16 **MR. SCOFIELD:** Yes.
 17 **CHAIRPERSON JAFFE:** And I'm trying
 18 to understand whether the more focused
 19 problem is the one that's the primary one
 20 generating the proposal, if you know, or
 21 whether it's a question of overall cost,
 22 which is something different, at least

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1 **MR. SCOFIELD:** Excuse me?
 2 **CHAIRPERSON JAFFE:** It would be
 3 greater than what a 15 percent would be
 4 for those categories alone because you're
 5 making up the difference of the freeze
 6 calculations for the singles?
 7 **MR. SCOFIELD:** I think what happens
 8 when you go out over time and how many
 9 spouses leave the population, yeah, that
 10 would certainly lower the base cost to
 11 which the 15 percent would be applied to.
 12 You know, it's my view that this
 13 would not cause a tremendous enrollment
 14 shift as it stands right now in -- in
 15 thinking that some shift would occur and
 16 the parties would reassess this during the
 17 next bargaining round with more updated
 18 information on what actually occurred with
 19 the shift -- you know, the potential shift
 20 in spouses.
 21 **CHAIRPERSON JAFFE:** Let me shift
 22 gears a little bit, although stay on the

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1 analytically, right?
 2 **MR. SCOFIELD:** Yes. So if this is
 3 the question, the proposal is that all
 4 spouses enrolled would create the Tier 2
 5 contribution requirement. The goal
 6 certainly is that -- I mean, it's twofold,
 7 you know, to allocate costs more fairly.
 8 But the important reason to do that is, as
 9 you mentioned, if spouses have other
 10 coverage available, you know that -- and
 11 recognizing that our spousal enrollment is
 12 so much higher than every benchmark, it's
 13 at least in part due to this situation
 14 where there's no -- you know, no incentive
 15 not to enroll all your dependents.
 16 **CHAIRPERSON JAFFE:** And are you
 17 aware of any data or studies, informal or
 18 formal in nature, that would suggest what
 19 proportion of the spouses currently
 20 enrolled in the plan, either out of the
 21 15 percent employee and spouse or the 56
 22 percent family, are spouses that have

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1 coverage elsewhere and have passed on it?
 2 **MR. SCOFIELD:** I have researched
 3 that and considered that it could be, you
 4 know, upwards of half the spouses. But I
 5 also recognize that the railroad
 6 population, you know, is demographically
 7 maybe different than others. Maybe, you
 8 know -- the thing I don't know is whether
 9 the railroad population has more spouses
 10 than other coverage just in general, not
 11 even regarding the health plan. But --
 12 and they may have fewer spouses that work.
 13 But I don't have any solid data on that.
 14 **CHAIRPERSON JAFFE:** Fair enough.
 15 So at least at the moment we can't
 16 quantify that aspect of the proposal --
 17 **MR. SCOFIELD:** We can't, although
 18 in reviewing detailed claims data, we do
 19 see the presence of coordination of
 20 benefits that would indicate dual
 21 coverage. So we know that it exists, at
 22 least in the case where there's some dual

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1 And in your review of other plans
 2 generally, have they addressed that
 3 problem by way of either spousal surcharge
 4 or in some other ways?
 5 **MR. SCOFIELD:** I'm certainly aware
 6 of spousal surcharges. No one that I have
 7 ever worked with have -- has implemented
 8 one, although -- you know, this doesn't
 9 have the exact same effect but, you know,
 10 as you can see, we're isolating the spouse
 11 with the additional contribution, but as
 12 you mentioned, collecting all spouses
 13 rather than just those with other coverage
 14 available.
 15 The trouble -- you know, the
 16 Carriers have discussed this quite
 17 significantly. The trouble with the
 18 spousal surcharge -- I don't know if you'd
 19 call it trouble, but it's kind of an honor
 20 system that is very difficult and, you
 21 know, unpleasant to police.
 22 **CHAIRPERSON JAFFE:** Absolutely.

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1 coverage going on. We have no idea how
 2 many spouses forego their coverage to
 3 enroll in this plan.
 4 **CHAIRPERSON JAFFE:** You anticipated
 5 my next question. So there it was.
 6 There's really three categories,
 7 right --
 8 **MR. SCOFIELD:** Yes.
 9 **CHAIRPERSON JAFFE:** -- those where
 10 spouses have coverage elsewhere and you're
 11 coordinating and those I assume the
 12 spouse's coverage is primary and you folks
 13 come in secondarily, right?
 14 **MR. SCOFIELD:** Yes. And just
 15 thinking through that, those spouses must
 16 have a plan that also has a low
 17 contribution because why would you get
 18 double coverage when you have the railroad
 19 plan for no additional contribution. So
 20 they must be enrolled in other rich
 21 benefits as well is my guess.
 22 **CHAIRPERSON JAFFE:** Fair enough.

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1 **MR. SCOFIELD:** Yeah.
 2 **CHAIRPERSON JAFFE:** Fair enough.
 3 Just one more spousal issue and
 4 then I'm going to move to other areas of
 5 the proposal.
 6 The high rates of spousal coverage
 7 in the plan, do you know whether that is
 8 something of longstanding fact or whether
 9 it is a more recent trend in terms of the
 10 percentages?
 11 **MR. SCOFIELD:** I don't have
 12 longitudinal data for that, although I
 13 will tell you this, that the railroad
 14 covered member to employee ratio has
 15 always been on the high side. Back before
 16 2010, the ratio was somewhere around 2.8
 17 to 1. And then with the passage of the
 18 Affordable Care Act, and coverage of
 19 departments up to age 26, it added a
 20 considerable number of eligible
 21 dependents. And that's in large part why
 22 we're up to the 3.2, 3.25 level. But I do

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1 think it has been a longstanding
 2 phenomenon, but it's been since 2010 that
 3 it's as high as it is.
 4 **CHAIRPERSON JAFFE:** Let me shift
 5 gears if I may, to another area.
 6 **MR. SCOFIELD:** Sure.
 7 **CHAIRPERSON JAFFE:** In the appendix
 8 of the materials that had been forwarded
 9 to the Board before our hearing today, at
 10 page 14 of the Appendix 2-1 for any of the
 11 counsel who want to follow, in your July
 12 11th memorandum there's a note that under
 13 current plan provisions only 47.2 percent
 14 of employees reach the deductible. And I
 15 want to make sure that at least we
 16 understand what that means and don't have
 17 a misimpression.
 18 Does that mean that because they
 19 haven't hit the deductible in the year,
 20 they receive no benefits from the plan or
 21 are there certain benefits that they do
 22 receive, even though they haven't hit the

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1 that the 46 or -7 percent don't get any
 2 benefits of the plan at all. They just
 3 haven't hit the deductible.
 4 **CHAIRPERSON JAFFE:** I was simply
 5 trying to get it clear, because with the
 6 proposal you estimated that would drop to
 7 40 percent --
 8 **MR. SCOFIELD:** Yes, because the
 9 deductible is higher.
 10 **CHAIRPERSON JAFFE:** -- that would
 11 reach it and 60 percent would not. I just
 12 needed to understand.
 13 **MR. SCOFIELD:** Yep.
 14 **CHAIRPERSON JAFFE:** Fair enough.
 15 If somebody has not reached the
 16 deductible, are they eligible for drug
 17 benefits?
 18 **MR. SCOFIELD:** Yes.
 19 **CHAIRPERSON JAFFE:** I would have
 20 thought that too, but I wanted to clarify.
 21 **MR. SCOFIELD:** Yes.
 22 **CHAIRPERSON JAFFE:** Fair enough.

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1 deductible? And if you could clarify
 2 which ones those are.
 3 **MR. SCOFIELD:** Yes.
 4 **CHAIRPERSON JAFFE:** Thank you.
 5 **MR. SCOFIELD:** So the plan has two
 6 types of approach to services. Some
 7 services draw copay.
 8 **CHAIRPERSON JAFFE:** Right.
 9 **MR. SCOFIELD:** Other services draw
 10 a deductible and coinsurance. No services
 11 currently draw both. So office visits,
 12 you know, specialist's office, urgent
 13 care, emergency room, all pharmacy, those
 14 are all covered by copays. So an
 15 individual could have, say, a low -- like
 16 a \$200 claim that is applied to the
 17 deductible, but they don't reach the --
 18 the deductible limit, but have other
 19 services that would have copays apply to
 20 them.
 21 **CHAIRPERSON JAFFE:** Okay.
 22 **MR. SCOFIELD:** So that's not saying

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1 **MR. SCOFIELD:** The drug benefits
 2 and any service under the medical plan
 3 that draws a copay, those are
 4 completely --
 5 **CHAIRPERSON JAFFE:** Right. And
 6 they all have copays. Got it.
 7 **MR. SCOFIELD:** Yeah. For office
 8 visits and such things, yes.
 9 **CHAIRPERSON JAFFE:** Let me shift
 10 gears, if I may, to the prescription drug
 11 proposal and to utilize advanced
 12 utilization management rules.
 13 **MR. SCOFIELD:** Yes.
 14 **CHAIRPERSON JAFFE:** And I had a
 15 couple of clarifying questions, if I may.
 16 In your memorandum you list a
 17 number of drugs specifically because they
 18 were high cost and not covered.
 19 Trulicity, Ozempic, Dupixent, Vyvanse and
 20 Jardiance.
 21 **MR. SCOFIELD:** The drugs in the
 22 middle box here where we said five out of

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1 the top ten drugs by plan spending,
 2 they're not implemented yet, yes.
 3 **CHAIRPERSON JAFFE:** Are those all
 4 recently developed drugs so that the
 5 reason they weren't covered is because
 6 they didn't exist when the rules were
 7 initially adopted?
 8 **MR. SCOFIELD:** Yes. So if you
 9 watch TV at all, you see these drug names
 10 on the commercials all the time.
 11 **CHAIRPERSON JAFFE:** Sorry. Not so
 12 much.
 13 **MR. SCOFIELD:** But if you did,
 14 you'd know all of those. You wouldn't
 15 know what they did, but you would have
 16 heard of them.
 17 **CHAIRPERSON JAFFE:** I plead guilty.
 18 I looked them up so I would know what they
 19 did. Fair enough.
 20 So under the existing program,
 21 unless the drugs are specifically listed,
 22 they don't receive the benefit of

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1 new drugs do not get this rule process
 2 applied to them.
 3 **CHAIRPERSON JAFFE:** That's fine.
 4 And the proposal that you have relative to
 5 AUM would continue that, so that if there
 6 are new drugs that are for the first time
 7 approved by the FDA and prescribed by
 8 doctors in 2024, for example, whatever you
 9 adopt wouldn't be able to pick them up
 10 until the next go-round of bargaining or
 11 is this proposal one that would treat that
 12 differently and allow for some midterm
 13 analysis and treatment of those new drugs?
 14 **MR. SCOFIELD:** Yes. So the care
 15 proposal, to be clear, it is to implement
 16 all the rules that are available to ESI
 17 today and, as new rules become available
 18 and ESI recommends them to the plan, to
 19 implement them as soon as is practical. I
 20 don't know if that means immediately in
 21 the middle of a year or at the start of
 22 the next plan year, but as soon as you can

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1 utilization management even if it's not
 2 advanced utilization management?
 3 **MR. SCOFIELD:** Yes. I'll explain
 4 it as best I can, because I have to admit
 5 it is a little confusing.
 6 So the rules went in back, you
 7 know, at the time frame of PEB 243. And
 8 at the time, Medco was the pharmacy
 9 benefit manager. The plans didn't adopt
 10 every single rule, but almost all of them.
 11 We were advised by at the time the
 12 clinician who was working with the plans
 13 and that clinician recommended most of the
 14 rules didn't think that a handful of them
 15 mattered that much. So that was what
 16 happened.
 17 And then the way it's been
 18 administered over time -- and it must be
 19 part of a collective bargaining rationale
 20 somewhere -- new drugs generally do not
 21 get added to the -- to the rule list and
 22 it's -- and that's the case, yes. So most

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1 so we don't have this problem of having to
 2 have labor and management decide what to
 3 do and then they don't decide it and then
 4 we get into the situation where we are now
 5 where it just doesn't make any sense.
 6 **CHAIRPERSON JAFFE:** Okay. And with
 7 respect to the cost aspects associated
 8 with advanced utilization management or
 9 even the current program, is the proposal
 10 one that would allow that to be changed by
 11 the pharmacy benefit manager or would the
 12 plan have to determine both the number of
 13 levels you had and then the dollar amounts
 14 of the copay for each of those levels?
 15 Because the AUM you have adds a new level
 16 of specialty drugs that I don't think
 17 exist currently and has a significantly
 18 higher copay or deductible for it, right?
 19 **MR. SCOFIELD:** Well, I think it's
 20 two separate pieces. The Carrier proposal
 21 on the design -- I can go to it if you
 22 would like -- but it had -- it includes a

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1 fourth tier --

2 **CHAIRPERSON JAFFE:** I saw it.

3 **MR. SCOFIELD:** -- that would apply

4 to specialty, although that is not

5 structurally linked to the rules at all.

6 The rules are separate and would -- I

7 mean, you're right. You know, the rules

8 apply largely to specialty medications.

9 But that's on the prior authorization

10 side. Other -- other rules, drug quantity

11 management and step therapy, they apply

12 more broadly to medications that have, you

13 know, like on the step therapy, generic

14 equivalents that are effective.

15 **CHAIRPERSON JAFFE:** Got it.

16 Still on drugs for the moment,

17 although I'm close to being done with

18 that. The copay assistance program, did

19 you have any estimate of how much the

20 savings would be to the plan or to

21 participants if that were adopted?

22 **MR. SCOFIELD:** Well, there are

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1 doesn't have to pay anything?

2 **MR. SCOFIELD:** I don't want to get

3 in trouble on this, but I think most

4 things --

5 **CHAIRPERSON JAFFE:** It's not his

6 area.

7 **BOARD MEMBER DEINHARDT:** Okay.

8 **CHAIRPERSON JAFFE:** Let me shift

9 gears away from prescription drugs, if I

10 may.

11 The 2020 and 2021 increases in cost

12 that the fund has, in fact, experienced

13 were fairly significant. And the question

14 I'm going to pose, if you know -- and if

15 you don't, just like the others, that's

16 certainly an appropriate response too,

17 Mr. Scofield.

18 How much of that is a function of

19 COVID and related both care utilization,

20 long case exposures, serious case

21 exposures, dot, dot, dot? There's a whole

22 series of things we could put in after

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1 different manufacturer copay programs that

2 are out there. So the impact, I think,

3 would vary significantly, depending on

4 which one you used. But my familiarity

5 with these, it works like this:

6 It doesn't apply to that many

7 drugs, but the drugs that it does apply to

8 are extremely expensive. And, you know,

9 there are complicated plan design changes

10 that are required to make it work. But

11 the end result is that the employee copay

12 would go to zero.

13 But I don't have any estimates

14 presently on any specific copay assistance

15 programs that we would look to. That

16 would be something to have to fill in the

17 blanks on.

18 **CHAIRPERSON JAFFE:** Fair enough.

19 **BOARD MEMBER DEINHARDT:** Can I ask

20 why that copay assistance program has to

21 be negotiated if it's just that employees

22 don't have to pay anything and the plan

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1 that, right?

2 **MR. SCOFIELD:** Yeah. So as best as

3 I can tell, the impact that COVID had on

4 the plans is, of course, like everyone

5 else. In the second quarter of 2020,

6 costs went down because people were

7 staying home. And, you know, there were a

8 lot of predictions on what was going to

9 happen. But now that it's gone or for so

10 long, my view is that COVID has definitely

11 contributed to the escalated cost of the

12 plans. There's been a lot of, you know,

13 COVID cases. You know, not all -- you

14 know, certainly not all of them go to be

15 large claim cases, but, yes, it has had, I

16 think, a fairly substantial effect.

17 **CHAIRPERSON JAFFE:** And do the

18 estimates take that into account and

19 assume it's going to continue, not

20 continue or it didn't really affect what

21 assumptions you're making with respect to

22 cost escalation?

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1 **MR. SCOFIELD:** It greatly affected
 2 assumptions. And the -- you know -- the
 3 parties, at least the NCCC, I know, spoke
 4 in great detail to the UnitedHealthcare
 5 senior actuaries. UnitedHealthcare does a
 6 lot of administrative functions for the
 7 plan that are separate from health benefit
 8 administration.
 9 And we were in touch with the most
 10 knowledgeable actuaries on these topics.
 11 And at the time we had their best
 12 recommendations, but no one predicted that
 13 it would last as long as it did.
 14 And so -- so to answer your
 15 question, we tried and I think, you know,
 16 like many, didn't get it quite right. But
 17 that happens all the time on stuff.
 18 **CHAIRPERSON JAFFE:** Yes, it does.
 19 Fair enough.
 20 Second cost question in the
 21 aggregate. Did you see an increased --
 22 significantly increased number of people

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1 **MR. SCOFIELD:** It's possible, but
 2 I'm not familiar with that. I don't think
 3 it was a terribly important factor.
 4 **CHAIRPERSON JAFFE:** That's fine.
 5 The site of care management, a
 6 couple of questions, if I may, with
 7 respect to that as well.
 8 **MR. SCOFIELD:** Yes.
 9 **CHAIRPERSON JAFFE:** First, is there
 10 any estimate of a cost savings or,
 11 conversely, the costs of not adopting?
 12 **MR. SCOFIELD:** So that's a tough
 13 one. So what we know is how many of these
 14 services occur in the outpatient setting.
 15 What we don't really know is how many of
 16 those services are in a geographic area
 17 where there actually is an available
 18 freestanding facility that could be used.
 19 So I don't know the answer, but if
 20 you look to this and try to make
 21 assumptions about either how many
 22 additional copays you'd collect or, you

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1 on COBRA following the initial furloughs
 2 and/or -- I'll use the word departures
 3 because I don't want to get into this
 4 whole quit thing in this question.
 5 **MR. SCOFIELD:** No, not to my
 6 awareness.
 7 **CHAIRPERSON JAFFE:** Okay. Fair
 8 enough.
 9 Because I've read at least that
 10 they had very different experiences in
 11 terms of utilization for people on COBRA
 12 versus --
 13 **MR. SCOFIELD:** Okay.
 14 **CHAIRPERSON JAFFE:** I've read that
 15 there were some very significant
 16 differences in utilization from people who
 17 were participating on COBRA for a whole
 18 variety of reasons we don't need to
 19 address now. But if there were large
 20 numbers of people on COBRA, it could
 21 potentially have an aggregate effect of
 22 significance. And I was just asking --

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1 know, better, how many would -- would
 2 shift services from the site of care that
 3 they're using on the outpatient hospital
 4 side to a freestanding facility, which we
 5 have done, in the modeling, you know, that
 6 we have done we've assumed \$25 million of
 7 total savings to the plan.
 8 But that is based on looking at all
 9 the utilization that we see, taking
 10 different assumptions of what we think
 11 could happen and, you know, it comes up
 12 with a number that we feel comfortable
 13 using, but admittedly, it's not clear.
 14 **CHAIRPERSON JAFFE:** That's fine.
 15 And you gave me an order of magnitude
 16 anyway, which is fine.
 17 With respect to site of care, just
 18 so I understand fully, I'm going to give
 19 what I hope is an okay, simple
 20 hypothetical just to kind of understand it
 21 a little bit better.
 22 One of the site of care facilities

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1 might be a group of physicians that are
 2 performing surgery in their own offices,
 3 for example, at a clinic connected to
 4 their offices. Would the plan's
 5 expectation be if this were adopted that
 6 if I have a surgeon who only goes to the
 7 hospital that I would wind up paying the
 8 additional costs if I passed on a site of
 9 care for a different doctor who was
 10 running a clinic, so to speak?
 11 You understand the question?
 12 **MR. SCOFIELD:** I do. I do. So the
 13 site of care additional copay as proposed
 14 by the Carriers would apply that copay
 15 first if the member had reasonable access
 16 to a freestanding facility and chose to
 17 use the hospital instead. It wouldn't
 18 apply to anyone on inpatient or emergency
 19 room basis. So it's only applying to what
 20 you might call -- not elective, but where
 21 there's a choice of sites to choose from
 22 and they choose to go to the hospital,

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1 the situation-specific issues, because if
 2 it's -- I mean, this isn't all spelled out
 3 yet. But, you know, we've envisioned the
 4 issues that would arise with this. At the
 5 same time, we recognize the -- you know,
 6 what we see is what could potentially be a
 7 major source of waste. I think it's
 8 possible that it's just because employees
 9 don't know of their options in many cases.
 10 So --
 11 **BOARD MEMBER DEINHARDT:** Okay.
 12 Thank you.
 13 **CHAIRPERSON JAFFE:** And two more
 14 clarifiers, you'll be happy to hear. And
 15 thank you for the assistance.
 16 With respect to competitive vendor
 17 bidding, is there anything in the proposal
 18 that addresses not changing the underlying
 19 coverages in any way? Because different
 20 health care providers or vendors of
 21 services, right, often approach similar
 22 situations in somewhat different, but

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1 then the copay would apply.
 2 **CHAIRPERSON JAFFE:** Got it.
 3 So if there were medical reasons
 4 requiring it be done -- the procedure be
 5 done in the hospital, that wouldn't be --
 6 **MR. SCOFIELD:** Yes. Our last
 7 exception is for situation-specific
 8 issues, yes.
 9 **CHAIRPERSON JAFFE:** I'm in the
 10 homestretch.
 11 **BOARD MEMBER DEINHARDT:** But under
 12 the Chairman's example, if you had a
 13 doctor that you were working with, a
 14 surgeon, and that surgeon only would do it
 15 in the hospital, you're going to be on the
 16 hook for the extra copay?
 17 **MR. SCOFIELD:** Well, if there's a
 18 freestanding facility in your location and
 19 you have access to --
 20 **BOARD MEMBER DEINHARDT:** But you
 21 can't use your own doctor?
 22 **MR. SCOFIELD:** Well, other than in

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1 perhaps, comparable or maybe not
 2 comparable ways, right?
 3 **MR. SCOFIELD:** Yes.
 4 **CHAIRPERSON JAFFE:** So I don't know
 5 whether what was envisioned here was that
 6 it had to be at least as good or better in
 7 all aspects or whether it had to be
 8 comparable or whether there were no
 9 criteria at all affecting the ability of
 10 the plan trustees to change vendors with
 11 whatever the resulting impact was on the
 12 participants.
 13 **MR. SCOFIELD:** I think the idea
 14 here would be to not infringe on the
 15 collectively bargained agreed to, you
 16 know, plan design and other features that
 17 are set forth in the collective bargaining
 18 agreement.
 19 If you switch vendors from, you
 20 know -- like with the medical vendors, the
 21 large ones, you know, you might have a
 22 difference in provider network, but not a

<p style="text-align: right;">Page 601</p> <p>1 terribly huge difference in other 2 administrative aspects. 3 So I think that what we envision 4 is, you know, that would certainly be part 5 of the bid criteria. If there was 6 something that had to be changed that was 7 so drastic from the current approach of an 8 existing vendor, I think that would come 9 into the decision process on whether that 10 vendor could be utilized. 11 CHAIRPERSON JAFFE: Fair enough. 12 And the last one I have, I want to 13 clarify I'm not asking you the legal 14 question of who has to do any negotiation 15 or the like. That's not your wheelhouse. 16 I'm just asking what the proposal provides 17 for. 18 MR. SCOFIELD: Yes. 19 CHAIRPERSON JAFFE: If we were 20 inclined to adopt the -- keep the plan at 21 88 percent actuarial value and look at 22 that at whatever the interval is, annually</p>	<p style="text-align: right;">Page 602</p> <p>1 or otherwise, that may well require 2 changes in plan design by definition. 3 MR. SCOFIELD: Yes. 4 CHAIRPERSON JAFFE: Is the proposal 5 one that would allow the trustees to 6 determine how to reach that, in short, 7 what areas of plan design to change? 8 That's question one. And then I have a 9 second one in followup -- 10 MR. SCOFIELD: Yes. 11 CHAIRPERSON JAFFE: -- but it's 12 with the same limitations. 13 MR. SCOFIELD: Yes. So if I 14 understand correctly, this -- this is the 15 Carriers' proposal for indexing. So the 16 thing we're trying to accomplish with 17 indexing is to avoid the erosion that 18 occurs when you have the fixed dollar 19 cost. There are multiple ways that you 20 could offset erosion. 21 So another example of a way that 22 you can do it, I worked with a large</p>
<p style="text-align: right;">Page 603</p> <p>1 employer in the past that simply applied a 2 trend-like increase to all their fixed 3 dollar copays and deductibles and out of 4 pockets. It accomplishes the same thing. 5 It spreads the cost-sharing increase over 6 more features, so it's -- so that -- so, 7 for instance, the deductible out of pocket 8 maximum increase would be less, but the 9 copay increases would be something. 10 So this is the Carrier proposal, 11 although admitting that there are other 12 ways that this could be done if -- if 13 desirable. 14 CHAIRPERSON JAFFE: And I was 15 asking a slightly different question, 16 although I appreciate the response. 17 MR. SCOFIELD: Okay. 18 CHAIRPERSON JAFFE: One can get -- 19 if you need to reduce from some higher 20 number to 88 in order to maintain that or 21 avoid what you have labeled as erosion -- 22 MR. SCOFIELD: Yes.</p>	<p style="text-align: right;">Page 604</p> <p>1 CHAIRPERSON JAFFE: -- one aspect 2 to get there is to focus on employee 3 payments towards the health care that 4 they're obtaining. 5 MR. SCOFIELD: Yes. 6 CHAIRPERSON JAFFE: The other is to 7 go ahead and change the design of the plan 8 in some other way that may not involve 9 employee payments, right? 10 And my question is not what was 11 desirable, not what was lawful, none of 12 that. I parked all those on the side for 13 purposes of my question. It's simply does 14 this proposal leave that to the trustees 15 to determine or is there some other 16 mechanism for performing that benchmarking 17 built into the proposal, if you know? 18 MR. SCOFIELD: I -- I think the way 19 the Carriers have approached this 20 achieving the 88 percent AV, that is a 21 statement of what the plan design 22 cost-sharing achieves.</p>

<p style="text-align: right;">Page 605</p> <p>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.</p> <p>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.</p> <p>CHAIRPERSON JAFFE: Got it.</p> <p>That's certainly enough for purposes of today. I thank you very much.</p> <p>MR. SCOFIELD: Thank you.</p> <p>CHAIRPERSON JAFFE: May I assume my Board members are good?</p>	<p style="text-align: right;">Page 606</p> <p>Thank you very much, Mr. Scofield. And let me thank the rest of the room for indulging because I know I kept you later.</p> <p>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?</p> <p>MR. MUNRO: I certainly hope not, Mr. Chairman.</p> <p>CHAIRPERSON JAFFE: With that, we're off the record.</p> <p>Thank you, all.</p> <p>(Thereupon, at 6:19 p.m., the proceedings were adjourned, to be reconvened at 8:00 a.m. on Tuesday, July 26, 2022.)</p>
<p style="text-align: right;">Page 607</p> <p style="text-align: center;">CERTIFICATE OF NOTARY</p> <p>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.</p> <p>Dated this ____ day of _____, 2022.</p> <p>_____</p> <p>Misty Klapper, RMR, CRR and Notary Public in and for the District of Columbia</p>	

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