DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

BOARD OF PILOT COMMISSIONERS
RE: PORT OF MIAMI RATE CHANGES

Hyatt Regency Miami
400 Southeast 2nd Avenue
Miami, Florida 33131

May 18, 2017

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CAPTAIN CHRISTOPHER SCOTT MARLOW
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ANNE
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(Thereupon, the following proceeding was had:)

CHAIR: Okay, let's get started today. This is May 18th, 9:00 a.m., the second day of our rate hearing. I appreciate everybody making it through the day yesterday, and --

MR. JENNINGS: Mic -- mic --

CHAIR: I'll try again. Okay, this is May 18th. Sorry about that. But I appreciate everyone making it through yesterday, and being back today for today's session. Today's rules of engagement follow the same as yesterday, and we will be going all day, and possibly going into the evening depending on the progress we make today. So a couple just adjustments in protocol is for each speaker, when you're a new speaker, for the camera and the court reporter, can you state your name, your title, and your organization. And I think we got that collected from everybody yesterday, but for all, every time that you're new -- you don't have to reintroduce yourself every time you talk, but just the first time you speak. And that will also apply, of course, for the public comment section which will occur later in the day.

The agenda today with be the Biscayne Bay Pilot Association response and presentation in support of their application for rate change. That will be a combined discussion. The Caribbean Cruise Association will then provide their response. We'll then do public comments. When we do public comments we will clear a spot for the presenters to come up and speak at the table. We'll ask that public comments be in the, no more than the three to five minute kind of range when we do that, and then we will have deliberations with the Board to discuss our observations after that time. Okay, any other questions for anyone before we get started?

Okay, the cruise association finished their presentation last night. The Board finished their initial question and answer session, and so Biscayne Bay Pilots are up. And, Mr. Crew, are you leading us off?

MR. CREW: I am.

CHAIR: Okay, the floor is yours.

MR. CREW: Sorry if I'm a little loud. Is that about right?

CHAIR: You're perfect. Yeah, if you stay about this far away, that works.

MR. CREW: Thank you, Mr. Chairman, members of the Board, my name is Paxton Crew. I'm from Link City, Texas, and I want to thank you very much for allowing me the privilege of representing the Biscayne Bay Pilots today. I'm a maritime lawyer. I'm not licensed to practice law in Florida. I'm not going to render any opinions on Florida law, but what I'm here to talk about and advocate is something that I'm very passionate about, and that's pilotage.

Pilotage is one of the oldest and most successful public safety entities and interests in the country. It's been around, you know, since 1789, and what I think is really unique and fascinating about it is it's unlike almost any other public service that we have, because in Dallas County, where I'm from, I live adjacent to probably one of the busiest ship intersections in the country. We have two pilot services in that, in my county that pass through that county, and the beauty of it is I don't pay a penny of it as a taxpayer, and that's the same thing in Florida. The people who pay are the people who profit, and that's the way it should be. They pay to keep the port open for everyone.

So I want to start off by thanking the Board for being here, because you don't have to be here. Some of you are appointed. Some of you Know are paid to be here, and have administrative purposes, like Mr. Jennings, thank you. But this is a -- this is a public service, and my clients consider this Board and the people of Florida to be their true customers. They service the ships. They do a good service. They service them all, whether it's cruise, whether it's cargo, whether it's any other vessel that is required to take a compulsory pilot in this state, they are duty bound to do that, and to do it safely, and so the reason we're here today is -- it's about money for us, absolutely, and there were a lot of questions that were raised yesterday, and I would like the Board to keep in mind some of the questions that are raised on both sides.

Why is it that the cruise lines are here; we're going to get to that. Why is it that the pilots are here; well, I can tell you right up front it's because the only way they can make revenue to support the pilot system in this port, which is a $41 billion entity to South Florida, is through the tariff, and without a change to that they cannot support the infrastructure that they need to safely do their jobs, and they cannot attract the best and most qualified pilots. And that is just not a Florida issue, that is a national issue. There is a pool of merchant mariners that are qualified in the United States to become pilots and take the tests.

We heard testimony yesterday from Captain Hansen and from Admiral Baumgartner about whether their captains could be pilots, and be a deputy. One thing that they omitted that was glaring, and I knew it through some sort of comments and groans from the crowd, was whether a $120 thousand captain could become a pilot here. Well, if he's an American citizen, yes, but most of the crew members and the officers on these ships are foreign flag, and it's very interesting to me that the cruise lines pick the one American flag vessel that they have that pays American taxes, is built my American shipyards, it employs American crew members and officers, to compare to what a American merchant mariner makes that's qualified in the same level as a pilot.

And -- and let me just say that that is the bare minimum to become one. You have to be a U.S. Qualified mariner to become a deputy. That's the ground level. So let me just draw the parallel. Someone graduates from medical school. They are all about the same level at that time, a mariner. Someone wants to perform a brain surgery. I think that is the correct comparison of the level of skill and technical expertise that this Board needs to appreciate in thinking about who are we comparing these pilots to for compensation. And we'll put forward evidence today that that is other pilots throughout the country, because when candidates are making a decision on where they want to apply, where they want to live the factors really come down to the same things that cruise lines care about, how am I going to pay for my family and my mode of living.

And this is just an aside. Mr. Panza made a lot of suppositions yesterday about motives, and why we're here, and why we charge that, but

I think that that is a little bit disingenuous when you consider comparing a pittance of what these pilots make compared to the executive compensations that their cruise line executives make. I don't begrudge what they make. I'm very happy we live in America, that's the system we live in, but their arguments are really that Florida should not value the pilots that protect these ports, and if other states value their pilots more that's their problem.

But that is a Florida problem at the end of the day. That is a race to the bottom, and I will put to you that in any port you should want the best and most qualified candidates, and the only way you can do that is by competing with the others. They will say that's a race to the top. I get it. You want the best most qualified surgeons I assume in the medical staff in Florida, in South Florida, and they have a free market to do it. This is the system that we're given. This is the statutory framework we're given, and we're going on evidence that I think will support this Board making a decision that fulfills your obligation to look after the interests of this port in attracting the best and most qualified pilot candidates.

The next question I wanted to get to, and this was something that was left lingering yesterday -- the cruise lines were here, there's only two out of the seventeen FCCA members that testified, NCL and Royal Caribbean. They continued to call themselves the rate payors. They don't pay the rate any more than I pay the rate on my hotel room. I'm here -- my -- my clients pay for it. It's -- it would be disingenuous to say that I pay for my hotel room here. It -- it's the same thing. They don't pay it. It's passed through a hundred percent to the passengers. They never disputed that yesterday. They'll have a chance to rebut it here at the end of the day, but we saw a lot of interesting economic analysis about pilot revenue for handle time. We're going to talk about that, and we have witnesses that will discuss what that really means.

But when you look at the true numbers from 2003 to present pilot revenue is flat. And revenue is revenue, and if you've got the same number of pilots, increasing expenses and flat revenue, the only way to keep up with inflation is by an increase in the tariff. A decrease would be devastating. The cruise lines mentioned many times that we should run our operation like a business, and that, that raised a question in my mind. If we know that they don't really, ultimately are burdened by the cost of pilotage, and it's passed through on a hundred percent basis the passengers, as a business do I need concern myself enough to fight lengthy legal battles all over the country to attack a system that makes no difference to my bottom line? It doesn't show up in any of their 10K reports. It's not accounted as any sort of expense. All of their contracts dictate very clearly that the cost of pilotage will be passed through to the customer. It's undisputed.

So the ultimate question is all of the other uses of Port Miami that utilize the pilot service here -- we've got a number of letters of support, of what it means to those users to have the excellent top tier level pilotage in Miami, and we've got probably the biggest -- the biggest impact for the cruise lines would be what is the consequence of having sub par pilotage here. And I'm not saying we have it, but eventually there will come a day where the infrastructure cannot be supported. Something could happen because we're not attracting the best most qualified candidates, and what we're -- now, we're not asking to be at the top of the list, no, we're just asking bring us to the middle. And it doesn't affect them.

So we're going to get to a lot of numbers. We're going to try to keep them short. But I think it will become very clear that as these cruise ships grow their profit streams grow because the number of passengers grow. The cost of pilotage as passed through to the individual passengers actually decreases, so when you get to this argument about handle time per pilot revenue I think that when you see who really pays for it, it is a non factor.

I'd like to touch briefly on infrastructure, and we'll get to that later with a couple of witnesses, but the Board was able to go out and see the condition of the docks and the pilot boats, and one of the things that I would just mention is that I have a, I have a vehicle that I drive every day to work, it's a 2015 vehicle, a nice vehicle. How many people in this room drive a forty year old car back and forth over the Miami highways to work every day, and you do so willingly? And we're talking about a marine asset here that carries the lives of the pilots that in the state that it's in cannot ultimately at the end of the day keep up with the cost of replacing these pilot boats. The youngest pilot boat they have is twenty five years old, and I'd suggest to you that that's a travesty. Now, however you want to slice it we have to pay for the pilots, we have to pay for the expenses. And -- and they need new pilot boats here, and that can only be paid for with a tariff increase.

One other point that I would briefly bring up, and Captain Lilly will attest to this, because he's going to be my first witness, is the idea that the pilots set the number of pilots is simply wrong. This Board sets the number of pilots. They do so based on peak load. They do based on efficiently dispatching pilots to all ships that come in here when they're needed. We'll talk about the consequences of how the cruise lines do business, and impact that, and frankly it is not fair to say you should just take time off as Admiral Baumgartner suggested. We have to -- we have to plan for peak loads no matter the day.

These ships that they're complaining is free open air space were designed by them, built by them, and placed in this port to make money, to make profits. Everyone else in the shipping industry has suffered dramatically over the past ten years except for the people that are sitting in this room today, the cruise lines. So again I ask the question why are they here, is it really about money to them, or is it about something else, because the bigger the ships the bigger the risk, and what I would attest to you is that it's about is even though they said they value the excellent service from the pilots what you heard is they tried to diminish that by comparing it to individuals who can get a merchant mariner credential in a third world country that make less than $120 thousand a year that are charged with $2 billion assets.

There are hedge fund managers who make many millions of dollars a year who are not in charge of $2 billion in assets. These $2 billion assets carry up to four thousand people on board. That's in my opinion more valuable than the, than the price of the ship itself. So equating that number to one individual who is not even qualified to be a pilot in this state is, in my opinion as a maritime lawyer who advocates for pilots, is a bit insulting frankly. And it's not even within the law.

These pilots who they make a decent living by normal standards, but when you put it in comparison to what it takes to run a pilot system -- they're in charge of a $41 billion port, keeping it open for everyone, keeping it safe, and making sure that they don't get hurt in the process. This is a dangerous business that they live in. I know that you've all heard it may times.

You were able to see it when you went out and toured the port. And whether it's entering a cruise ship or climbing the pilot ladder on a very lightly loaded cargo ship, or a tanker as they take care of Fisher Island, every time you step foot across from a pilot boat onto a ship at the sea buoy there's a chance that something can go wrong. Mechanically; the pilot ladder slips, something's not tied right. This is the chance that each one of these individuals take. They board these ships. They aren't familiar with them like the crew of that ship is. They don't know that everything is right. They don't know that the steering gear is going to work. They don't know whether they're going to have a total loss of power.

The cruise lines are here, and they operate in a for profit manner where it's easier to ask for forgiveness than permission, and -- and what -- I'm not saying that that's a bad thing, it's just the way it is sometimes in business. They have insurance. They can pay for mistakes. If something goes wrong they have ways to do that. If something goes wrong in Port Miami it affects everyone, not just one user, not just one ship. We're going to talk about the consequences of that.

The pilots view is that they plan for what if everything goes wrong, and every ship they treat the same way. And that's the level of professionalism that we need to attract in our ports to keep them safe, not let me get the ship to the dock as quickly as possible, and let me leave as quickly as possible. So with that I'm going to start my presentation, and I want to introduce Captain Stuart Lilly. We have a PowerPoint and a short video first. If any of this is redundant, I know you've seen some of it, but we just wanted to give the Board a little bit, a feel for what it's like. It's a very short video, and then we'll start with Captain Lilly.

If it's not going to come up we'll skip it. This is probably why Mr. Panza doesn't trust technology. All right, Captain Lilly, can you introduce yourself for us please?

CAPTAIN LILLY: Good morning, Commissioners. My name is Stuart Lilly. I am a harbor pilot here at the Biscayne Bay Pilots Association. It's a pleasure to be here. And as you can see I've been a pilot here since 1992. I graduated from the United State's Merchant Marine Academy. I've sailed on various ships over several years. I served in the Naval

Reserve. So in the last, well, since about 1995 when I became a full pilot I've done over nine thousand ship handles. In my training period, well, there were at least four thousand ship handles in those three years. So I'm going to make some comments for the next few minute that is in that context of my twenty five years or so here.

MR. CREW: Captain Lilly, we heard a lot about what the cruise lines are putting into Port Miami in the way of new ships, and the new terminal that's going to open up. Aside from that you are also involved with assisting Port Miami in the development of the infrastructure of the cargo docks for the neopanamax vessels; is that right?

CAPTAIN LILLY: That is correct.

MR. CREW: Can you tell us a little bit about that?

CAPTAIN LILLY: So this $2 billion infrastructure program that's been going on for many years now, beginning actually with the approval of a dredge project back in 1990, so for over twenty five years. There has been three phases of a dredge project, and we pilots are intimately involved in that. And it was just completed in 2015, which allows the port to be big ship ready for these 13,000 TEU container ships. They will be wider, slightly deeper, slightly longer than these ships here you see on the poster boards.

So one important point to make is that this infrastructure project isn't just done. We're not going to sit on our laurels. There's a 2035 master plan in effect, and there's more planning, more expansion plan that we pilots are a part of. And I'll go into those support services in a bit.

MR. CREW: All right, let's see if this video works now. This is a video of the Port, and we want to show it for purposes of -- you can see the channel that's, and actually what happens under (unintelligible).

Captain Lilly, we talked a lot yesterday about what the navigators and the officers do on board these cruise ships, and they talked a lot, prepared for instance the Bay, New York Harbor Hudson River Valley with Port Miami, and so what we'd like to do is play this video. I think it will play now. I'll tell you what, we'll do it at the end of this slide. It worked this morning, but again this is probably why Mr. Panza doesn't like technology.

Now, part of the -- one of the elements that we have to cover in terms of the statutory topics are the different types of pilots, or the vessels that you pilot here in the port. And aside from the cruise ships, which we'll cover primarily because they are the objecting party, and the party asking for a decrease, can you tell the Board a little bit about the other types of vessels that you pilot inside Port Miami?

CAPTAIN LILLY: It's a mixture of cargo ships, cruise ships, what we call river traffic, first to all the small freighters that are approximately 250' to 300' in length that transit the Miami River, which is pilotage waters. Those numbers of handles for that size of a vessel has gone down, and that's because the economies have scaled over the years and decades, you know, the shipping industry has changed, and the ship owners are finding out that they can reduce their unit costs, their slot costs, which is their metric cost of moving a metal container around the world in its space on a container ship.

I would like to direct your attention now to Exhibit B, which is in the Investigative Committee Report, Exhibit B, not in today's exhibit -- it shows the tonnage in revenue analysis, and I'd just like to point out one item about the variety of ship size that we have experienced since 2003. It represents a cross section of 2003 to 2016 -- yes?

MR. LAW: Excuse me, what was your reference number on --

CAPTAIN LILLY: Exhibit B, as in bravo, to the Investigative Committee Report.

MR. JENNINGS: Do you have a page number, Captain Lilly?

CAPTAIN LILLY: I do not.

MS. KURTZ: Well, the report ends on 56, and the exhibits are immediately following.

CAPTAIN LILLY: Yeah, there's exhibits after the report. Exhibit B.

MS. KURTZ: It's in your last tab, Section 7 of the full packet.

MS. WOODARD: It begins with Page 981 of the PDF file.

MR. JENNINGS: Thank you.

CHAIR: Mr. Lilly, can you speak a little closer to the mic please?

CAPTAIN LILLY: Yes. Okay. All right, so Exhibit B talks about river traffic. The top line left, tonnage less than 10,000. You can see how all these river ships fit in that category. At the right side of this page you have cargo. On the left side you have cruise handles. 2003-2016, this is the period of time when there were no rate changes to skew the numbers. 2003 was the first full year after the last rate change fifteen years ago. You can see the cargo handles from 2003-2008, which was the year we filed a rate application, which was withdrew. And then you can see 2015-2016. And the mix changes. I'll show you a chart in a few minutes of trends that summarizes this table.

One of our supporters is Miami River Marine Group, and their ships are on the river, and they're in that first line, less than 10,000 gross tons. One -- go ahead.

MR. CREW: Yeah, I got it fixed. All right, Captain Lilly, we're going to show this video now. And we've got some drone footage of vessels transiting Port Miami channel, and I'd like to have you explain to the Board a little bit about what's going on in this video if you don't mind, just simply narrate it.

(Thereupon, the video was played in the meeting.)

CAPTAIN LILLY: This is a post panamax cargo ship inbound with tugs. YOU -- you saw at the site visit these waterways. You can see the pleasure boaters, the work boats. This narrow channel here is supposed to be 600' from the south bank to the dock, but it's really 300' effectively with those cranes out. Large -- large ships like this passing other large ships create real issues. There's a lot of hydrodynamic interaction, and that has reduced our handle, I'm sorry, reduced the speeds of these ships, and has increased our handle times. It's one of the many factors that has changed our operating practices in the last two years with these wider and deeper ships.

MR. CREW: And, Captain, just for some point of reference for the Board members who aren't mariners, what's, what is the beam, or width of this ship, that moored, that's alongside the dock?

CAPTAIN LILLY: That one is 106' in beam.

MR. CREW: And this one, it looks to be a little larger.

CAPTAIN LILLY: That -- that's correct. That's 131' in beam.

MR. CREW: Okay, and then -- and then can you tell us -- can you see the line here? Is that the edge of the south channel?

CAPTAIN LILLY: That's the south bank, the edge of the channel. That ship channel is 50' deep. That bank is 5'. It is a box channel, and that dock wall is a vertical wall, and so there's lots of, lots of current there that, that creates this interaction that we are extremely careful of, and hence the use of tugboats in this situation.

MR. CREW: Okay. Thank you, Captain Lilly.

CAPTAIN LILLY: In Port Miami it's unique. Every port is unique. We have four turning basins in Miami. This is -- this is the one of the two that cargo ships use. It is 1,500' in diameter. You heard comments yesterday about tight turning basins, well, there is one so other cargo ships at the docks do not stop cargo operations. This port is complex. There's all kinds of ship traffic, pleasure boats, work boats, construction boats, passenger ferries.

Now this, this vessel entered, and it traveled the entire length of Fisherman's channel. It had to go to the western turning basin to turn because there's not enough room at the eastern turning basin. Again, slow speeds add to our handle times. Other ships working at the dock here. There's a private oil terminal on Fisher Island that is not part of the port to which we handle loaded oil tankers. Again safe, slow speed, we're talking two to three knots over ground here to prevent any kind of movement to that oil tanker with its hoses and chiksans hooked up. Again passenger ferries passing.

MR. CREW: So for instance, Captain Lilly, I'll just ask you for my own benefit. If there was a steering failure, or something along the lines here, this would be in what you call a zone of danger, for instance with this tanker loaded here, for an outbound cruise ship, or another ship that's outbound?

CAPTAIN LILLY: So this -- let's talk about this turning basin real quick. It is the convergence of four different channels in Miami Harbor. We call it malfunction junction. You've got an oil tanker birthed there. You've got marinas to the north, a Coast Guard base, a small freighter terminal, a new yacht basin, and commercial traffic down the south, so there's a lot going on here. These are -- these are tight quarters. If there's any kind of failure then I'm relying on the tugs, the ship's crew and officers.

These -- this container ship here had to wait for that previous passing ship before it could get underway.

MR. CREW: Captain Lilly, I know there was some discussion yesterday by, I'm not sure if it was Captain Hansen or Admiral Baumgartner, about how Port Miami was a relatively simple and uncomplicated channel that, for instance as compared to Bayon. I think you -- could you tell the Board something about the PAWSA study?

CAPTAIN LILLY: Sure. You saw how, I think graphic yesterday of Miami and New York

Harbor. Several years ago the Coast Guard undertook a Ports and Waterway Safety Analysis, risk, risk assessment studies of major ports around the country, and all the stakeholders got together, and that involved FCCA executives, pilots, tug operators, terminal operators, port directors, Coast Guard, law enforcement, and that group for Port Miami concluded that Miami had an 8.7 our of 9.0 waterway complexity factor.

Miami ranked in the top three of all these ports surveyed around the country for various risk factors, including bottom type width, transit traffic, pleasure yachts, and also the invisibility issues, believe it or not, with rainstorms in the summertime. Miami is a 500' wide channel. The New York Harbor is a 2000' wide channel. There is really no issues with crab angles there. There are here in Miami.

MR. CREW: Now, Captain Lilly, what we're going to do is play out the rest of this video. Something I mentioned and touched on earlier is what happens beneath the waterline, and I think this video will transition into that in a minute. Can -- and we got this video, correct me if I'm wrong, the under, underwater videos from MITAG; is that right? Can you tell the Board what that is?

CAPTAIN LILLY: Sure. MITAG is one of several training facilities and simulation research facilities around the country. We do risk assessments far in advance of any planned ship traffic to a port. A seaport director came to us and said can we bring these ships in, and we pilots go to these simulation facilities and assess the risk. And we're talking about a channel here in Miami, we talked about the deep dredge project, that has not been widened since 1968. It's been 500' wide that for long. It's been depend but not widened, and so longer and wider ships especially reduce the margins for error.

We are -- we are experiencing less margin of error here. There's consequences on these big ships closer to the bottom. We have to deal with all kinds of vessel motion. Ships move in a 6o of freedom, it's subject to wave action, to the wind, to ocean currents, to tidal currents, to even the river currents inside here in the Miami River, so we are apprised of this, and we are doing these preoperational training events years in advance.

MR. CREW: Thank you, Captain Lilly. Let me get this started back up. I apologize for the delay. It won't take long. We'll be right back on track. All right, Captain Lilly, I'd like to turn next to the characteristics of some of the larger cruise ships, and what, we've got our three slides to describe the three sizes of cruise ships that you service in Port Miami. Let's start with one of the larger ones that's currently here. I know -- I know, by the way, we mentioned yesterday, and Admiral Baumgartner did, that two larger ships are going to come here, but right now this is the Norwegian Escape. That's the largest ship, cruise ship that comes into Port Miami, correct?

CAPTAIN LILLY: That's correct.

MR. CREW: Okay. Can you tell us a little bit about this ship? And we've got the particulars on the next page.

CAPTAIN LILLY: Sure. This ship is a weekly, a weekly caller. It arrives, like other ships, late at night/early in the morning, in a convoy system, and it's, it's beam is not on there, but it's a post panamax beam as well, so it needs constant care. Because we talked about crab angle, as you've heard, and the wider the ship the less margin of error. That means we have to reduce our crab angle on these wider ships, and that is exactly why we imposed wind limits on these ships with huge sail area.

MR. CREW: Here's a -- I want to ask you a couple of questions Captain Lilly. There was a lot of talk about the actual, you know, what, what the cost was to the cruise lines for these vessels, and so I see on this slide that we have a pilot fee of $6,500. Is that one way or two ways?

CAPTAIN LILLY: That's one way.

MR. CREW: Okay. And so correct me if I'm wrong, but essentially you took the listed passenger double occupancy rate for the Norwegian Escape, or 266, and you divided that into $6,500, and you came up with a pilot fee per passenger, right, and what was that for the Norwegian Escape?

CAPTAIN LILLY: That's $1.52.
MR. CREW: Okay. And assuming the vessel sails at max occupancy what is that number?
CAPTAIN LILLY: Maximum occupancy $1.30 per passenger.
MR. CREW: $1.20.
CAPTAIN LILLY: I'm sorry, yeah.
MR. CREW: All right. And how this is the Norwegian Sky. I think we also talked about this vessel a little bit yesterday. This is one of the, sort of the medium sized cruise ships that calls the Port Miami; is that right?
CAPTAIN LILLY: That's correct, this is a frequent caller. This is a twice a week call. This is one of actually three ships in the last several years that are frequent callers, however that ship and the two others are the oldest ships in their respective fleets, the oldest ship with the least amount of high technology, and no pilot compulsion on these ships. You can see the pilot fee per passenger here as well.
MR. CREW: Captain Lilly, just touching on the comment that you just made about the technology, as far as electronic navigation

aids aboard these ships, as far as you know all of the ships that call on Port Miami are required to have the same electronic aids to navigation; is that right, radar?

CAPTAIN LILLY: Yes. There's carriage requirements for radar, for ECDIS now, that is correct.

MR. CREW: Do you use anything independently of the shipboard radar AIS, such as the personal pilot unit?

CAPTAIN LILLY: Yes, we do.

MR. CREW: Okay. And so why do you use a personal pilot unit?

CAPTAIN LILLY: We found that using our own carry aboard navigation device with its own independent power system, its own independent electronic navigation chart, allows us to customize it for our port. We have accurate Corp of Engineers soundings on it, it's customizable, and we have found that there are so many vendors of radar and ECDIS that we need to be confident and proficient on our own custom designed unit, and that's why we carry onboard all these larger ships.

MR. CREW: And one of the comments

yesterday I think was one of these extra essential services for pilotage was a computer manager. Is a computer manager someone who takes care of the personal pilot units for the pilot crew?

CAPTAIN LILLY: Absolutely.

MR. CREW: And so -- I don't want to misrepresent what these are for -- this is just an additional aid that you use in safely piloting the vessels; is that right?

CAPTAIN LILLY: That's correct, it's another tool in our tool bag.

MR. CREW: So back to the Norwegian Sky, the stated double occupancy is 2,000, about 2,000 passengers. And I don't know if you can read it here, but what does the double occupancy pilot fee per passenger come out to on this vessel?

CAPTAIN LILLY: The Norwegian Sky is $1.63 per passenger.

MR. CREW: Okay. And this is a $3,200 pilot fee charge, roughly about half of what the Escape was, right?

CAPTAIN LILLY: That's correct.

MR. CREW: So even though the pilot fee is about half it's still about the same price for pilots, I mean for the passengers on the pilot charge; is that right?

CAPTAIN LILLY: That is correct.

MR. CREW: Finally, this is one of the smaller ships that calls Port Miami, the Seven Seas Navigator. Can you tell us a little bit about this ship, and what it does, because it's a little bit different than the other ships, I believe, in what, what its purpose is; is that right?

CAPTAIN LILLY: Yes. Here's a good example of a seasonal ship. Our ship, cruise ship traffic increases in the winter season. You heard comments yesterday about a low season and a high season. This one is home based in Miami for the winter months, November through March and April, and you can see the specifications on it, and the price per passenger.

MR. CREW: And this is also a really, like an ultra high luxury cruise ship; is that right?

CAPTAIN LILLY: That's correct.

MR. CREW: I think -- and I know they can rebut me if I'm wrong, but this is really sort of the next step up to a ultra luxury private charter yacht; fair to say?

CAPTAIN LILLY: That is correct.

MR. CREW: So this is one of the vessels that even though it's a lot smaller they have a lot lower passenger capacity to give what I think Mr. Hansen and Admiral Baumgartner talked about, the open feel on the cruise ship; is that right?

CAPTAIN LILLY: Correct.

MR. CREW: So even on this ultra luxury cruise ship the price per passenger is still only $3.00?

CAPTAIN LILLY: $3.00 per passenger --

MR. CREW: All right, now Captain Lilly, this is a chart that is -- can you tell us about this chart? Can you see it? You might want to turn around and see it, it might be a little easier. We've got a dark bar graph on the top line. Can you tell us what that stands for? And I think the Board may be able to see it in the packet.

CAPTAIN LILLY: Yeah, the dark line starting at the top is pilotage per TDU.

MR. CREW: And so -- and just so I can explain the graph, the top line is $1.70; is that right?

CAPTAIN LILLY: The very top line of the graph is $1.70, that's correct.

MR. CREW: And that's -- that's for cruise, right, on left side of the chart?

CAPTAIN LILLY: That's correct.

MR. CREW: And so on the right side it's for cargo.

CAPTAIN LILLY: That is correct.

MR. CREW: And so this chart is basically, has two lines, one for cargo, the dark line, and the red line is for cruise; is that right?

CAPTAIN LILLY: That's correct.

MR. CREW: So this chart essentially tracks the costs for either TDU or passenger going back to 2003; is that right?

CAPTAIN LILLY: That's correct.

MR. CREW: And so over that time can you describe what the trend has been as those ships in those respective trading categories have grown in size and capacity?

CAPTAIN LILLY: So this is a chart that summarizes that Exhibit B that we referred to which had the table of handles and revenue from 2003. So on average you are looking at the left side, the red line showing the pilotage fee per passenger from 2003, slight fluctuations throughout the years. Up to 2016 it has essentially been, the trend is flat to downward. The -- the black line is the pilotage fee per TDU, and you can see the clear downward trend there, and that's because of the economy is a scale.

MR. CREW: And -- and what I want to point out and ask you about real quickly, it looks like in 2011 we had a significant dip in price per passenger to below $1.40 per passenger. Can -- can you explain to the Board why that may have occurred?

CAPTAIN LILLY: Well, there -- there's a -- there's a variety of ship operators that come and go. There's seasonal ships. Like I said even the regular callers, they get shifted out, relocated. You know, the composition and GT of these ships change year to year, and the statute kind of acknowledges that in the beginning, that normal uncertainties occur in the mix of traffic.

MR. CREW: And can you tell the Board when you first started seeing these 150,000 let's say gross ton ships arriving in Port Miami?
CAPTAIN LILLY: They were showing up around, the first one was in 2010, and then in 2015 and '16.
MR. CREW: And just -- so we're clear has there been any year since 2003 in which the price per passenger has been higher than $1.65?
CAPTAIN LILLY: Never.
MR. CREW: This is another chart which I think shows the same thing. And this also includes the number of passengers handled. Can you explain, explain this chart for the Board?
CAPTAIN LILLY: Total numbers are passengers moved through Port Miami year after year since 2013, 2003, excuse me, with the total pilotage fees paid for handling cruise ships, and it leads you to an average pilot fee per passenger, and that has essentially remained, flat to downward is the trend. May I refer you once more to Exhibit B? In all these ups and downs, and fluctuations you see, and talk of very large GT cruise ships that, that will be coming, that have been built, there

actually is an average gross ton per handle on this Exhibit B that shows from 2003 on the left side the cruise ships only. 87,000 average gross ton ship in 2003 of all the cruise ships handled that year. In 2015, 84,000. In 2016 85,000 gross ton. That's the average size handle of a cruise ship we do. There -- there's no -- there's no trend there, it's flat.

MR. CREW: And I know they talked a lot about revenue, and how you had basically doubled our revenue in some way because you worked less, but for instance this chart shows in 2003 you had about $6 million in revenue, and in 2015 you only increased it by about $1 million.

CAPTAIN LILLY: That's correct.

MR. CREW: Next. We talked about this a little earlier on the charts, showing the TEUs dropping as the ships have grown. Can you tell us about the trend in Port Miami of the cargo ships increasing, and what Maersk's position is on that, if you know it.

CAPTAIN LILLY: Sure. Maersk Line is the world largest owner and operator of container ships. They have been in this port since 1983, and they have discovered by doubling the size of one of their ships they enjoy an immediate twenty five percent cost savings in operating costs, so the economy scale is benefited down tremendously.

MR. CREW: And I don't know if you know this or not, but does Maersk and the other cargo ships that call on here, do they have like a Net 0 pass through on the pilotage expense to the people who for instance have slot charters, or ship cargo on their ship?

CAPTAIN LILLY: Well, they -- as you can see they pay that lower day rate, and companies like that have the ability to impose surcharges on their customers for a variety of reasons, whether it's fuel, port congestion, what have you.

MR. CREW: In other words they may pass it on to their customers, but they pass it on in way of a freight charge, plus surcharges, and things like that. Or in the case of a chartering, a charter party, to the person who is actually chartering the vessel, right?

CAPTAIN LILLY: That's correct. That's

correct, so it's zero cost to Maersk.
MR. CREW: Well, if you know or you don't know. But in any event they're not here objecting on behalf of their charterers, or the freight users on those ships, are they?
CAPTAIN LILLY: That's correct.
MR. CREW: Now, we talked a lot yesterday about how the Maersk Altair could carry, I think it was the Norwegian Escape, or it was one of the Royal Caribbean ships. Can you tell us a little bit about this ship as it relates to calling on Port Miami?
CAPTAIN LILLY: Sure. This is -- this ship has been here several times. You can see the dimensions here. The pilot fee for one way handle of -- ships like this will need two or three tugs to enter and leave. When turning around it needs three tugs due to the turning basins, and the, and the ships at the dock, so you can see how the transit cost is, includes cost of tugboats.
MR. CREW: And that's not something that the cruise lines pay routinely.
CAPTAIN LILLY: That is correct. That is correct.

MR. CREW: So for instance comparing the Altair to the Norwegian Escape, the Norwegian Escape would only pay $6,500 in pilot fees to, to Port Miami one way, right?

CAPTAIN LILLY: That's correct.

MR. CREW: So for the Maersk Altair cargo ship that they're, that the cruise lines were complaining about that received a discount, it would be over $40,000, right?

CAPTAIN LILLY: That's correct. Right.

MR. CREW: Do you know whether there's a difference in the dockage that the cruise ships pay versus what the cargo ships pay?

CAPTAIN LILLY: That would be in the Port Miami tariff, and they break it down by length, tonnage, tons of cargo, GT of ship, numbers of passengers barked, embarked and debarked.

MR. CREW: Do you know whether Port Miami considers gross tonnage as a factor in charging dockage?

CAPTAIN LILLY: It's a standard charge.

MR. CREW: So I'd like to ask you about another component of the traffic in Port Miami, and that's the river traffic. This used to be a much larger segment of the handles in Port

Miami; is that right?

CAPTAIN LILLY: That's correct.

MR. CREW: Can you tell us about where typical, you know, Miami River ship job would be?

CAPTAIN LILLY: So these ships trade in the islands, Central America, and Miami River is their home port, which is its own seaport unto itself, so these ships have been replaced by larger ones that do not go to the river, they come to the port now. And, you know, years ago these ships would require handle times a lot less than say the Maersk Altair.

MR. CREW: So in -- I know that the Royal Caribbean Cruise Association mentioned this a number of times yesterday, that way back in the 1990's you had a larger number of handles than you do now. Was that due in part to the larger number of river jobs that you had back then?

CAPTAIN LILLY: That's correct.

MR. CREW: Okay. And so in that -- and over time as the economies of scale have increased you've seen a slow down in this type of traffic; is that right?

CAPTAIN LILLY: Yes, we have.

MR. CREW: Now, this -- just for some -- this is the vessel Mambo. This is about a 250' long ship. It's about 5,000 GT; is that right?
CAPTAIN LILLY: Correct.
MR. CREW: Okay. And that's typical of a river job, right?
CAPTAIN LILLY: That's correct.
MR. CREW: And they're charged gross tonnage just like everyone else?
CAPTAIN LILLY: That's correct.
MR. CREW: Let's talk about some of the hazards in navigating the Port Miami, the north and south channel, and out to, to the cut. Miami has the highest rate of marine injuries, deaths from recreational boating in the state; is that right?
CAPTAIN LILLY: That's true.
MR. CREW: And how often do you encounter pleasure boats, and jet skis, and other recreational, you know, sail boats in, in Port Miami?
CAPTAIN LILLY: During the peak periods of our commercial ship traffic.
MR. CREW: And it's basically every day.
CAPTAIN LILLY: Just about every day.

Even during the week day.

MR. CREW: We've got one incident in 2015 that I'd like for you to inform the Board about involving the Norwegian Getaway and 31' sailboat, if you wouldn't mind explaining that to the Board.

CAPTAIN LILLY: Sure. In 2015, the Norwegian Getaway outbound cruise ship in the evening, a -- the pilot onboard noticed a sailboat in the Government Cut, in the channel inbound with this large cruise ship outbound. The winds were blowing about 25 knots at the time, and at the last moment this sailboat crossed the bow of this cruise ship, with the cruise ship already at a maneuvering speed of approximately 11 to 12 knots due to the wind force. So, we face this kind of choice a lot with jet skiers and unpredictable boaters. What do we do, this, the Norwegian Getaway has nowhere to go in this channel. That boater is right in the way, you know?

The pilot on that cruise ship maneuvered just slightly, and chose to damage the ship, to ground the ship just so they wouldn't hit this, this yacht that was going right across the bow, and right down the port side of this ship, clearing it by meters. So there was damage, and we are faced with these last second decisions all the time here with these pleasure craft.

MR. CREW: Thanks. Captain Lilly, the next thing I'd like to talk about is something, this is sort of in response to some of the essential pilot services that you were criticized about yesterday. Can you explain to the Board what some of those are, and they they're important to the Biscayne Bay Pilots?

CAPTAIN LILLY: As we mentioned the deep dredge project, infrastructure investments over the last twenty five years; there's a lot more behind the scenes work that we do that we just don't get credit for, and that's a part of the system. We just do not get on ships and drive them in and out; we're not a valet service. This is a system of pilots that work as a team on all these seven, and eight, and nine ships that come in the morning and go out in the afternoon.

Essential services include multiple meetings with the seaport director and his staff, law enforcement agencies. I mentioned training, and risk assessment studies for future ship traffic, these, these take up weeks and months of our time. We have to work with terminal operators, tugboat companies, cruise lines. We have public terminal operators in the port and private terminal operators elsewhere. We have the United State's Coast Guard aids to navigation which is outside the Harbor Safety Committee. We have the City of Miami. We have Dade County we have to work with, all the work that goes into pre and post response with Hurricane and tropical storm passage.

We have institutional knowledge in this port. We get turnover on a lot of, a lot of individuals, a lot of people in various agencies, and we have to be engaged in a lot of education and re-education the piloting system.

MR. CREW: Can you tell us a little bit about the Biscayne Bay Pilots involvement with the dredging project here in Port Miami?

CAPTAIN LILLY: Sure. This Phase 1 ended in 1993, just after I started here, and there are constant regular meetings with dredge people, equipment operators, tugboat operators, to get this done. You see there's -- Miami has been unique for the last several years. None of these dredges can operate, operate outside the channel. You have to move traffic past the equipment in the channel, and the shipping lines and cruise lines, you know, were subject to quite a bit of delays, so it wouldn't happen without our detailed involvement.

MR. CREW: So I think we've touched about what the computer manager does. We'll talk about the boat manager with Captain Stubbs here in a few minutes. And then what we'll do is -- I think that you covered most of the other things, but those -- those are all aspects of your job that relate to you being able to continue servicing the vessels that call on Port Miami; is that right?

CAPTAIN LILLY: That is correct.

MR. CREW: I mentioned this in my opening, about who sets the number of the pilots, and this Board does obviously, but I want to talk about why this, you have to have a full compliment of eighteen pilots. And -- and there's one reason really why you have to have

that basically, right?
CAPTAIN LILLY: Peak periods. They're -- they're predictable, and unpredictable.
MR. CREW: So what I want you to do is -- I guess we're going to show them the next slide. This is a picture of the dispatch screen in your dispatch office, right?
CAPTAIN LILLY: Correct.
MR. CREW: And this is something that you handle for Port Miami right now for all the users at no charge, correct?
CAPTAIN LILLY: That's correct, yes.
MR. CREW: And what you're seeking in part of this tariff is a charge for that so that, you know, in other ports there's either a harbor master fee, there's usually a communication charge, but this is something that is a, an expense and drain on the pilots in order to keep the top level service that you provide; is that right?
CAPTAIN LILLY: Absolutely.
MR. CREW: So tell us a little bit about what's going on on this screen.
CAPTAIN LILLY: This is an image of our, what we call the board. It's our computer

dispatch system that our harbor patrol office maintains 24/7. Ship's agents call in and order a pilot, and we call a pilot, send a pilot, so this lineup is on a 24 hour basis, and it shows almost twelve ships in a period of less than three hours that are going to require pilots. And that -- that's why there has to be a rested rotation of pilots. That's going to use up all nine pilots in the rotation plus the tenth pilot on standby.

MR. CREW: Okay, so for purposes of explaining to the Board what's going on here, if there's a blue A that's an arrival, right?

CAPTAIN LILLY: That's correct.

MR. CREW: Okay. And so if it's a D and it starts at 1600, that's 4:00 in the afternoon?

CAPTAIN LILLY: That's correct.

MR. CREW: So between 4:00 in the afternoon and 6:00 in the afternoon all of those Ds in a row were vessels that left Port Miami.

CAPTAIN LILLY: Correct.

MR. CREW: And through the same channel, going through malfunction junction out the

Government Cut to sea, right?

CAPTAIN LILLY: A pilot on every one of them. All the ships want to leave at the same time. You know, the cruise business, you heard, they say it's predictable, but we experience a lot of unpredictability in the business on these departures of cruise ships, as well as cargo ships.

MR. CREW: I want to touch on one of the other charges; I don't know if maybe Captain Marlow will touch on it a little bit later, that's the detention charge, and you, you service all these ships when they, they call it out, why do you feel like you need an increase in the detention charge?

CAPTAIN LILLY: Cruise ships in the afternoon are waiting for thousands and thousands of passengers, and we have experienced over many years regular delays on these cruise ships. A ship's agent confirms a pilot. We show up on time, and we get there and they're not ready. And well over half of all these cruise ships are causing delays. The pilot stays on board and waits, however that puts a strain on our rotation of the rest of the pilots.

MR. CREW: And how -- how does it affect other port users, for instance cargo?

CAPTAIN LILLY: Well, there you go. You got the outbound cargo ships as well. You have inbound cargo ships as well that have an evening start time at the dock, and so we have to decide who's going to go first and who's going to get delayed, so that puts, that's a delay on other ships, and delays are the last thing these ship owners want. For instance Maersk line, you had mentioned before, they wrote a letter to this rate committee in 2014. It's -- I believe it's on Page 18 of investigative committee report. There's a comment there that any, these costs of delays far exceed the cost of maintaining a full pilot rotation to meet the peak demands.

MR. CREW: So that was a very busy day that we saw there. Do you have any idea how many -- I mean you have rough idea sometimes because of the convoy, but you have to plan for every day, or at least a couple of days a week, for it to be that way; is that right?

CAPTAIN LILLY: For -- for the cruise

lines it's months in advance this planning begins with the pilots, and the port, and their agents, absolutely.

MR. CREW: And that's a premium service that you give to the cruise lines, right?

CAPTAIN LILLY: Sure, because they demand a certain arrival time in the morning. Everybody wants to arrive at the same time. We have to spread them out based on the ship composition, the size, the timing, the position of berth, and so on.

MR. CREW: The next thing I'd like to turn to is some of the consequences of grounding, a severe, you know, collision in Port Miami, and that's what you're here to avoid, that's what you plan for, when everything goes wrong. This is a -- and I'm just discussing for the Board, what we've got is a -- this a very large crude carrier, it's an old tanker, and it was involved in what's called a lightering operation, where it was taking oil off of it and loading it onto a smaller vessel that can make it into a port. This is -- and I think the Java Sea, and it happened earlier this year. And the point that we want to illustrate for the Board is that -- what would the consequences of something like that happening in Port Miami be?

First of all this, this vessel is about 154,000 GTs, and it's 1,000' long. It has a beam of 197', which I'll point out some of the extreme beams from the largest outside point into these large 220,000 GT cruise ships is about the same. So as far as gross tonnage is concerned it's a very large crude carrier. It is about the same gross tonnage as the Norwegian Escape which we talked about yesterday. I'll also point out that even though there's many hundreds of thousands of barrels of oil on these very large crude carriers, ultra large crude carriers, the crude ships that call here, and the cargo ships, typically carry between 30,000 and 50,000 barrels of bunker fuel, so this is an issue.

Here's what happened. April 12th of this year the Alex was engaged in laddering aside this craft and it grounded in soft mud. No hole breaches, no pollution, but the vessel is stuck there, and unable to move for twenty two days. That's how long it took them to get them to get it re-floated, make sure the hole is intact, and to move it. So what we want to do is talk about what would happen if that went on here. So I think as far as the port is concerned Captain Lilly is farm more qualified to talk about it, in terms of the channel and the consequences, so can you give us a little -- let's say it happened in Government Cut, for instance.

CAPTAIN LILLY: Sure. Up to this point no one has talked about the consequences of the ship operations in these narrow channels, so what if. And that's what we plan, and what we plan for these contingencies, and it's the last thing we want to happen to any, any size ship. Because of the, the configuration of this port, and that, and that entrance channel, it's at the doorstep to the Gulf Stream, we are very concerned about bringing in ships of this size in that narrow channel with this hard rock bottom and, and sides, so severe consequences.

MR. CREW: No, during that -- during that three week period, say twenty one days, how many cruises -- let's say if there's eight cruise ships in, in port at the time, how many cruise ships would be, I mean cruises would be canceled?

CAPTAIN LILLY: It would be approximately thirty cruises that would be impacted just by that blocked channel alone in that time.

MR. CREW: And what I want to talk about is this -- I know we talked about the technological superiority of some of these -- at least the cruise lines talked about it yesterday, that if you could -- and we're -- we're talking about in terms of grounding, and what the, what the risks are. Most of the things that you prepare for are mechanical failures, and problems with the ship in handling and responding to your instructions; is that right?

CAPTAIN LILLY: That's correct.

MR. CREW: And so as part of what you do as a pilot do you, do you look out for other ships, or do you monitor reports of ships that are having problems, so you're appraised of them when they come into Port Miami; is that right?

CAPTAIN LILLY: That's correct.

MR. CREW: So Norwegian Dawn, that's a

vessel that's called in Port Miami before, right?

CAPTAIN LILLY: Sure.

MR. CREW: Now, there was a grounding incident with the Norwegian Dawn in Bermuda. Can you tell us a little bit about what happened with that?

CAPTAIN LILLY: This vessel was operating on TRACKPILOT, you've heard it mentioned yesterday, which is basically a glorified auto pilot, but in its operating conditions, sometimes a human being can't react in time, and there was some overreliance on electronics at this time from that ship bridge.

MR. CREW: And that resulted in a grounding in Bermuda.

CAPTAIN LILLY: Correct.

MR. CREW: It interrupted just that cruise, and nothing else, right?

CAPTAIN LILLY: That's correct.

MR. CREW: Okay. I know this is sort of a sensational issue, that we're not talking about in terms of, you know, Carmel is not here, and Costa is not here, but in terms of the salvage for the (unintelligible), it took three years.

CAPTAIN LILLY: That's correct.
MR. CREW: And that was on rocks, hard bottom like we have here in Port Miami.
CAPTAIN LILLY: True.
MR. CREW: Next we have an example of a grounding of the, it's called the motor vessel Rena. This was in New Zealand; is that right?
CAPTAIN LILLY: Correct.
MR. CREW: What happened in this case?
CAPTAIN LILLY: According to the incident report, the captain decided to take a short cut which brought them too close to a reef off the coast of New Zealand, and ended up in this catastrophic situation, ended his career, ended the ship's career, an oil spill, loss of -- the ship lost its cargo.
MR. CREW: Yeah, and I think if you can see in the, in the photo, there's a helicopter there that's actually lifting one of the sailors off the, off the vessel. Do you know whether they ever actually refloated this, this ship, or salvage?
CAPTAIN LILLY: I believe it was salvaged on the spot, broken up with torches all the way. There was no -- there was no chance of

actually saving the hull.

MR. CREW: Yeah, it's -- it broke later, but they were able to get most of the boxes off of it, but --

CAPTAIN LILLY: It's done.

MR. CREW: So, I mean, I guess one of the issues is -- I mean this -- this can happen here, and this is a much smaller ship than what we're dealing with now, but if you could tell us a little bit about this 2002 incident where a steering failure happened in Government Cut.

CAPTAIN LILLY: Sure. This mid sized container ship was inbound, and out of our cut in Miami, the steering failed. The pilot had no choice but to stay in the channel, and ended up going straight onto the south bank in Bar Cut. The draft of the ship allowed that vessel just to ride up on the coral reef and avoid any oil tanks, and avoid an oil spill. The point is though, it blocked the channel partially. That was 2002.

Today we've got ships like this with 1,155 people on it that would block the entire channel. And this photo was taken from the bridge of an outbound cruise ship that was able to sneak by. 48 hours later there were much larger cruise ships that were not, and the salvage company was under a lot of pressure to get that off, and they did get it off successfully.

MR. CREW: So let's -- let's take a 150,000 GT ship. Irrespective of how much open space, and solariums, and theaters, and open air the passengers like, what would be the consequence of a ship like that grounding in Government Cut?

CAPTAIN LILLY: So that would obviously block the channel. There is a possibility of an oil spill. Absolutely no commercial traffic could move through this port, and the entire, the entire system would be affected.

MR. CREW: Now, I think one of the reason that we like to bring up for the Board's purposes is, is that given the cost constraints that a decrease would place on the group here in the pilot system in Miami, that we're not saying that this would happen, obviously the pilots are all very highly skilled qualified navigators that look out for the port, but this is a risk that they guard against by training, by having money sufficient to go to MITAGS, other simulation facilities around the world, and to try to mitigate this issue by being aware of problems as they arise, and planning for the worst case scenario before they happen.

And also when they know the problem in advance to say no, because as the preamble of our Florida statute says commercial pressure is not to be considered. This is really, the public interest should prevail. And that's what their job is about. So I'd like for -- Captain Lilly, I said what I had to say about that. If you wouldn't mind expanding a little bit of how a decrease would affect Biscayne Bay Pilots.

CAPTAIN LILLY: Sure. Sure. The FCCA is asking for a rate decrease back to 1992 levels, and we just ask how is that rational and reasonable. There's no evidence of any systemic issue here, no evidence of any safety issues, no one has complained about our service. The demands on the system have increased. We're operating larger ships on the cargo side. The average size of the cruise ships have remained flat, but these wider ships have really increased our handle times because of the slower speeds. We board these vessels farther out. We used to have a lot of two way traffic. That's been reduced greatly because of these wide beamed ships on both the cruise and the cargo side, so the system has to be maintained.

Maersk Lines does not want to suffer any delays to their, to their terminal operations. Really technology doesn't justify rate decrease for cruise lines, and nor does captain's experience or familiarity with a port can justify any kind of decrease here to this system.

MR. CREW: And, Captain Lilly, would you agree with me that becoming a harbor pilot is really apex, what the top job is in your profession when you started out as -- can you just point -- that that was the highest thing that you could aspire to be in this --

CAPTAIN LILLY: That is right. That is correct.

MR. CREW: How do you feel about someone coming in here and saying that you should be happy with a $100,000 pay cut at the apex of your career?

CAPTAIN LILLY: Yeah, it doesn't make any sense to me in terms of, you know, keeping this system going, and really maybe giving me second thoughts about, about staying here.

MR. CREW: One of the things that you mentioned in the other essential support services, there was a line item that they criticized called mentoring. Can you tell us what you do personally in regards to mentoring within Port Miami?

CAPTAIN LILLY: When there's an opening in the State of Florida for a deputy the State advertises it. We do our part as well locally to spread the word, however you really got to attract people to the maritime profession first before you attract them to being a pilot, so locally we attend high schools, and meet with 9th and 10th graders, and expose them to the maritime world, and all the, all the jobs that go with it. And that is --that's key to us, because we want -- we want people to know that there's a future here, in this port at least.

MR. CREW: And do you ever get questions about, from, let's say Kings Point Cadets, or students, about what the prospects of becoming a Miami Pilot are given the current situation?

CAPTAIN LILLY: Sure -- sure, they're wondering.

MR. CREW: And what do you tell them?

CAPTAIN LILLY: Well, I think the word is out with a lot of mariners that there's, there's an issue here with this, with these rate decrease applications that we've incurred in the last three years, so they're concerned.

MR. CREW: Captain Lilly, I want to thank you for your testimony. What I'm going to do now is I'm going to play the video very briefly while we transition to Captain Stubbs.

CAPTAIN LILLY: Thank you.

MR. CREW: But I want to reemphasize this is, again, no cost to the Florida taxpayers. I think that's very important. Thank you, Captain Lilly. Does the Board have any questions for Captain Lilly before -- he'll be here the entire time. You want to take a quick break?

CHAIR: Yes, let's do our morning fifteen-minute break. Be back at 10:30. Thank you.

(Thereupon, a brief recess was had, and the proceeding continued as follows:)

CHAIR: Okay, let's get started. It's 10:30, and we will be continuing on with Mr. Crew.

MR. CREW: Thank you, Mr. Chairman. Thank you, Mr. Chairman, members of the Board. One thing I, it was pointed out to me, I misspoke, and please forgive me, I am not as intimately familiar, being from Texas, as all of you, so if I misspeak about the formalities of this Board I hope you'll forgive me, it's sometimes a little confusing to me. When I talked earlier about this Board setting the number of pilot,s, I mean the full Board of Pilot Commissioners, not simply this rate committee. So I misspoke; I apologize about that.

CHAIR: We understand.

MR. CREW: The next witness I'm going to call is Captain Bronson Stubbs. Captain Stubbs, can you please introduce yourself?

CAPTAIN STUBBS: Yes. I'm Captain Bronson Stubbs.

MR. CREW: Hold on, let me get you started.

CAPTAIN STUBBS: Yes, Captain Bronson Stubbs. I started here in 2013. I graduated from Texas Maritime Academy in 2005. I worked from 2005 through 2012 in mainly the oil services industry, supply boats, anchor handlers, drill ships, a lot of dynamic positioning stuff, a lot of SE5's, pretty much all over the world.

MR. CREW: And you -- you're from Florida originally; is that right, Captain?

CAPTAIN STUBBS: Yes.

MR. CREW: Okay. Where were you raised?

CAPTAIN STUBBS: Fernandina Beach, Florida, the northeast corner.

MR. CREW: All right. I'll talk a little bit about your experience. After you graduated from Texas A&M Maritime Academy what license did you, did you hold when you graduated?

CAPTAIN STUBBS: Pretty much all the maritime academies you graduate third mate unlimited.

MR. CREW: And after you left Texas A&M where did you go to work?

CAPTAIN STUBBS: I went to work for a company called Edison Chouest Offshore, with the bigger supply vessels and anchor handlers in the Gulf of Mexico.

MR. CREW: And was it at Chouest that you got your DPO certification?

CAPTAIN STUBBS: Yes, it was.

MR. CREW: Okay. And then after you left -- sorry, we've got some emergencies in the background. After you -- after you left Chouest you went and got a job at Transocean; is that right?

CAPTAIN STUBBS: Yes, that's correct.

MR. CREW: And -- and what did you do for Transocean?

CAPTAIN STUBBS: I was a dynamic position operator, and then senior dynamic positions operator for Transocean.

MR. CREW: Okay. I'm going to ask you some more questions about that in a little while, about what you did there, and what your lifestyle was like, because I think it's important for the Board to consider that you're a fairly recent pilot, and what you had to give up at that job to become a pilot here in Port Miami.

Before we get to that I'd like to talk

about what your position within the Biscayne Bay Pilots is. And you're the boat manager; is that right?

CAPTAIN STUBBS: That is correct. I am the boat manager, if these guys are wondering what we're doing.

MR. CREW: Yeah, they had some questions about what, what that was, and whether or not one of your senior boat captains could be the, the boat manager for the association. Could you tell us what it is that you do in your role as the boat manager for the association?

CAPTAIN STUBBS: Yes, I can. And we have actually tried having one of the other guys manage the boats, and it just really didn't work out too good. But as the boat manager I basically oversee all the major refits, repowers, every time we have a yard period I arrange that. I oversee the maintenance on all the boats, make sure everything is getting done correctly.

We are right now in the process of researching new pilot boats. I've been going around looking at other boats getting quotes, visiting other associations and seeing how they like their boats. And I basically manage the six guys there that are, that are our boatmen, and, and boat maintenance guys, and kind of relay all the information, and break it down to the pilots, say, hey, these are our decisions, I mean these are our, these are our options, this is what I recommend, this is what this is going to cost, this is what that's going to cost, and, you know, that sort of thing.

MR. CREW: So from a -- from a business standpoint you consider all the expenses that your association might incur, and you weigh those out and report them to the rest of the group; is that right?

CAPTAIN STUBBS: Yeah. In regard to the pilot boats, yes.

MR. CREW: Okay. Now, in regards to the maintenance schedule on these boats, why is that important to supporting the pilot system in Port Miami?

CAPTAIN STUBBS: Well, the boats are the most important part of, you know, without the boats we couldn't be the pilots, obviously, or we couldn't get to the ships, so the maintenance on the boats is of the utmost importance, and we are, you know, really up to date on our maintenance. We don't skip any maintenance. We do everything at certified intervals, and, you know, we don't spare any pennies on the maintenance, that's for sure.

MR. CREW: And because of the convoy system, and, you know, the heavy peak loads that you have at Port Miami, you have to have three pilot boats to, to have a back up as well in Port Miami to actually service all of the vessels that are calling here; is that right?

CAPTAIN STUBBS: Yes, that's correct. It's not only during peak hours. It's pretty much every day. Any day of the week most of the time we'll have two boats in use at one time. You know, there might be one boat having pilots offshore that's boarding a couple ships, and then there's another boat waiting at the dock to bring the pilot that's getting off one of those ships back out for another job, or, you know -- but at any rate we have two boats that are being used simultaneously, you know, pretty often.

And we have another boat that's always in standby that -- obviously we have maintenance times for boats, and stuff like that, so we'll have a boat out of service for a couple of weeks, and then we have two boats that we're relying on.

MR. CREW: And can you tell us some of the recent events that you've experienced in your role as boat manager with mechanical breakdowns on board these pilot boats?

CAPTAIN STUBBS: Let's see. This year actually we had one, we had one boat out for regular yard period annual maintenance. We had the propellers out, the shafts out, everything, and then we had one of our other boats breakdown while, of course while the other boat is disassembled pretty much, and so we were down to one pilot boat. And luckily it was during a period where we could make it work, but we were with one pilot boat. It was a holiday weekend. We couldn't get parts, and, you know, but we were down to one pilot boat for a couple of days there. We made it work luckily, but it was pretty close.

MR. CREW: You mentioned earlier that part of your role as boat manager is that you've been getting bids from various boat manufacturers, pilot boat manufactures on new builds. Can you tell the Board a little bit about what the cost estimates and bids that you've received from those pilot boat manufacturers are, the ranges?

CAPTAIN STUBBS: Yeah, they're basically anywhere from the low $1 million range to, one of the boats you saw at our station there, the larger boat that's on the dock by itself, the Vizcaya built by Gladding-Hearn, which is one of the more reputable boat builders in the U.S., an exact, that exact boat today is about $2.2 million.

MR. CREW: Captain Stubbs, I don't know if you're familiar or not with the new EPA diesel particular emission regulations on diesel engines in marine vessels like pilot boats, but can you explain to the Board about how that impacts your expenses in getting a new built pilot boat?

CAPTAIN STUBBS: Well, yeah, all the, the new engines with all the emissions stuff, tier forward is what it's called, it cuts emissions by a good bit. It's -- they're a little bit more expensive for sure.

MR. CREW: As opposed to the boats when they were originally built, right?
CAPTAIN STUBBS: Right, exactly.
MR. CREW: So let's talk about the age of the boats. You've got -- you've two Queen Craft 43' pilot boats, and the oldest was built in 1976. And it looks like you've got a Gladding-Hearn that was built in 1994 that's 52'. That's a little, a little newer. Which of these boats do you plan on replacing in the next five years, if any, or more than one?
CAPTAIN STUBBS: No, I think for sure we need to replace the two older boats, and like the newer boat as well within the next five years or so.
MR. CREW: Okay. Has the Biscayne Bay Pilots done any sort of analysis on what the debt service on replacing two pilot boats would be if the cruise association is successful in a twenty five percent decrease as they requested?
CAPTAIN STUBBS: We have not, but I think it's safe to say that we will not be buying any new boats if we get a rate decrease.
MR. CREW: I know that the Board visited the pilot station, and they had an opportunity

to look at the dock. And I know part of this was in Mr. Law's report, but can you tell us about what you've done as the boat manager investigating the maintenance and repair, and reconfiguration of the, the pilot boat dock, and why that's important to the pilots?

CAPTAIN STUBBS: Yeah. Obviously we have to have a place to tie our boats up, and the dock is an important structure there. The dock was about thirty years old, and it started, we started noticing some cracks, and things like that, and it -- then we had a large wake come through and one whole section fell into the water, and we've been getting, you know, it's been a long process going through all the permitting, finding an engineer, you know, the engineer gets the plans permitted, then once they're permitted you can send them out for bids, and we've just now gotten bids back to rebuild the dock.

MR. CREW: As far as the fuel for the pilot boats, and the lubricating oil, and the other, you know, maintenance items that are just part of routine maintenance, that's all paid for out of the pilots' revenue; isn't that right?

CAPTAIN STUBBS: Yeah, everything with the pilot boats is paid for out of our revenue.

MR. CREW: Do you have any third party service providers, diesel technicians, do any of the routine maintenance, or do you do it all in house?

CAPTAIN STUBBS: We do most of the routine maintenance, but we have Certified Diesel, who is our dealer, we buy our engines through them, and they give us very good service.

MR. CREW: During your time as boat manager how many times have you had to repower the pilot boats, the three pilot boats that you currently have?

CAPTAIN STUBBS: During the time I've been boat manager I've only had to repower one boat. It had a catastrophic failure about 12,000 hours in, and we repowered it. And then actually those engines are under warranty, and one of those blew up again so we did a swap out with that engine as well.

MR. CREW: How much does that routinely cost, in terms of repowering the engines?

CAPTAIN STUBBS: I have a quote from

Certified Diesel for repowering. A rough estimate is around $175,000 by the time they do some reconfigurations, new engines, new transmissions, controls, gauges, the whole nine yards.

MR. CREW: Okay. And -- and do you have any idea how a decrease, if adopted by the Board, would impact your ability to carry on the routine maintenance expenses, and obviously re-powering the boats going forward?

CAPTAIN STUBBS: It would definitely impact our abilities to do re-powers and routine maintenance, was we would, it would hurt us for sure on the boat maintenance side.

MR. CREW: As far as your role as a pilot, I mean these are vessels that you put your, your life at stake any time that you go out to debark, and board a vessel, or disembark out there, right?

CAPTAIN STUBBS: Yes, we do. I think about that all the time actually when we're working on them.

MR. CREW: So, you know, if you had your choice would you be on a forty year old pilot boat out there boarding and disembarking?

CAPTAIN STUBBS: Probably not.
MR. CREW: If you guys get an increase are you going to buy a new pilot boat?
CAPTAIN STUBBS: Yes.
MR. CREW: Look, I want to talk about a couple of things in terms of, you know, the dangerous nature of your occupation. We covered some with Captain Lilly, but I'd like for you to address, you know, I know you're a new pilot but you've had, you've seen it firsthand, how injuries to pilots impact your rotation, and your ability to provide service to the users of the port.
CAPTAIN STUBBS: Yes, since I've been there in early 2013 it seems like more often than not we have someone out with an injury, whether it's -- I've seen quite a few knee injuries, knee replacements. There's a guy out right now with a shoulder injury from the ladder. And, you know, it takes its toll on you over the years, I think, as you get older, and hopping on and off the pilot boat onto the, hopping on and off a ship to a moving boat, you know, it's knees, and shoulders, and ankles, that are going to get injured every time.

MR. CREW: Have you suffered any injuries? I know you're young. I feel them just from getting out of bed in the morning, but have you suffered any injuries, you know, since you've been a pilot?

CAPTAIN STUBBS: Luckily I have not. I have not.

MR. CREW: I think we covered this already, but the critical nature of the boats -- these pilot boats, you don't use them only to service cruise lines, do you?

CAPTAIN STUBBS: No, they're used for all ships, cargo, cruise lines, you know, even the big yachts, whatever. Any ship that comes in, any vessel that comes in that requests a pilot we use the pilot boats to get back and forth to them.

MR. CREW: Now, I -- this is some topic -- obviously this is a goal for you, keeping our port safe and open for commerce, but what I'd like to turn to next is how you became a harbor pilot, and the decision making that went into becoming, your coming to Port Miami, what your expectations were, and the job you left to get here. So let me start off by asking you before you became a pilot at Port Miami, took the, you know, test, and was accepted, where did you live?

CAPTAIN STUBBS: I lived in Fernandina Beach, northeast Florida.

MR. CREW: Did you -- did you own your home, or rent it?

CAPTAIN STUBBS: No, we owned it.

MR. CREW: And what kind of house was it?

CAPTAIN STUBBS: It was just a regular Florida style house, 2,000 square feet or so, three bedroom, two bath, a normal, normal house.

MR. CREW: You're married, right, Captain?

CAPTAIN STUBBS: Yes.

MR. CREW: Do you have any kids?

CAPTAIN STUBBS: Yes, two kids.

MR. CREW: So it's a four person family living in a 2,000 square foot house in Fernandina Beach.

CAPTAIN STUBBS: Yeah. We didn't have four then, but yeah.

MR. CREW: Okay. And how much was your house worth approximately?

CAPTAIN STUBBS: We actually sold it last year. I think it was around $200,000 range, something like that.

MR. CREW: And did you have a mortgage on that house?

CAPTAIN STUBBS: Yes, I did.

MR. CREW: How much did you pay in your mortgage payments each month?

CAPTAIN STUBBS: I think it was $1,600 a month.

MR. CREW: And so at the time that you were living in Fernandina you were sailing for Transocean; is that right?

CAPTAIN STUBBS: That's correct, yeah.

MR. CREW: And what was your -- what was your position on -- and what -- actually what vessel were you sailing on?

CAPTAIN STUBBS: It was a vessel called the Deepwater Millennium, a drill ship, a deep-water drill ship for Transocean.

MR. CREW: And where was that, that vessel positioned?

CAPTAIN STUBBS: We were kind of all over the world. We would be in the Gulf of Mexico some, Brazil some, East Africa, West Africa. Wherever the contracts were we would go there and do the jobs.

MR. CREW: So when you're on the Millennium you were getting paid -- how much were you getting paid by the way?

CAPTAIN STUBBS: It was about -- when I left it was about $220,000.

MR. CREW: Okay. And what kind of other benefits did you have when you were sailing with Transocean?

CAPTAIN STUBBS: Well, you got a 401K match of six percent. You got health insurance, life insurance, dental insurance, vision, I mean pretty much the whole package. You did pay a little bit. I think it was $100 a month or something for the insurance package, but that was about it.

MR. CREW: And -- and when you're on the ship you didn't pay room or board, or anything, right?

CAPTAIN STUBBS: Negative. You didn't have any expenses on the ship.

MR. CREW: And so that sounds like -- were you the captain of this ship?

CAPTAIN STUBBS: No, I was not.

MR. CREW: Do -- do you know how much the captain of that ship made?

CAPTAIN STUBBS: At that time he was making over 300, like low 300 range.

MR. CREW: And so you weren't even the captain of the ship but you were making $220,000?

CAPTAIN STUBBS: That is correct.

MR. CREW: All right. Now, so at some point you're sailing for Transocean, and you decide that you're going to start testing for some ports in Florida, right, to become a pilot?

CAPTAIN STUBBS: That is correct.

MR. CREW: Tell me about how you did that, and what transpired.

CAPTAIN STUBBS: Well, I wanted to become a harbor pilot, so Florida has a pretty fair system, and I started being from Florida, and I liked the idea of staying in Florida, and I started taking the exam. I took it four times. The first time, Panama City. The second time, Key West. The third time, Jacksonville. And then the fourth time, I got it in Miami.

MR. CREW: And -- and so when you got into Miami did, did you know how much the pilots made when you decided to take the position here?

CAPTAIN STUBBS: No, I didn't. I was going off of kind of what Statute 310 says about comparable salaries to other pilots and masters, and I knew basically what the range was, what a lot of captains were making at that time, and what other pilots were making, so I thought it was a figure like Mr. Panza said yesterday.

MR. CREW: And -- and when you became -- actually you went through the deputy program. How much were you getting paid as a deputy?

CAPTAIN STUBBS: I think it averaged out to -- I think the first year was $36,000, and the second to the last two years were $6,000 a month -- yes, $72,000.

MR. CREW: So you want from making $220,000, room and board paid -- and by the way did you pay -- what were you required to pay taxes on that $220,000?

CAPTAIN STUBBS: That was a bonus of working for Transocean, you only -- you didn't really pay -- most of the taxes, most of the money was earned overseas, and they paid a foreign income tax to another country, and you get that money tax free here. You got an income tax credit here in the U.S. They pay taxes on your behalf elsewhere, and then you in turn didn't have to pay taxes on that money in the U.S., and it was basically tax free.

MR. CREW: So you went from making almost -- I know there was probably some tax consequences to what you made, but $200,000 a year, a very nice benefit package, to making $36,000 the first year you were in Miami.

CAPTAIN STUBBS: That's correct.

MR. CREW: And you had to transplant from Fernandina down here to Miami.

CAPTAIN STUBBS: That's correct.

MR. CREW: And -- and it's cheaper to live here in Miami, right?

CAPTAIN STUBBS: Oh, yeah, a lot cheaper.

MR. CREW: Well, let me ask you about how much it costs you to live in Miami. What -- do you own a home here?

CAPTAIN STUBBS: No, I do not.

MR. CREW: So are you renting and apartment, condo, something like that?

CAPTAIN STUBBS: No, we're renting a house here.

MR. CREW: Is it about the same size as the one you had in Fernandina?

CAPTAIN STUBBS: Yeah, it is. It's about 2,000 square foot. It's a lot older house. It's just an old Florida style house.

MR. CREW: And how much do you pay in rent a month?

CAPTAIN STUBBS: $4,500.

MR. CREW: So, that's pretty, that's -- I'm not going to tell them, but that's pretty high. Okay.

CAPTAIN STUBBS: Well, keep in mind here in Miami a single, you know, a one bedroom apartment here is $2,000 a month, so it's not good for a family of four.

MR. CREW: But so you were making $36,000 a year, then you went to making $6,000 a week, or a month?

CAPTAIN STUBBS: No, $6,000 a month.

MR. CREW: A month. Okay, so --

CAPTAIN STUBBS: So $36,000 the first year, and then it was $72,000 -- basically it was two more years after that more or less.

MR. CREW: And so then -- then you became

full pilot here.
CAPTAIN STUBBS: That's correct.
MR. CREW: And as part of becoming a member of the association you had to buy in, like Mr. Panza talked about, like buying into a law firm, or something like that, right?
CAPTAIN STUBBS: That's correct.
MR. CREW: And part of buying in is they basically base that on what an annual distribution share would be in Miami; is that right?
CAPTAIN STUBBS: That's correct. It's a percentage.
MR. CREW: It's -- it's a percentage of it. So what was your buy in when, when you had to buy in in 2013?
CAPTAIN STUBBS: Well, it's every year. Every month they just take a percentage out, but I believe this -- for 2016 I believe my buy in was like $55,000, or somewhere in that range.
MR. CREW: Okay, but so on a monthly basis you're buying in until it's paid off. How much are you paying for your buy in?
CAPTAIN STUBBS: It fluctuates, but I

would say between $4,500 and $5,500 a month.
MR. CREW: So -- just so I'm clear you're paying $4,500 a month in rent.
CAPTAIN STUBBS: Yeah.
MR. CREW: You're paying about $4,500 to $5,000 to buy into your share.
CAPTAIN STUBBS: Yep.
MR. CREW: So that's about, you know, over $100,000 a year in just five expenses that you have. And so I guess -- I guess what my ultimate question is if they're successful in this decrease of a $1.8 million decrease, which is a $100,000 hit to you, is -- that's -- that's significant to you, isn't it?
CAPTAIN STUBBS: Yeah.
MR. CREW: You heard Mr. Panza yesterday say that you make somewhere in the vicinity of $500,000.
CAPTAIN STUBBS: Yeah, I wish.
MR. CREW: I mean you -- we wouldn't be here right now, would we?
CAPTAIN STUBBS: No.
MR. CREW: Okay, so -- so you know better than anybody how much you actually took home, right?

CAPTAIN STUBBS: Yes.

MR. CREW: What did you take home in 2016?

CAPTAIN STUBBS: The share was $282,000, and my buy in was roughly, just say $55,000, so it left me just a little, you know, $230,000, somewhere in that range.

MR. CREW: And -- and so you were making last year what you made working for Transocean.

CAPTAIN STUBBS: Yup.

MR. CREW: And that was tax free money.

CAPTAIN STUBBS: Yes.

MR. CREW: And if you take a $100,000 hit on that what, what's that going to do to your ability to continue to be a Biscayne Bay Pilot?

CAPTAIN STUBBS: Well, I think I'd probably be sending out some applications.

MR. CREW: Do you -- you obviously have a network. I think most mariners who went to the academies do, you talk, right, you still have a group of friends from the AE Gallison who you sailed with at Transocean?

CAPTAIN STUBBS: Yes.

MR. CREW: Do you have any opportunity -- do they ask you about what's going on in Miami?

CAPTAIN STUBBS: Well, yeah, I get people asking all the time what's going on here, as far as people wanting, possibly looking to become a Miami pilot, or people that are pilots other places, or what have you.

MR. CREW: And, you know, in the maritime trade there's a couple of publications that are pretty commonly read, like Professional Mariner, other, other things -- I think there's one that's called Maritime Professional, that's just also something that's been posted. Since you became a pilot have you noticed kind of an uptake in articles about what's going on in Miami?

CAPTAIN STUBBS: Well, yeah, I guess so. I haven't really paid that much attention to most of the publications, but there is definitely some articles that were brought to my attention.

MR. CREW: And -- and those were basically about what's going on with the rate decrease here in Miami.

CAPTAIN STUBBS: That's correct.

MR. CREW: And so -- and as you know other qualified mariners that are out there that could become pilots in Florida, is this a concern that they expressed to you about whether or not they should come here?

CAPTAIN STUBBS: Oh, yeah, there's a lot of opportunities out there, and when people ask me about it I tell them, you know, that these are the things we're dealing with, the pay is a lot lower than you think, and it's lower than comparable places, such as, you know, a lot of the other ports that there's good opportunities to get in, places like Texas, Louisiana, Georgia, you know, there's plenty of other opportunities out there for people that want to become pilots.

MR. CREW: Captain Stubbs, is there anything else that you wanted to add about your job with the Biscayne Pilots? I didn't -- I didn't mean to imply that you didn't like being a pilot.

CAPTAIN STUBBS: No, no.

MR. CREW: I'm just talking about in terms of how a decrease would affect you. But is there anything else you'd like to add for the Board, or --

CAPTAIN STUBBS: No, it's -- you know, we do a, as a deputy one of the things they were saying about comparing a captain to a pilot, well, a pilot's got three years of training, and we do probably 2,000 ships under supervision of other pilots that have thousands of ships under their belt in all types of weather conditions, night and day, all sizes of ships, and you see, you know, you start to notice trends, when things start to go downhill, this is happening and this is happening, and you need to do this and, you know, it's just, it's not even on the same level of comparison.

MR. CREW: All right. That brings up a good point that I want to follow up on. When you worked for Transocean you worked on one ship, right?

CAPTAIN STUBBS: That's correct.

MR. CREW: And you knew that ship, you knew how it worked.

CAPTAIN STUBBS: That's correct.

MR. CREW: Would you have felt comfortable going from that ship to let's say a 1,100' long cruise ship, and being the captain overnight?

CAPTAIN STUBBS: No. No.

MR. CREW: And likewise a 1,100' container ship.

CAPTAIN STUBBS: No.

MR. CREW: So as far as your deputy training, that was something that you needed to become familiar with all the sorts of ships that call into Port Miami, right?

CAPTAIN STUBBS: Absolutely. We have people with all different backgrounds. One guy is -- a couple guys came as captains on oil tankers, some guys captains on container ships, some guys were second officers on cruise ships, I mean all kinds of different background, and it's a pretty humbling experience to go through as a deputy. When you're standing back watching it you think, oh, this is not so bad, but then when you actually start doing it it's a whole different ball game.

MR. CREW: One other point. There was talk about the, the captains on board the cruise ships. And I -- I think I may have gotten it confused, or they did, that they stated it was $120,000 a year for their captains, and I wasn't sure if that was an American captain or a foreign captain. Do you know whether or not that's the prevailing rate for an American captain?

CAPTAIN STUBBS: Absolutely not.

MR. CREW: And what do you base that on?

CAPTAIN STUBBS: I actually ran into a guy in the airport the other day. He was just out of school, a third mate, and I asked him, you know, what are you making fresh out of school, and he was making $120,000 fresh out of school, he was just going to training classes.

MR. CREW: Brand new.

CAPTAIN STUBBS: Yeah, brand new. I had a pilot hat on and he came up to talk to me, and we got to chatting a little bit. But I know other people too. My brother was working for Crowley fresh out of school, and he was making close to $100,000.

MR. CREW: And so for a captain that's had six, seven years experience to work his way up the licensing chain, the U.S. licensing chain, not a foreign one, would you expect that salary to be the same?

CAPTAIN STUBBS: As the -- as the $120,000?

MR. CREW: Yeah.

CAPTAIN STUBBS: No. No. No, I find that

very hard to believe, that $120,000 is the salary they actually get paid.

MR. CREW: All right. Well, Captain Stubbs, unless the Board has any questions for you I'd like to ask you to be excused. He'll -- he'll be around if you have questions later, but at this time.

CHAIR: Thank you.

MR. CREW: I'm going to turn it over to Ms. Blanton and Captain Marlow, and I'm going to see if I can get this video to play because I think it is -- Chris is going to do it, so I'm going to plug and let him -- turn it over -- thank you.

MS. BLANTON: Bear with us while we get situated just one second. Good morning again. I'm Donna Blanton, for the record. I know you all heard from me yesterday. I am going to introduce Captain Marlow, who is going to have a series of slides. We're going to talk a little bit first. I will tell you that the slides that he's going to talk about, that will be on your screen, a larger set of them are in your bound notebook, and so they may not be in the order that he's going to go through them but they are there, and if you need any guidance about where they are he'll try to help you with that.

So let's get started. Could you please state your full name for the record?

CAPTAIN MARLOW: Yes, my name is Christopher Scott Marlow.

MS. BLANTON: And tell me what you did -- you're a pilot with Biscayne Bay Pilots, correct?

CAPTAIN MARLOW: Yes, I am.

MS. BLANTON: And you've been a pilot for how long?

CAPTAIN MARLOW: I've been a pilot in Biscayne Bay since 2012. Before that I was a pilot in Panama City, Florida, which is a smaller port, since about 2009.

MS. BLANTON: Okay. And what did you do before you became a pilot?

CAPTAIN MARLOW: Well, I started out my career going to sea working on a variety of ships ranging from container ships, tankers, O&G tankers, freight haul ships, a large variety of cargo ships. And in the final years of my career before I became a pilot I worked as a senior office for Norwegian Cruise Line ships, modern cruise ships.

MS. BLANTON: Okay. And which -- which Norwegian ships were you on?

CAPTAIN MARLOW: I sailed on the Norwegian Dawn, the Norwegian Jewel, and the Pride of Aloha.

MS. BLANTON: Okay. Could you tell us what your educational background is after high school?

CAPTAIN MARLOW: I graduated from the U.S. Merchant Marine Academy with a Bachelor of Science in marine engineering and marine transportation, and a dual unlimited license, unlimited tonnage, and unlimited horsepower as an officer to serve aboard American merchant ships, well, actually all merchant ships, but with an American license.

MS. BLANTON: And you had some further education after that, correct?

CAPTAIN MARLOW: I did. I graduated from Johns Hopkins University with an MBA in finance, and a certificate in investment finance. And after that I completed Levels 1 and 2 of the charter financial analyst curriculum.

MS. BLANTON: Okay, so you see why he's going to talk about the financial stuff.

CAPTAIN MARLOW: Just for your -- for your background the CFA curriculum is a bit like the pilotage exams for finance professionals. It's an extensive three series exam. It's a three part series that's given once per year, each part, and the pass rate for each level starts at about thirty percent, and it climbs as you get to Level 3.

MS. BLANTON: Okay, so Mr. Law has reminded us in his presentation yesterday that the last time the pilots had a rate increase was, I guess the request was filed in 1999, and it was a three step increase over that time, correct?

CAPTAIN MARLOW: That's correct. In the year 2000 it was three and a half percent. In 2001 three percent. In 2002 another three percent.

MS. BLANTON: And he's got a discussion in his report about the consumer price index and how it's changed since 2002, and whether or not that's relevant. Now, obviously the pilots think it's relevant because part of your rate increase application is tied to the CPI, so I would like you to tell us why that's important.

CAPTAIN MARLOW: The CPI aspect of our application from the perspective of a numbers finance guy is critical. We haven't had an increase since 2002. It's thirteen years now since the last step, thirteen years of withering revenue and net income largely due to the affects of inflation. I'll show you in the presentation what has happened with revenue, net income, expenses, and so forth, in detail. But the -- the point of it all is that we know from the data that's out there that national average pilot compensation keeps pace or exceeds the CPI.

Even though various pilot organizations throughout the country all have different rate setting mechanisms, some are automatic but many are set by Boards like this, but on average we know that it keeps pace, or exceeds the CPI. We are strongly divergent from what is happening with the national average for pilot compensation. It is to say the least easily characterized as a race to the bottom, and as that happens our ability to attract and retain the best and most qualified individuals as pilots, as is required by the statute, is obviously perilous. There's just absolutely no way that you can make the argument that the best and most qualified people will choose to become pilots in Miami when they're making $282,000 a year when they could go to other places where routinely pilots in other ports make in excess of $500,000 a year, and in some cases they make in excess of $600,000 a year.

We have a compensation expert who will be coming up and explaining those numbers in detail. He's an expert on that. But I'm just here to let you know that that's, that's what we're facing in a big picture. Furthermore these, these rate setting processes, what it takes for us to go through these, these applications, and these hearings, is extraordinarily expensive. This one has been going on for years, and our bills for legal fees and administrative expenses associated with this battle are about $1 million, and the meter is still running. Right now it's running really, really fast.

And it's important, there's no other way to do it, but it is the nature of the system; we have to go through this process. The cruise lines are, are perpetually looking out for the bottom line. It's the, the Walmart, you know, school of, of business management that, that I studied at Johns Hopkins, you look at every single penny and you try to cut it as much as you possibly can. We're arguing that in the safety sensitive role that we play that that might not be appropriate here.

They're -- they're doing their thing as a business, but we're trying to serve our customer, and our customer is the public interest. Furthermore this, this application process is a tremendous distraction from what we do. I have been fully absorbed in this application process from the beginning, and I can tell you that my focus on piloting ships and running our business is shadowed, eclipsed by what I'm doing in this rate application process as a necessity of proving our case against the billion dollar opponent.

We're -- we're tasked with recruiting the best and most qualified people, and obviously compensation is the most effective way to do that, as anyone would argue. The Port Miami is now a neopanamax port. We are handling the biggest ships in the world, both on the container side for cargo and on the cruise ship side. It's the cruise capital of the world, and it is one of the first ships able to handle neopanamax ships coming through the new and expanded Panama Canal. Obviously ships of that size are the most complex, most demanding, most risky, and need the best pilots.

There's a statutory requirement that you're required to meet to make sure that the rate that you set enables us to attract and retain the best and most qualified, and clearly you'll see from the data that our rate is, is not doing that. Another thing about the CPI adjustment that is in our application, the reason it's there is that -- there are -- there are a couple different components of our application, but really if you had to summarize it there is a rate adjustment of the five increments of six percent that are really just to fix what has taken place since 2003. And then there's an ongoing CPI, and the purpose of that CPI is just to, to allow us to tread water and hold the ground that we make up. It is -- if we get this right here we don't have to keep coming back and begging for more increases, we can just sort of relax, and everybody knows everybody raises their rates, the CPI will just sort of hum right along, and our revenue will maintain itself in whole dollars.

MS. BLANTON: Let's talk a minute about the statutory reference to CPI. I think Mr. Law in his report had a statement that the CPI may not apply to pilotage rates, and we had some discussion yesterday about the CPI. I think you probably heard that. What's your interpretation of whether that's compliant with the statute?

CAPTAIN MARLOW: The -- the statute says that the -- it does not say that the Board cannot consider CPI, or shall not consider CPI. It says that you may consider CPI, and clearly if you're talking about rates and income CPI is relevant. The cost, the time value of money, the affects of inflation are highly relevant when you're trying to evaluate income, revenue, and rates. It just says that you can't make it the sole factor, and we, we are talking about lots of things here. You are not using CPI as the sole factor for setting these rates.

MS. BLANTON: Let's talk a little bit about the retirement plan. Mr. Heller, our accountant, is going to talk more about it after you speak, but I want to just give the committee an overview of the plan, its history, a little bit if you could.

CAPTAIN MARLOW: Yes, the -- the plan has been around for many, many decades. Our -- our attorney has been with our business since 1977 actually. He doesn't know the exact date when he started, so that's how long we have been operating as planned. In its current form the, the unfunded nature of it, the percentage of revenue, everything is going exactly the way it has been for at least forty years.

MS. BLANTON: Do you know -- do you have an understanding of why it was set up the way it was? I know it's been a long time ago, you wouldn't been there, but what's --

CAPTAIN MARLOW: I was six or seven then.

MS. BLANTON: -- what you're understanding?

CAPTAIN MARLOW: What I can say is this. I look at it from an analytical perspective, and I say, well, what were they thinking when they made this plan. And I can see the key points that the cruise lines make about starting up a funded plan. I don't agree with them, but I can understand what they're saying. But when I look at this plan, and consider all the factors that I know about our business, I see a certain brilliance in the way that it's set up.

Commission Oatis mentioned one of the issues with unfunded, or sorry, funded plans, is that they run the risk of shortfalls created by downtrends in the markets. I remember in, I guess it's the '80s now, that the, there were a lot of airlines that were going bankrupt, largely because of their funded pension plans. Pension plans that have defined funded benefits -- funded pension plans with defined benefits have the propensity to run out of control and dominate the business.

Ours has a couple of different factors that mean that that can never happen, so I think that in great committees of Christmas past they looked at what they had to do with funding the pension plan of the retirement for the pilots, and they said, well, there are a few different ways that we can do it, and we want it to be under control so let's do it in a way that is in control. And I think what they did is they said let's set aside a percentage of revenue going forward and make it twenty percent or less, they can never exceed that. So we have a cap, that means that our aggregate pension payments can never exceed twenty percent of revenue. It can never dominate the business. It can never take over and essentially bankrupt us.

Furthermore, it is a percentage of net income on the individual level. As you know it's fifty percent benefit, and that percentage is of net income, so when we're considering what has happened to that benefit over the past fourteen years or so since 2003, that benefit has declined as net income per pilot has declined, so it's controlled on the individual level, and if we get too many pilots in retirement taking too many bites out of the apple it's controlled in the aggregate, so that it will never dominate the business. Yeah, that's --

MS. BLANTON: And it's your understanding, and I think we've heard some testimony, this is the kind of plan that most pilot organizations around the country have historically used, and still use, correct?

CAPTAIN MARLOW: That's correct. It is an unfunded percentage of revenue, percentage of income plans are the absolute standard among pilot associations across the country. It is -- there are lots of reasons behind that. We have experts that will testify to the history of it, but that is the standard as it is now. So if you're trying to compare pilot associations, if you're trying to say someone looking to be a pilot is going to look at their total compensation package, including the retirement benefit, they're going to see percentage of revenue unfunded benefit plans wherever they're looking.

It's worth pointing out -- I'm sorry. It's worth pointing out that our plan has no vesting, so if a pilot works for nineteen years and has some sort of incident where they lose their license, or they just decide that they want to throw in the towel early and walk away, they receive nothing. Any pilot that works with us has to complete at least twenty years in order to receive a retirement benefit.

MS. BLANTON: Mr. Law refers in his report to the plan as a consulting agreement, and I think that's because it's actually called that in some of your documents. Tell us what, what that's about.

CAPTAIN MARLOW: It's actually specifically referred to as a defined contribution benefit plan in our articles. We have an accountant that will testify to the accounting details, which is a little bit beyond me. But at the, the high level, the executive summary level, I can tell you that it's a defined benefit deferred compensation plan, and the retirees are referred to as consultants. The consulting language is confusing, and what I can tell is it walks like a duck, it quacks like a duck, it's a pension. It's a contractual obligation that pilots earn while they are working based on years of service, and as a benefit that is defined as a percentage that we are contractually obligated to pay.

They are not required by any sort of legal or contractual obligation to perform any service for it. They are entitled to it. There is nothing that we can do to get out of it. And that's the way it has been since, well, before 1977. The -- the consulting language -- again I was at least six when this was started, maybe younger, but I think that the reason for the consulting language is that our, our entire profession throughout the world is highly based on the transfer of experience from older generations to younger generations. That's what the training program is all about, and that continues into retirement. So there could very easily be a situation that would come up for a younger less experienced pilot where he would need the advice of a more experienced pilot, and we can call up our retired pilots and say I need your help with something, in the last dredge project that was in, I think it was '98 before this last one, what was, how did you deal with this, what was the story with that, I heard there was some issue, how did you manage cracking, things like that.

They're available to us as consultants, but they're, they're not paid consultants that can be fired. The benefit is not discretionary, and we can't get out of it.

MS. BLANTON: Mr. Law talks in his report about some other potentially negative aspects of your plan, that it could be impacted by economic conditions, port traffic, that sort of thing. Again, to the pilots themselves, are there some potential downsides to this plan?

CAPTAIN MARLOW: Absolutely. As I mentioned before if net income declines your benefit as a retiree declines with it. If the business dries up completely your benefit goes away.

MS. BLANTON: Could you today if, if we listen to some of the testimony we heard yesterday, and they say this is a fiscally irresponsible plan, if, if someone were to tell you, this committee, or you decided to just suddenly create a funded retirement plan, how would that happen, and what would it involve?

CAPTAIN MARLOW: For a plan that is forty plus years mature I think any knowledgeable financial person would say that it is economically unfeasible. We have current obligations to people who have years of service approved that they're entitled to, and it would require tens of millions of dollars at this point to start a funded pension plan as an initial assessment, I guess, and then from there it would require a higher rate to fund the ongoing contributions to a funded plan.

MS. BLANTON: So the --

CAPTAIN MARLOW: We have an accountant who will testify that the time to set up a funded plan is at is inception, not after the plan is forty plus years mature.

MS. BLANTON: Okay. In your opinion is there anything fiscally irresponsible about the pilots' retirement plan?

CAPTAIN MARLOW: Absolutely not. I think it is a very good cost containment mechanism for our pension plan.

MS. BLANTON: And I believe you testified that it's important for attracting the best and most qualified new pilots who are expecting something like that, correct?

CAPTAIN MARLOW: It is critical for two reasons. Number one, as I mentioned other pilot associations by and large have a very similar plan to ours. Furthermore our target for recruiting new pilots is not the minimum that the statute requires of a second mate with a high school graduate, and things like that. It is actually an American captain who has ten plus years of experience at sea, and those people have pension benefits wherever they are, and we're asking them to walk away from years of pension time to start over and become pilots, and it's a disincentive if they have to give up that time and face no pension at all in their career as a pilot where compensation is supposed to equal or exceed comparable employment.

As it is they do start out at zero. They don't get any grandfathering or vested time. They start out from a fresh slate, and have to acquire twenty new years despite the fact that they have ten years of vested time somewhere else, or ten years of predicated time somewhere else.

MS. BLANTON: At this point we're going to turn to your presentation, but before we do that did you want to --

CAPTAIN MARLOW: I do.

MS. BLANTON: Do you want to play the video that we had hoped to play earlier. So it will be a break in between --

CAPTAIN MARLOW: So we had a technical glitch earlier, and it actually works out really well, because if you haven't figured it out yet this stuff is dry, so please bear with me, and hopefully the video will spice it up a little bit. And the sound is --

(Thereupon, a video presentation was played for the committee.)

CAPTAIN MARLOW: There's some good looking faces in there. Maybe you recognize a few of them.

MS. BLANTON: Before you get into your slides -- there's a lot of data that you've relied on in these slides, and the big picture, I'd like you to tell the committee where the data came from.

CAPTAIN MARLOW: Yeah, big picture, I got all of this data either from public annual reports for the Port, and a couple from the cruise lines, publicly available information. And also from our internal data for revenue and handles. Pretty much I think all of it has been handed over to Richard Law through Exhibit B in some form, matter, or another. So it's -- what I'm going to try to do here is -- it's not going to be a number jumble, it's going to be a graph jumble. I'm going to try to give you a high level executive summary that helps you to distill lots of information easily and quickly to help you understand what the different factors are, and help you make your decision.

I'm going to explain trends to rates, revenue, and he cruise percentage of revenue. I'm going to identify some useful metrics that will help you compare pilotage between big and small ships. And I'm going to detail the composition of revenue across the spectrum of gross tonnage. I'm also going to explain to you what has happened to net income in our port, in our pilots association.

MS. BLANTON: You just have to turn --

CAPTAIN MARLOW: Sorry, I got word that I wasn't speaking closely enough to the microphone, so I'll try to speak up and speak closer. A couple of foundational items, this is a financial analysis, and as with any financial analysis the devil is in the details, so I'm just going to lay out the basic framework to give you and idea of the fact that it is in fact a fair and impartial just explanation to show you what has happened, and let the results speak for themselves.

The -- like I said the data sources of from publicly available information, and our data on revenue and handles. The base here for every analysis, any chart that you see here, is 2003, why, because we had rate increases in 2000, 2001, and 2002. The last rate increase was actually in April of 2002, and the affect of the rate change creates a skew in the data for that period caused by a change in the rate, and it's not representative of what has happened organically due to traffic, and changes, and pendency's of ships at Port Miami.

I just as a -- as a part of our ongoing rebuttal one of the issues that I took as an analyst with the cruise lines presentation is they cherry picked base years for their reference data. I heard base years of 1995, 1998, and 2012. Base years of '95 and '98, that, that information was already considered by this committee in 2000, and based on what this committee saw of what was happening with traffic, and revenue, and different issues, the decision was made to issue a rate increase, so that, the last installment of that rate increase took place in 2002, so in my opinion the appropriate base year to start is 2003 and onward, and all of the years in between, because that's just what has happened organically. The -- one of the analysis that they showed of a base year of 2012, I'm not sure why they would choose that year because they're using '95 and '98 in other places. So this is all based on 2003 to just show you what has happened.

So for the first chart is page, Exhibit 7 Page 120 in your book. If you look in the bottom right corner of your exhibits there are page numbers. And -- and as Ms. Blanton mentioned I'm going to go out of order a little bit. I'm just trying to skip over some things, but I have extra information in there for you, and to help me explain questions that might come up. Exhibit 7 Page 120 is dollar revenue trends that have occurred essentially in our business. You can see the top line is yellow. That's Carnival Cruise Line's revenue, clearly trending upward. The next line below that is in blue. That is the revenue trend for Port Miami. The one below that is in green, is the trend for Royal Caribbean's revenue.

And the bottom line, orange, that almost looks like the axis because it's so flat, that's pilotage revenue in Miami. That's gross revenue plain and simple, no, no adulteration, that's just what our revenue has done. Our revenue is flat in 2003-2016. So what does that mean on a percentage basis? We know these amounts are increasing, but by how much?

The next chart is page, sorry, it's the next page, I guess Page 121. This is revenue trends by percentage. Similar results, you can see that Carnival is trending upward at a hundred forty four percent, Royal Caribbean a hundred and twenty four. The port's revenue is up sixty seven percent. I've included our expenses just so you have a relative measure here. During this period our expenses are up twenty six percent but our revenue is down one point three percent over thirteen years. So I guess the question that I would have is, well, what, for -- for those entities that have revenue increases what caused those increases; is it because of more economic activity or is it because of changes in price.

One thing I want to point out, by the way, about this chart, I did not include NCL because NCL went through a big merger in recent years and it just causes a huge spike, and it's just a total distortion, and it's really the same picture, but the merger is more complicated than it needs to be. So the next chart is Page 122, and that is -- we've talked about revenue trends both in dollar and percent terms. This is trends in rates, so these are prices. Now, we don't have rates for the cruise lines, but we do have rates for port services in, in our exact area, in our exact business, and you can see that they are all sharply upward. In the middle, a dotted line, I've included the CPI at thirty eight percent. But as we know our pilotage rate is again the axis at zero percent, it is completely flat.

The next exhibit is Page 125. I'm skipping over a couple there that are summarized. So the cruise lines claim that it is unfair that they are sixty five percent of revenue and thirty five percent of handles. I'd like to point out to you that the orange line on this chart is pilotage revenue, and the -- this is -- I should say this is the percentage of pilotage revenue from cruise lines. That's the orange line. The percentage of wharfage revenue, which is a fee charged by the port by the cruise lines is in blue, and you can see that they are pretty nearly in lock step with one another, they are mirror images.

Well, why is that; well, there are two reasons. Number one, the wharf also uses gross tonnage as a rate basis for charging wharfage. The other obvious reason is that, well, we have exactly the same traffic. We're talking about exactly the same ships here, exactly the same business, so where pilotage, the cruise percentage of pilotage has gone from about fifty percent in 2003 to about sixty five percent today, the cruise percentage of wharfage has gone from about, now let's call it fifty seven percent, to seventy five percent today.

So what's interesting is what wharfage is is the charge, the charge that the port levies for using the dock. And we're talking about, like we went through all sorts of reasons of channel complexities, and risk, and different things like that for why big ships should pay a higher fee, but why should big ships pay a higher fee for wharfage? Why should a 1,000' cargo ship and a 1,000' cruise ship pay different rates for a linear space on a concrete dock? Well, the answer is that gross tonnage also measures the earning capacity of the entity using the facility, so because it's a measure of earning capacity it's also a measure, a measure of the relative benefit that the ship receives from using the infrastructure of the port, and our service is part of that infrastructure, so the, the port charge is based on revenue capacity, and so do we, because it's a standard sort of way of paying for the services and the infrastructure of the port.

If you'll turn to Page 126, this is a

chart that you've already seen. It is pilotage revenue per passenger, and pilotage revenue per TEU. TEU is a cargo term that is, it has a complicated explanation, but suffice it to say it is a unit measure for cargo on a container ship. And this is from the port's data. This is all of the passengers that went through the port, and all of the TEU's that went through the port. On the right hand axis is the scale for cargo. On the left hand axis is the scale for cruise. The cruise line is in orange, the cruise line pilotage per passenger, and you'll see that for passengers the history, pilotage per passenger has gone from about $1.45 to about $1.48 today. It's pretty much flat. Not much change, but what change there is you can see amongst all this volatility there's a trend line that shows that, it evens out the volatility, it shows that there's actually downward trend.

For the cargo side the trend is from $5.30 to $3.75. It's markedly down. In both cases pilotage per unit is down. Now, what is the reason for that; the answer is economies of scale. We've got a poster board over on the side of the room here, as well as in front of you. Yeah, it is, it's in your book. It is Page 127.

So let's look at cruise ships. This is the database of about two hundred fifty ships. It is a fair sample size of all the cruise ships in the world. It is safe to say that pretty much all of the ships that call on Miami are included in the sample size. The call outs that you see in the individual boxes are ships that call on Port Miami in recent years, and what I did is I took all of these ships and I modeled the Miami pilotage rate for each one of these ships as of they were all calling on Miami today to show what pilotage fee they would pay. And then I divided that rate by the maximum passenger capacity of that ship to see what the pilotage per passenger would be between small ships and large ships.

I did this because I honestly didn't know what the answer was. I had an intuitive idea, but I wanted to see it for myself because I'm a numbers guy. You'll see a trend, and the trend is pretty clear. It's a magenta line, and it doesn't show up very well in your book but you can see it on the screen. The trend is that small ships pay a higher fee per passenger than large ships. It's just the way it is.

The cruise lines are probably going to criticize me for using the maximum capacity to consider this pilotage fee per passenger. They would argue that I should use double occupancy, or twenty five percent full, or something like that, but the fact of the matter is that this is an apples to apples comparison, so if I use double occupancy, or some other percentage, the, the scale of the graph would change but the conclusion would be the same, and the trend would be the same, so I just want to preempt that.

Let's look at the smallest ship on the screen. It is the Sea Dream II. She pays a pilotage fee per passenger of $3.65. That's pretty high, but her pilotage fee overall is $402.00. She's a small ultra luxury ship that has a hundred and ten passengers on board. They market themselves as an alternative to owning your own personal yacht. On the other end of the scale we've got the Norwegian Getaway. The Norwegian Getaway is a large ship. She has a pilotage fee of about, I think it's $5,800. Her pilotage fee per passenger is $1.14.

So as cruise ships get bigger, vary economies of scale, that's why they build them that way. You'll notice that if you look in, in smaller scales, you'll see that the comparison is not perfectly linear, there are some ships that have ups and downs in the spectrum. And why is that; well, there's something in the cruise industry called space ratio, and space ratio is effectively a relative measure of the comfort level and luxury of the ship. The -- it's -- it's something that you can Google, and you'll up tons of the information. The cruise lines are very aware of it, and more importantly their clientele, their customer base is very aware of it, and they look for it.

A way to consider it, the way to understand it is you consider, let's say you're going out for a restaurant, you're taking your spouse on a date. You have a few different options. You could go to a place like the Golden Corral Buffet where there's lots of noise and you're elbow to elbow with people, and kids running around, and, you know, whatever, cheap prices, or you could take your spouse to a really nice French Bistro with a corner table and candlelight, and quiet, you can have a private conversation, great service, comfort, great food. The question is what are you paying for. You're getting a meal in either one of these places; are you paying for the cost of the food? We know intuitively that the nicer restaurant is going to be more expensive, so are you paying for the cost of food or are you paying for something else?

Well, if you think about the difference between the nice restaurant and the Golden Corral space ratio is effectively air, and that's what they sell. That's what the cruise lines sell, is air. Some ships have more air than others, and ships with more air per passenger command higher ticket prices. A larger ship should have more air per passenger than a smaller one, right, because it's a bigger ship. Well, the answer is, no, not necessarily. A ship can have a given space ratio at any size, it's something that they target when they design the ship depending upon the clientele that they're marketing that particular ship towards.

In fact what we know is that smaller ships have higher space ratios than bigger ones because they put a lot fewer passengers in a given unit of space. The smaller ships that we're seeing are generally high end super luxury five start resorts, very great service, very private. So if ships are designed with space ratio in mind, and space ratio is air, well, how do you measure that? The answer is they measure it by dividing gross tonnage by the number of passengers for the ship. So what the cruise lines are selling is the same thing that a nice restaurant is selling, they're selling air, which equals gross tonnage. Promenades, restaurants, gift shops, theaters, casinos, that's air. That's how they make their money.

The next chart is pilotage tons to scale, Page 128. So I wanted to say, okay, well what happens in a given size of ship to the pilotage fee, and I wanted to consider what is the pilotage fee per gross ton, because that really seems to be a big deal for the cruise lines, as they're concerned about the fee that they pay based on higher gross tonnage ships, and what I did is I took all the 2016 data for all of the ships that called, the cruise ships, sorry, the cruise ships. This is an application brought by the cruise lines. And I wanted to consider -- but I'll consider cargo later. I took them all and I averaged them into categories of 10,000 GT, so you can see on the scale of 20 all the way on the left, the vertical bar, if you look at the data at the bottom the average gross tonnage in that group was about 28,000 tons.

And I looked at the average gross tonnage, the average draft. I applied the Miami pilotage fee that we collected on average for that grouping, and I divided by the tonnage, the actual tonnage of that average, and I came out with a series of bars which as you'll note there's a trend. It seems that the pilotage fee per gross ton goes down with increasing levels of gross tonnage. So applied the initial small ship gross tonnage as a base here and measured the percentage, and it turns out that as you get to 160,000 GT the intrinsic discount due to increasing gross tonnage is about twenty three and a half percent. I think what they're asking for is a twenty five percent decrease because ships are getting bigger. I think this in some sense puts an argument that maybe they're already getting that.

The next chart is Page 129. And so now we know that pilotage per passenger decreases with size, and we know that pilotage per gross ton decreases with size. Let's look at specifics. For 2003, 2008, 2016, I took the biggest passenger ship that called on Miami, and the smaller, smallest passenger ship that called on Miami, and I wanted to know the pilotage fee that each of those ships pays per passenger. So if you look on the left hand side of, of groups of three bars, you can see that the trend for the largest ships is, is downward. I would accept that it's flat if you wanted to, but the trend is downward. The pilotage fee per passenger for big ships is going down.

But for the smaller ships the trend is upward. It's clearly going upward, with a huge spike in 2008. Well, why is that; well, the answer is the smaller ships, they have too much air on board. These are five star luxury ships that are catering to a high standard of clientele, and they command high ticket prices. We have in Miami an increased number of small luxury ship handles that have a high space ratio. That's what that trend shows.

So the next chart is Page 130. This is -- I think it's Exhibit B in Mr. Law's investigative committee report, and he urged you to focus on it, so -- it's a little bit abstract so I'm going to spend a little bit of time and hopefully get conveyed to you what's happened. This chart has three axis. On the left hand axis is the number of handles. On the bottom axis is the tonnage in groups of 1,000 GT. The yellow bubbles are for 2003, and the bubbles represent the amount of revenue at the intersection of tonnage and handles. So you have a number of handles, and a number of tonnage, which is the standard XY coordinate, and then at that point the size of the bubble shows the amount of revenue. So it tells you how much money we're making by gross tonnage and by handles, and it gives you granularity to really get an understanding of what's happening with our composition of revenue, of pilotage revenue in Miami.

Now, these are just for cruise ships, because there are two different sides to Port Miami. I also have cargo, but this is what's important for you all to understand because this is what their case, the cruise line's case is based on. You can see that at the 70,000 GT level there's a sweet spot. Our revenue pretty much always is concentrated at 70,000 GT ships. 2003, 2008, 2015, 2016, that is the heart and sole of our revenue, fairly small to mid sized cruise ships, that's where we make our money.

In 2003 you can also see that there's a significant amount of revenue earned at 130,000 GT. So in 2003 though it's pretty much all either 70,000 GT or 130,000 GT which not, with not much in between. In 2008 again 70,000 GT is the sweet spot, and we've also got a huge amount of revenue at 150,000 GT. That's the barbells for our revenue. There's a couple of other concentrations in there, but really that's where it is; they're medium sized ships and big ships.

So consider 2015, still 70,000 GT is the sweet spot, but where are the big ships? Where are the orange bubbles on the right hand side of the scale; we don't, we don't have them. Look at 2015, the revenue is spread out across the spectrum of mid sized ships and small ships. Note that we've got a huge chunk of revenue and handles, over three hundred handles at 30,000 GT, so there's a lot of small cruise ships coming into Miami in 2015. Did that change in 2016? A tiny bit. We've got a green bubble at 160,000 GT, about a hundred handles. But still 2016 revenue is spreading out across the spectrum.

I want to note something. If you'll remember the cruise lines up, up an exhibit, it was this one, comparing the Seaboard Patriot cargo ship to the Norwegian Escape, and it showed that the Seaboard Patriot was handled about a hundred times, and the Norwegian Escape was handled about a hundred times, and the difference in pilotage fees went from $65,000 for the smaller ship to almost $700,000 for the bigger ship. If you'll notice the 160,000 GT level for 2016 is about a hundred handles, and note the relative size of that bubble. And then look at the left hand side of the scale, you'll see at 30,000 and 40,000 GT we've got a total of three hundred handles there, and you can see visually that the amount of revenue earned at the combined three hundred handles at 30,000 and 40,000 GT is less than the revenue at 160,000 GT. It stands to reason that bigger ships are paying higher pilotage fees, but our rate is not discriminatory.

The FCCA would argue that because ships are getting so big all cruise ships across the spectrum deserve a discount, including the 30,000 and 40,000 GT really tiny cruise ships. The -- what they're claiming visually looking at this chart is that there should be green and orange bubbles somewhere up here. There's a huge concentration of revenue they're claiming for large ships coming into Miami in recent years, but it's not there. It's spread out across the spectrum of tonnage.

This is the cargo side. It's a different story here. I'll just go over this quickly, but essentially in 2003 you can see that all of our revenue is either at 10,000 GT, or 20,000, 30,000, or 40,000 GT. There's a lot of smaller tonnage. In 2016 we've got -- and 2015 as well, we've got some sizable increases in tonnage, and a sizeable decrease in tiny ships, so what's happening in the cargo side is that we are getting more revenue from the bigger ships, but it's only on the cargo side, not on the cruise side, and it's what you'd expect with the advent of the neopanamax era, and deep draft ships associated with our deep dredging project.

Page 132. So what's happening? This is gross tonnage revenue per handle for each of the base years, 2003, 2008, 2015, 2016. On the left hand side you can see the cruise side, yeah, for cruise ships. Gross tonnage revenue per handle for cruise ships is trending downward. There was a huge spike in 2008, but 2015 and '16 compared to 2003 and 2008, it's clearly down, revenue per handle. On the cargo side it's clearly upward, so we're getting more smaller ships on the cruise side coming in to Miami, and fewer big ships on the cargo side coming into Miami, so why is cruise asking for a discount based on the claim of bigger ships producing more revenue per handle?

Cargo is supporting our increase, and that's exactly what's happening to them, but they understand that their ships are getting bigger, and because of that they are more expensive to operate. But they also know that their economy is to scale, they're paying lower pilotage per TEU because their ships are bigger. The next chart, Page 133, that's total revenue per handle. The previous chart was gross tonnage revenue per handle. It's exactly the same conclusion. I just didn't want you to think I was holding anything out on you. That -- that shows the big picture of how it comes together, it's mirror of the other one.

I'm going to ask you to jump forward to Page 131, and just really quickly look at the raw data that form the basis for these charts, and you'll see, well why has the cruise to cargo revenue ratio gone from roughly 50/50 to 65/35. Note the number of handles, and look where I'm pointing on the screen, and then you can find it. For visibility in your chart, it's the top line in the bottom section. There has been a twenty nine percent increase in the number of cruise ship handles.

If -- again look where I'm pointing, and then find it in your booklets, that's tons per handle. There's been a decrease in tons per handle of cruise ships, they're getting smaller, of lower tonnage. And then look at revenue per handle, where I'm pointing here all the way at the bottom, there's been a decrease in revenue per handle. All these metrics point to the conclusion that ships are getting smaller on average in Miami. We are getting some big ships, but we're also getting a lot of small and mid sized ships. We're getting a broader spectrum of ships in Miami than we've had in the past.

Page 143, concurrently with the cargo side, again look at the number of handles, where I'm pointing here, there has been a fifty one percent decrease in cargo handles. Why is that; well, there's -- we're going through a really stiff recession, and we learned in Miami that our cargo business dried up before anybody knew the recession was going on, so if you want to know where you should put your money in the economy see what's going on at the port, because it's a leading indicator of economic change. So we had a fifty one percent decrease in cargo handles, and if you look at tons per handle in the purple there, increasing tons per handle. The cargo ships are getting bigger. And if you look at the bottom, increasing revenue per handle. Ships are getting bigger, and they're paying more because they're bigger on the cargo side, not on the cruise side.

So we're seeing more revenue from more handles of smaller cruise ships, and we're seeing less revenue from fewer handles of larger, deeper cargo ships. That leads to a shift in the percentage of revenue coming from the cruise line sizes. It's not because cruise ships are getting bigger, it is volume of service. They're paying more for more units of service. The cargo side has declined, we hope temporarily due to the recession, but what we're seeing with the advent of the post panamax era is that giant container ships are coming in, and they're replacing multiples of smaller container ships. Why; the economies have scaled, they're more efficient to operate. You can make a ship go from big to giant for a small increase in operating costs, along with an exponential increase in revenue.

So next slide -- I don't have an exhibit, but let's talk about net income. This is the same statute that the cruise line showed you. They chose to focus it a little bit differently than I do. The prevailing compensation available to individuals in maritime -- sorry. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, and being recognized that in order to attract to the professional piloting, and to hold the best and most qualified individuals as pilots, the overall compensation afforded to pilots should be equal to or greater than that available to subject individuals in comparable maritime employment.

So the -- the key areas to focus on are clearly the highlighted areas. You see them, the best and most qualified, compensation equal to or greater than comparable maritime employment. Well, what is comparable? Is the answer a foreign cruise ship captain who lacks the most basic qualifications to be eligible to obtain a U.S. Coast Guard captain's license, let alone qualified for the deputy pilotage exam? I know Commander Dunton can tell you that if a Bahamian licensed cruise ship captain with twenty five years of experience came and applied for the Miami exam he would reject the application because he's not qualified to sit for the deputy pilot exam in Miami.

The next slide shows a -- this is -- this is one number for compensation, net income. It comes from the appellate court ruling in a pilot rate case. The judge said the numbers should be about $400,000 per year. And that number is not comparable to the investigative committee report number because it does not include add-backs. That is compensation as you and I understand compensation. If you ask your best friend what do they earn they're going to tell you a number. It doesn't include things that they don't even know if they're receiving in terms of benefits.

Note that it makes two major points. It says that pilot in a larger port like Miami should make more than a pilot in a smaller port. I -- I hope it turns out that way because I used to be a pilot in a smaller port and I left that port to make more money, but it hasn't turned out that way. It also says that large ships supplement smaller ships in the pilotage system; they're expected to pay more. Note there's no mention of length, of run, or handles per house, or any of these metrics that you've been shows in the previous presentation. It simply shows what a pilot should make. If you have a port you need pilots. If you want pilots you have to attract and retain the best and most qualified with appropriate compensation.

I'm going to direct your attention to Chart 135, Page 135 in your booklet. So this is the big finale. Here's what has happened to net income since our last rate increase. The vertical bars indicate annual revenue of the pilot association. The blue line is, at the top, is net income. Since 2003 we have gone from an income of $372,000 to $282,000. Those are nominal dollars, not adjusted for any inflation, or anything like that. That's just showing if you looked at the numbers what they would show you.

So that's what we're making, $282,000. That's the big number that you need to know as one of your statutory factors. Is that comparable compensation to other pilots in other ports? Well, remember that number as you go, as you hear other experts talk in our case. When you consider the combined affects of decreasing net income and the loss of purchasing power due to inflation our net income has gone from $372,000 to $194,000 in, in real dollars.

The next chart is exhibit, Page 134, so you're going to go back a page. You don't have this chart actually, I'm sorry. Well, you do.

CHAIR: We do.

CAPTAIN MARLOW: Okay, sorry, you do. This chart is in our application. It's based on 2015 data, and it's prepared by Dibner Maritime Associates. Brent Dibner is essentially a pilot compensation junkie. If you want to know what's happening with pilot compensation in this country, or for that matter in many ports throughout the world, Brent Dibner is an expert. It's what he does. It's his life blood. It's -- it's his entire

-- well, I won't say it's his entire business, but he is the only guy in town that knows all the information on everybody because he follows it to the T.

He's coming up in a minute to speak, but what I wanted to draw your attention to was average pilot compensation, which is the blue line running across the top of the chart. You can see it's clearly trending upward. And this is not compensation with add-backs that you would compare to the number in the investigative committee report. It's just as if you were to receive a 1099 or a W-2. It's what we all think of when you say who much do you make. The point that I wanted to draw your attention to in particular in this chart is that average pilot compensation nationwide despite different rate setting mechanisms tracks or exceeds the CPI, which is the green line just below the blue line.

So in conclusion -- I've shown you the pilotage rates revenue and net income are flat to sharply negative for the past fourteen years. I've shown you that is an anomaly in the pilotage profession, and amongst businesses

in our port, including the port itself, and
I've defined useful metrics to help you see the
relative impact of pilotage on small and large
ships. I have introduced you to granularity,
to the compensation of pilotage revenue in Port
Miami for your analysis. I hope this analysis
helps you to clearly understand why we so
desperately need this rate increase to maintain
the Port Miami's pilotage system. Thank you.

MS. BLANTON: I don't know if you -- I'm
sorry. I don't know if you want to ask
questions now or wait until the end. Captain
Marlow will be all day, obviously, and it may
be lunchtime.

CHAIR: Yeah, let's go ahead, and it's a
good breaking point, so let's break for lunch
and be back at 1:30.

MS. BLANTON: Thank you.

CAPTAIN MARLOW: Thank you for your
attention.

(Thereupon, a recess was had and the proceeding
continued as follows:)

CHAIR: Okay, let's get started. It's
1:30, and Ms. Blanton, you have the floor.

MS. BLANTON: Thank you very much. Good

afternoon. Our next witness is Mr. John Heller, and we will get right into it. Mr. Heller, could you please state your full name for the record?

MR. HELLER: Sure. John Heller.

MS. BLANTON: And where are you employed?

MR. HELLER: I'm employed by Marcum, LLP and the advisory group.

MS. BLANTON: And what is Marcum, LLP?

MR. HELLER: Marcum, LLP is a full service accounting firm.

MS. BLANTON: And what position do you currently hold there?

MR. HELLER: I am a director there. I've been there nine years. Before that I was with a small firm, Barban Associates, which I was there for sixteen years. So I have about twenty five years experience. I've been a CPA since 1996. I have a couple of other credentials behind that.

MS. BLANTON: Do you have some designations beyond being a CPA?

MR. HELLER: I do.

MS. BLANTON: What are they?

MR. HELLER: I am certified in financial

forensics, as well as being a CIRA, which is a certified insolvency and reorganization adviser.

MS. BLANTON: Okay, let's talk about why we're here today. As part of your work for the Biscayne Bay Pilots have you had an opportunity to review materials from the last hearing in 2014 involving FCCA and the pilots?

MR. HELLER: Yes, I took a -- I took a look at the 2014 FCCA rate app, the 2014 investigative committee report, at certain hearing transcripts from that rate hearing, a swell as Robert Lamont's presentation. I've also taken a look at obviously the current 2016 BPPA rate app, and the 2016 investigative committee report.

MS. BLANTON: And just to be clear, Mr. Lamont is the tax attorney and, and general attorney for the pilots, correct?

MR. HELLER: That is correct.

MS. BLANTON: Okay. All right, and have you read the most recent investigative committee report that was prepared by Mr. Law and Commander Dunton?

MR. HELLER: I have.

MS. BLANTON: Okay. Have you been out to the pilot station at Port Miami where the pilots work?

MR. HELLER: I have.

MS. BLANTON: When did you do that?

MR. HELLER: I did that actually the day before yesterday with the committee.

MS. BLANTON: Okay. On the port tour?

MR. HELLER: On the port tour.

MS. BLANTON: Okay. All right, and I assume in addition to reviewing the documents you spent a fair amount of time talking to the pilots; is that correct?

MR. HELLER: Yes, I've had many meetings with the pilots, as well as their external accountant.

MS. BLANTON: Okay. And their tax lawyer, as we mentioned earlier.

MR. HELLER: Mr. Lamont, yes.

MS. BLANTON: Do you believe you have a good understanding of the pilot's business based on the dealings you've had with them over the last few months?

MR. HELLER: Yes.

MS. BLANTON: And how would you

characterize that business, given that it's a small business that we've talked about, relative speaking? Give me -- give me your views as a forensic accountant on how you view the way they run their business.

MR. HELLER: Well, essentially the only way they can run their business at this point is by controlling costs, and that's what they, they've been focused on since, you know, early 2000's, because they have no way except coming here to increase their revenue, or increase their rate --

MS. BLANTON: And have they done a pretty good job of that --

MR. HELLER: They've done a -- they've done, you know, a good job of that under the circumstances, and in light of rising costs, as put in Mr. Law's report, the healthcare costs increased ten percent in the last year.

MS. BLANTON: In reviewing the materials from the last hearing, and reviewing what's been filed before this committee in this hearing, are there any particular areas that you've focused on?

MR. HELLER: Sure. Essentially I've been

-- I've taken a look at their retirement plan, as well as just the general allegations by the FCCA.

MS. BLANTON: Okay, let's focus on the retirement plan first. Do you believe you have an understanding of that retirement plan?

MR. HELLER: I do.

MS. BLANTON: And have you -- I think you've probably heard here yesterday, and I know you've read in the transcript, that FCCA has deemed it a fiscally irresponsible plan. Do you recall hearing that?

MR. HELLER: I do.

MS. BLANTON: Do you -- do you agree with that conclusion?

MR. HELLER: I do not. That -- that's a moral judgment. Essentially what the pilots have is what's called a defined benefit plan. There's two types of plans under the Internal Revenue code. Either you have a defined contribution plan, and if it's not a contribution plan then it's a defined, defined benefit plan. That's -- and defined benefit plans are common. If you don't mind I think now is a good time for my printout. I just want to let the committee know --

MS. BLANTON: Go ahead, Mr. Heller.

MR. HELLER: There -- there's been -- there's been some allegations or discussions by the FCCA that defined benefit plans are, you know, not the norm, or not, you know, not prevalent. In fact if you go look out at the U.S. Department of Labor they do post some statistics, and I took a look at both defined benefit plans and defined contribution plans, and the number of employees that are, that were participating in those from 1999-2006, and then the data was a little bit different from 2010-2016, or the data available, and that was about, you know, the employees, and that have access, which is the second table down, so if you look at those, and you look at the percentage of employees in the first column of both tables, which is the defined benefit plan column, and you look at the defined contribution plan column, and you add those together and you either get the total participation, or the total access.

Then the last column over I went ahead and calculated out how many people have either defined benefit plans, or access to defined benefit plans, and you can see it ranges from thirty two to thirty seven percent, so it's a fairly common plan.

MS. BLANTON: And I think we heard some statements yesterday that you had ninety nine point nine percent, or everybody has a defined contribution plan, and what the pilots has is way outside of the ordinary. Is that an accurate statement?

MR. HELLER: That is not accurate.

MS. BLANTON: So is the plan the pilots have authorized by law?

MR. HELLER: It is.

MS. BLANTON: It's fully consistent with the U.S. Internal Revenue code?

MR. HELLER: It's consistent with the Internal Revenue code. And the way it's written it essentially, the only thing for a defined benefit plan is it's got to have definitely determinable benefits, and that the means is, is an actuary has to be able to determine the benefits at some point based on his actuarial tables. And in fact if you look at the audits that were attached to the pilots'

application an actuary has gone in and
determined those at $46.2 million at the end of
2015.
MS. BLANTON: And tell me what that figure
represents, what, is that the figure it would
cost to, to switch from a, from the type of
plan they have now to a funded plan?
MR. HELLER: In theory if you want -- if
you wanted to -- if it was a funded plan at the
end of 2015 it needs $46.5 million of costs to
fund that plan.
MS. BLANTON: And who would pay for that?
MR. HELLER: It would have to be a rate
increase to, in theory, to pay for it. Or it
would have to directly come out of the pilots'
career earnings.
MS. BLANTON: All right, so just to
summarize there is nothing unethical, or
immoral, or illegal about the pilots' plan,
correct?
MR. HELLER: No. Oh, correct. Make sure
I answer that correctly.
MS. BLANTON: Okay. Now, Mr. Law has
talked in his investigative committee report
about the plan. He's explained, and we heard

Captain Marlow also explain it. And I know you've had a, you had a chance to take a look at it. And I think you've also looked at some of the governing documents that go on the pilots' procedures; is that correct?

MR. HELLER: Sure.

MS. BLANTON: And we've heard the plan referred to as a consulting agreement. Did you make an effort to understand what, what was meant by that concept?

MR. HELLER: Sure. So -- so essentially I did make an inquiry, and Captain Marlow earlier gave, gave you the explanation, but I'll reiterate. The -- they called it a consulting plan simply, and mostly, because they believed that from a experience factor that a retired captain has an obligation, a moral obligation to pass down the experience when needed. However, there is nothing in the, in the articles of association which governs the part, the plan of the pilots, that says that you don't get paid if you fail to pass down the information when we ask you, if you fail to give us the consulting. So it's just a little clause. There's nothing in the Internal

Revenue code that says whether you call it a consulting agreement it has meaning or not meaning, it's the fact that whether it meets the definition of the defined benefit plan, which it does.

MS. BLANTON: And Captain Marlow touched on this earlier, but there's some risks to the pilots associated with having a plan like this. It's not just a great big windfall like we've been, you know, sort of led to believe, correct?

MR. HELLER: Absolutely right, that is correct. Again, I'm going to reiterate a little bit what Captain Marlow said. If Biscayne Bay Pilots Association stops operating tomorrow, if the port shuts down, if one of the -- one of the cruise ships comes in on their own and wrecks the port, or whatever happens, if this association ceases, the retirement plan also ceases.

MS. BLANTON: The FCCA and Mr. Law have attempted a valuation of the pilots' pension plan a benefit, if you will, and Mr. Law has called that a highly judgmental issue. And we've heard how the FCCA's accountant valued it yesterday. Do you agree with Mr. Law's characterization that the valuation is highly judgmental?

MR. HELLER: I agree that it's highly judgmental, and that's why you have an actuarial look at those things. But more importantly what, and I want to tell the committee about this, you have some problems in the structure of BPPA, in that on a defined contribution plan it's completely and utterly a hypothetical situation under the current structure. There are limits under 414, Internal Revenue Code 414 for highly compensated individuals, which the pilots are, and ownership, that make a defined contribution plan not particularly feasible, which -- and I've talked to their counsel about it, and the initial design, and that it why you had a defined benefit plan.

Now, that defined benefit plan has been a defined benefit plan in front of the committee since the inception of this, so when they've come in and asked for rates because they have that twenty percent cap in their defined benefit plan, twenty percent on revenue, they can never pay out more to retirees than twenty percent, it's always been part of their, what they've asked for as a rate increase. And -- and that's it, it's part of their rate.

Now, if you were to actually want to do a defined contribution plan, okay, then back from the beginning they would have had to, and you would have had to award them a little higher rate, right, or a higher rate to fund that contribution plan in addition to the compensation that they were currently making. So if in fact they, they had a higher rate along the way they would have invested those dollars, and they would have grown, much Mr. Law says, or the FCCA has alleged, and some interest would have happened. But what you're missing is the -- the story that you're missing on that is the opportunity costs, okay, so the fact that there wasn't a higher rate means that the end users have actually paid less during that time than they might have otherwise paid.

They've had those funds in their pocket that they could have invested, so whatever imputed interest that anybody wants to apply over, from either the FCCA or Mr. Law, and for whatever many years, it's irrelevant because those same users would -- when I said those end users, IE., the cruise lines, the passengers, the cargo people that, that have had use of those funds instead of the pilots getting those funds as a rate and putting them in a contribution plan, you end up with a wash, because both, both can earn the same amount of money over time.

MS. BLANTON: So it's pretty difficult, if not impossible, to really put a valuation on it the way that both Mr. Law has tried to do and the cruise line's accountant has tried to do, correct?

MR. HELLER: Right, they're trying to add back a benefit that's already in there.

MS. BLANTON: Let's -- have you had occasion to look at some other issues in Mr. Law's report?

MR. HELLER: Yes, I have.

MS. BLANTON: Any particular comments? I think we talked a little bit about he adds back some organizational type expenses, correct?

MR. HELLER: Correct. And so essentially Mr. Law and Mr. Glick yesterday each have,

have, had an add- back presentation of what they believe you should add back to the pilots to figure out what their annual current compensation is, of what, what they're actually making. So what -- what I didn't like about, or what I dispute, or have a different opinion about than, than Mr. Law --

MS. BLANTON: I'll pass it out while you're talking. We have another document. I'll in the interest of time pass it out while he's talking. Go ahead.

MR. HELLER: It -- so the lobbying and the political contributions, I'm going to just kind of address this. The differences between what you've been handed now and what you've been handed, or what you see in Mr. Law's report, are simply the removal of those items. So what you see here now, and I just want to run through it real quick, in 2003 this committee went ahead and said that, that very first column there, said that $372,000, okay, based on all the facts in there was what an annual pilot should, should be compensated for.

MS. BLANTON: Or what, what their average net is --

MR. HELLER: What their average net income is at that time, and should be. That's what --

MS. BLANTON: Correct.

MR. HELLER: It was based on, based on the rate that was awarded in 2002. Then that same line coming down, it's about, you know, a fourth line down across, in 2007 that dipped to $308,000. In 2014 that dipped to $301,000. And in 2015 we're down to a little under $280,000. That's comparing apples to apples. Okay, now additionally Mr. Law and Mr. Glick has, has a whole host of additional add-backs, but additionally we agree, or I agree that, you know, certainly health insurance and life insurance and general contributions are benefits to the pilots and should be considered compensation back to them on an annual basis.

Okay, now the, the lobbying expenses and the political contributions under GAFF, okay, those are deductions of the organization. Each individual pilot doesn't have a say. There is an operating committee that takes care of, or, excuse me, an executive committee that takes care of Biscayne Bay Pilots Association. They make decisions on the organization. They have decided that certain lobbying expenses are what they need to do. And part of -- part of that on this business, which is different than other businesses, is that you have a regulated public service here.

The only way that these guys can legitimately change anything -- they cannot -- since they are a public service they can't go off and do anything different. They can't make a change. They can't decide that instead o being pilots we are now going to go out and be search and rescue guys with our boats. They're -- they are obligated to be pilots under the statute, so the only way they can have any say in, in the regulation, is to, to go back through the political process.

Now, specifically these add-backs are disallowed under 162 of the Internal Revenue code. They're essentially called a book to tax difference, okay, so on a Schedule I the political contributions and the lobbying expenses are specifically disallowed as a deduction for tax purposes, and that's why they are, that's why you see them added back here. But that doesn't make them a benefit to the, to the pilots. They are an organizational expense pushed by the, by the Biscayne Bay Pilots Association for their, their lifeblood to, back to the committee, and to the legislation.

MS. BLANTON: So what you've come up here with here basically is, is kind of a third version of what the average net income per pilot after adjustments and add-backs would be, right? We've seen a couple of other --

MR. HELLER: Correct.

MS. BLANTON: -- Mr. Law's version. We've seen FCCA's version. And now we have your version, right?

MR. HELLER: Correct.

MS. BLANTON: And it -- it all comes down to basically what you choose to add back or not add back; is that a fair statement?

MR. HELLER: Right. My opinion -- and I just want to give the committee so when they're, when they're figuring out, when they're saying, they're looking at whether they're going to do apples to apples, whether they're going to, whether they're going to make some changes to the, to the pilotage rate based on what the pilots should be compensated, they have some, a few different analysis' to consider.

MS. BLANTON: Okay, thank you. That's essentially what I wanted to cover with you. Is there anything about the retirement plan that I didn't cover that you would like to add before we move on to the next witness?

MR. HELLER: I believe between myself and Captain Marlow we've covered the retirement plan description, but I'm happy to answer any questions.

MS. BLANTON: Okay. And you'll be here the rest of the day, correct?

MR. HELLER: I will be here.

MS. BLANTON: Okay, thank you for your time. Mr. -- we would at this time call Mr. Tim Donney.

MR. HELLER: And thank you, committee.

MS. BLANTON: Mr. Chairman, we have several witnesses this afternoon. We are going to try to move through them pretty quickly, so I'm not trying to rush anyone. On the other hand we want to be respectful of everybody's time. Okay, could you please state your full name for the record?

MR. DONNEY: Tim E. Donney, D-O-N-N-E-Y.

MS. BLANTON: And where are you employed, Mr. Donney?

MR. DONNEY: I am currently self employed. I call my company Lighthouse Marine Risk Consulting, LLC.

MS. BLANTON: And what kind of consulting do you do?

MR. DONNEY: I do marine risk consulting, re warranty surveys, vessel inspections, maritime loss control programs.

MS. BLANTON: Could you briefly summarize your educational background after high school?

MR. DONNEY: I attended and graduated from the United States Merchant Marine Academy in Kings Point in 1974. Much later in my career I earned a masters in business administration, or MBA in quality management systems from Leiter University in Jersey.

MS. BLANTON: And as I understand it you were a deck officer for a while after you were at the academy. And summarize if you would sort of your work history after that.

MR. DONNEY: Yes, after I left the -- after I graduated I initially sailed on my license on Port of New Orleans for two years on various cargo ships, and then it got slow because we had an overflow of officers from the Vietnam War at that time, I worked for a year in the offshore oil industry as barge engineer on a semi-submersible rig, and also as mate and really captain on tug and towing vessels in the Gulf.

MS. BLANTON: And what did you do after that? You -- to sort of summarize you spent a long time with Allianz Global Corporate Specialty, correct?

MR. DONNEY: Yes, I spent a great deal of my career after that, and basically two ways. One, I went to work for a company Hull and Cargo Surveyors, Inc., which is a marine surveying and consultant company. It was owned by the marine office of America Corporation, which is the largest marine insurer in the U.S. I stayed with them for approximately twenty four years, rose to the president of the company, which I've been for the last ten years. Then I worked briefly for Intermodal Transportation Services as their marine director for North American operations.

And then in the latter part of my career, the last twelve years, I was hired by the Allianz Group to build their marine risk control department, and I spent twelve years with them. Allianz is the world's largest grade insurer, and I was responsible for a staff of approximately twenty three risk consultants around the world, most of whom were master mariners, chief engineers, and I had one naval architect on my staff.

MS. BLANTON: And just so you all know Mr. Donney has a written report. It is included in your bound folder. We are going to cover the highlights of that, but we will not go through everything that's in that report today. So is it fair to say that the primary focus of your forty plus career that you've described is maritime safety and marine insurance?

MR. DONNEY: Yes, that would be an accurate summary.

MS. BLANTON: Have you personally investigated any maritime casualties?

MR. DONNEY: Yes, I've -- over my career I've investigated hundreds of maritime casualties.

MS. BLANTON: Okay. And now, did you personally investigate one called the Star Pride?

MR. DONNEY: Yes. About a year ago this time after -- I formed my LLC in retirement, and a little over a year ago this time I was sent to the west coast of Panama where the cruise ship Star Pride which is owned by Windstar Cruises had grounded on reefs, or locks, going into a port.

They did substantial damage to the bottom, holed in several areas. The ship almost sank. If it wasn't for one bulkhead that held, and one water tight door that was quickly closed, it would have sank. It was a dead ship, it had no power, and I was asked by the insurance underwriters to review and approve the emergency repairs that were made with underwater welding and other devices, as well as to inspect and approve the towing vessel and towing arrangements for its dead shift tow from the west coast of Panama to a shipyard in the Bahamas.

MS. BLANTON: You've also conducted safety inspections, and developed safety and loss control for --

MR. DONNEY: Yes, that was a big part of my responsibility, particular while I was with Allianz, in helping our insureds develop their loss control programs.

MS. BLANTON: Okay. Now, as part of your work with the pilots have you had occasion to read the application of FCCA for a twenty five percent reduction in the rates of pilotage for passenger vessels in Port Miami?

MR. DONNEY: Yes, I have.

MS. BLANTON: Okay. And I'm going to ask you some opinions, whether you've formed some opinions about that application, and go to that, but first before we do that -- and those are addressed in your written report. We're going to talk briefly about them. But you were here yesterday, correct, when the FCCA made its presentation?

MR. DONNEY: Correct.

MS. BLANTON: Okay. Did you hear anything yesterday that you would like to comment on that may be beyond the scope of your written report?

MR. DONNEY: Yes, there was a few items

that I'll briefly comment on. One was we saw an example of how gross tonnage would be applied if the passenger ship Allure of the Seas was loaded aboard the, the Altair, and I think it's important for the committee to understand that is impossible. That could never happen. The Allure of the Seas is longer, wider than the Maersk ship. It would take up so much space that it would actually crush the deck house, the pilot house, and everything else, and aside from I don't know how you could lift that on top of a container ship, that, that was just an impossibility.

I would also add that there's a thing, vertical center of gravity, that jumped out at me. As a ship is loaded deeper in the water the lower the vertical center of gravity is, cargo that can be loaded on board. In other words it's like sitting in a, stability is like sitting in a rocking chair. I can rock back and forth fine, but if I stand up in that same chair and try to rock like this I'll flip it over. The difference is my vertical center of gravity. Yeah, so for the number of reasons this would be impossible.

MS. BLANTON: So it's sort of a, an absurd example, yes?

MR. DONNEY: Yes.

MS. BLANTON: Okay, what about dynamic positioning? I think we heard something about that yesterday. Is that something you're familiar with?

MR. DONNEY: Yes. It's -- my comment on that is I don't know how that would be used in docking and navigation in the port, but I have seen it with a project that we were involved at Allianz with the replacement of the Tacoma Narrows Bridge, which is the famous galloping birdie from engineering failures, if you've ever seen that. The original remnants of piers are still there so we couldn't anchor there, so it's these large ridge deck sections -- this was a suspension bridge. They were built in Korea, came across on a Dockwise ship, then it had to be offloaded into the suspension cable so we had to use a vessel with dynamic positioning to hold it in place underneath the bridge as they picked them off.

And that worked well, and then one day the computer system malfunctioned, or dumped, and our vessel was spinning around 360o in circles out of control. It was brought under control by a tug, and no real problem with that, but I wanted to mention it because I couldn't imagine in Port of Miami with a 500' width at most, and a 900', or 1,000' vessel, when these electronic features go back they go bad in a big way in a real hurry.

MS. BLANTON: You heard some comparison yesterday too, I think, to some other ports in New York, New Jersey, and New Orleans. In particular did you have some comments about that?

MR. DONNEY: Yes. I've -- I've spent fourteen years working in the Port of New Orleans, and the comparison to New Orleans, and as well as I've spent nearly thirty years up in Port New York/New Jersey area, the major difference in those ports, they're much larger in scale, but to say that it doesn't require the pilot expertise is not a correct statement, because those, those ports both have very wide, wide passageways, and waterways. If you ground you're just grounding on a soft bottom that's not going to cause catastrophic damage.

Even the Port of New Orleans, that's 100 miles up river from the mouth, and Mississippi river is nearly 3/4 of a mile wide at the port, and over 200' feet deep. That's not the same as navigating within a 500' wide relatively narrow shallow waterway that's surrounded by stone coral reefs.

MS. BLANTON: Anything else from yesterday that you wanted to comment on before we move on to the key points of your report?

MR. DONNEY: No. The only other thing I would comment on is Port of New Orleans, it's divided into I believe five different sectors for pilotage, so although it's quite large they get divided into different areas.

MS. BLANTON: Your -- your report makes a few points, first of all, about maritime safety, and you address the claim of FCCA in its application that modern cruise ships are easier to control and maneuver than a typical cargo ship, or smaller vessels, and if you would just address that please?

MR. DONNEY: Yes. The -- first of all it's important to understand that most losses, collisions, groundings, they occur on arrival and departure. That's been -- that's a statistical fact that I've seen from studies that we have done. And although these cruise ships do have, do have sophisticated drive systems, propulsion systems, shallow draft, it's primarily so they can get into these smaller Caribbean ports in areas to service.

And what this suggestion that the risk of these vessels is less than other conventional vessels that are a fraction of their size overlooks the fact that these passenger ships, they have a huge what we call sail area, so they're very prone to, if there's a thunderstorm, or a wind burst, shoving them off course, and these, these electronic systems, and propulsion systems, cannot respond adequately to counter those forces, and particularly when you're looking at a narrow port like the Port of Miami, and bounded by hard coral stone reefs.

MS. BLANTON: Have you seen some examples of what can happen when a crew relies solely on electronic navigation equipment?

MR. DONNEY: Yes. In -- well, in addition to the DPS example the Royal Majesty was a cruise ship that grounded in Narragansett Bay in 1995. At that time the company I was running represented the P&I club for that casualty.

MS. BLANTON: And tell us what a P&I club is, please, for those who might not know.

MR. DONNEY: A P&I club is a little bit different than a property and casualty insurer like Allianz. A P&I club is based on -- it's a ship owners mutual. It's the traditional insurance idea that everyone contributes something to a common pool to pay out for losses so that no one vessel owner has to absorb all that risk. And what they do is they hire -- so the ship owners, the members pay into it, and they hire a P&I club as the managers of those funds to administrate the claims, legal activities, et cetera.

MS. BLANTON: Okay, so -- and you were --

MR. DONNEY: Yeah, we were representing through Royal Majesty's P&I club. And there was an NTSB investigation after that as well, and what happened was the ship had, it had a GPS system on it, and it also had the, what's called the ECDIS, electronic chart display information system, and the crew was relying on their satellite navigation system, and its ECDIS display as the navigated through Narragansett Bay before they picked up a pilot, and what had happened was the electronic lead from the antennae on top of the wheelhouse down to the receiver that's in the wheelhouse for the SATNAV system had become loose, or worn away. They get worn in marine environments.

And that particular received was designed so that the lost signal from the satellite, it would revert to a dead reckoning mode, which means it takes the last known position of the vessel and then projects on its current course and speed where its position should be. That does not take into consideration current, wind, or other factors that might blow it off course, and they followed their electronic navigation system until they, as we say, grounded on the North American continent. They were over ten miles outside the channel.

MS. BLANTON: And that I take it -- and we don't need to go through all of them necessarily, I know you have them in your report, but this is just one of several examples of that.

MR. DONNEY: Yes.

MS. BLANTON: Okay. Another topic you address in your report has to do with pilots' personal safety, and I gather you took some exception to the comments in FCCA's application about the physical dangers that pilots actually face. Would you talk briefly about that?

MR. DONNEY: Yes. And I think, you know, committee members that road out yesterday in a pilot boat have some appreciation for that. But that's more dangerous than, say a librarian would do. But in the period from 2006 to 2007, there were four pilots killed in the U.S., and a fifth operator of a boat died when it capsized.

MS. BLANTON: We actually had a Florida pilot that was killed recently too, is --

MR. DONNEY: Yes, in 2014, and so there are dangers. And I would also like to comment that it's more than just dangers from boarding and disembarking. On the trip down here I read about an award that was given by Professional Mariner magazine to two pilots in the Port of Houston. In September they were undocking a ship and the ship lost power. The ship then collided with shore side structures, ruptured a fuel tank, and a fire ensued. And as the fire burned on the vessel one pilot was able to maneuver it out into the channel to prevent that fire from spreading shore side to other facilities and structures, while the other pilot communicated and coordinated with the Coast Guard to get fire boats out there to try to put out the fire.

And the fire became so intense on that ship that one of the pilots' face was burned, and his hair was singed. The conversations recorded from the bridge indicated that they thought they were going to die, but they stayed with it, they were able to get the fire out and save the ship, and save a major loss. And for that they have received the Plimsoll award.

MS. BLANTON: Let's talk about gross tonnage, which we've heard a lot about in the last day and a half, and it's also something you address in your report. And I gather you have some thoughts about the use of gross tonnage as a means of calculating the rates of pilotage, which FCCA has questioned.

MR. DONNEY: Yes. Gross tonnage has been explained a lot here, and even in the Admins report, a good description of historically where it came from. And we have a lot of stories like that behind where things come from, particularly in the maritime industry. But gross tonnage today is, is universally used as a measurement, not only as the volume, but traditionally it's considered the earning capacity, or revenue earning capability of a vessel, and it was further to find in 1969 at the International Tonnage Convention, so I would say it is not an arcane thing, because we have ratified it.

There was an implementation period of about twenty years, and that -- what ITC69 did was did away with a lot of the rule, theater options, tonnage stores, and other things that naval architects could design in it, so what we have today for gross tonnage is a well defined documented admeasurement, as we call it admeasurement process calculations to determine the gross tonnage of a vessel.

MS. BLANTON: But it's used more for just -- more than for just calculating pilotage rates; it's used for a lot of other things?

MR. DONNEY: Yes, it is. I mean throughout the industry, flag states will use it to, gross tonnage is a means of assessing fees or rates accurate, ships and their flags. The classification societies use gross tonnage to go back to assess rates, fees against their members, as well as for affability of their rules for building, construction, and repair of vessels.

MS. BLANTON: You mentioned the P&I clubs earlier so let's talk about the insurance aspect of it. Is gross tonnage used in insurance?

MR. DONNEY: Yes, absolutely. From the -- from a rate insurer's standpoint there are several factors, including the lost history of an account, but gross tonnage is the basic baseline that a rate insurer will start with. And for the P&I clubs, they do the same, something very similar. They use gross tonnage as a way of assessing their fees or charges out to their members, both initially, and then as they go through the, as they go through the year and have a loss experience they place additional calls for additional premium, and those calls, one of the factors based on that is the number of vessels and their gross tonnage.

MS. BLANTON: And is it correct that passenger vessels would generally pay higher P&I rates that cargo ships?

MR. DONNEY: Yes, that's correct.

MS. BLANTON: And why is that?

MR. DONNEY: Well, that's primarily because they have such a greater number of crew. I mean you have perhaps a thousand crew members on a large cruise ship versus, you know, thirty or forty on a cargo ship. As well as you have perhaps a few thousand passengers, so you have much greater potential liability I'm sure, and much higher P&I ratings.

MS. BLANTON: Okay. Let's talk briefly about I think the last topic in your report, and that's marine liabilities, and the port's financial impact. And one of the things you said in your report is that FCCA's focus on liabilities is narrowly focused, and tell me what you meant about that.

MR. DONNEY: Yeah. The impression I got

in reading the FCCA's report was that it was focused from the ship owner's perspective as to the pilots' liability to the, to the ship owner, and it didn't address at all the much broader issues such as, you know, the other types of damages that a maritime casualty could do in the port to other vessel owners, other facilities.

And then we look at what would be the economic impact, and the economic impact to the port would be very substantial. I've been involved in a number of maritime salvage jobs, and I can tell you that it's, a major collision, or incident, or grounding here in the Port of Miami would very likely result in the closure of the port, and the loss of all the, the revenues that might come from that. You have the oil pollution aspect of it, which the Coast Guard will shut down a waterway if there's a sheen on the water to keep other vessels from passing through it to carry that, because they would carry that water, that oil adhering to the hull into other parts of the port. They'll shut that down until that's removed, and the threat is removed.

The size of these ships and the size of the channel is such that they would effectively block navigation for vessels either leaving or entering the port, so it doesn't talk at all on any of the other broader marine liability issues, which are really quite substantial.

MS. BLANTON: And you mentioned -- I think you read, or told us you read the 2016 local and regional economic impacts of Port Miami, right?

MR. DONNEY: That's correct.

MS. BLANTON: And did that inform your opinions about what sort of risks the --

MR. DONNEY: Yes, I -- I thought that was, that was interesting, because it says that, it concludes that the total value of economic activity direct and indirect in Port of Miami is somewhere around $41 billion a year. Of that includes 325,000 direct and indirect jobs, and of that 295,000 jobs are related to cargo activity and of that $41 billion $36 billion are related to cargo activity, so there again the FCCA comment is just about the cruise ships, it completely ignores the other impacts.

MS. BLANTON: And the executive summary,

that report is also in your binder, just for your reference. Now, your report points out that FCCA identifies as a reason for its rate decrease request that pilots are not contractually liable for damages to the vessel owner. What struck you about that statement?

MR. DONNEY: Yeah, well, the first thing that struck me about it is the maritime industry operates on the concept that a vessel owner has an absolute responsibility for the seaworthiness and safe operation of their own vessel. They cannot delegate that responsibility to any type of third party inspector, surveyor, or contractor, such as a pilot. To do otherwise it would clearly be not in the public interest, so it's not unusual for pilots to have that type of agreement with the ship owners as to liability to the ship owner.

Another thing that struck me about it is saying that pilots don't have any responsibility, any liability, any other liability. Well, I've seen where they have been subject to litigation by third parties in the event of a major casualty or oil spills. Our company Allianz insured the San Francisco

Bay Pilots Association. They provided the liability insurance for them when the Cosco Buson incident, when that struck the San Francisco Bay Bridge, and I can tell you that we had a liability policy I believe in the neighborhood of $5 million for the pilots association. There were so many third party suits that we just tendered up full policy limits and paid it off, and walked out of it. So there's a lot of third party activities that can go on.

There's even a potential for criminal prosecution under the Oil Pollution Act of 1990, what we call OPA, for wrongful spillage of oil. The example that was discussed earlier, when the Cosco Busan and the pilot John Coda spent ten months in federal prison. And just in other examples of pilots who have been targeted like that, in Florida John Lerro who was piloting the Summit Venture when it took down the Sunshine Skyway Bridge in a very heavy thunderstorm, he didn't do jail time, but he was criminally prosecuted by the, by the State, although not convicted.

MS. BLANTON: If you would, kind of

briefly summarize your key criticisms in the FCC application if you could. You have a nice summary at the end of, of your report.

MR. DONNEY: Yeah. If I could just one comment on the pilot liability. The other thing that struck me is that from a maritime casualty a pilot has, he has a license, he has a certification that's issued by some type of governing board, and that in itself can be suspended and reviewed. As part of my career I spent six years on the Marine Chemist Qualification Board as the insurance industry representative, and I was actually the chair, my second three year term I served as the chairman of the Marine Chemist Qualification Board. We investigated any fire, explosions, or accidents involving marine chemists, and I know first hand what it's like when you have to take the professional and review, and take action against their certification, against their livelihood. It is -- it is not accurate to say that pilots have no liability. Yes they do.

Now, in summary my comments in my report disagree with the FCCA filing about the large cruise ships being, presenting less risk here in the Port of Miami because of their sophisticated electronics and propulsions systems, because of the large sail area and the confines of this port I don't agree with that.

Second, the idea that gross tonnage is an arcane and frivolous measurement that has no meaning today, I don't agree with that suggestion. The maritime industry widely recognizes and uses gross tonnage as a means of assessment. That's done throughout its many sectors.

I disagree with the concept that the pilot has no liability exposure; there certainly is. I strongly disagree with the idea that the work environment or physical dangers presented to a pilot are no more than that of the librarian, and less than that of a florist, as is stated. No, very much disagree.

And lastly, the economic impact must be carefully considered because that would be tremendous here in this port. As someone who has spent over forty years in marine risk control, as an independent consultant brought into this, having done a deep dive review, I can tell you you have a very high risk of a catastrophic scenario of a ship grounding, collision, or something that causes the closure of your port, and it is absolutely paramount that you do everything you can to try to prevent that type of scenario from happening because you have all the elements of it right here.

MS. BLANTON: Thank you, Mr. Donney. Mr. Donney is catching a plane later this afternoon, so I don't know, Mr. Chairman, how you feel about this, but if there are questions for him it probably would be better if anyone could ask him now, because he may be gone at the end of this.

CHAIR: Okay, yes, I agree. Does any, any of the Board members have any questions for Mr. Donney?

MR. SOLA: Thank you for joining us today, and coming from Pennsylvania. What kind of insurance do pilots normally have in your experience?

MR. DONNEY: Usually, they don't carry any. The San Francisco Bay Pilots, that was an exception due to the way that organization is structured. To my knowledge, I don't think the pilots personally carry any liability insurance. Certainly pilot associations typically do not.

MR. SOLA: Okay, thank you.

MS. BLANTON: Thank you very much. We're going to switch chairs here quickly.

MR. CREW: While Mr. Dibner, our next witness is getting ready, I thought I could perhaps answer your question about what sort of insurance the pilots usually have. I am just only trying to offer this to be helpful because I do this throughout the Gulf Coast. Pilots usually have a marine officer's protection insurance, which is defense in the case of a marine casualty investigation, it provides for that. And then there's -- often there is some sort of insurance for the group, it just depends on the group. Certain large groups, like Houston, who have a tremendous amount of transits have insurance policies. And again, most of these pilots are independent contractors.

I will mention one case that wasn't mentioned earlier, but a Pascagoula pilot was not criminally but legally in a case where he was assessed with damages of about $800,000. You know, as Mr. Donney said there is risk involved, just like any other professionally licensed, you know, professional in the statute, you lose your license you lose your career, and that's really the big risk to pilots.

Do the members of the Board have a copy of Mr. Dibner's report; has it been handed out?

CHAIR: Not yet.

MR. CREW: Well, in any event we have a backup plan for when technology fails. There we go. I'd like to introduce Mr. Brent Dibner. Mr. Dibner is here to testify about pilot compensation on a nationwide basis. You've all got a copy of Mr. Dibner's report? Mr. Dibner, can you please introduce yourself to the Board?

MR. DIBNER: Yes. Good afternoon. My name is Brent Dibner. My background is as follows. I am a management consultant. I have been for forty years, specializing in the maritime industry. I founded my own firm after twenty five years as a senior partner at

Temple, Barker, & Sloane, which is today Oliver Wyman, one of the three or four largest management consulting firms in the United States.

Prior to my forty years as a management consultant to the maritime industry I was trained as a naval architect and marine engineer at the University of Michigan, and I practiced in shipyards and design firms, both in the U.S. and overseas. In 1977 I graduated from Harvard Business School with an MBA, then joined the firm. My clients have included a very, very broad range of ship owners, cargo interests, port interests, logistics firms, financial institutions involved with shipping. I have also served the cruise industry. In the late 1990's I was hired by Richard Fain, then and now the CEO of Royal Caribbean to help him with a team of my people to arrange the order of the plan, or the merger and acquisition of Celebrity Cruise Lines, which RCL had bought.

Previous to that I had worked with Norwegian Cruise Line on the de-installation of diesel engines aboard the SS Norway, formally the great French Liner France to rectify problems in power reliability. I've worked with other cruise industry firms, and I've also worked with ferry and cruise companies in Europe. In the 1990's I also worked intimately in the Port of Miami to help a small company break the domination of the fueling market here in Miami by Belcher Petroleum, and we succeeded at that, and subsequently Belcher bought the company. Thank you.

MR. CREW: Now, Mr. Dibner, thank you for your background. In particular you're here to testify today on a few aspects of the pilot compensation, correct?

MR. DIBNER: Yes, I am.

MR. CREW: Can you tell us about your background in working with different pilot groups around the country, and in, for other entities, for that matter, investigating pilot compensation.

MR. DIBNER: Commencing in the mid 1990's what I believe were the Port Everglades Pilots I was approached to help understand and begin to benchmark a variety of topics, including workload, and also the question of compensation. And over the years on and off that has expanded to the current day, where I have worked diligently for eleven groups ranging from Jacksonville all the way to Hawaii to help them understand and benchmark compensation in this relatively small field, and I have done so. In the course of that with those eleven organizations I have generally focused my efforts on the major organizations all the way between Charleston and Puget Sound, including Hawaii.

MR. CREW: Okay. And, Mr. Dibner, can you tell us particularly why you focused the scope of this report on the twenty five ports that you chose from Charleston down to, down the Atlantic coast, all the way around of the Gulf of Mexico, and the west coast in Hawaii?

MR. DIBNER: The reason is that they are the largest ports along the coast. They represent the great majority of pilot organizations that are of consequential size, meaning more than maybe seven pilots, sometimes a few more. And these became the core of an expanding number of organizations over this twenty two year period.

MR. CREW: And so essentially Charleston

is the first major port south of Norfolk, Virginia, correct?

MR. DIBNER: Correct.

MR. CREW: Okay. And your report consists of data that you've compiled from a variety of public sources, including for instance financial reports that are filed with fee commissions such as this one and Louisiana, other documents that have been filed in legal cases, and documents that were provided in legal cases, and documents that were provided to you by your clients; is that right?

MR. DIBNER: Both provided, discovered, requested and received, as well as the analysis of ship and cargo movements, ship calls, drafts, gross tonnage arrivals, tariff rates, et cetera.

MR. CREW: And so for the ports north of Charleston, north, or going up the east coast, you don't have any data with which to form any sort of factual analysis on, do you?

MR. DIBNER: There are four major ports in the area, New York, the Delaware, Baltimore, and Norfolk. Those are the only major ports that I have not grappled with, and the reason is that they are very, very, very closed. Their regulatory processes are utterly closed, there is no disclosure, and as a result it was not frankly considered to be both necessary and required for me to attempt to deal with them.

MR. CREW: So we'll get to the tables that you've presented, and there's an appendix in the back, so those are being consolidated essentially for the Board's purposes, but by way of example we provided to the Board earlier today a copy of a Louisiana fee commission filing, and do you have that in front of you, Mr. Dibner?

MR. DIBNER: I don't have it in front of me, but I have seen those reports.

MR. CREW: Okay. In I believe the front page on the report is a law, a law firm, or something to that effect.

MR. DIBNER: Yes, Lowell's law firm.

MR. CREW: Or -- we'd just like to direct your attention to that very briefly. Now, Mr. Dibner, are you familiar with these sorts of reports that are filed with the Louisiana fee commission as they relate to pilot net income?

MR. DIBNER: I am familiar with them. I

have seen three of the four that have been filed, and I received a letter from the law firms of the four.

MR. CREW: And how many in this group of twenty five ports that you analyzed, how many pilots are included in these twenty five ports?

MR. DIBNER: If my math is correct approximately three hundred and five. These represents more than, well, forty percent, just these four organizations.

MR. CREW: I want to -- I want to clarify what I asked, because I think I asked you, you answered something I didn't ask, Mr. Dibner. Of the twenty five groups there's seven hundred eighty pilots, right?

MR. DIBNER: Correct.

MR. CREW: And so the Louisiana groups that we're talking about, the four, Lake Charles, New Orleans --

MR. DIBNER: Lake Charles, NOBR, which is, you have in your hands, the Crescent which operates in the middle section of the river, 105 miles, the NOBR which you have represents 134 miles above that, and then there's the associated branch which operates on approximately 25 miles at the very mouth of the river. These four organizations constitute more than three hundred of the seven hundred eighty pilots which I have tabulated in these twenty five ports in America.

MR. CREW: And, Mr. Dibner, these kind of filings, for instance because there's numerous of them, there's hundreds if not thousands of pages of filings across all these twenty five groups. Is this a representative example of the type of data that you've relied upon in generating your analysis?

MR. DIBNER: These are relatively unique. They're very, very much to the point, but I have certainly looked at hundreds and hundreds, if not thousands of pages of various hearings, financial statements, applications for tariffs, applications and presentations to state regulatory authorities.

MR. CREW: Okay. And so -- and now in this example that we've provided to the Board, this is a 1099 distribution by the association to the, to the individual pilots; is that correct?

MR. DIBNER: Yes.

MR. CREW: And there's 117 of those numbers on the page with a corresponding, you know, the dollar figure next to them; is that right?

MR. DIBNER: That's correct.

MR. CREW: Okay. And -- and can you tell us for purposes of your analysis today, and coming up to net income, how that would relate to let's say an apples to apples comparison with the other data from other groups?

MR. DIBNER: Well, the term that I have confronted, and I have worked with over these twenty two years, is the term net income, and I would suggest to you that net income is not the net income which is used in the earlier discussion that you heard from Mr. Law. Net income in the experience of all twenty five organizations means the 1099 equivalent, or real, income that pilots would report upon considering the amount of money that they received, if you will, as paycheck funding. If they were -- if it were regular every year we might call it their salary.

It is the money that they earn, and in order to align them fully I have always made sure that regardless of where, whether it's a small group of four pilots who do not have any association paid health or pension benefit I would deduct those costs to reset them in the proper apples to apple basis. In other words if the organization did not pay for, make payment to the pilots of their retirement, whether it was to a qualified or non qualified plan, and if the organization did not in some way participate in giving the medical benefits, I took those medical benefits and pension issues as a SEP IRA, and as a payment of health care, and then deducted downward taking into consideration the tax, self employ tax relief that comes on the portion of that that's at the maximum tax rate.

MR. CREW: And I just wanted to point that out for some clarity to the Board, because we're not suggesting that this should be the definition of net income that the Board uses, but only for purposes to illustrate that this is a way that you made apples to apples comparison across all the pilot groups, the twenty five that you surveyed; is that right?

MR. DIBNER: Yes. And I would say one

more thing. As you heard the conversation in the questioning of the young man who is a pilot with Miami this morning the conversation rotated precisely around the same terms and definitions. That's what net income means to the pilots.

MR. CREW: I think we've discussed these other data sources. Next, I see you prepared a chart that's labeled net income, and if you wouldn't mind explaining to the Board how this, how to explain this chart in terms of net income per pilot --

MR. DIBNER: This is the result of my analysis. It represents all of the groups. They obviously are arranged in descending order of net income, all aligned, all fair and square, medical and retirement funds off the chart. And what you see here is that they are arranged in such a manner that they vary from the high 600's down to the $260,000 odd range, $600,000 to $260,000. And you will note that Miami at this juncture in its history is the second lowest.

Only -- those pilots in Miami are only above the seven pilots in Pascagoula, Mississippi. Pascagoula is the home of a large Chevron refinery. It has a small public port. It has lost approximately a third of its petroleum import tonnage because of the large amount of domestic oil, and so it is suffering. In better times five years ago before this boom in American oil Pascagoula was right up there with, with the others, but it is not at this moment.

MR. CREW: And, Mr. Dibner, I think that's probably a very fine example of the sort of speculative, you know, looking forward issue that was raised earlier about can you estimate what ships are going to be here and which ships aren't, and what the flow is going to be; is that right?

MR. DIBNER: That is correct.

MR. CREW: Mr. Dibner, I see this is another chart that you prepare on net income, and you've got accumulative number of pilots from lowest to highest. Can you explain to the Board what the significance of this tabulation is?

MR. DIBNER: Well, this is a graphical tabulation of the same groups. This time we go from left to right. You'll notice the order is essentially the same. It's the rising with the highest paid pilots on the right, you'll see Pascagoula, you'll see Miami, and what you have are the two lines. The blue line is the amount of money as we rise up through this net income progression. In other words we have Pascagoula and its pilot compensation, and we have then Miami, and then so on and so forth all the way up to the Sabine River Pilots in eastern Texas.

The lower line is simply the tabulation of the cumulative number of pilots up to the seven hundred seventy nine pilots that are covered by this benchmark, and you will see that it rises with the groups because that is the way the data was aligned. We went -- we from the seven souls in Pascagoula all the way up until we have the Sabine River with its twenty nine pilots, and we're right at the top in terms of the number pilots. So that -- that is the range of the number of pilots.

MR. CREW: I guess on the same topic, Mr. Dibner, we've got a tabulation again which breaks down the data, and I believe, correct me if I'm wrong, it's the same way, but this is where you arrived at the total average of all net income for all the pilots in the twenty five groups surveyed; is that correct?

MR. DIBNER: That's correct. The average is simply the summation of the total net income as you see in the third numeric column, $389 million divided by the 778.5, forgive me, that's what I had as the number pilots for the organization, yes.

MR. CREW: And in the far right column it's the basis, and that is the, the methodology that you used to derive the calculation for each one of these groups; is that correct?

MR. DIBNER: That's correct.

MR. CREW: And so, for instance, and we'll get to this in a minute, but to say the Board's time a copy of Mr. Dibner's calculation for the Sabine River Pilots is included in the back of the first page of the appendix, the other topics.

MR. DIBNER: Yes.

MR. CREW: I know that gross tonnage has been talked about extensively today, and we're not going to cover old ground, other than I'd like to ask you about the way other pilot groups across the twenty five that you've surveyed utilize gross tonnage in assessing a tariff, and can you explain this charge, and how you arrived at this.

MR. DIBNER: This chart is very I think straightforward. The organizations are down in the left hand side. The primary elements of the tariff, obviously every organization charges if you're late, or charges is you cancel, or has different small fees, but the heart and soul of their revenue comes from charging the ship based on some characteristics, and as you can see draft is common in all twenty five but for three, and even one of those uses T, which is the naval architecture symbol for draft. D is for depth.

And you will also note that in the Gulf of Mexico, and in California they have, they have developed for their own local reasons slightly different derivations of length, depth, draft, to varying degrees. It's just the way it's done in those parts of the country. It achieves the same essential affect, it does measure slightly different things.

MR. CREW: So and you -- how are you able to determine which ports used with methodologies for assessment of tariff?

MR. DIBNER: The one thing that is easy to get, although sometimes even that has been shrouded at times, is their, is their tariff. Tariffs are usually on the web, and if you call them up they'll fax it to you. It's public information.

MR. CREW: And so all of these check boxes were filled in after you reviewed the tariffs and made the determinations; that's correct?

MR. DIBNER: Yes.

MR. CREW: And this is all publicly available.

MR. DIBNER: Yes, sir, it is.

MR. CREW: Again, we've talked extensively today about pilot pension, and we're not going to cover which one is the right one, or the accounting methodology behind it, but I'd like to ask you to inform the Board about your review of the pilot groups that you studied, what sort of retirement plans, pension plans you may call them, the various groups use.

MR. DIBNER: The majority of groups

utilize non qualified pension plans, meaning that the organizations pay the retired pilots in the current timing of their operation. In other words they have a certain number of people, individuals who are retired, or are widows, survivors, and those persons receive according to their planned and stated obligations, and with certain guidelines, money, and that money is raised through the tariff, and that money is paid to the qualified recipients.

MR. CREW: And that -- in the Biscayne Bay Pilots' case they calls theirs a consultant agreement, but in your view of the other pilots groups included in your study does that consultant agreement match what would be qualified a non qualified pension for purposes of your determining net income?

MR. DIBNER: Yes, it does.

MR. CREW: Okay. And now there's some other groups that do theirs slightly differently. Can you explain how the other groups handle their pension plans?

MR. DIBNER: There are a small number of typically large groups, and they're identified

I think in the appendix for you, that do have qualified plans. Many of them, such as New York, in the Northeast, Houston, have funded pension plans that have the characteristics of a fully qualified plan. They are certainly a minority in terms of number of organizations, but they do exist, and so those, those should be noted. That is the -- those are the primary ways. There are a few that do not pay pensions at all, and that's where I have taken it on myself to reduce their net income by the fact that the pilot is left having to pay as an SEP, self employed pension according to the simple IRS rules for the self employed, and he same thing for medical insurance parenthetically, they have to write a check. There is some deductibility to that which cushions the blow, but the reality is that this is what is considered.

MR. CREW: So in your review of the twenty five groups what was the majority -- I'm sorry. Of those groups which format did the majority of the groups utilize?

MR. DIBNER: Non qualified plans.

MR. CREW: And that's the same as the

Biscayne Bay Pilots.
MR. DIBNER: Yes, it is.
MR. CREW: Now, this is something you mentioned earlier on that you've been following for a long time, and that's, there's some dispute on which is the proper way to pay pilots, based on essential pilotage services expended, bridge time, handle time, task, time on task, et cetera. You've compiled a table on Page 16 of your report that is again another metric of these factors. Can you explain this table to the Board?
MR. DIBNER: Certainly. This is -- more or les sit is a geographical array at the bottom. We're -- we're basically going from the Columbia River to St. John's Bar Pilots, and what you see here is three lines. The lowest line is based on data reported to the American Pilot Association some years ago, and modified where changes have occurred that I have been able to see looking at the number of jobs that they were performing, and you can see that in general pilot organizations, the mode would be a little bit more than one, but there are organizations where more than one is done,

particularly in very, very short trips like Los Angeles. You virtually can go out in the Anchorage, get a ship, sail it for a mile, go another mile, spend time docking or undocking the ship, and that's it.

But you'll notice that other than the bridge hours, which is in the middle -- we have the number of jobs per day on average, typically somewhere between, let's call it 1 and 2. You'll notice that that is where Miami falls, as Miami is in the center of this chart, and the box is to help you find it, but it's a little bit more, it's 1.6, 1.7, some number like that. As we heard today there are factors that change operations in a port. There's dredging. There's congestion, so on.

You'll notice that the next line in the middle is the bridge hours estimated per day on duty, and you'll see that those, that rises from very low numbers, like the Columbia River Bar, that's where the go out in a spacesuit and a helicopter takes them out to the ship because if you get out of the helicopter you're likely to be eaten by the sea, and it takes a few hours, and you're at the Bar, and you hand over the ship to a Columbia River Pilot, and vice versa when you're leaving, all the way up to relatively long runs that take place elsewhere, notably Lake Charles where you have a long ocean run, et cetera. So that's -- that's what we see there, and multiple trips.

Some organizations are able to fit things in going in, going out, others cannot. And then at the very top the dashed line is the, reported to APA and, and reviewed over, over the intervening years, task hours. And again you can see that Miami is certainly in the mode, it's in that range between 6 and let's call it 8 task hours.

MR. CREW: Mr. Dibner, for purposes of what you've included in estimated task hours did you limit this estimate to any particular tasks other than transit time to and from the job, the vessel, and preparation for the job?

MR. DIBNER: Yes, I exclude all group functions, activities management, or kinds of responsibilities that pilots may undertake. There's no credit for time, training, or anything of that sort. This is strictly doing the ship work, fulfilling the mission of getting out there, getting ready, going, coming back.

MR. CREW: And -- and in your review of the, let's just even call it the bridge time, even though Miami is dead in the middle, or roughly dead in the middle, they're the second lowest paid pilot group in the country as far as your report.

MR. DIBNER: Yes, that's -- the facts are not disputable.

MR. CREW: Now, the next thing I'd like to turn to is the topic on the cost of piloting as an element of the cruise industry's cost structure. We only looked at this because, in isolation for cruise companies, because they're the ones that are objecting that the pilots make too much money in the handle time, et cetera, so what I'd like for you to explain to the Board, what you've looked at, and what you've calculated in terms of pilotage costs, and operating costs for the cruise lines, and how you arose to that, and what data you relied on in reaching this analysis.

MR. DIBNER: Certainly. The three cruise companies are public, Carnival, Norwegian, and

Royal Caribbean. Interestingly, and importantly, the alignment of their financial data is standard. In other words the categories are the same, the various terms, as you'll see. So every years in the 10K for the annual reporting under FCC rules the numbers are there, and what I did was I looked at those and analyzed them in various ways. I looked at pilot as a cost, as a percentage of operating cost, and I found that in general the cost of a typical Miami pilotage on a model ship, which is just briefly described on Page 21, ship billing comes down to a very simple thing, gross tonnage, draft, and that's it.

So I picked a ship that's, a ship that's served in the Southeast U.S., 138,000 GT, 29', 3,400 passengers, and then used that as the model, because I could have used anything but I just picked that. And the bottom line is that when one analyzes that cost and compares it to the operating costs which are specified in the FCC documents it turns out that the cost of that pilotage services is less than 1/200th of shipboard operating costs. That doesn't include the other costs, and the capital costs, et cetera, and is less than not 0.5 percent, but 0.3 percent of total daily passenger revenues, because obviously the costs, the operating costs in all forms for maintenance, this, that and the other thing, fluids, crew, those are all there, those are operating costs.

But then we have the recovery of for capital and profit, so my point is that the cost of pilotage in Miami on a per diem basis, seven day cruise, is 0.5 percent of the costs themselves, and 0.3 percent of total daily passenger revenues.

MR. CREW: Turn to the chart on Page 19. If you can identify the colors in the bar graph for us, and which companies they represent.

MR. DIBNER: Well, we start -- just simply in this case it's -- first is CCL, second is NCL, third is RCL.

MR. CREW: CCL is Carnival Cruise Line, right?

MR. DIBNER: Carnival Cruise Line, correct. Okay, so they're -- they're laid out here for 2015. These are the operating expenses per diem. We know how many -- we have a seven day cruise. We have their costs. We have their fleet. What we come out with is these various bars, vertical bars showing the cost structure building up to the total cash, which is sort of four columns from the right side of the page, and then the arrow points to pilotage. This is on a per diem basis, and what you see here is this, this zero. It's almost -- the computer cannot draw the line, it's too small in the context.

And so you can see the Miami port charges, which I've figured out. You can see the commissions, the cost of onboard sales, the payroll of the crew for the ship, the food, and for passengers and crew, the fuel. These are the categories. Marine costs for maintenance, repair, dry docking, insurance, supplies, et cetera, marketing and sales, et cetera, et cetera.

MR. CREW: And this was all information that you obtained from their FCC filing, correct?

MR. DIBNER: That's correct, yes.

MR. CREW: Next we have a pie chart that I think illustrates it in a little bit different way.

MR. DIBNER: It was just a simple way to see it a more fulsome context. You see the circle, which is all the operating costs, and then what you see at the very top going vertically, I will confess I excised it from the port fees, tug pilotage, repairs, marine insurance, supplies, et cetera, because that's the category in which it's embedded, but I took that 0.27 percent and I just put it vertically -- I am guilty of duplicating.27 percent in the circle.

MR. CREW: Mr. Dibner, I just want to make that this doesn't -- for your calculation here, this was just looking at it from a company basis of a cost, and not whether they recouped it on a direct net zero pass through to the passengers. This was just all the costs that they've had to pay out.

MR. DIBNER: Absolutely that's correct.

MR. CREW: Okay, the next -- again we're dealing with a 138,000 GT ship, 3,400 passengers this time, and I see on this chart you've got two lines. And you tell us what the two lines stand for?

MR. DIBNER: The two lines, the one at the top is average revenue per passenger day for the three company average for 2006-2016. And the second one is the net profit per passenger day.

MR. CREW: Okay. And where -- where -- it says pilot fee per passenger day on this chart, and is the line -- I don't see the line on the chart.

MR. DIBNER: The line is there. It's the bottom red line along the axis. It's drawn according to its scale. I didn't draw it myself. That's it. That's when you look at zero point something. That's where that line is.

MR. CREW: Now the -- the next topic that I'd like to ask you a couple of questions on is in your review of pilot compensation of the twenty five groups did you have a chance to from a historical perspective analyze when these groups received increases in either their pension compensation or their tariffs?

MR. DIBNER: Yes, I did. As you can see between 2002 and 2016, and for a few I have gleaned it for 2017. It's probably not finished, or complete, but I tried to mark where I could see that there was a rate adjustment action for the organizations which are enumerated, the same organizations that we've been looking at, from geographic order, so we started in Charleston and we worked down.

MR. CREW: Okay, and just so I'm clear on the line in Charleston there's a green square blocked in for 2002, and then there appears to be a gray bar from 2003 on up through 2009. Can you explain why that bar is colored gray?

MR. DIBNER: I just cannot get my hands on older tariffs so I marked it as such. I just can't. They're just not available to me.

MR. CREW: But there were newly published tariffs during this time?

MR. DIBNER: I imagine that there was at least one, but that is not something that I can definitively identify for you.

MR. CREW: So this is not indicating that there was an increase during that time, it was just that you don't know.

MR. DIBNER: I don't know.

MR. CREW: Okay. But at least from 2011 on, the only year that Charleston did not get an increase was in 2013.

MR. DIBNER: That's correct. And we can

see what it was from 2010, there was none, and then '11 and '12 there was, and '14, '15, and '16 there were adjustments, the tariffs change.

MR. CREW: So jumping down to Savannah, we see when they, they periodically have had increases. 2002, they had another one in 2008, and then they've had three since 2011.

MR. DIBNER: Correct.

MR. CREW: And then below that we have the four Florida groups you looked at. And when was the last increase that any Florida group of any of the significant ports of Florida received?

MR. DIBNER: The last one that I'm aware of was Tampa in 2010.

MR. CREW: Okay. And as far as Port Miami is concerned when was the last adjustment to its tariff?

MR. DIBNER: The last one was in 2002.

MR. CREW: So -- and below that we have the rest of the groups. Apparently Louisiana is terrible. Their process doesn't really work for enabling pilots to get increases.

MR. DIBNER: It works perfectly and automatically, but it doesn't necessarily --

the tariffs change doesn't mean that the pilots needed a change. I emphasized that. In other words full review -- if the traffic picked up and they can do it, you know, they may or may not have had an adjustment of certain parts of the fee, but every year it's done, and it's done quickly and sweetly, and it's done.

MR. CREW: Okay. And in Texas again it appears to be most of their groups have periodically received some sort of adjustment. And likewise in California, Oregon, the west coast groups.

MR. DIBNER: Yes, it varies, but for example, Oregon is very, very intuit; so is Washington to some degree.

MR. CREW: Now we have the appendix, and we've got a number of materials, for instance in Topic 1 here is the Sabine River, the net revenue model that we talked about in how Mr. Dibner, you know, applied his methodology in coming up with --

MR. DIBNER: I would emphasize that this is only a small part of it, because there were thousands of ship arrivals, and each one had its drafts, and its gross tons, and you applied the tariff, and et cetera. But to give you the sense, yes.

MR. CREW: And then in Topic 3 we'll just direct the Board's attention to the individual tables which are quite large. The first one is just the southeast groups, including Charleston, Savannah, the four Florida groups, and then Pascagoula. And then we have the much larger -- this was the data that was provided on the next page for the American Pilots Association which shows simply the types of pension plans amongst all of these groups.

MR. DIBNER: With the caveat that it's the best thing we have, but it's from 2003, and it should be viewed as perhaps the way it still is. There may be changes, but --

MR. CREW: And you don't know if any of these pension plans have, for instance, been defunded.

MR. DIBNER: I have not heard of any defunding. I have not heard of any program change through, through discussions, reading, paperwork, or anything else. There's just -- I don't know, you know, the nitty gritty of each group. Some of them are, particularly the large old ones are deep in the darkness of the way they do things.

MR. CREW: We talked about Louisiana, the Texas plans, pension detail for the Texas groups, California groups. And I'm just getting through these rather rapidly. I have just one closing question for you, Mr. Dibner. There was a lot of talk about the add- backs, and certain things that needed to be added in by Florida Caribbean Cruise Association. I remember very clearly yesterday they mentioned that they thought that the Biscayne Bay Pilots made $499,000 when you added everything in.

I'm going to ask you if you added in everything, or added back everything that the cruise association added back against the Miami pilots, the Biscayne Bay Pilots, what would be the outcome for all the groups surveyed in, in your twenty five groups?

MR. DIBNER: The add-back -- assuming that -- first of all there wouldn't be much add-back from any of them. We know that they're receiving medical coverage. We know that they are receiving pensions in one way or other, typically non -- so the --

MR. CREW: I think -- I think you missed the point of what my question is. If the numbers that you have don't include the add-backs, right, because they're, in only cases where they are, but if you add them back in the same way the cruise association did all right the numbers going to be the same or higher?

MR. DIBNER: We -- they're -- it was done only for Florida groups, and it presumably was done based upon what they felt were the benefits, what Richard thought were the benefits, $29,000 for MM&P family insurance policies, and some provision for retirement for those who retired after twenty years, or twenty five years.

MR. CREW: Okay, listen to my question. You've got twenty five groups that we're not talking about in Mr. Law's group, right?

MR. DIBNER: Right.

MR. CREW: Okay. You didn't add back in the same things Mr. Law did, or the Cruise Association.

MR. DIBNER: No, absolutely not.

MR. CREW: Your average number for all

pilot groups is $499,000, right?

MR. DIBNER: Correct.

MR. CREW: If you take the number from Miami, and you included the add-backs that were included against Miami against all of the other groups that are a part of your table, would that average be lower or higher?

MR. DIBNER: Much higher. Much higher by the difference between $280,000, or whatever, was the real net income, plus the gap to Mr. Law specified, it's huge.

MR. CREW: Thank you. Mr. Dibner also has a flight, that he has to be out of here in about thirty minutes, so we'd like to turn him over to the Board now.

CHAIR: All right, thank you. Any questions for Mr. Dibner? Okay, thank you.

MR. DIBNER: Thank you. Sorry I didn't get that one. I was -- it's such a big number.

CHAIR: Okay, and let -- this is a good time to take a break; so let's do fifteen minutes.

(Thereupon, a recess was had and the proceeding continued as follows:)

CHAIR: Okay, let's get started again.

Ms. Blanton, I understand you have three more witnesses, is that right, and then we'll, you'll be --

MS. BLANTON: We do, and they're all going to be relatively quick.

CHAIR: Great, thank you.

MS. BLANTON: Speaking of quick -- sorry, you got to laugh. It's been a long couple of days, right? Okay, with me today is Captain George Quick, who I think is probably not a stranger to many of you, but I'm very briefly going to ask him to just summarize what he does right now, and his background.

CAPTAIN QUICK: Hello, I'm vice president of the International Organization Master Masters, Mates & Pilots. I represent the pilot membership group within that organization. And I'm also responsible for the MMP's national regulatory and international fares.

MS. BLANTON: Captain Quick has written comments that are attached to the investigative committee report that he gave Mr. Law at the investigative committee meeting. He also has filed a supplemental report that talks a lot about the gross tonnage and space ratio issues that you all have heard about from Captain Marlow this morning, and from others, so we are not going to talk about that here today. But he does have a couple of strong opinions about those, and they are in his supplemental report, and I would encourage you to take a look at them.

What I would like to ask Captain Quick about, and we don't want to plow ground we've already plowed, but he has a perspective that nobody else in this room has because of how long he has been involved in pilotage, so I would like to ask him just very briefly to give us sort of the background of why the retirement program that pilots have are structured the way they are. And we've heard testimony that almost every pilotage organization in the country has this type of plan. There are a couple of exceptions, not many. So if you could just give us some background on that.

CAPTAIN QUICK: Well, pilotage is probably the oldest regulated profession of today's regulation of lawyers, or doctors, and I think that's an indication of the interest, the public need to regulate a profession where if they make a mistake it can have very catastrophic consequences. Back in the colonial days pilots are regulated in every colonial state in a manner not too dissimilar to the same way they're regulated today.

In the mid 1800's they were reorganized in their current structure, and at that time unfunded plans were the norm, and all the pilot associations had unfunded pension plans. The Aristle laws in qualified pension plans are relatively new from a pilot's perspective. When they came into effect we had unfunded plans in all the associations, or most of the associations. We continue -- we could have switched over at some point in time, but we have all the legacy costs of service credits that made it particularly expensive to do so. I've sat down and crunched the numbers in my own association, and the costs of unfunded plans were costing us less than twenty percent of our revenue.

I also looked at the multi-employer plans that covers our masters and officers, and they were running above a twenty percent cost of wages so it didn't make any economic sense to try to shift to a funded plan and pick up all, all those liability credits, if there was no source of funding for it, so I think most of the associations have done the same thing. They've made an economic analysis of the cost of the unfunded plans versus the cost of shifting, and the cost of the legacy costs that would be involved, and decided to remain with unfunded plans. And they actuarially sound, they don't have market risk in the future, they probably benefit the shipping companies because those legacy costs have to be passed on in some way to the shipping companies, and in fact I think we would -- the individual pilots would probably be better off with a funded plan because they would then have an identifiable interest, and an asset that would be transportable.

As it is now I think the state's public policy position, wants to keep the unfunded plans so you don't have a vested interest in the pension until you put twenty five years in. That brings stability into the pilot associations, and that it keeps the pilots locked into the port, they have to stay with that port or they lose the pension. And I think to become -- to become --

CHAIR: Farther away.

CAPTAIN QUICK: What? Back up a little bit?

CHAIR: Yes.

CAPTAIN QUICK: You know all -- and since we started I had trouble listening to the people, and I made a mental note to make sure I get close to the mic. I'm probably overdoing it, so -- all right, thank you very much. That -- that's what summarizes my viewpoint, or the pilots' position of why we have unfunded plans. Thank you.

MS. BLANTON: And just one further point on that. It is important for the Biscayne Bay Pilots if they want to get the best and most qualified pilots they're going to be looking at someone that is going to expect a plan like that, right, because that's that's what they're used to.

CAPTAIN QUICK: That's correct. It's a normal standard throughout the United States. That's the way -- that's the way we do it. And for dollars, historic, and economic reasons, we keep it that way, thank you.

MS. BLANTON: One other point that I think you've addressed in your primary report that's attached to the investigative committee report but I just wanted you to touch on really briefly, and that's pilotage income. As part of your job with what you do with Masters, Mates & Pilots you have a good handle on pilotage income around the country, correct?

CAPTAIN QUICK: I have a very good hand on it because I meet periodically with the pilots around the country. They're the people I represent, and they're the ones who elect me to office, and I have a fairly good general idea of what pilots' income is around the country. And I think Mr. Law in his opening statement said they're fee for, fee for service professionals, and their income will fluctuate with quite a number of factors, depending upon their expenses, the traffic volume into the port, the size of the ships, the number of pilots, so I think it's difficult to put a finite number on it. But I think Mr. Dibner has done a very excellent job of showing the scope of what the range of what the pilot income is in the United States. He came up with about $500,000 as an average, and I would cooperate, or say that in my professional opinion that's very close to what it is. Thank you.

MS. BLANTON: Thank you, Captain Quick. Unless there are questions of Captain Quick I think that's all we need to ask him here. I would commend to you his two reports in the record. They're both very thorough.

CHAIR: Mr. Quick, will you still be here, or are you leaving?

CAPTAIN QUICK: I'll still be here, yes.

CHAIR: Okay. All right, thank you.

MS. BLANTON: At this point I would like to call Mr. Paul Kirchner.

MR. KIRCHNER: Thank you. Good afternoon.

MS. BLANTON: Hi. Could you please state your full name for the record?

MR. KIRCHNER: I'm Paul G. Kirchner. That's K-I-R-C-H-N-E-R.

MS. BLANTON: And where do you work, Mr. Kirchner?

MR. KIRCHNER: I work at the American Pilots Association in Washington, DC.

MS. BLANTON: And what's your position there?
MR. KIRCHNER: I'm the executive director and general counsel.
MS. BLANTON: How long have you been with the APA?
MR. KIRCHNER: Twenty four years.
MS. BLANTON: And the Biscayne Bay Pilots are members of the APA, correct?
MR. KIRCHNER: Yes, they are.
MS. BLANTON: Okay. Tell me what the APA does.
MR. KIRCHNER: The APA is the national association of the piloting profession. We were founded in 1884. The original objective, and still our main objective today, is to promote and protect, and assist the state pilotage system in this country. We work with the federal government relevant to this proceeding. We do -- we do a lot of work with state regulatory authorities, appear before state legislatures and, and pilot commissions, offices of the governor, and other, other entities of state regulatory authorities.
MS. BLANTON: And you were in here in 2014

for the first hearing on FCCA's application, correct?

MR. KIRCHNER: Yes.

MS. BLANTON: And you made a presentation at that hearing?

MR. KIRCHNER: Correct.

MS. BLANTON: Have you been following the developments in this case since then?

MR. KIRCHNER: Yes, I have.

MS. BLANTON: Is it correct to say you're familiar with both the pilots' application and the FCCA application?

MR. KIRCHNER: Yes, I am.

MS. BLANTON: Okay. Tell me a little bit if you would, a big picture, 10,000' level, about the reasons for the compulsory pilotage requirement which obviously is part of Florida law, and the law of many other states.

MR. KIRCHNER: A compulsory pilotage requirement is navigation safety regulation. In fact it's the most effective tool that a state has for protecting its waters, and facilitating its water board commerce. It's on thing to have rules that tell ships what they can and cannot do, and in that respect the state has somewhat limited authority to do that, but it's something much different, and much better, to require a ship to have somebody on board to direct the navigation of that ship that's been certified by the state as having the competency and the qualifications, and the expertise, as well as the local knowledge that's needed to, to protect the state interest.

MS. BLANTON: And you're familiar with the Florida statutes governing pilotage?

MR. KIRCHNER: Yes, I am.

MS. BLANTON: Now, I -- I didn't ask you this, but you're a lawyer, correct?

MR. KIRCHNER: Yes, I am.

MS. BLANTON: You've had a JD for a long time, right?

MR. KIRCHNER: Yeah.

MS. BLANTON: So you've read the Florida statutes; you're familiar with them.

MR. KIRCHNER: Yes, I am.

MS. BLANTON: What do you consider the most important duties of the state in regulating pilotage?

MR. KIRCHNER: The most important duties

or responsibilities of any state, and there are twenty four states that regulate pilotage, number one is to ensure that any ship that's required to take a pilot, a state pilot, receives a state pilot in a timely manner, and that pilot is competent and qualified, mentally and physically fit, has the expertise that the state wants, and is supported by a pilot operation that's able to provide the pilotage services that the state wants to offer in its ports.

The second responsibility of the state is to, is to provide pilotage rates that will generate the revenues that are necessary to support a pilotage operation of that kind, that's able to provide those type of services.

MS. BLANTON: And I should have mentioned that Mr. Kirchner has read the comments as well that are, that are in your binder. And one of the points you've made in those comments is that the primary consideration in Florida Statutes is to give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe pilotage services. What does that mean to you?

MR. KIRCHNER: Well, I think -- I think what it clearly means, just from the language of the statement in the statute, is that in, in determining a change in the pilot rates, any, any requested change in the pilot rates, the committee's main responsibility of primary consideration is the public's interests in having efficient, reliable, and safe pilotage services, so the focus is on the needs of the pilot operation, and, and the responsibility of the state to provide the necessary revenues for that operation.

MS. BLANTON: Another part of the statute talks about attracting to the profession of piloting the best and most qualified individuals as pilots. That's in our statute. What do you think the committee must look for in order to satisfy that statutory objective?

MR. KIRCHNER: Well, as you've heard, heard today at least, the most important consider there is compensation. That's what -- that's what potential pilot applicants look at mainly. I think the committee should also be aware that Florida has some negatives that it has to overcome when it tries to attract people to become a state pilot. There's certain things about the piloting system here that, that are not favorable in the competition for applicants, one of which is the rigorous exam program that's here.

The investigative report talks about it's about a six month investment of time and effort to prepare for the exam so, so you need people that are willing to put in that kind of investment without any guarantee that they're going to be selected. And in fact the chances of their selection are pretty small, we've heard that. So -- so people are only willing to make that kind of investment when the reward at the other end is, is large enough for it to make sense. You know they can go other places where there are easier application processes, where the chance of being selected, of being selected are greater.

And if they're going to be making more money in those other places then Florida has a negative there that they have to overcome. And there's some other things. Florida does not have a limitation of liability program as, as a number of other states do, so that's a financial risk there that has to be factored into the decision of where somebody wants to apply to be a pilot.

MS. BLANTON: I think we've heard some testimony that if the FCCA petition were granted it would result in an annual loss of about $1.8 million of the pilots' $11 million annual operating operations. Do you have a perspective on what, what would be the impact of that type of loss?

MR. KIRCHNER: Well, it would seem obvious that any proposal to take $1.8 million away from an $11 million operation would have a significant adverse impact on the quality of that operation. That's a lot of money to be taking away from an operation that's not a deep pocket operation, and so certainly there would be, it would be a downgrading of the operation here in the Port of Miami.

MS. BLANTON: And I know your APA organization does not focus on the income of Harbor Pilots to the extent of someone like Mr. Dibner, who we heard about, but I gather you have, you're familiar with the public information that's out there about pilotage

income, correct?
MR. KIRCHNER: Yes, correct.
MS. BLANTON: Do you have an opinion based on what you've heard from Mr. Dibner, from Mr. Law, and Captain Quick and others, about what the average national pilotage income is?
MR. KIRCHNER: Well, I know in the, in the investigative repot they mentioned figures of $400,000 from the Fort Pierce case in 2012, $410,000 from George Quick's testimony in 2014 also relating to 2012. If that -- if that refers to what's been described as a W-2 equivalent estimate of income, you know, that's what, that's what most people consider income or, or what somebody makes. That's on the low side of the national average. I think it's -- I think it's probably -- it's probably closer to $500,000.
MS. BLANTON: Let's talk specifically about the petition of the cruise lines for a rate decrease. And in your written comments you identified a number of what you call misstatements of law and fact. Could you -- could you sort of tell us what, what those are?
MR. KIRCHNER: Yes. I'll try and be, and

be brief on those, because other, other witnesses have talked about those. The description of the role of the pilot and the respective responsibilities, and the relationship between the master and the pilot is, is erroneous. It's well established in pilotage law in the United States the pilot directs the navigation of the vessels subject to the masters' overall command, and the ultimate responsibility for the vessel's safety.

The key point there is the pilot directs the navigation of the vessel. That's the official position of the U.S. Coast Guard, and now it's a Commandant's decision, in that decision, the Commandant's decision also says that the, that the cliche about the pilot being an adviser is a misconception; that's their word, that has no foundation either historically or legally. And that's accepted. So -- so the distinction there is that the pilot, the pilot directs the navigation of the vessel.

MS. BLANTON: And the pilot's responsibilities are not just to the ship, correct?

MR. KIRCHNER: Absolutely. Under the state pilot system the state pilot has responsibilities to protect the public interests, and that's always a consideration, and that's, and the state pilots are trained in that. That means they have to exercise independent professional judgment when necessary. That means occasionally they may, you know, they might have to say no to an operation that, that the ship or the master might want to undertake.

MS. BLANTON: You also mention that FCCA downplays the liability risks that pilots face. And -- and we've heard a little bit about that from others, but could you just summarize your concerns about that?

MR. KIRCHNER: Well, pilots have always been liable for their own negligence. They -- pilots are sued. Pilots have judgments rendered against them. Many of these are recorded, any maritime lawyer can find them. It was mentioned earlier, the case in Pascagoula that I know the Florida pilots are well aware of, so there is civil liability.

That explains the interests in the other states about a limitation of liability system to address that, you know, so there is liability there.

There's criminal prosecution, we know that; the Cosco Busan case was mentioned. Although I do have to say that there were a number of misstatements about the Cosco Busan situation, and you know, what the legal consequences of that accident were.

MS. BLANTON: Finally in your, you write in your comments that FCCA's characterization of the pilots as having guaranteed income is incorrect. Could you just summarize your point on that?

MR. KIRCHNER: Well, that was curious. There were two places in the FCCA paper, or petition, where they described the pilots' pay, or the pilots' income as being guaranteed. Obviously it isn't, you know, we heard today about, it fluctuates, it's tied to the traffic, it's tied to other factors that pilots often, often they can't control. So they have a risk there, and, you know, they accept that risk, and that's part of it. But that's also a factor in calculating, or in trying to determinate just and reasonable compensation, you know, any rates anybody should take into consideration the fact that they have an entrepreneurial risk as part of their job.

MS. BLANTON: Finally, are there any concluding remarks you may have about the relative merits of the two applications that are before this committee?

MR. KIRCHNER: I'd like to reinforce the idea that the focus of any rate exercise is on revenues, what are the necessary, what are the revenues necessary to provide for the type of pilotage operation that a state decides that it needs or, or it should have for its ports. And -- and, you know, there are different ways in a rate structure to generate revenue, and those can be, those can be changed or played with, but, but in the end, and the bottom line is, the pilot operation has to be provided with the revenues to operate the kind of service that the state wants.

I note that, that the Port of Miami has spent $2 billion in infrastructure improvements to be big ship ready. Other people are making investments to offer the Port of Miami as a, as a first rate port. It doesn't seem to me to be the time to be downgrading the pilot operation. It seems -- it seems very peculiar to me even proposing that, you know, why would you want -- why would any state want a second rate bare bones operation, one that Mr. Panza described or, or indicated that the cruise lines want, which in his, in his term was a cut to the bone operation? Why would any state want to have that type of pilot operation?

MS. BLANTON: Thank you, Mr. Kirchner. Will you be here --

MR. KIRCHNER: Yes, I will.

MS. BLANTON: Okay, so he's available later. I'm going to change places with Mr. Crew.

MR. CREW: It's not even 4:00 and that's our last witness. We promised you we'd be brief, and we are. I'd like to introduce Mr. Thomas Kornegay. Mr. Kornegay, could you please introduce yourself to the Board?

MR. KORNEGAY: Yes. My name is Thomas Kornegay. I'm the former director, port director at the Port of Houston.

MR. CREW: Mr. Kornegay, can you tell us a little bit about, about your education, and you came to work at the Port of Houston?

MR. KORNEGAY: That's a question I get a lot because my education at the University of Texas was in architectural engineering. I got my Bachelors there, and then I went on to the Oklahoma State University, and I got a masters in architectural engineering there. Do you want me to tell them how, how I got to Houston, and the port --

MR. CREW: That's right.

MR. KORNEGAY: I moved to Houston and worked for three different consulting firms designing buildings, and then I got an offer to go to the Port of Houston and become a planner. They were developing their very first container terminal and they needed somebody who could -- this is a long time ago, so they needed somebody who could learn what the container business was all about, and try to design the terminal to handle containers. At the time that I did that there was one textbook on what containers were and how they were being handled, so --

MR. CREW: And that -- that was the Barbours Cut container terminal that's in the Port of Houston now; is that right?

MR. KORNEGAY: Correct.

MR. CREW: And so what other projects did you work on with the Port of Houston in developing and growing the Port of Houston?

MR. KORNEGAY: How long do we have? Well, I was in the engineering department for twenty years so I did the Barbours Cut container terminal. I did the planning, but I was also involved in the actual design of the first terminal. As a matter of fact I was involved in the design and the construction of terminals all the way up through number five. I was slightly involved in number six, because by that time I was in management.

MR. CREW: And can you tell us how -- eventually you became the executive director of the Port of Houston. When did you assume that, that title?

MR. KORNEGAY: 1992.

MR. CREW: Okay. And how long did you serve as the executive director?

MR. KORNEGAY: Seventeen years.

MR. CREW: Now, Mr. Kornegay, it may be a little confusing to the Board why we have a port director from Texas here today testifying, but in your experience in working in Houston as a port director did you ever find yourself perhaps in the middle of a squeeze politically on which way you might come out and support a side that might be interested in doing work at the port?

MR. KORNEGAY: Weekly, monthly, yes.

MR. CREW: Okay. We wanted to have someone from Port Miami to come in, and unfortunately we couldn't, but we're very happy to have you here today, because what I'd like for you to give the Board here is a little perspective on how the pilot group in Houston facilitated growth within the Port of Houston.

MR. KORNEGAY: How they facilitated growth?

MR. CREW: Yes.

MR. KORNEGAY: You have to understand our channel is 50 miles long. 25 miles of that channel are developed on both sides. We have -- I was trying to figure out a while ago how many berths we have. I know the Port Authority has over forty berths, so my guess is that the total number of berths in the Houston ship channel are somewhere north of a hundred. We have a very narrow channel. I think I've heard that term used here several times, that you guys have a narrow channel. And our pilots actually have to use a maneuver called the Suez maneuver, which if you've never seen it you don't want to see it when you're on the ship because the ships actually point themselves right at each other, aim right a the other ship, and at the right time they both turn right, starboard, then they both turn left, and they pass each other with a wall of water holding them apart. And it's pretty exciting because feel like you could reach out and touch the other ship going the other way. I have done that. I've rode on the vessel, and the last thing you want to do is ask the pilot what you've got in the tank, because most of our vessels are tankers, because they will always tell you it's snafta (phonetic), which you understand what that means. But our pilots always have been basically focused on growing the business in Houston, because it's good for them, as well as it's good for the port, so they have always had the port's best interest in mind, and safety is their number one concern at all times.

MR. CREW: For instance -- I'm not sure if you were in the room yesterday when Captain Lilly testified, but one of the things that the testified to was the cooperative efforts with the port here in Port Miami of discussing the growth of the container terminal. Can you tell us a little bit about the importance of that from a port's perspective in having pilot group participation?

MR. KORNEGAY: Yes, I -- I actually worked with the pilots from beginning to end in designing the terminals at Bayport, and later on at -- excuse me, I said Bayport, I meant Barbours Cut, and then later on at Bayport. It -- it was -- I mean I don't know how you design a terminal without their help because only they know what the situation is on bringing the ship in, and what they need in order to make that ship, or bring that ship to the berth.

A very good example is a dock that was designed, basically it was being designed when

I went to work at the Port of Houston. Because the guys in the engineering department did not talk to the pilots that dock is almost unusable today, because the way the ship docks there they just beat the dock up, and it was a poor design. And if they had gone to the pilots in the beginning then what --

MR. CREW: I know we're talking about two very differently sized groups, you know, the Houston group has almost ninety pilots, we have eighteen here at the Port of Miami. But in terms of the revenue that the pilots generated in amongst themselves from the port's perspective, did you ever -- did you ever hear any criticism from the businesses that were calling on the port about the money that the pilots made? That's a big question, I know.

MR. KORNEGAY: It's very simple. I've never had business with any of the shipping companies that didn't complain about A, the ports charges, and B, the pilot's charges, and C, the tugboat, and D, the steamship mooring charges, et cetera. But I will the tell you the way -- our pilot situation is a lot different than yours. Our Boards work differently than yours do. But the way we managed that was that I developed a committee of industry people, and from all of the industries, container, the tankers, and actually we had an association that was on that committee that represented most of the stevedores and the steamship lines, and whenever the pilots wanted an increase they came to us and we sat down and discussed it, and tried to understand why they needed that increase, and worked out an increase that was good for everybody.

MR. CREW: One of the -- one of the things that might be useful to explain to the Board is that in Port of Houston, for example, the pilot board, and the rate setting structure, consists of members of the port authority; is that right?

MR. KORNEGAY: Actually the port commission is the pilot board. They wear one hat at part of the meeting. They wear another hat at the other part of the meeting.

MR. CREW: And -- and in that -- and in that role working with the port you had very intimate knowledge of the way in which the pilot rates were structured in Houston; is that right?

MR. KORNEGAY: Yes, I was -- I was at the, sort of the tip of the sword, because, you know, I was employed by the port commissioning, which means that I was also employed by the pilot board, so it was my responsibility to work with the pilots, and work with the industry to get those things done.

MR. CREW: And, Mr. Kornegay, in that role did you ever as working on the board, the pilot board, take a look at what the impact of the pilot tariff charges were ultimately on the businesses calling in Port Houston?

MR. KORNEGAY: Of course we did. And I remember so well a study that actually the labor guys were not really happy about when it came out, but because everybody always thought that if they could get the port to lower their rates they could get more cargo, and they wouldn't, or they wouldn't lose cargo, and it turns out the study showed exactly the opposite, that the rest of the charges other than port authority, pilots and tugboats, the other charges were much more significant than those three.

MR. CREW: In terms of the total port costs inhibiting businesses.

MR. KORNEGAY: Yes, in all the -- that's basically all the costs that they had to pay at the port, yes.

MR. CREW: And I don't know if you had an opportunity to see what Mr. Dibner's report indicated, but throughout the time that you were at the Port of Houston you understand that the Houston pilotage tariffs and compensation to pilots are some of the highest ones in the country; is that right?

MR. KORNEGAY: Yes.

MR. CREW: And from your perspective at the port at that time did that have any impact on the growth of the Port of Houston?

MR. KORNEGAY: No, none whatsoever.

MR. CREW: And so do you have any comments that you would like to share with the Board about this situation they're in today, and what you feel like would be the proper things for them to consider? If you have any suggestions. I'm not saying that you're more knowledgeable, but perhaps any takeaways.

MR. KORNEGAY: Well again, I have worked with, as you know, more than one pilot group, and, and my advice is always exactly what I just said a while ago, is that you really have to look at the situation in your port, and understand why the pilots are asking for the increase. And just the little bit that I've heard today I think it's pretty clear why they're asking for an increase, so, I mean, that needs to be looked at. And it also needs to be looked at as whether it's going to really hurt the business or not, and in my, in my experience that, you know, the pilot charges just aren't enough to do that.

MR. CREW: Thank you, Mr. Kornegay. If the Board has any questions we'd like to turn it over to the Board. Okay, thank you.

MR. KORNEGAY: Thank you.

MS. BLANTON: We have no more witnesses. I guess I am ready to close with the caveat that you may first want to bring back anyone that you all have questions of. I don't know of you do have questions of any of our witnesses. Most of them are still here. If you do I'd let them do that first, and then

I'll close.

CHAIR: Okay, let's do that at this time. So Board members, let's just, you know, anyone that has any questions to any of the people they've heard today? So what we'll id we'll go through the questions. We'll do a five minute close, and then Mr. Panza, you'll do your accounting. And then we'll do public comment after that. Okay, questions from the Board. Commissioner Oatis.

MR. OATIS: A question for Captain Stubbs as the boat manager. I guess the thought that obviously as the boat manager you're responsible for assessing the status of the boats, the status of the tugs --

CAPTAIN STUBBS: Not the tugs, just the boats.

MR. OATIS: Just the boats themselves.

CAPTAIN STUBBS: Yes.

MR. OATIS: Okay, so as far as the status goes, having being aware of what the useful life is remaining, knowing that down the road at some point there might be a purchase need to be made --

CAPTAIN STUBBS: Yes.

MR. OATIS: I guess has there ever been conversation of a reserve started from like the current funds and put aside to, unfortunately we call it a sinking fund, in order to have that money available to either fully offset or partially offset any type of debt requirement that would be needed?

CAPTAIN STUBBS: There has been discussion of it, but the consensus is to wait until we get there and try to finance the, finance the boat as we need it.

MR. OATIS: Okay, so going through a debt, financing in order to, to obtain that?

CAPTAIN STUBBS: Yes.

MR. OATIS: Thank you.

(Thereupon, a recess was had and the proceeding continued as follows:)

CHAIR: Okay, we're back at 5:30. The Biscayne Pilot Association's response and presentation is completed. We now have the Caribbean Cruise Association response, immediately followed with public comments, and then we'll begin our deliberations. Mr. Panza.

MR. PANZA: Thank you very much. I'm sorry, I was trying to get organized here. This will be the rebuttal portion of the FCCA position. What we attempted to do when we came in here just to, as part of this rebuttal, is to make everything as simple as possible, and look at the statutory requirements, and the compensation benefits that are included in there. If we look at the statutory requirements, which Ms. Blanton just went through so I'm not going to waste everyone's time in reading all of this again, and I'm going to try and get through this rebuttal very, you know, as quickly as possible, but if we look at the ones that are in red, which is what I pointed out the other day, and that has been talked about as part of the pilot's case, it says in determining whether the requested rate change will result in a fair, just, and reasonable rate, so that's what really have to look at.

And the first thing that we would say to you is that what the pilots are requesting from us, and their interpretation of the, of the vessel characteristics is wrong, and this is fundamental to this, to their entire application. And I'll get into that in a minute, why it's wrong, but it's got to be fair, just, and reasonable, and their interpretation of the GRT is just, just wrong, and as a result of that it can't possibly be fair and just, and reasonable.

The next point that I want to make is the determination of the average net revenue of pilots in the port, including the value of all benefits, so that would include the pension benefits, the healthcare benefits, and any other benefits that they derive, derive from the service as a pilot. For the purposes of this, this subparagraph net income of pilots, it's very simple, it tells you what it is, refers to total pilot fees collection, so that would be the $11,000,000 or so that they collect, $11,105,000 in 2016.

In the port, minus reasonable operating expenses, that these are subject to debate, whether all of these operating expenses are reasonable, such as using a pilot as a, you know, as the boat supervisor. We haven't heard anything about what the communications supervisor does, or the computer supervisor apparently keeps track of these individual, I guess GPS systems, or whatever they talk, the personal plotters that the, that the pilots take on board, which may be an important tool, but as part of their application the entire, I believe all of them cost $29,000 cumulatively. As a result of that it doesn't -- I don't know how much technology that would need, to have a pilot spend a lot of time servicing, or dealing with these particular plotters. But, anyway, they didn't spend any time on explaining it anyway.

That would be the net income of the, of the pilots, minus reasonable operating expenses divided by the number of licensed and active State pilots within the port. And that's pretty simple in my view, my estimation, simple definition of the Board has to look at. And they have to look at the reasonable operating expenses of the pilots, and that would include the items that we talked about. It would include going to these meetings, and it would include in essence what the pilots said, and I don't think you heard any testimony today that would support the proposition that they work 202 hours a month, or 5 people at 40 hours a week doing these essential services.

We didn't hear about any of the essential services that would take that type of time. Being the building manager, they could certainly hire someone at a much lesser salary than a, than a port pilot, even if you take any of the debatable amounts about the port pilot, what they're making to service a building. The port pilot doesn't even -- it's not even part of their responsibilities or competency to manage a building.

And then we have on the bottom there Number 9, we have the cost of retirement and medical plans. And the other one I want to add is the one above it, is Number 8, which we talk about the projected changes in vessel traffic. The projected changes in vessel traffic are significant because as you can see we made, I believe we made our charts really simple. We said here is the number of handles in, originally in 2002, or, excuse me, in 1995, and in 1998, and they were at 10,500 handles. In 2015 they were down to 5,500 handles, or half as many, and what happened is the revenue remained the same, so it obviously meant that they used the same measurement standards in '95 as they do in 2015, so what it meant is that some of those measurement standards got larger, but what got larger was the GRT of the vessels.

And that -- that would bring me to why this, why their application cannot possibly from the rebuttal standpoint be fair, just, and reasonable. When we look at GRT somehow or another it's over here in the pilotage rate vessel characteristics, Statute 310.151(6) says here, here they are. In (C) it says length, beam, and then -- they don't count either one of those two. But where it says net tonnage, gross tonnage, or dead weight tonnage, they take gross tonnage to mean passengers. I don't see the word passenger up there any place. They take it to mean profitability. I don't see the word profitability up there. I see tonnage. I see dead weight tonnage.

There's three words in here, or three little short snippets I guess. One would be net tonnage, one is gross tonnage, and one is dead weight tonnage, so it's obviously talking about some kind of tonnage, but it's not talking about passengers. It doesn't talk about how much a passenger weighs, and it doesn't talk about any profitability of the passenger. And you all will recall the example I used about the cable companies, which is exactly what they're attempting to do. They're attempting to create through an illusion that because the cruise ship industry is profitable therefore they should get some share of these profits by virtue of what a characteristic is of a vessel, and there's nothing in the statute. If the legislature wanted to pass something that said that you'll get a percentage of the profits they would have passed that, and they would have said that. There's nothing in there that, that even comes close to talking about that.

Then the FCCA testified, and the Admiral sitting next to me testified, that what we're talking about is a measurement of air. We're talking about this measurement of air, so the pilots come along and say, yeah, that's really what you're measuring, you're measuring this measurement of air, and the more air you've got the more passengers you can put in. Well, I submit to this Board by way of rebuttal that gross tonnage has to mean gross tonnage. If it means profitability then it means that they need to look in the containers and see what's in there. If they're -- if they're hauling diamonds I guess that's more profitable than if they're hauling sand.

It mean -- it's got to mean the same thing. I don't see any different definition in there that says cruise ship versus cargo ship, versus tanker ship, or versus a river ship. It doesn't say any of that. So if we're going to start talking about measuring air, and all of the sudden air means how many passengers you're going to have, and how many profit, how much the profit is going to be, then I think that that unit of measurement has to be consistent across each type of vessel.

If you're going to measure cruise ships against cruise ships that's one thing. If you're going to measure cargo ships against cargo ships that's another thing. If you're going to measure tankers against tankers that's another thing. If your going to measure these small river ships against each other that may be a fine way of looking at it, because you've got a measurement of an apple to an apple, to an orange to an orange.

But let me just -- let me show you. The cargo ships do not have -- they have air. They put these, these containers on top -- this is -- this is an exhibit we would like to produce in rebuttal. It's relatively similar to the size of the Altair which you saw before, and it, and I thought that it would be a pretty graphic depiction of what isn't measured as far as GRT on a cargo ship. Now, the cargo ship, look at how and how many of these cargo containers. Not one of them is charged a tariff rate, nothing. Why, because there's no covering over it. But yet it's charging for air, so all of this is charging for air. So just because the cargo ship doesn't put some type of a roof over it then I guess that's all for free. So it shows the absurdity of trying to compare a cruise ship to one of these cargo ships using the same measurement, the same unit of measurement, and it simply just doesn't, it simply just does not work.

The measurement that deals with handles is a mathematical, I guess, or an arithmetic, or it's clear, it says here is the number of handles that the pilots have, and we told, and we said what that was. In 2000, excuse me, in 1995 they had 10,500 handles approximately, and in 2016 they had half as much, 5,500. The -- the charts that we produced shows that the handles have been decreasing, and the, the gross revenues have remained the same, so it shows that this GRT as it relates to cruise ships is completely unfair, completely wrong, does have no comparability to a cargo ship, or anything else.

They don't -- if -- if it was the same exact meaning for cargo and cruise, cargo and cruise ships, then you'd have to measure I guess how much profitability the, the cargo ships make. We haven't heard a word about that, nothing. Nothing. We just heard about how the cruise ships make a lot of money so therefore they're okay. And when they talked about the increase in the amount of cruise ship profitability they're talking about worldwide. They're not talking about Port of Miami. Excuse me. They're talking about China. They're talking about Europe. They're talking about where most of these cruise ships are located.

So when you take the container ships, and they do not have to pay for air, except that they're being judged by gross tonnage, but they, they don't have that same definition for them, nor do they have it for a tanker. So when we go and -- and we only -- I'm only going to have this, the Admiral just do one question here, and that's going to be the -- the question on the -- could you put up the Altair? And then this will just take one, one minute. I know we want to get this through, and I want to get it through as well.

But what we wanted to do was to take this and compare it to Mr. Dibner, or Dr. Dibner's report, and go through -- would you please explain what that was about? Okay.

ADMIRAL BAUMGARTNER: Yeah, we have an allotted, in the pilot's case, about how we were off base about complaining about gross tons as being an, an irrational measurement for pilotage when you have both cargo and passenger ships in the same port. Mr. Dibner actually did us quite a favor. If you go to Slide 12, I'm sorry, Slide 11 in his presentation, you don't actually need to see it, but I'll describe it to you.

He showed which ports use gross tonnage still, and which ones have abandoned it, and it's actually quite interesting. We have so many friends from Texas here, and you'll see that all of the Texas ports have abandoned gross tonnage as, as a basis for pilotage fees. You'll find that Louisiana, which we also heard a lot about, uses dead weight tonnage, not gross tonnage. In Texas they don't use dead weight tonnage because that could cause some other disparities. We would love it here if we -- if this was Louisiana, if you look up there the Allure of the Seas has 19,750 dead weight tons. We would love to pay a tariff based upon dead weight tons here. The Maersk Altair, 110,000 dead weight tons. What the -- what the ports in Texas are putting, what Mr. Dibner's reports use, is they, they consider draft, they consider length, they consider beam, not gross tonnage.

If we -- if we actually used this on the Maersk Altair and the Allure of the Seas you'd find out that they'd probably roughly have about the same pilotage fees, whereas when we use this gross tonnage measure right now the Allure of the Seas would pay 88% more than Maersk Altair. That's the basis of what we're talking about here. We're paying a rate here, we're looking at it, and we're saying it isn't fair here. And there's a reason why it isn't fair here, and actually a lot of other places agree with us.

Ten out of those twenty five ports that were in Mr. Dibner's report do not use gross tonnage for pilotage fees, and I bet if you look there you'll find that there's a segment of the market where gross tonnage is very unfair, and are looking over at, at container and cargo, and saying, wait a minute, this isn't fair, we had to come up with a system that makes sense for everybody. New York is another port that doesn't use gross tonnage. So we're -- that's part of what we're asking here today, is just let's, let's be fair about this, and let's figure out a fair rate. As a rate payer that's what we want.

MR. PANZA: And then could you please

describe that when a ship comes in in 2017, because it goes to, it goes to --

ADMIRAL BAUMGARTNER: Okay, right. Yes. It -- right, right, right. And the other thing, we saw a lot of things from Captain Marlow, and lots of bubble charts. As you look at those, one thing I would say, look at them very carefully. You'll find out that there are different scales for different columns on there, and some of them, you know, I think you did a good job of presenting them, but you have to look because in some places cargo has a completely different scale than cruise. The bars look the same, but if you actually look at them you'll find out that none, that the scales are completely different, so be careful when you look at that.

Now -- and in all of the data about whether it's big ships, small ships, and so forth, there's really one data point that you need, that, that you need to know to, that brings this home. Right now there is one ship that's calling that's over 140,000 gross tons. That provides 10% of all of the cruise revenue to the pilots, 6% of their total revenue, one ship that calls one day a week. In 2018, and this gets to future traffic, everybody knows here that Royal Caribbean has announced that two large ships are coming to Miami. They'll each call one day a week.

With those two ships calling at the current rates that's an additional $1.8 million in revenue that are coming, that's going to come in. That will be a 16% increase in revenue, just two ships, each one calling one day of the week. That's the impact of using gross tonnage right now on these large ships, and how it really kind of distorts the numbers because we have this kind of a measurement system here. And you don't need to add very many of these ships and you'll see, you know, vast increases in revenue coming in.

MR. PANZA: Thank you. Thank you very much, Admiral. The -- the next issue that I want to touch upon is Mr. Dibner's charts, and what the Admiral was referring to as -- pardon me. What I was referring to is Page 132 and 133, just as two proxies to show you the difference. If you look on, on Mr. Dibner's charts, on his 132, I think it's -- yeah, Mr.

Dibner. Oh, I'm sorry, Captain Marlow's charts. I apologize. Yeah, Exhibit 7, Captain Marlow. I apologize.

If you look on the left hand side it looks like, you know, the cruise industry, and then it's got the cargo industry, but if you look at the numbers over here it starts off at $3,400, in the line that's over here with cruise, and then cargo is $1,200. So the $1,200 is less than, than the least amount of the cruise, and so they're using different scales, and they're mixing different numbers together. And the same thing hold s true on the next chart, which is on Page 133.

And the issue that I bring up about the charts is because this case, while it's very, very important, and the pilots are very, very important, I don't think the actual concept of the rate increase, et cetera, the mechanics of it is as complicated as brain surgery. I mean it's not as complicated as I believe the pilots are making it out to be. You have the number of handles. You know how long a handle takes. You know what the pilot does on the handle. You know what their gross revenues are. And it's a simple mathematical computation as to what they make per handle per hour, no different than any other type of a business that would have some unit of service that you would want to measure. That's all you have to do.

We heard testimony, and we heard explanations of the buy in system, and the buy back system, and it's 19% and, and 81%, and this percent, and that percent, and I believe it is deferred compensation, I guess is what they do. They -- they pay in like you would in a partnership, when you sell your share back you get that. If the value, if the book value of this company has gone up significantly, or whatever it's done over that period of time, which it will because the gross revenues will go up, presumably your share goes up. It doesn't really go down.

So -- so when we hear this -- we hear all those complicated statements. I mean if the question is you got to buy in -- I don't even know what it costs to buy in. They never said that. The question was asked directly to them what does it cost, is it $500,000, is it

$1,000,000, because somebody is getting that money that is being bought in, and they're getting it back. I think that the panel has a right to know what, or the committee has a right to know what that is.

The other issue, or a couple of other issues are, we never heard -- when -- when we talk about the handles, very simple, very simple calculation, number of handles, how much are the gross revenues. Well, we never heard what happened to their time, or whatever they do for the other 50%. In other words they're having 50% less handles, whether it's the river ships or cargo ships, or whatever other ships are not coming in here, they're not spending time out there on the seat doing pilotage work, so what happened to that 50%? We didn't hear one word about it, nothing. It was 10,500, it went down to 5,500. I don't know what, what happened. It was 18 pilots then, it's 18 pilots now.

The other issue on the 18 pilots -- and I'm not one iota saying they should have less pilots. If they want to have 20 pilots, or 25 pilots, that's, you know, I guess the Board, the overall Board's business, for them to come in and justify how many pilots that they want, but it's up to -- the rate payers are the ones that shouldn't have to be penalized because they want this. If they looked at other staffing models -- and I did not hear one word, not one bit of testimony about other staffing models that were analyzed, and from a personnel, or a human resource standpoint, or an operation organizational standpoint, there are many staffing models.

If you took a simple example of a restaurant that's busy on Friday and Saturday night, they have a lot more staff there than they do on a Tuesday morning. But do we hear anything about the pilots, that they want to staff according to the needs of the, of the, of their customer demand, or do they just have all the pilots there all the time because they have all the pilots there all the time, and it's easier to give people two weeks on, two weeks off: But we didn't hear anything about them trying to staff to, to manage the staff to the peak hours, nothing.

The investigative report itself, according to Mr. Law, puts their salaries with the, with the add backs, to $396,170 to $411,170, not $272,000, or whatever number that they had been, had been testified, you know, had testified to. Let's talk about the pension benefit. The pension benefit, if you want to call it a pension benefit, and I'm not going to quibble over whether they call it a consulting, and that they want to pass down this, this knowledge that they have, but I would assert to this committee, most respectfully, that most industries, and most businesses, want to pass down to their higher level employees their knowledge, their wisdom. Law firms try and mentor people. Doctors do it. Virtually all professions do that, so that's not an usual thing.

But when they have a pension benefit plan and, and they're calling it a defined benefit plan, and they cite statistics that 32% of the companies use, civil, not the, not governmental, not, you know, state or federal plans but private employees, 32%. If you look at the statistics that they show, and it's 50 -- and if you look at those companies that are

50 or less on their own statistics that they have it's only 8% that do defined benefits. And I would assert to you that there's less, and less, and less of defined benefits. And I mean I don't think you have to look any further than the State of Florida as to why there's not defined benefits, because they're very, very hard to keep them actuarially sound, because this is the benefit you're going to pay regardless whether the, the money is there or not.

But even in all the defined benefit plans there's usually some type of a contribution from the employee and private industry, and if there's not at a very minimum there is a collection of that money, and an accumulation of that money on an annual basis, or a monthly basis. And the -- the most simple, once again to keep everything very simple for me, the most simple reason for that is it compounds itself. Every seven years it doubles, or whatever that accounting term used to be. It used to be like that I guess when the interest rates were such. But the point of it is it compounds. If you don't compound it the rate payers, the rate payers, the people that use these services have to pay that compounded interest.

And I didn't understand at all, and I agree with you, I'm not the sharpest, you know, knife in the drawer, but I couldn't understand at all, they were talking about, well, there's a wash, it doesn't really matter, because if the pilots get it then they would be investing it, or something, and if they don't get it, it doesn't matter and it's a wash. All I can tell you is Mr. Law found that it was a $24,000,000 delta, or difference. We found that it was somewhere in the same neighborhood, $17,000,000 or so difference in compounded interest, and it just seems to me that if you have compounded interest, and you don't get compounded interest, it's not a wash of anything, you don't get it, so therefore let's just pass it on to the rate payers, cause they got a lot of money so it doesn't matter.

The next issue that I would like to address would be the capital costs. They on one hand say we are a business, we're a monopoly over here, and the only place we can go get money to is from, from you all basically, you know, a rate increase, and we're, we, we're not, you know, we can't, we don't have any other, you know, method to get, to get additional funds in. The -- I guess one way to get additional funds is maybe you could be more judicious in how you spend your money, or you don't have a pilot being the boat, being the boat manager, or being the property manager, or communications manager, or whatever. That would be one way of making more money.

But aside from that, if you were a carpenter and you had to have a tool kit, you know, you're going to have to have a saw, you're going to have to have whatever you have to have to go to work. If you're -- if you're, you know, if you're a company that does plumbing you're going to have to have plumbing supplies to go to work, wrenches, whatever else you need to, to do these things. They are -- they want to be a business, so they want to, they claim that they've got all the stresses of a, of a regular business, so when they look at capital, instead of taking the boats when they originally bought the boats -- they depreciated them just like any other business would depreciate them. That's a cash -- that's a cash number as far as the financial statements go.

They take the depreciation and it comes off of the statement, but it's really cash, it doesn't go anywhere. They could have put it into a sinking fund, or they could have put it into some type of an escrow account, or some type of a savings account, or some type of account to, to use that depreciation that they did receive so that they could replace the boat. That's the whole idea of depreciation, obviously, and, you know, I'm not telling the panel anything, or the Committee anything the Committee doesn't know. But that's the whole purpose of the depreciation, because it's losing its life's value, so what you do is you replenish the life's value by taking that amount of depreciation, if they had put it away for the last 41 years, or whatever it is, they'd have probably had three or four new boats if they wanted to.

But now what they do is, they don't do that, they take that money and put in their pocket, because it's cash they put it in their pocket, and so now when it comes time to buy a new boat we got to have a rate increase, because we got to have a new boat. Well, maybe they need a new boat, I don't know, but if they did need a new boat they should have been prudent, they should have been like any other business. There's no other business that would be able just to go to, you know, some customers they have and say, we need a new boat so here, just pay it, you know, pay for a new boat. It doesn't work like that.

The -- the next fact -- it's a fact. It's undisputed. They never disputed it once. And this was the bar chart that we showed. It was in blue, that showed the, that they were the third highest per handle port in Florida, third. The two that were above them were Key West and Cape Canaveral, and both of those are somewhat outlier ports in comparison to Miami. Key West is a, is a small, small port. They have large ships go over there, and little cargo. And I believe it's similar with Canaveral. But so they're still the third highest.

So we give -- we take -- we took the 25% reduction that Mr. Glick did the analysis of, and we took that, and they're still the third highest in the state. If you look at the reports that they, that were done on the, the same report that was done on this, this Texas pilots, et cetera, and if you look at these reports you'll see that many of the numbers that are used in there are all these, all these ports, they all are different. It wasn't the same twenty five ports on every one of the charts. Some of them used -- some of them used Jacksonville, some of them didn't use Jacksonville. One only used Dade, Broward, and Tampa, so there was a mix and match of whatever ports they thought were, were appropriate.

But the ones that we used were the simple ones, the number of, of handles, the number of gross revenue, the number of pilots, you divide all that up and it tells you where you're at in the state of Florida if you do it against all the other, all of the other ports. And we know our numbers are accurate because the handles are reported to the State, so I mean they're as accurate as the State numbers will have.

The navigation tools that are on the vessels, the pilots, excuse me, the pilots have indicated that the navigation equipment, you can't rely on this navigation equipment. I mean this, this is like taking the old sexton and looking out some tall ship or something. You can't rely on its navigation system. The one accident that they testified to, or commented on, was some incident hat happened in 1995. This is the year 2017, twenty two years later. I believe -- I don't even know if we had -- I guess we had portable telephones, or cell phones back in 1995, I don't remember, but we probably had those old brick ones then or something, but we had them I guess. But the -- the navigation has so much drastically, drastically improved. Then they go on to say it's related to the navigation and the propulsion system of these giant, of these very large passenger ships. They talk about the tons.

The cargo ships really pay a lot more. It's very deceiving because cargo ships pay this lower amount, like the Altair pays this lower amount, but they need to pay $38,000 for tugs. Well, whoever owns the -- Maersk, not whoever, Maersk I guess owns the Altair. They made some type of a business decision someplace wherever Maersk is located. They made a business decision, and that business decision was that they weren't going to put on sophisticated propulsion equipment. They were going to put on azipods (phonetic). They were not going to have six propulsion engines. They were not going to have four bow thrusters that have 30,000 horsepower. They weren't going to have the navigational system. And with all of that it costs tens of millions of dollars, tens of millions of dollars to do that.

The -- in order to, to have that, that kind of maneuverability so that you're self contained, so that you can go to ports all over the world whether they have pilots or not, the cruise ships spent that kind of money. But to use the example that the navigate, you can't rely on the navigation system, and that the cargo ships have to use tugs to come in, they have to use tugs out of their own choosing, that was a business decision. They must have figured it was cheaper to pay $38,000 for tugs than to have azipods and everything, all the rest of the propulsion systems that are had, that, that the cruise ships have.

The foreign flag cruise ships, this is one that I find somewhat offensive. This is the one that these third world countries -- well, I submit to you that the pilots that, that are captain, not pilots, the captains that operate, and the staff captains, and the first officers that run, and that operate these vessels that are valued at a million, a billion, two billion dollars, 4,000 people on them, all of this, are extremely qualified. You heard the testimony, that they're 30 year, 35 year captains that have that kind of qualifications, but to give the impression, to say they're these third world people that come from some backwater country, is not only preposterous, it's insulting. Most people who have been on cruises have the experience of these captains, and these captains are very, very experienced.

And they're called England, France, the Netherlands, Italy, Germany, and many other Europe -- we'll just take in Europe, just European countries who have a history of sailing, who have a history of navigation, who have a history before Columbus. I mean I guess under this theory Columbus was from some third world, or wherever he was from. But these people have this history of sailing, they sailed long before the United States ever came about sailing, and when you look at where the major shipyards are that build these ships, where are they located? Most of them are located in Europe. And is anybody going to say that a Norwegian captain with thirty years experience is some backwater location? So what they're doing is they're trying to paint this, and paint this to show something that's just not true, and they say it's based on your nationality versus based on your experience.

These captains go into ports all over the world, China, every place, and they, they navigate these, and have very, very, very few allusions, or accidents as they call them in, in, in navigations. The vessel owner in, the master, the vessel owner is totally responsible. You heard from the attorney for the group, and others, that said that the vessel owner -- this has been the law, maritime law since they started having maritime law, whenever that was, I guess in England in the, you know, 1600's, or 1400's, or whenever they started common law. But anyway, the owner has always been responsible. The master must be qualified. The owner of the vessel, the vessel, is responsible.

We talk about the liability of the pilot in the context of the responsibility of the vessel. The liability of the pilot -- they don't have any insurance. You heard that from the person who was in insurance for thirty years or something with marine insurance. They don't have insurance. They have no liability. The only liability they have, according to what they said, was if for their own negligence. Well, I'm sorry if your negligent and, and somebody wants to hold you liable for that, or if it's for some kind of improper action on your part. So if you have something that you could be disciplined for then that's a liability. Well, they don't generally take your license away for doing nothing. They don't take your license away for being a great captain that's had 5,000 good trips, they take it for coming up on the, on the bridge drunk, or doing something like that Bussan, where the guy was on all the drugs and smashes into the bridge. That's what they take their licenses for, no different than any other profession. So they don't have any liability, they don't get sued.

The other issue that they have, and I'm not going to get into their business, this is what they do, it's their business, but they talk about how difficult it is to recruit pilots. You heard the testimony this afternoon pursuant to your questions, how many pilots left Dade County, none. Has there been any time when they couldn't recruit pilots, no. So all of this, the statements about how they're, they're not going to be able to get qualified pilots -- so what -- so under that theory unless you pay a pilot, you know, $1,000,000 a year, you're not going to get a qualified pilot. I think all the pilots are very qualified. They -- they haven't had accidents here. They've been doing very, very well with the money that, that they earn.

And -- an don the training, how many

businesses are you trained where they talk about the deputy pilot as being this kind of put upon person that makes $35,000 a year the first year, and then I guess doubles it, or something, the second year. Well, how many jobs, how many employments in the marine industry or otherwise do you have where you have three years of training and you're making north of $350,000 a year? There's not many of those around. And when they're talk about the pilotage, and they talk about the, what the pilot, the one pilot was making when he was on an oil rig, or an oil, I don't know, an oil tanker, or whatever it was, in the boon days, yeah, but that same very boat is laid up now by the business, so when there's boon days I guess people make a lot of money, when it's in the Yukon and they have the gold rush, but when that didn't happen, you know, this is not the, the natural occurrence.

The cargo industry didn't appear here today, I guess. They may be here, but at least they didn't present, or do anything here. So they're asking for a 15% raise on the cargo industry, and we don't have any comment on that. That would be up to the Board, as to what the, you know, what you all want to do with that. But we're only talking about cruise ships, and we're not a fair comparison to the, to the cargo, as far as it being fair, just, and, and rate, and reasonable.

The -- going back to the liability of the port, not of the pilot necessarily but of the port, it's a $41 billion port, or gross revenue, or a multiplier, or what it produces in economic value, and $36 billion of that $41 billion is attributed to cargo, yet if we take a minor, if we take a minor cost in this whole entire thing -- when I say cost, the comparison of $41 billion, $36 billion, and we take the piloting costs, the cruise ships pay approximately somewhere between 60% to 65% of the revenue, and yet 30% to 35% of the work done for them. Yet if we look at the cargo industry they're responsible for $36 billion of this economic engine, and it just doesn't seem appropriate.

When we look at the -- Mr. Dibner I think didn't answer the question properly, but I think sometimes when you're asked a question and you, your first response is probably the real response. When he was asked the question about what would this amount be if they had all the add backs in, or, you know, the, putting the pension back in, and counting that back in, he said it wouldn't be any different because the account all the benefits and everything now anyway. So these benefits for health insurance count, which if you look at the health insurance premiums, or for the, their family plans, that's their choice. If they want to do that more power to them, I think it's a very noble thing. I think everybody should have health insurance, and I think that it's great.

But when you look at what it, what it costs, it's part of what, what they're making, and it's part of their salary, and if that's the way they choose to, to have their salary, that's their business. The -- they're -- the primary last points that I want to make is that there's -- they continually argued about the pass through, the pass through, the pass through, that the cruise ships don't pay this, it's only they pass it through. Well, that first of all is not true, as the testimony was given by our witnesses yesterday I believe, and they showed no documents to you.

On every contract, they said every contract, every ticket contract has the words, shows there's a pass through. They didn't show you any ticket contracts. The only thing they had is what was in their, in their report, which showed five, or whatever it was, three of which didn't count. Then they go and they, they have this pass through that goes to the profitability which has nothing -- it's not contained in any of the statutory requirements, it's not contained within the characteristics, it's not contained any place. It's the only argument that they've got that they can make, because the cruise ships make money, so therefore they should get a piece of that, that money, without any of that risk or anything else that's associated with it.

And to say that they're making -- our -- our computations are that they're making currently $499,000 a year, which is completely within the range of pilots, or, you know, in a very high range of pilots. And that there is this need for 18 pilots in the year, in the, in their audit, in the year 2014 they only had, I think it was 15 and a half pilots, we'll say 15.5. In the year -- in the 2015 I think they had 16.5 pilots, so they must have had less Pes at that time, and they seemed to do just fine.

So to sum up -- I'm done. To sum this up we think that it's not a fair, just, or reasonable rate increase, and what we want to do is -- our last exhibit that we'll show -- Greg, would you hand me that please? I'm not going to put Mr. Glick on there to explain it because I think you all understand the financial statements that we gave. This is exactly the same financial statement as yesterday.

All right, so this is the same, the same methodology, the same statement that was used yesterday. The only real difference in this statement, and rather than put Mr. Glick back on and take time I can do it myself rather quickly, is we took 2016 -- these were the projections that Mr. Law did in his report, in the investigative report. The only difference that Mr. Glick did was in the investigative report under 2016 they had a projection that was $700,000 lower than the actual, so if you look at the -- it was an adjustment of $710,000 because the actual amount they brought in in 2016 was less than what their projection was, I mean which was more than what their projection was by $710,000, so Mr. Glick added that in at the very bottom where it says adjustment for underestimated revenue in 2016.

But if you look at this, and you put the add backs in, which I guess they're arguing with us today about the add backs about lobbying expenses. I don't think lobbying expenses are, you know, deductible, but I won't go into that. But nevertheless it comes out to their adjusted this year, in 2016 would be $458,261. If you gave them that increase that they're asking for, 6% plus the 2%, this is 6% compounded plus the 2% cost of living, you'll come up in the year 2021 at $712,374. And -- and if you take into account, you could add another on the very, very bottom on the right hand side, the $56,809 would be an additional amount that would make that one, you know, $770,000 or $780,000 if you added in the actual net, you know, the actual real money that, or real revenue that they brought in. So it shows where the, where the pilots are at.

We are asking for a 25% rate decrease. We think that the pilots will, will easily make that up by virtue of the organic size of the ships. As the Admiral testified to two ships that are going to come in in 2018 will constitute 10%, 16% of their, of their total revenues. So it's clear to see that this is what's going to transpire, and the cargo ships as well are getting larger, so the organic nature of it, the historical data we showed showed you how the, there was an increase in their revenues with less handled, and the same thing will hold true in the future. And we heard no testimony that would indicate to the contrary. In fact the pilots testified that the ships will be getting larger, and will be coming here.

So with that I will end my rebuttal, and I will end my closing argument, and I will end everything. That's that, except to ask you to please grant the rate reduction for the FCCA. Thank you.

CHAIR: All right, thank you, Mr. Panza.

I appreciate your information, and I think that concludes that, that section, so we are now ready for public comment. Ann, do we have any one who wants to provide public comment? Okay, if you can bring that to me, we'll ask those who would like to speak, I'll call you in the order that you signed up. And if you can seat, be seated right here on this one open chair. I can't read -- Baird? I'm sorry, I can't read your handwriting. So -- so Baird, can you just provide your name, your spelling, your title, your organization, and you have about three to five minutes. Thank you.

MR. LOBREE: Sure. I'll be quicker than that. My name is Baird Lobree. I'm the president of the Lobree Corporation. I'm a thirty year transportation distribution logistics industry professional. I've worked in land, sea, and air components. I'd also like to make it very clear that not a penny has been paid to me by any party in this room, so my comments are truly as an industry professional, and a resident of the state of Florida.

I'd like to say something that has not

been said by any party in a different way. I believe the pilots are very important internal control to the safety of the marine transportation industry. The beneficiaries are the environment, the public, the passengers, the cargo owners, the maritime company shareholders, and the insurance companies who benefit from their work.

There's no question in my professional opinion when we're talking about a $41 billion industry, that let's say it's, let's round up, $12 million a year cost, that's a popcorn fart. The value that the pilots deliver is far in excess of the costs received for their services.

My second point, the state of Florida really needs a system that better weighs the risks and rewards to all constituents that doesn't incur the many millions of dollars of costs that were incurred in this room to get the parties prepared and here. If you think about in addition the compounded cost of this process being duplicated in all the other ports in the state of Florida this is just incredibly crazy waste. If the parties really want to save some money, make some more money (unintelligible) the industry, get quicker and easy at this. You're going to save a lot of money right there. This management consultant would like to work on that.

Again, as a state of Florida resident and business professional I'd like to request that the Florida Department of Professional Regulation and all parties in this room make recommendations to automate, and make this a quicker, easier, less painful, and far less process for all.

The one other thing that I want to make sure that somebody here educates everybody on -- I'm also former Olympic hopeful sailor. I'm a weekend daddy sailing coach, and I think a lot of the lawyers, and a lot of the parties in this room, need to learn about one word that's, that is in Paragraph 6, it's freeboard. One of the risk insurance professionals talked about sail area, and a lot of the parties need to learn that the iron Jenny, that's a little tongue in cheek boater/sailor maritime industry humor, is one of the biggest factors that creates a lot of risk that these pilots deal with, and everybody needs to learn about that a little bit more because it's really one of the big things that impacts that risk/reward ratio. Thank you very much.

CHAIR: Thank you for your comment. Mrs. Corban.

MRS. CORBAN: I will be using the five minutes. My name is Genai Corban, G-E-N-A-I C-O-R-B-A-N. I'm an unpaid independent maritime spokesperson, a member of the United States Coast Guard Auxiliary. I reside in Naples, Florida. Cruise ships are the ultimate floating amusement park, and we all want to have fun, right? But in the UK they knight their harbor pilots. Here we sue them. Welcome to Port Miami, home of the Biscayne Bay Harbor Pilots, your port guardians, the eyes and ears of the Coast Guard. Theirs is a local story of maritime tradition, safety, security, and a century of service.

Cruise shipping on the other hand is international business. We all know it's not uncommon for a ship to be built in Norway, owned by Greeks, crewed by Philippine's, insured in Bermuda, financed in London, and flagged in Liberia. But not the Biscayne Bay Harbor Pilots, they fly the American flag. These 18 men, as you learned from Captain Stuart Lilly, Captain Bronson Stubbs, and Captain Chris Marlow, are all disciplined maritime professionals with unsurpassed detailed local knowledge who have successfully averted marine incidents, which I have personally witnessed, in an extremely complex busy narrow rock lined, and relatively narrow channel, and shallow, through government cut with the convergence of vessel and river traffic all around them.

Panamax, post panamax, tugboats, recreational sailboats, powerboats, kayakers, and jet skiers, many of whom lack sound judgment, have kicked up submerged power lines with their anchors, and are far exceeding the speed limit as they make the blind turn at the east end of Lummus Island. Commanding control of a cruise ship that may soon be transporting as many as 6,000 sleeping souls, often in the middle of the night where background lighting from the illuminated condo buildings in Miami, is a navigational hazard at best, is high risk, so don't be fooled by the opposing attorneys and their esteemed guests regarding their enthusiasm for the azipod propulsions on their new cruise ships, which require constant maintenance and supervision, by the way.

Some of the most catastrophic marine incidents in history where there was tremendous loss of life, such as the Costa Concordia owned by the Carnival Corporation, have occurred in plain sight of land. But not on the Biscayne Bay Pilots watch. When a Biscayne Bay Harbor Pilot boards a cruise ship, or any other, the A Team has arrived, and no one knows the location of the channel markers, lit and unlit, the tidal currents of the sea buoy, the wild strength of the Gulfstream, and the trade winds that blow southeast, and all the other visual reference points in the waterway behind me, like they do.

The Biscayne Bay Harbor Pilots also have an exceptional line of communication between each other. A number of months ago I was alone on the pilot boat with Boatman John Bennett on a late Saturday afternoon in peak season when Captain Bronson Stubbs aboard a cargo vessel radioed the pilot boat with a mayday call to alert us to a rogue sailboat on his port bow in very heavy wind and rough seas. Captain Stuart Lilly was also alerted, who was in approach on Royal Caribbean's Empress of the Seas. Bottom line, it's because of the quick thinking and immediate communication by Captain Stubbs the pilot boat I was on, along with the passengers and crew of the Empress of the Seas, narrowing missed the out of control sailboat which minutes later crashed into the jetty on Fisher Island very close to the fuel docks, requiring helicopter, Coast Guard, and Miami Fire and Rescue assistance.

So as you consider your decision today note the vital role and value the Biscayne Bay Harbor Pilots play in passenger cruise ship safety, and feel the weight of your decision as one for the record books, as if this was a Supreme Court decision honoring, as Mr. Panza said, past maritime heroes such as Columbus, Magellan, and Sir Francis Drake, and do not decrease the Biscayne Bay Harbor Pilots' rate one cent. And shame on you if you do.

As all of you know who were on the pilot boat with Captain Jonathan Nitkin and myself on Tuesday the Biscayne Bay Harbor Pilots, who also operate as harbor master and harbor control of Port Miami, have been attacked, and now they need a 25% increase in pay to recoup the roughly $1.1 million they will have spent over the last three years fighting this outrageous view that somehow their local expertise in maritime safety is worth a value of less than 1% of a cruise ship's annual revenue.

CHAIR: All right, thank you Ms. Corban. Do we have any other individuals who would like to make public comment? Yes, sir, come on up. You can provide us your name, title, organization.

CAPTAIN CONDON: My name is Captain Zach Condon. I'm a harbor pilot in Panama City, Florida with the St. Andrew Bay Harbor Pilots Association. I'd just like to give a quick anecdote about the inherent safety risks associated with, with piloting. On March 14, 2013 at 0200 in the morning I was boarding an inbound ship with Captain Frank Knowles. During the pilot boarding process Captain Frank

Knowles fell in the water. Captain Frank Knowles was a pilot for nearly forty years in Panama City.

Because it was 2:00 in the morning, and the sea conditions at the time, we didn't find Frank Knowles for two hours, and when we found him he was dead. So this is a dangerous job. You hear about accidents happening all the time, but I witnessed it, and it's very hard to quantify, and put a dollar amount on having to go into someone's house and tell them why their father and husband, and grandfather, aren't coming back, which is what I had to do. So thank you for your time. I hope this helps with you, helps you make your decision.

CHAIR: Thank you for sharing. Anyone else? Any others? Going once. Going twice. Okay, that completes our public comment section of our agenda, so now we will go into the deliberation and determination of requests for changes in the rates. So this will be a Board member discussion time that will go on until we reach our conclusion. So we -- it's 6:30 right now, so let's, let's start this conversation, and then we can collectively decide here in an hour or so where we want to go from there. Okay?

All right, to start with I would like just to make one comment following Mr. Lobree, did I say your name, Mr. Lobree's comment as well. Many of us, this is the first time we've been through one of these sessions. May of you -- I can't believe you've been through nineteen of these sessions. You're an amazing man. But I do have to agree with you, it's an extremely painful process, and I do think we owe it to, to all the organizations involved to, to figure out how to streamline this process, and improve the process. So to the extent after we complete this hearing I think we ought to discuss with the broader pilot group on maybe setting up a workshop to look at improving this process, including, you know, some of the third party players that are involved in this, so that we can make this a better, a better situation for everyone.

Okay, so having said that we are now in the deliberation, and Clark, do you want to just reiterate our, the decisions we have to make, which is two, three?

MR. JENNINGS: Yes, sir, Mr. Chairman. Essentially the committee members do have three options. Approve one petitioner, deny the other, deny both petitions, which would maintain the status quo, or to come up with some formula in between. Since you have one group asking for an increase and another group asking for a decrease that leaves the window wide open for you as whatever you wish to do. If you start going down the, the path of CPI, I may want to interject some, but let's see where we go with that, if you want to actually include that specifically in the formula.

But beyond that, in the (unintelligible), that's where we are. If I may make a suggestion, as you begin if you could have Mr. Law describe what the current formula is for the determination of rates at this port. I want him to repeat it on the record if you would please. Just -- jus the current rate of pilotage. There's a formula. How is it determined currently?

CHAIR: Hit your button.

MR. JENNINGS: And I'm not necessarily concerned about numbers, it's -- it's, you know, length, breadth, beam, or is it just gross tonnage; if you could just get that on the record.

MR. LAW: First the current rates are based on draft, and currently it is $17.433 per foot. That's also based on tonnage, GRT, and the minimum is 2,500 GRT. The rate is $.0364 per GRT. There are a number of other auxiliary charges, shifting, anchoring offshore, cancellation charges, detention charges that are already built in. Is that what you're looking for?

MR. JENNINGS: Yes, Ray, but nothing to do with length, width, height, none of that is included.

MR. LAW: That's right.

MR. JENNINGS: Okay.

CHAIR: Yes, Commissioner Kurtz.

MS. KURTZ: I was wondering if we were going to take these one at a time, if we were going to address like the decrease first, and then the increase, or it's a free for all discussion --

CHAIR: It's a free for all.

MR. JENNINGS: Free for all.

CHAIR: Do you want to jump in? Mr. Assal? Okay, we definitely have, Your Honor, the procedural process of, of looking at each of these two applications, or going to third, you know, so, you know, each of the applications themselves are in essence a yes or a no vote. To go to a third option means we have to have much deliberation to customize what we would all agree to, to be a, be an offer that we'd want to vote on, and so that would require quite a bit of deliberation. So, you know, what I want to try to get from the group here is, you know, do we want to consider voting up or down on a particular issue, or discuss the third option first, which is a customized option, and then only if we don't think we can get to a customized option go back to the, the first two options. Commissioner Kurtz.

MS. KURTZ: I would like to make a motion. Is it premature, or can I just --

CHAIR: You can make a motion --

MS. KURTZ: All right, I'd like to make a motion to deny FCCA's application to reduce the rate by 25%.

CHAIR: Okay, so there's a motion. Let's have a discussion. Which sort of goes back to my point.

MR. SOLA: Do we need a second?

CHAIR: Did you say something?

MR. SOLA: Do we need a second?

MS. KURTZ: Yes, we need a second.

MR. JENNINGS: You need a second. For -- for the sake of discussion you would need to a second.

CHAIR: You need to have a second first before discussion, okay.

MR. JENNINGS: Yes, sir.

MR. WINEGEART: I'll second for the discussion.

CHAIR: Okay, Commissioner Winegeart seconded. All right, so we're in the discussion.

MR. KURTZ: I have carefully considered those factors. I've listened carefully to all the presentations, and, you know, obviously FCCA had no obligation to prove financial hardship, they just want to change the rate because they don't like it, and they think it's not fair. Gross tonnage has been shown to be an acceptable way to measure ships in all sorts of different venues, not just Biscayne Pilots assessing pilotage fees. It's acceptable in the majority of the cited pilots, pilot groups in one of the reports. It's used to assess port fees. It's used to assess insurance. It seems to be, you know, the most universal way of assessing a vessel, a vessel's fees, so I don't see the unfairness in gross tonnage being used, and so I think the 25% decrease is arbitrary, and I think they just don't like it.

I, you know, it's -- when, you know, they're not trying to prove financial hardship it's, it's hard to say anything else other than they just don't like it, and they're doing it because they think it's not fair. But I haven't seen anything that shows what the unfairness is, so that's why I'm proposing a denial of the decrease.

CHAIR: Okay. Commissioner Winegeart.

MR. WINEGEART: I go back to the charts that the FCCA provided to us as far as the average revenue broken down by groups of tonnage, and for more than 50% of these handles cargo ships are actually paying more than the cruise industry is, or the cruise ships are. So if you drop the passenger vessels down 25% that only increases the disparity between what the cargo ships and what the cruise ships are paying, and that by definition isn't fair.

CHAIR: Commissioner Winegeart, just, just for the record, and thank you for actually going into the record to identify reasoning, you know, basing your facts, could you identify that chart please, because unfortunately I don't think they were identified in the handouts, just as A, B, C, or D -- if you just --

MR. WINEGEART: The title is 2016 passenger handles not equal to cargo handles.

CHAIR: Thank you, sir.

MR. WINEGEART: So the, the three groups of handles, the 40,000 to 70,000, which is 192 handles for the cruise ships, 70,000 to 80,000 ton ships, with is 623 handles for the cruise ships, and 80,000 to 120,000 gross tons is 543 handles for the cruise ships. The cargo ships are paying more money for the oversized vessels, most tonnage vessels, so how, how can you justify reducing the amount that the passenger ships will pay by 25% in addition?

CHAIR: As across the board.

MR. WINEGEART: As across the board as a, as a passenger ship as opposed to a cargo ship. That doesn't pass the fair test to me.

CHAIR: Commissioner Oatis.

MR. OATIS: I guess I would say that my only concern with the application is that it does target a specific industry, and so to that extent wanting to void the narrow focus of the application, but to some extent I also do see the points made of the fairness, and think that that's something that needs to be addressed through the actual rate computation. Going back to the history of the formula, although the gross tonnage is deemed acceptable by the statute I think there's also a way to address that in a sliding scale aspect in order to balance you the size, and the relative contribution of the increased size compared to the, the flat line fee that's currently being charged.

CHAIR: Commissioner Sola.

MR. SOLA: Right along those lines, I see that when the formula was done in 1999, that there really wasn't any GRT over 100,000 tons, and it probably wasn't conceived that the ships were going to go that high. And with the information that we've been given I don't see any, I haven't seen any cargo ships over that, so it seems that the scale would be fair to a certain point, and then after a certain point it's definitely their industry, so I would tend to agree with Commissioner Oatis on, on something as, as in a sliding scale.

CHAIR: So what you're saying is maybe we look at the higher tonnage ships, and provide a discounted rate for potentially some of the higher end categories, but not all categories; is that what you were saying?

MR. OATIS: Essentially, yes.

CHAIR: Is that what you -- Commissioner Sola.

MR. SOLA: It seems that the newer ships are larger. They have an advanced technology. We want the best pilots, which I believe that -- now, this has been a little bit painful, but I believe that we have the best pilots, and what we want to do is in the, in the pilots own admission, we want a great big circle over here, and right now we don't have a circle over there. And I believe everybody wants, everybody here, to their benefit, wants those big ships to come, and we want more of those big ships to come.

And if we -- I think a sliding scale would be much more beneficial than to targeting one industry or another industry. I just don't see how the Florida Statute would allow us to specify a passenger ship or not a passenger ship. I believe it would allow us to go up to a certain gross ton and then have a sliding scale, but that, that's just my, that's how I read the statute. And I believe what we have to go back to is back to the 1999, when the last rate review was done, and specifically to the statute.

CHAIR: 2000.

MR. SOLA: It was in 1999 is when it was done, but it was, actually took place in 2000.

CHAIR: Through your implementation.

MR. SOLA: And I also believe that, you know, we haven't even addr4essed this yet, but I believe having years of not having a rate increase is also something that we need to address as well. I open it for discussion.

CHAIR: Commissioner Assal.

MR. ASSAL: I think on the -- if you got to look at the, the volume of handles, I guess, as well, I mean you put all these things in perspective, if you're using less handles with the same amount of dollars, so the inflation had to have kicked in. Does that make sense? Did I say it right? When you've got half the volume of touching with the same amount of revenue why would you use the same amount of pilots? I mean I get it, and I get the Port of Miami, the peaks and valleys so you have to do that, so there's going to be sacrifices to make it work.

Do I -- I mean 12 years without getting an increase to me, or excuse me, since 2002, or 1999, is a significant amount. I think the industry in general, we've all (unintelligible) and other industries have taken losses, or taken cuts during the recession, but we're not there anymore, and I think those are things to look at it as an escalated based upon the tonnage. I think that makes a -- because the ships are going to get bigger. I mean we know that.

And I was doing some math, or excuse me, I think by the time it's all said and done they're going to have 11 ships in port one day, just cruise. That's a significant amount of pilots which, I mean, I don't know if we're going to need more or less at that time, but we're talking about by the time 2023 from what I understand their master plan is 11 terminals.

MR. JENNINGS: Right. So that will be added, added revenue with more ships --

MR. ASSAL: Added, a lot of added revenue, and most of the ships are getting bigger. I mean we're talking about -- I believe the Getaway, I believe it's 165,000 tons --

CHAIR: You may as well wait --

MR. ASSAL: I apologize.

CHAIR: No, no, no, we just may wait until the parade goes by.

MR. ASSAL: Know that they're building a bigger terminal, or bigger ships, is good. I mean you've got the Getaway, it's 165,000. You got the, the lower class vessel, the Oasis class vessel is 225,000, you know, and talking about Carnival, they're up at 150,000, 165,000 right now. There still at 145,000. They have bigger ships. They're not going down in ship size, I'm going to tell you that, they're getting bigger, so the tonnage is going up definitely.

CHAIR: Commissioner Oatis. I was just going to ask one thing to Commissioner Assal. You made some projections out to 2020 something or other, and I'm trying to recall if there was any testimony provided that they were going to be building another terminal. I may have missed it.

MR. ASSAL: No, it was on the ship tour.

CHAIR: Oh, it was on the ship tour. Okay, thank you. I just needed a reference so I could --

MR. PANZA: And the reference of the additional --

CHAIR: And we -- and we're getting affirmation, okay, from the FCCA. Thank you. That's right, he did say that --

MR. OATIS: No, I think -- following up on that thought, obviously as the gross tonnage is increasing it's finding that balance of what is the marginal contribution of that growth to the risk of the ship, and trying to translate that into a rate that reflects that risk, and is it a one for one, is it less than one for one. I think that's basically where were at now, is what I'm hearing, is finding what that balance is.

CHAIR: Commissioner Kurtz.

MS. KURTZ: But the question remains, do you think that a 25% decrease across the board for all passenger vessels is fair, because that's the motion that's on the floor, is the decrease first. So this all sounds to me like we're debating kind of the increase, and how to, you know, how to deal with the long time period between increases, and is tonnage a natural increase, or any of that, but I thought maybe, you know, to do the first part, and just get a consensus of, you know, the fairness of that issue first, which is why I made the motion. So just --

CHAIR: No, you're good. You're good. We're still in discussion.

MS. KURTZ: The second conversation is more complicated.

CHAIR: Got you.

MR. OATIS: Right.
CHAIR: I understand. I mean just to comment on just a little bit just from my point of view being a new guy, like all of us, or three of us, four of us, it appears, I've been on, been on this committee now for almost a year, so the quality of the harbor pilot PARAM seems to be unmatched. We seem to have great harbor pilots, really across the state, and Miami is no exception. You -- you just, you know, the fact that we've had full retention of the pilots, the fact that the industry just continues to go on about their professionalism, and, you know, efficiency in, in their works, you know, we seem to be doing a good job from that perspective.
You know, being a business guy, and trying to understand, you know, how do you maintain, keep the top quality people, you know, we are maintaining and keeping the top quality people. It does bother me a little bit on this whole salary discussion -- I was very bothered by this, mainly because I saw Mr. Law's presentation, which I sort of understood, and I never really felt like I understood the numbers

presented by the Biscayne Bay team, because we never really got into the math.

We did comparisons at high levels, comparing to, you know, weird numbers, what's in, what's out, and never getting down to the exact numbers. And if I've seen the exact numbers I would have been much more comfortable, so I even to this moment I still don't know what an exact number is. I feel like there's a, there's a great premium due to harbor pilots, and I feel like we're close to that, but I also feel like were a little bit below compared nationally to other people.

However, what frustrates me is when I look at a lot of the items that were brought up that are cost factors that just had not been addressed for years that could drive more revenue to pilots but has not occurred for whatever reasons, and you know, in our business life when the recessions hit, or when a sale didn't go through, or something like that, you know, we would adjust our business many times to, to make sure that, you know, we were still generating the bottom line necessary. And there are just so many levers here that haven't been challenged.

You know, the retirement program I have a real problem with. I accept the fact that it was a hereditary concept from the beginning of time, and the industry has always used that, but it is not a generally accepted model in my, in my opinion, in any business industry. And I think any layman who would look at what is occurring here would, would challenge that, or any business person would challenge that as well. Are you at your twenty minute? Okay, so we need to stop for a minute to change the tape.

All right, so why don't we stop for five minutes, take a five minute break, and then we'll come back.

(Thereupon, a break was taken off the record and the proceeding continued as follows:)

CHAIR: Okay, we're back in session. I was walking through my soliloquy of my point of view. So what I was saying is I felt like, you know, I feel like there's lots of levers the Biscayne Bay team can utilize to improve the revenue of the pilots. I'm particularly, you know, worried about the retirement concept, and the fact that, you know, there will never be a good time to change it, but it's got to change some day. But I also understand the concept that, you know, those costs are their responsibilities to adjust, and, and we don't have, you know, influence as a Board into how they spend that revenue, you know, that's their responsibility.

But continuing to, you know, improve the revenue of the pilots I think is important, and I think, you know, particularly this year in Miami, living in Miami, and he cost of living here, and, you know, the, the implication of anything that we would do that would -- another benefit of Miami -- or the implication of anything that we would do which would actually reduce the, the revenue of the pilots is, is bothersome to me. But at the same time, you know, I think we have an obligation too, to continue to, you know, support the ever changing industry, and the growth of the cruise business, and, you know, that type of thing.

So, you know, I'm sort of in the same space that Commissioner Oatis, and Sola, and Assal are, is that, you know, there's probably some model here of reducing the high end cost structures, but my fear right now is I don't know what the implication of that is, right, none of us do, right, and would like to understand those numbers before we decided on something.

And so is that something that, Richard, that you could help us on in this evening, to, to crunch some numbers on the implication of that?

MR. LAW: Right now?

CHAIR: No. But if --

MR. LAW: For tomorrow?

CHAIR: If we figured this out, you know, looked at something, and maybe you would have some discussion on the cost implications in the morning.

MR. LAW: Okay, give me some --

CHAIR: Does that make sense to you all, or --

MR. OATIS: I would probably contribute to that too.

CHAIR: Okay, you said yes.

MR. LAW: I just didn't want to have to do it in five minutes.

CHAIR: Right. No, no, that's fine.

MR. JENNINGS: Commissioner Oatis, what was your comment?

MR. OATIS: I was saying that I would probably contribute to assist in that process as well, translating our thoughts into numbers to be able to make, get a magnitude of what the event is.

CHAIR: Is that -- is that acceptable, Mr. Jennings, that a Commissioner could work with, with Mr. Law?

MR. JENNINGS: With the staff, yes, sir.

CHAIR: Out of -- out of session?

MR. JENNINGS: Yes, sir. Mr. Law is staff. Commissioner Oatis can work with, with Mr. Law. They'll report back what they're going to do tomorrow, so that's perfectly acceptable. No violation of the Sunshine Law.

CHAIR: Okay. Does that make sense? Does that make sense to you all?

MR. ASSAL: I understand what you said, Chairman, but we have a motion and a second that we have to overcome before we discuss what we're going to do I think so --

MR. JENNINGS: Right. Right. Well, I

don't think he was suggesting that we just adjourn now and that occur.

MR. ASSAL: I got you, but, but the discussion is to talking about modifying something --

MR. JENNINGS: Right, right, yes, sir, we have. We have the motion on the table, and that will have -- there will be a vote on that. But clearly since all of these motions are somehow interrelated there's, there's a general discussion and -- so I haven't been the border collie that I should be as far as shepherding all of you into one little location on one simple topic, because I know it's all connected, but I see where it's going and so I think we're okay.

But I would prefer, Mr. Chairman, if the motion is voted on before there is any adjourning for the evening. And I think as I, if I'm understanding you correctly, what you would like to do is then have more discussion to get a general idea where you're going possibly, that then Mr. Law and Commission Oatis can work on numbers to see what the implications might be.

CHAIR: Exactly. Exactly. Commissioner Kurtz.

MS. KURTZ: So if you are looking at coming up with something as an alternative then it would be a denial of the 25% decrease across the board as presented, which is what the motion is for. And that opens the door for something else.

CHAIR: Yes, that is correct.

MR. JENNINGS: So do you want to call the question on that motion?

CHAIR: No, is there any other discussion first? Okay, so now -- so now we do have a motion, and it was seconded, and we've had the discussion, so let's do a roll call on, you know, denying the request of the FCCA's 25% across the board decrease. Ms. Anne.

ANNE: Commissioner Assal.

MR. ASSAL: Here.

CHAIR: It's yes or no.

MR. ASSAL: I was asleep --

CHAIR: It will be a yes for denial, a no would be you don't want the option to continue.

MR. ASSAL: Yes.

ANNE: So you say yes?

MR. ASSAL: Yes.
ANNE: Okay. Commissioner Kurtz?
MS. KURTZ: Yes.
ANNE: Commissioner Oatis?
MR. OATIS: Yes.
ANNE: Commissioner Sola?
MR. SOLA: Yes.
ANNE: Commissioner Winegeart?
MR. WINEGEART: Yes.
ANNE: Commissioner Wilkins?
CHAIR: Yes.
ANNE: Okay.
CHAIR: Okay, so one motion is down, or one application is down. So we still have the other one on the table, which is the 6% across the board.
MR. ASSAL: I'll make a motion to deny the increase for the, for the Biscayne Pilots Association for the 6% for the next five years, including 2% CPI that they had requested.
CHAIR: Do I have a second?
MR. SOLA: Second.
CHAIR: Second by Commissioner Sola. Discussion? On that one -- I mean, Clark, do we need to discuss a little bit more on the

rationale of why we --

MR. JENNINGS: Yes, sir, you absolutely would. And preferably point to some facts on the record to support your rationale.

CHAIR: Does anybody -- Commissioner Assal.

MR. ASSAL: I don't believe in my personal opinion that you get an increase plus a CPI, you either have one function or another that you go by. Some people don't get raises or increases for multiple years. It's happened with bigger companies than all of us. That's just part of doing business. Then the way I looked at it is that the, like you said, Chair before, the Biscayne Pilots Association is a business, and if these are issues that concern, that have came up, we'll say fourteen years ago, or thirteen years ago, then why wasn't it brought up twelve, thirteen, fourteen years ago when they were making, or taking a pay cut.

So I'm looking at it that whatever we choose to do, or whatever I believe happens based upon the motion, it needs to start from today. We can't go back in the past, because whatever happened in the past, I can't say back in -- that's my opinion. I can't say -- I can't go back to 2002 and say when, if I could have, should have, would have -- we can't do that, we can only move going forward, so that's why I put the motion up. And in volume I think it was just a little excessive, progressive, compounded, whatever you want to call it, it say a little high for me.

CHAIR: Do you -- Commissioner Kurtz.

MS. KURTZ: Just to comment on a pilot association being a business, it's not like a normal business. A normal business has some control over their financial outcome. When you have expenses, you know, you can pass things on to your customer, when fuel goes up, or your manning requirements change, you can lay people off, but a pilot association doesn't work that way. You can't let pilots go. You are obligated to maintain your compliment of pilots, so it's a little tricky. It's a risk you take. When there's a downturn in business you share smaller pie, and then when things are good, you know, you share a bigger pie. So really the only way to, to recover expenses from the past, is to come to a rate hearing, because the rate board is in control of the financial outcome of the pilot association to a certain degree.

You cannot recoup any sort of costs. You -- you can't adjust for them as their happening. And I know health insurance is a benefit, and all that, but I know in my group health insurance goes up an average of, you know, 13% to 20% something every year, and so there's an erosion of what we take home because we can't figure out how to cut 13% off of our other expenses, because, you know, we're operating certainly, and fuel also goes up. So, you know, to say that you can't try and recover something you've lost in the past, there is an inherent unfairness to that statement, because the pilots have no other way to adjust for increased expenses over time other than to come before the rate committee and try and recoup something. And as you can see it's a lengthy and cumbersome, and emotion filled process, and so to subject yourself to this with frequency to have smaller adjustments, it's very expensive, and it's hard to do.

And -- and they're usually challenged, and there are motions for years, and you, you know -- this -- we did this two years ago, three years ago, whatever year it was, and, and we're still, we're still doing the same thing. So, you know, it is a business, but it's a special kind of business. We're a single provider of service in a port, and I know it's often called a regulated monopoly, but again that word monopoly bears a heavy implication that there's price fixing, or some financial control over the customers, and that's not really true. Pilots -- we -- we can't charge more, you know, you have to ask, and it's, it's often denied.

You can see from the table pilots in Florida don't get rate increases, so, you know, I just -- I think it's important to consider some of the money that they haven't been able to earn in the past, you know, to make up for some of what they've lost because their expenses have gone up, so that, that's just --

MR. ASSAL: And -- and, you know, I agree with you, Commissioner Kurtz, but it's like investing a lot of money in the home and the real estate market crashes, and there's a lot of people that lost millions of dollars in that. I'm not saying -- all I'm saying is that if you want to move forward, and go progressively forward, some of the losses that everyone had to take in business through the downtime, down years, they can't go back and say to their customers, oh, because I lost money then can I go back and get it retro.

I'm saying is that maybe then something's wrong with the way we have the rate scale. Maybe the -- maybe as we said earlier we look at length being all that versus gross tonnage. And I'm not saying I'm right on that, or wrong, I'm just saying is maybe there's a way to where it benefits both sides, that during the enlargement of ships, and they keep getting bigger and bigger, the pilots benefit, and when they go downsize they, it's got to be a happy medium for both sides.

MS. KURTZ: I agree with you. I think that the rate process, it's medieval, there's no mechanism for expense recovery, and it's a real problem. And I'm not talking about a bad business decision or a downturn in the economy, I'm talking about your expenses going up, which are not exactly related to your business decisions. Insurances continually go up. Fuel generally goes up. My lawn guy adds $5 to my bill every week when gas goes up above $3 a gallon.

Pilots can't do that, so, you know, ten years ago, whatever, I don't remember exactly what year it was, and fuel went up really high, and, and groups, you know, had to eat a half a million dollars in increased fuel costs, you know, just in that year because fuel went up, and then it went back down, but how do you recover that money that you, you not -- we're not allowed to pass any costs onto our customers, which is the normal business model, that you pass your increasing costs onto your customers, you know, it kind of rolls that way, and, and there's no method for a pilot association to do that.

So, you know, I understand it seems like a lot to, you know, bring them up to speed, and then you have this, you know, escalating scale moving forward, and I'm not suggesting that, you know, you stick to the 6%, the 2%, and then the 2%, you know, add in to an item, that's not what I'm suggesting, but to say that you can't take into consideration anything that happened before today I, I don't think that's fair.

CHAIR: Well, I agree. You know, my comment similar to that is, you know, the issue of providing a 6% compounded with other inflators when we don't know what, what cost problem we're solving, seems to be unreasonable. You know, it seems like the whole discussion today around costs of a harbor pilot, what I got out of it is we should be paid more because other people are being paid more, not because I'm losing people and I can't keep them, not because, you know, I've got, you know, new training costs, or, you know, those types of things.

So there seems to be to me just a new guy coming in, this fear about the number, that we can't really talk about what the price of a harbor pilot is, or what they get paid, you know, it's got to be a guarded secret, and we're not really telling you exactly all the costs because if you know all that you're going to take it away from me. That's the feeling I get, you know. I mean I literally didn't even know what a harbor pilot got paid for over a month or so in this job, because everybody kept asking and no one would tell him. You know, it was, oh, well, you know, you know, you know, sort of a dance around on the, on the subject.

I mean my personal opinion is I'd rather agree on a price structure for harbor pilots, and come back every year and look at the rate model to see are we keeping them whole. Going back to your lawn mower guy, maybe not every month, you can't do that, but -- and that's so what I even heard, that somebody in Louisiana does something like that, one of the associations does that. But, you know, and then what you'd be doing is you'd be really be looking at are you really managing all your costs, and then are the harbor pilots getting trued up based on other, you know, volumes and business activities happening in the industry, because --

And I mean today a harbor pilot obviously take a risk if the markets go down, and volume goes down, and that type of thing, and I guess historically they're willing to take that risk because it didn't occur that much, and I'd rather take the gamble that the upside will occur, and that was a better deal for, for me. You know, what -- in today's new world order sunshine and public integrity, and public exposure of costs -- and if any of you all have watched the Florida legislature in the last year where they've attacked economic development directors, and tourism directors, and university employees on their costs, you know, so, you know, I mean we've got to continue to watch that.

And, you know, all the cost items to me are problematic. When I see the retirement costs, you know, at the next meeting if something's not happening there that's a real problem for me. And the only thing we can do as a Board is address it through the rates, because we can't dictate that they change their retirement system. Or their lobbying costs seem to be exorbitant to me, but once again we can't do anything about that. But we can ensure that, you know, we can adjust the rates to ensure that individual pilots, you know, are not being disenfranchised if the organization truly is verify, proving to us they're doing everything they can to adjust costs.

You know, the whole retirement conversation, I keep coming back to this because, you know, I heard the FAC, FACA, FCCA basically say, well, there's a $17 million savings, and maybe it's a little bit more than that, and the pilots came back and said, well, we just can't do it. Well, now no one -- I mean we haven't hired anybody, or they didn't hire anybody to show us what it would cost, what it could be done, but they're just saying, well, it can't get done. Well, that's not true, it could get done. There may be an upfront cost. There may be, you know, we may have to do an assessment to give them the initial money to transition, or get a legislative approval. I mean there's -- there's ways it could be done.

But for us to continue to support a, a model that is really just not industry standard anymore, I think is not appropriate for this organization. And for us to continue to raise rates when those kind of changes aren't happening doesn't seem like, you know, we're being very prudent in our decision making. So that's a ramble, I know, and I apologize for that, but, but it goes back to the rationale of just giving the 6% across the board when I don't think we've solved some of the basic cost drivers in the equation yet is premature. Does that give you --

Other discussion before we bring that one to vote? Mr. Winegeart.

MR. WINEGEART: Yes, I agree with the whole process. There's testimony that they've spent $1 million on this process, which would darn near buy a pilot boat. It's ridiculous, so I agree with that. Our -- what I -- as I read our responsibility is to fund the pilot association through the rate process, and if the pension is something that the rate board feels need to be addressed then we need to address it specifically, and fund the changeover. I believe it was the Biscayne Bay Pilots' CPA that came up with some, a number, and I don't remember what the number was, to fully fund the retirement program, so I think they have --

MR. ASSAL: $48 million.

MR. WINEGEART: $48 million, okay. So it

-- it has -- it's not something they are not,
haven't thought about, okay.
CHAIR: Yeah. No, that's a good point, although that was a bit disingenuous, because I mean you wouldn't have to fully fund a $48 million --
MR. WINEGEART: I know, you could phase it in. I don't --
CHAIR: You could phase it in, right.
MR. WINEGEART: And I -- and trust me, the pilots that I know do not have a, would not have a problem with a funded pension plan, but that's not the way we, they came into, and to phase it in is going to cost X amount of dollars, and prior rate hearings have not given that structure.
CHAIR: Yeah, that's right. And I mean there's a million different ways it could be done, you know, and it's not just an issue -- as you mentioned it's not just an issue here, you know, it's an issue in all the associations, right? Commissioner Kurtz.
MR. WINEGEART: One other -- one other thing about the -- sorry -- about the pension plan that, something that is not taken into

consideration sometimes is that you talk about being a business, or a monopoly, or whatever you want to call us, but we had no control over who we take in as a deputy, and hence becomes a full pilot. It could be a 35 year old person. It could be a 49 year old person. It makes it difficult sometimes to make things like pension plans work out.

CHAIR: Yeah, that -- that's fair.

MR. ASSAL: Most -- most pension plans that are set up, whether you're in at 49 or in at 22 or 35, you're going to get out of it what you put into it, so it does vary.

MR. WINEGEART: But as long as the market is --

MR. ASSAL: I got you, but --

MR. WINEGEART: Treating you right. But -- and another issue is that I've heard repeatedly from the industry over the last twenty five years is that they don't want old pilots, over the hill pilots having to climb up their ship, and having the unfunded pension plan is one way to assure that someone doesn't try to hand on too long.

CHAIR: Commissioner Kurtz.

MS. KURTZ: I have a question for Clark. So there's a motion on the floor to deny the increase as presented.

MR. JENNINGS: Correct.

MS. KURTZ: If that -- if that motion carries are we finished? Does that preclude the coming up of an alternate, or, you know, or is the important thing to try and come up with the alternate, since it was already asked of Richard Law to work on something overnight? Procedurally like where are we?

MR. JENNINGS: No, procedurally you're right on point, and I was going to, when you all stopped talking I was going to --

MS. KURTZ: Sorry.

MR. JENNINGS: No, that's quite all right. I like the conversation. It helps me write some things. But I was going to ask the motion maker to modify his motion so that it was deny the rate modification or increase as presented, with the understanding that there is a desire on the part of the committee to modify the rate structure somehow, and there'd be further discussion to that end. Because otherwise, you're right, if all of the sudden it's just a

flat out deny this motion, you denied the other motion, it may be at status quo, unless you make it clear that's not your intent.
MR. OATIS: Does that mean --
CHAIR: Commissioner Assal.
MR. ASSAL: The motion that you said, but I thought we denied the other motion completely.
CHAIR: We did.
MR. JENNINGS: You did, but that's okay. He --
CHAIR: We just don't want to -- we just don't want to take both of them off --
MR. JENNINGS: You just don't want to take them both off the table completely without something.
MR. ASSAL: Well, now we've taken one off the table completely --
MR. JENNINGS: Yeah.
MR. ASSAL: -- so why wouldn't we take this off the table completely?
MR. JENNINGS: Well, if you do, and you don't say anything else, you've just maintained status quo.
MR. ASSAL: Or I'll make it --

MR. JENNINGS: This -- this is just -- this is just to place on the record, Commissioner, that you're going to continue to talk about this matter, otherwise --

MR. ASSAL: Well, we can still continue having a discussion about this matter. Part of the first, the twenty five decrease, 25% reduction, was stipulated that we were going to go have meetings to discuss alternate ways, but it's completely off the table, right?

MR. JENNINGS: Right. All I'm doing, Commissioner, is to assure on the record that that's exactly where you're going. That's why I wanted that motion to be slightly modified. I didn't say it was an increase up or down, I just said to continue to talk about the formula and possible modifications.

MR. ASSAL: From what I recall, that they're application was just for increase with no decrease. So now we're saying, is they're going to get an increase, whatever the increase that's --

MR. JENNINGS: No. No, no, no, no, no, no, no, no, that's not what I'm saying.

MR. ASSAL: Well, that's what I

understood.
MR. JENNINGS: No, sir, that's not -- that's --
MR. ASSAL: Okay.
MR. JENNINGS: The motion would be to deny the petition as presented, with the understanding that the committee is going to continue to discuss the matter and modify the rates one way or the other. I just want to make certain that there's something on the record so everybody understands that we're not done the second you vote on this one motion.
MR. ASSAL: I'm trying to --
MR. JENNINGS: That's fine.
MR. ASSAL: What I feel them, we should have had the first -- well, I mean, again it's too late now. We can't --
CHAIR: Make the motion.
MR. ASSAL: Well because I'm trying -- no, I get it. I'm not -- but --
MR. JENNINGS: Do you understand what I'm trying to do for you? I mean I want to make certain that you don't just close the barn door.
MR. ASSAL: I understand.

MR. JENNINGS: Okay.
MR. ASSAL: I understand.
MR. JENNINGS: Maybe that's what you want to do at the, you know, I don't know.
MR. ASSAL: No.
CHAIR: I thought we could just make our own motion independently --
MR. JENNINGS: Yeah. Yeah, yeah --
CHAIR: So he's just giving us additional protections here.
MR. JENNINGS: Exactly. Think of it as insurance.
MS. KURTZ: Or else you can withdraw the motion pending further discussion.
CHAIR: Commissioner Assal, would you like to modify your motion?
MR. ASSAL: Yeah, whatever Clark says, because I don't want to go in circles here. I mean I want to understand exactly what I'm saying.
CHAIR: Correct, okay.
MR. ASSAL: Okay, but if we're denied the first motion, then we deny this motion, which you're saying we will, in reality, (unintelligible). So we have to come back and

do discussion based upon that.

CHAIR: Right. Correct.

MR. ASSAL: Okay, then I'll make that motion.

MR. SOLA: Second.

CHAIR: Okay. And there was a second from Commissioner Sola. Okay, so any more discussion before we vote? Commissioner Winegeart.

MR. WINEGEART: I just want to make sure of what I'm voting on here, because do we need to discuss the parameters that Mr. Law is going to --

MR. JENNINGS: Yes.

MR. WINEGEART: Prior to this vote or --

CHAIR: No, after.

MR. WINEGEART: After the vote, okay.

CHAIR: Yeah, so after this vote we're going to sit here until we agree on what parameters we're going to give Mr. Law to model tonight, along with Commissioner Oatis.

MR. ASSAL: I guess from what I'm understanding is we're going to discuss the way we're going to change the rates for the pilotages.

MR. JENNINGS: That's correct, sir.
MR. ASSAL: Right?
MR. JENNINGS: Yes, sir.
CHAIR: Yes.
MR. ASSAL: And I'm assuming we're going to get to discuss strictly the cruise, or are we discussing all of it?
CHAIR: All of it.
MR. ASSAL: Okay.
MR. OATIS: It's the rate.
MR. ASSAL: I understand that.
CHAIR: It's the rate, yeah --
MR. OATIS: As --
MR. JENNINGS: Yeah, I just want to --
MR. ASSAL: Other -- other parties, or other interests that are involved in this rate are not -- that's their choice I guess --
CHAIR: Yeah.
MR. JENNINGS: And I just wanted to make certain that it was understood by everyone that once you had this motion you weren't done, that you were going to modify the rate. The door has been opened, you're going to modify the rate.
MR. ASSAL: I got you.

CHAIR: Unless you don't want to.

MR. ASSAL: No.

CHAIR: Commissioner Oatis.

MR. OATIS: Yeah, just final thoughts on this motion, trying to put support on the floor for it, I do think after fifteen years it is time to address the rate, it's time to address the practicality of it, where it's been, where it should be going. (Unintelligible) to some extent to think about it as a recoup of prior expenses. I guess to some extent to me that taxes the future consumers for the past consumer's use. But at the same time I still think we also have to look at how we're going to help fund through going forward.

The only other thought that I have relates to the, the matter of law. As I read Section (c), where it does refer to the consideration of CPI when you are coming up with the rate. The -- the last phrase basically said the committee shall not use CPI, it as the sole factor in fixing rates of pilots. And I guess my only concern with that was that after year five, so starting with year six, the rate is solely based on CPI. Again, unless Clark tells me otherwise that there's no issue there it's a matter of legal concern as well.

MR. JENNINGS: No, sir. In fact that was the comment I made earlier, is that when you're basing it exclusively on CPI I believe you have a problem. Now, if you want to get out your crystal ball and guess what the CPI is going to be in the year two and three, and you just change your numbers so that it's a progressive scale where -- and let's just say just for the sake of discussion you want to modify gross tonnage, and you up it by $.02 per ton next year, and the year after, because you think that will keep up with inflation, you could do that because you've got a hard number.

You don't just say, oh, whatever CPI is going to be, that's going to be the rate. Now, obviously I'm hearing that there are other people out there who disagree with my interpretation, but that's my interpretation for the read, based upon the statutory provisions just referenced by Commissioner Oatis.

MR. SOLA: So does that mean we as the Board are going to sit together to discuss this outside public forum.

MR. JENNINGS: No. No, sir.

MR. SOLA: So who's coming up with the guidelines?

MR. OATIS: We are.

MR. LAW: We are.

MR. SOLA: Who's we?

MR. OATIS: Right now.

MR. ASSAL: Me, you, them.

CHAIR: Right after we vote.

MS. KURTZ: And Richard Law is going to crunch the numbers overnight so we can actually see what the proposed percentages --

MR. JENNINGS: Yeah, so you can get some guidance.

MS. KURTZ: -- will look like in real numbers.

MR. ASSAL: You ask him to come up with numbers arbitrarily --

MR. OATIS: Well, we'll give him some options.

MR. ASSAL: Yeah, but you're -- you're asking for a vote right now on something --

MR. OATIS: We're asking for a vote to deny the motion, and to continue discussion.

CHAIR: Right.
MS. KURTZ: Or you could withdraw the motion and --
MR. JENNINGS: What is your concern?
MR. ASSAL: My concern is you're asking to change the pilotage rates, whether in favor or not in favor of one way or another --
MR. JENNINGS: Right.
MR. ASSAL: -- when -- I really didn't -- I didn't -- I'm trying to understand it. Maybe I'm a little slow here.
MR. OATIS: We have to discuss what's fair, what we think is reasonable.
CHAIR: Yeah, and if we can't get to a conclusion then we, we would be at status quo, right, but that's the next discussion. What -- what I'm trying to do is get this motion off the table, the 6% with the inflators, that motion off the table so we can now discuss why, is there a hybrid solution here that we could all live with. So we don't know if we can get there yet.
MR. JENNINGS: Yeah, based -- based upon the information provided to you on the record.
MR. ASSAL: I guess what -- I guess my

concern is you blocked one completely, but you didn't block the other one completely. How's that fair?

MR. OATIS: We are blocking it.

MR. JENNINGS: Well, we are --

CHAIR: We're denying -- once we vote to deny it the second one is blocked.

MR. ASSAL: But we didn't put a motion on the Board with looking at a possible increase at all.

MS. KURTZ: You have that option.

MR. OATIS: No -- increase/decrease. Option number three can go any direction. We are not limited --

MR. ASSAL: Okay, I'm -- again I'm the dumbest one in the room here, so please forgive me.

MR. OATIS: No, no. Does that make sense? We're not limited because we are voting on a decrease, I'm sorry, and increase now, we're not limited to only consider increases in the third option. The third option can go in any direction that we deem fair and reasonable.

CHAIR: Okay, Ms. Anne, we're going to do a roll call. The motion was to deny the

Biscayne Bay Pilots 6% a year rate increase with the related inflators, but to begin a process to consider alternative rate adjustments as the Board sees fit. So can you please call the roll? The denial would be a yes.

ANNE: Commissioner Assal.

MR. ASSAL: Yes.

ANNE: Commissioner Kurtz.

MS. KURTZ: Yes.

ANNE: Commissioner Oatis.

MR. OATIS: Yes.

ANNE: Commissioner Sola.

MR. SOLA: Yes.

ANNE: Commissioner Winegeart.

MR. WINEGEART: Yes.

ANNE: Commissioner Wilkins.

CHAIR: Yes. Okay, so now we're in the new space of what hybrid rate adjustments would we like to make for Biscayne Bay.

MS. KURTZ: I have a question, and it may have been in the materials we were given, but honestly I really don't want to go through all of that again. Do we have a number from the pilots, how many cancellations and detentions there were, because there were other charges outside of the rate that there's a request for change? I want to know if they have any cancellations or detentions -- there are other non percentage related charges that --

CAPTAIN MARLOW: Right. The history of our group is that we've never charged detention or cancellation.

MS. KURTZ: Ever?

CAPTAIN MARLOW: No. The -- there may be a onesie in there somewhere, but since 2000, the year that I looked at -- no, the answer is that we have a $50 per hour detention fee, $50 cancellation fee. It's been a neglected rate that we have not charged.

MS. KURTZ: So you don't track -- so you're saying you've never even -- it's on the books --

CAPTAIN MARLOW: I'm saying we do track it, it's zero. It's zero.

CAPTAIN NITKIN: We don't --

CAPTAIN MARLOW: We don't charge it.

CAPTAIN NITKIN: We don't charge it.

CAPTAIN MARLOW: And -- and part of it is it's, it's --

CAPTAIN NITKIN: It's not worth it.

CAPTAIN MARLOW: -- it's $50, it's not even worth --

MS. KURTZ: Okay, but do you track like how many times something is canceled, or how many hours a delay had been incurred, just as a way to --

CAPTAIN MARLOW: Not -- not specifically. Not categorically. The -- the intent of that component is -- while we have not charged detentions, delays, we, we routinely experience issues with, with certain ships that call for pilots and we get there, they're not ready, they know they're not ready but they called for the pilot anyway, and we end up sitting in port for --

MS. KURTZ: No, I know, yeah -- no, I know how it works. I just --

CAPTAIN MARLOW: And -- and it's -- it's a deterrent. There are no --

MS. KURTZ: I just wasn't sure if you had been charging for it or not.

CAPTAIN MARLOW: We have not. And -- and we think this will serve as a deterrent, that we still would not. It -- it would be something that would cause them to tighten up their, their pilot requests, and, and enable us to schedule and manage our pilot compliment effectively.

MS. KURTZ: Okay. And then the -- the two pilot jobs provision here, that would be for the neopanamax container vessels?

CAPTAIN MARLOW: Correct. It's -- it's listed specifically as certain neopanamax container vessels. We have some of those coming in right now, but the issue that we have is there are some that are looking to come that are really, really pushing the envelope of, of at least initially what we're completely comfortable with until we get more experience handling these ships in our port, specifically the maximum limit of 1,200 feet x 161 feet by 14 years.

MS. KURTZ: Okay. And do you have any data on if these size vessels use two pilots in other ports of similar dimensions?

CAPTAIN MARLOW: I don't have specific data. I know anecdotally from conversations that there are, there are many ports that put two pilots on there because of the decreased visibility and, and different factors like that. There might be a situation where you would want a pilot on one bridge wing, and you're on the other one, and maybe even a third guy on the center line, or --

MS. KURTZ: So that's -- that's not an unusual request, to have two --

CAPTAIN MARLOW: No, it's not at all. It takes place in many other ports.

MS. KURTZ: Thank you.

CHAIR: Yes, Commissioner Sola.

MR. SOLA: Yeah, along the same lines the -- the cancellation order for the pilot on board is $50 per hour?

CAPTAIN MARLOW: It's $50 -- it's cancellation so it's $50 period.

MR. SOLA: It's $50 period.

CAPTAIN MARLOW: $50 period. So if you call a pilot and he comes to the ship, and you say, eh, we changed our mind --

MR. SOLA: In your application did you request that to be changed?

CAPTAIN MARLOW: We did. The --

MS. KURTZ: It's here.

MR. SOLA: I know, I'm --

MS. KURTZ: I'm sorry.

MR. SOLA: I'm sorry, but --

CAPTAIN MARLOW: It's been a really long day so I'm a little but punchy, but I know the detention charge is 25% of the pilotage fee per hour. I think the cancellation charge is 25% of the pilotage fee as a single.

MR. SOLA: Got it. And then -- and then the other question I had was the minimum, the minimum fee that we had, $300, I think it's $400 and some dollars right now.

CAPTAIN MARLOW: $335 more or less.

MR. SOLA: Yeah, it seems. It seems really low. What was your -- what was your request on that?

CAPTAIN MARLOW: Our request on that is not to specifically change the minimum but to increase the minimum draft, and to -- that rate is based on a combination of gross tonnage and draft, just like every other ship. It's not a discriminatory rate. And we're -- if you increase the minimum draft it helps us with some of these lower tonnage ships, because effectively we, we lose money on those ships.

MR. SOLA: From going from 14 feet to --

CAPTAIN MARLOW: 18 feet.

MR. SOLA: Okay, thank you.

CHAIR: Okay, so in terms of adjustments to the rate structure, if I was hearing Commissioner Sola and the other Commissioner's comments -- if you looked on Page 13 of Mr. Law's report, you know, you have there the handle data, right, and you show the handle, handles and revenue by size of vessel, and so I think that's what you guys were talking about, right, which is the top two categories, which coincidentally are also cruise ships. Maybe there's a cost reduction there. Recognizing as well that the volume is going to be increasing in the next year, and so if there's a couple more boats coming in next year, and you factor that in to sort of the volume this year, what would be the implication of that. Am I articulating that right? Is that what you all were thinking?

MS. KURTZ: So are you looking for different values assigned to different percentages, or just other than gross tonnage a different way to calculate? What -- what are you asking us to do?

CHAIR: Right, if you applied a percent, whether that's 25% or 30%, or whatever, to those top categories, you know, what would be the revenue reduction, but then factor in the fact you've got two new boats coming in, and, you know, they would be in that category as well, because of -- the testimony was there was a 16% revenue increase forecasted for, in a year for that, for those new vessels.

MR. OATIS: Multi variable, because you want to adjust some rates downward potentially for a discount, but then also include a future event that hasn't happened, and integrate that using current numbers.

CHAIR: Yes. Say that again.

MR. OATIS: A combination multi variable analysis. So you're trying to adjust the current handles using the, the information that we have, figure out what a new rate would look like, what the implications what a new reduced rate at higher tonnages would be, but then also integrate a future event of new boats, new vessels that are coming that are going to be at even higher tonnage, and convert that, and try to make that into a single analysis. Is that

-- that's what you're asking.

CHAIR: Yes. Yes, that's a good way --

MS. KURTZ: Are you going to work with Richard on that?

MR. OATIS: I think, yeah, we're going to have to.

MS. KURTZ: Are you going to order in? Sorry.

CHAIR: What other changes, or factors, would you all like to look at?

MR. OATIS: So we're in discussion?

CHAIR: Yes, we're in discussion.

MR. WINEGEART: I would just like to point out a point that Captain Quick made in his information that he provided to us, that when he talks about basing the pilotage charges on tonnage it brings the smaller vessels with low tonnage into the system where they can afford to take a pilot. And I would like for Mr. Law and, and you, Commissioner, to keep that in mind, and not price the little guys out of business. Just I would like for you to keep that in mind as you're going through your calculations.

MR. OATIS: Well, what our calculations

will be will be a reflection of what is decided by this committee.

MR. WINEGEART: Well, that's -- I'm giving you some input.

MR. OATIS: I think we'll probably have to get a little more specific as far as ideas, percentages, and converting that into numbers.

MR. WINEGEART: Right.

MR. OATIS: What -- what does that look like, to not overburden.

MS. KURTZ: I have a question for Commissioner Oatis. You mentioned that increasing the rate to recoup past expenses, although it may be necessary perhaps to try and do that there's also an unfairness to your future customers because you're imposing a rate on them. Can you figure out some way to address that in, you know, would that be like a one time assessment to make up for some portion of what's been lost, or, you know, just philosophically disagree with a rate that would tax future customers as opposed to past customers that didn't have to pay?

I -- I just -- I don't know how you would address that. And I do understand your point, but the problem still exists, so I'm just throwing that our there as something that I'm hoping you'll, you know, consider.

MR. OATIS: And again, I mean I don't know if I overstepped my bounds in offering to help, but it's not going to be on us to come up with any mechanism to do that. It's going to be what is decided here, translated from words into a spreadsheet, to determine what the impact is going to be. So if -- we would have to think of a mechanism on how that would be somehow integrated, balanced out, where we are, if that's the decision of the committee, who bears some of the previous expenses while still adjusting the rate on a go forward basis.

MS. KURTZ: Okay.

CHAIR: Yes. I mean just as my perspective is, you know, I agree with this issue of the methodology today that has been used for over, it doesn't fit that nicely with the cruise business, would like to change, but it may go, be going past my mental capacity to deal with that in this change, and, you know, we ought to look at that down the road to move away from, you know, the tonnage models, and to use different parameters, but I think that ought to be modeled in a controlled environment, move to a new model that's revenue neutral, you know, somehow then, and see how it works for a year or so, rather than trying to reduce and trying to change the methodology, and creating a revenue scenario that we don't know what the implication would be. Do you see what I'm saying? So therefore in your model I would just look at reducing as a percent, you know, one way or the other, rather than changing the methodology.

MR. OATIS: You're saying reducing as a percent -- you're -- so you're just talking about the tierage (sic).

CHAIR: Yes.

MR. OATIS: But then not addressing the other aspect of the rate increase.

CHAIR: Well, if you want to come back with -- you're saying one of the other levels of rate increase -- yeah, I mean I'm open to that, but -- Commissioner Winegeart.

MR. WINEGEART: I would ask Mr. Law what does he need from us to go back to the room and figure out a rate structure. It seems to me you're going to need to know what target compensation --

MR. OATIS: Correct, because the first thing we have to figure out is what is average net income, what, what factors are included, what's excluded.

MR. LAW: We can't do that. You know, it's like I said at the very beginning, it's a big equation with a lot of variables, and if you -- if you want --

MR. OATIS: Well, to some extent we've identified the variables. We've identified what they are, and basically determined which ones we think are included and excluded, but --

MR. LAW: The reason we have that in Exhibit 15, and in 16, just so you see things change, and you may hear that, well, a new cruise ship is going to come into this port, well, that means something's going to leave, and so I wouldn't want to advise you to count on something's coming in and then not consider what's going out. I think we could -- you could create a lot of damage here by, by trying to aggregate all this data.

And what -- what we really need to work on is this information in Exhibit B, or that layered report on Page, it's in our report, and try to say where can you give a discount at a tonnage level, quantify the revenue given up, but then where do you put the -- if you're wanting it to be revenue neutral where do you add it back?

MR. OATIS: I don't necessarily know it has to be revenue neutral.

MR. LAW: That's your decision.

MR. OATIS: Right.

MR. ASSAL: But I think once you change the rates completely it's going to change the whole dynamics of the Port of Miami, so we have a very important task here, that we're not comparing apples to apples. We're not talking about the same industry. We're changing other people's, so it's like going to your office tomorrow and they just moved your desk, and you might not have an office. I mean that's what we're talking about here. And people aren't thinking this through, we're just trying to come up with a formula that's already been in place for a hundred years.

And I think -- and from what I'm

understanding FCCA is looking for a number that would offset the size of their vessels. The pilots are saying, well, we've lost so much money for so many years, but no one else is really here to fight for their rights, so -- and I'm not saying that they didn't know. But you're talking about changing not 2,000 vessels, 5,000 vessel rates. That's significant.

Whether -- now you're going to upcharge, or whatever formula you guys formulate, probably 17, 195 handles that are tomorrow are going to hear something different -- that's pretty significant. Or vice- versa, or we -- I mean what's -- what's the end goal here? What is the end goal?

CHAIR: I mean they're going to hear something different anyways, because if we went with either one of these, if we accepted the BBP's it would have been different.

MR. ASSAL: Okay, but what's the end goal? What is our goal as the committee, as the Board here? We heard both sides of the story, okay. We felt 25% was too much. We felt 6% was way too high. So what is our end goal as the

committee? We're going to come up with a
formula that's going to affect the whole
industry. That's going to set the tone for
everything throughout every pilot sector in the
state of Florida, and you're going to be doing
these once a month.

MR. JENNINGS: Well, if I may, Mr. Chair.

CHAIR: Yes.

MR. JENNINGS: A couple of things to keep
in mind, Commissioner Assal, every port is
different, completely different. You know, the
-- the combination of vessel traffic, the size
of the vessels, what the vessel -- every one is
different. I mean there are some
consistencies, yes, and everyone's current
formula is different, so what you do in Miami
may not be what happens in Everglades, or even,
or Panama City, or whatever. I do hear what
you're saying though. You're right, if you're
-- if you're not doing status quo, but you're
trying to play Solomon and give each side a
little something that they want, well, there
are only two other groups that are going to,
you know -- someone's going to pay, right?

I mean if you're going revenue neutral, or if you're going to give the pilots a little bit of an increase but you're going to give the FCCA a break on the bigger vessels, somebody is going to pay for that, and the other two other categories I can think of, pleasure yachts and cargo, big player -- so, yes, somebody is going to come up with that money, based on what you're talking about. But isn't that always the case, that somebody is going to -- if there's a rate increase somebody is going to pay. And if there's a decrease somebody is going to pay. In that case it would be the pilots.

Your mission is to ensure that whatever number you come up with, whatever formula you come up with, it's a fair, reasonable, and just rate that ensures that you have a high quality piloting community to ensure the health, safety, and welfare of the people of the state of Florida, and the economic engine for those people. So that's your mission. It's not easy.

MR. ASSAL: I got you.

MR. WINEGEART: And I'd add to that, mention that we -- it says in the statute that the overall compensation to port pilots should be equal to or greater than that available to individuals in comparable maritime employment.

MR. JENNINGS: Right, that was one of the factors that the legislature said should be considered.

MR. WINEGEART: Right.

MR. JENNINGS: Absolutely. With the idea being that's why, that's how you get the best and the brightest to serve the state of Florida.

MR. WINEGEART: Correct, so we have a responsibility to do that.

MS. KURTZ: And also there are other things on the table besides the percentage on tonnage. There are also cancellations, detentions, the two pilot on large cargo vessel, and the harbor control surcharge. Those are all things that are being asked for, and if you do just some simple math that's actually real money right there, so, you know, that's also another way to, you know, if an increase is distasteful, or inappropriate, or, you know, whatever the opinion is, you know, there's quite a bit of very reasonable fees there that are paid in lots of other ports, you know, to sort of counter-balance, you know, whatever numbers might be -- so I just -- I don't want you to forget about the other parts to this. It's not just, you know, the 6% and the CPI moving forward, there are -- there are port call fees. That's all.

MR. SOLA: I agree with Captain Kurtz, that there are some other fees in here that haven't been addressed in a very long time, these auxiliary fees, and also as I stated earlier, that all vessels over 100,000 GRT would only pertain to the cruise industry, and I feel that if we were going to do a sliding scale somewhere around that range would be where the new sliding scale should, should pertain to.

MS. KURTZ: So where does that leave us?

MR. ASSAL: Well, this is a big formula. You got fees, you got everything, so when we're talking about all these things it's not something that we're going to have a calculator and it will pop out in the next thirty minutes. There's no way. There's a lot more variables to changing the whole structure, and, and the bigger the ships, or the bigger the tonnage, and the cost factor, and then it's -- again if you talk about what Commissioner Sola said over 100,000 tons, or whatever, you're talking about -- it's almost 50% of the cruise ships, and only 100 ships on the cargo side.

MR. JENNINGS: And, Mr. Chairman, if I may.

CHAIR: Yes.

MR. JENNINGS: Part of the problem that you're facing is that you -- I've heard this from both sides, those requesting a decrease, and those requesting an increase, is that, well, we made it this way just to kind of keep it simple for you. Unfortunately by trying to keep it simple I think they may have made it difficult for you.

For example I've heard nothing -- although I've heard talk about width of the vessels being a problem when the handles are coming in, and how it's, because you have a narrow channel and they're, they're at the dock, but they take up so much space -- but now has talked about width as far as maybe part of the rate structure. I mean everyone just says keep the, keep the current structure, and, you know -- which I'm going back to earlier and said if you -- at some time -- at some point, maybe not now but in the future, maybe just these two factors are not sufficient anymore.

MS. ASSAL: But the evidence from both sides, you look at the handles how, what, by 50%, and then the other ones say the expenses have gone up, I mean so -- I mean you have the same amount of revenue with only, what did we have, 10,500 handles? So we had a lot more smaller ships, and now we're getting a lot more bigger ships, but the revenue hasn't changed. But I guess revenue is generated by GRT, right, so is the GRT volume the same? Not the handles, is the GRT volume equivalent to that dollars and cents then?

MR. OATIS: Basically yes.

MR. ASSAL: Basically yeah, right? It's just less handles.

CHAIR: But one side would argue more difficult handles.

MR. ASSAL: And I understand that.

MR. JENNINGS: So where do we go from here?

MR. SOLA: I'm looking at Page 8 of Mr. Law's current rates, and, you know, I can give a proposed idea that per discussions, that maybe we can look at, for example we have draft minimum fees at $17.433. Is there any discussion on if that should go up or down? Very quickly let's go --

MR. OATIS: The whole aspect of really even that process going was we would give Port Everglades pricing, it's a tiered pricing on both draft and GRT. So there's precedent, there's a precedence here to do that in order to account for that marginal contribution of the larger ships.

MR. SOLA: I saw that, and I agree with that.

CHAIR: I like -- I agree with that too.

MS. KURTZ: Is there any way to run those numbers and see, you know, how, what, you know, the numbers from 2016, and see what that would look like?

MR. OATIS: There is. I -- I set it up already too, out of my curiosity, because that's where I was thinking it would go. So now, again, it's just a matter of we can determine what that amount is, and we can go an apples to apples comparison of what the total income is.

MS. KURTZ: I can'[t hear you.

MR. OATIS: Sorry. I apologize. We can run the numbers. And we can run the numbers of the impact for this modified approach. Where do we stop? Do we stop at a total income, or do we, do we still need to address a net income? For an apples to apples comparison we likely could stop at total income, and then not have to get into whether or not --

MS. KURTZ: You mean total revenue.

MR. OATIS: Revenue, yes.

MS. KURTZ: I agree, I think total revenue is the number to look at, because they're expenses, you can argue what those expenses are --

MR. OATIS: But that -- that's a whole --

MS. KURTZ: That's a whole different thing. We're really looking at revenue, because you're dividing it amongst an equal number of people regardless of what the deductions are.

MR. OATIS: But wanting -- and obviously

wanting to make sure that still gets us where we went to be from a (unintelligible) perspective as far as considering any rate increases.

MR. KURTZ: Yeah. How do you feel about that, looking at total revenue as the number, because it's an easier number to calculate, we have it --

MR. ASSAL: The challenge is, is that whether I talk to Jacksonville or you, or any different, the expenses are the expenses, and I just go based upon the numbers that, that are brought to us, and that's how I tried to back into them when I was playing with the calculator. They have to be able to control their own expenses. I can't tell them that. And if they can't control their expenses that's not my problem. I got to look at what's fair for the whole board. That's just part of life, I mean business, so Business 101. I agree with you, revenue. Their expenses, if it goes down it goes down. If it goes up it is what it is, and we'll go from there, but depending on what the future foreholds (phonetic), and we'll see what happens.

MR. OATIS: I think what the summary said -- I guess what I'm thinking about it, to your point, the management of expenses is ultimately something that comes out of their pockets. If they're not managing the expenses they're not running the business aspect of it, you know -- you understand, it's part business, part regulated industry, but to the extent they're not running the business, that's out of their pockets. That's -- that's money their spending because they're not putting through it themselves.

MR. ASSAL: If you are capable of putting those numbers together for everyone to see then we can discuss either today or tomorrow -- I mean what are we, what are we basing it on, each average size for the amount of volume per, per --

MR. OATIS: Basically, yeah, we would need to figure out what the ranges are, put them in the buckets, how we want to adjust the GRT charge, and how we'd want to adjust draft, assuming that we are sticking with those as the drivers.

MR. ASSAL: So why don't we use the

numbers of 2015 just to get a number, and get a ballpark idea, because it's already set, right?

MR. OATIS: We got 2016.

MR. ASSAL: Or 2016. I apologize.

MS. KURTZ: That's good.

MR. OATIS: That's what we've got, and that's what the formulas are set up for.

MR. ASSAL: For the amount of vessels for that year --

MR. OATIS: The tonnage, the handles, everything.

MR. ASSAL: Everything.

MS. KURTZ: Using the Port Everglades model that's in place currently?

MR. OATIS: And that's -- do we want to use that to the T --

MS. KURTZ: I'm asking. That's --

MR. OATIS: -- or do we want to use it as a comparable and come up with --

MR. ASSAL: Can you let us know exactly what their model --

MR. OATIS: Yeah. It is --

MR. SOLA: Do you have it already for total ships, and all that already?

MR. OATIS: I'm an accountant so that's my palate for artistry. I've got a screenshot of it. Let me see if I can find it for you.

MR. LAW: Are you looking for the Everglades rates tier?

MR. OATIS: Yes, it's in your report.

CHAIR: It is? Okay.

MR. LAW: Page 29.

MR. OATIS: It's 948 of the overall package.

MR. LAW: Do you want me to read it out to you?

CHAIR: Okay, there it is, yeah.

MR. LAW: Okay, their layers for the tonnage are the first 80,000 tons at the existing rate. The next 50,000 tons is at $.0343, and that is a 3.65% decrease for the first layer.

MR. OATIS: Right, it's a -- it's a fixed percent. It's.013 reduction.

MR. LAW: $.0343. And that's -- so that's on the next 150. That gets you up to 130,000 tons. And then above, anything above 130,000 tons is at $.0330. And that is a 7.3% decrease from the beginning base --

CHAIR: Right. Also.013, so it's a fixed

dollar, fixed cent reduction.

MR. OATIS: The only other thought that I would add to that is, is thinking of Mr. Wilkin's thoughts of looking into the future as well, look into where the tonnages are going to be, addressing that now so that there's a fee structure in place to account for it once they come in.

MR. LAW: You know, I think looking at the Everglades layers, they kind of have an idea of what that revenue, how it will affect their revenue, otherwise they would not request it. And I think that in Biscayne the Everglades calculations -- well, it may have some, some pretty good merit --

MR. OATIS: It's the model. And they also -- they also address draft as well, because they have a feet draft minimum, at 21-30 is $22, 31-40 is $29, and anything over 40 feet is $45, which would reflect a significant increase from where we are now.

MR. LAW: Right. And then Miami had requested the minimum go from 14 to 18, and if you look at the analysis I did here on Page -- there's a lot of pages. I'm trying to show you how the -- okay, it's on Page 30, how that minimum was affecting the draft on those smaller vessels.

CHAIR: Okay. So you're going to model using those numbers, and you'll be able to come back with something in the morning at 9:00?

MR. OATIS: Yeah, I think that's feasible.

CHAIR: Let me bring up something else. I know it's late. You're going to do this exercise, and the only thing for sure is the number is going to go down, right?

MR. OATIS: No.

MR. LAW: Yeah.

CHAIR: Yeah.

MS. KURTZ: No.

MR. OATIS: Well, no, that's -- that's -- again it's a model to work with, but I'm not necessarily saying to apply it strictly as it stands, because I think that addresses half of what we talked about addressing.

CHAIR: Correct.

MR. OATIS: It doesn't address any type of increase, it only addresses a tiering of what we currently have. And I still think we need to talk about the buckets, the numbers, the --

CHAIR: So you're going to apply the tiering across all vessels.

MR. OATIS: Correct.

CHAIR: Okay, cargo and --

MR. OATIS: Cargo and passenger.

CHAIR: Okay. So then that will give us a number, but you don'[t know what variable it is. But it's probably -- well, is it higher or lower, do you know? It will be a little bit lower.

MR. OATIS: Which way?

CHAIR: If you just modeled it using --

MR. OATIS: Using strictly Port Everglades?

CHAIR: Yeah.

MR. OATIS: I don't know that one, because their, their draft is so much higher. We'd have to see how that weighs in. Plus we'd also have the additional auxiliary fees.

MS. KURTZ: Right, because the double pilotage on the neopanamax vessels would have to be factored in, so how many of those vessels are there, because that's a double -- that would be a potentially double --

MR. OATIS: Yeah, and this is where we're going to struggle, because we're trying to do apples to apples in 2016, but then every little variable we start throwing in takes us away from -- we would have to have a base case to compare this to. We need to have a set of facts. Right now we can use 2016 as it is, and we can use that as our base case, but if we start bringing in future variables we need to somehow integrate that into our base case, and we won't have apples to apples.

MS. KURTZ: Can we just look at 2016's numbers for how many neopanamax vessels they had, so that can at least get applied and see --

MR. OATIS: Yeah, I think we can do that.

MS. KURTZ: And that would just at least give some idea, just because these are other proposed changes.

CHAIR: Okay. Commissioner Sola, did you have a quick? Okay, so you -- so you'll have that exercise, and then we'll come back and you'll have that number, and then we'll debate the what ifs on a couple of the categories in terms of looking at percent reductions or --

MR. OATIS: So I'll start right now, is

looking at a pure application of Port Everglades to the Port Miami facts without any different tiering, without any different adjustments. It's -- that's where we're starting, and then we pick up the conversation tomorrow. Is that -- I'm asking I guess.

CHAIR: Right.

MR. OATIS: Am I understanding that correct?

CHAIR: But then what we will do, then we'll get into a debate on, okay, look at these top two categories, or top three categories, and want to know what's the implication in revenue if you drop it 10%, or 20%, and you'll be able, you'll have that right there on Excel so you'll be able to tell us that immediately.

MS. KURTZ: And you may actually be able to e- mail to all of us without problems so we can look at while you're -- no?

MR. OATIS: I can't do that because it -- yeah, no, that's right.

MS. KURTZ: No, I mean in the room, because we're all sitting here with our --

MR. OATIS: Well, I can put it up on the projector if --

MS. KURTZ: You can put it up on the screen, yeah, there you go.

MR. JENNINGS: But you're not passing it out tonight.

MS. BLANTON: No, not now. No.

MR. JENNINGS: I just heard e-mail and I got -- Ms. Blanton and I both got a little nervous about that one.

MS. BLANTON: Can I ask a procedural question at the appropriate time, about what happens next when we come back tomorrow?

MR. JENNINGS: Okay, go ahead.

MS. BLANTON: My question is -- I understand you're going to do some modeling tonight, you're going to come back tomorrow, and they're going to discuss options going forward. Is there going to be an opportunity once you get to a proposal for the parties to comment on it? Because we're talking about something totally different than what FCCA proposed, and totally different from what we proposed. Do you want our input on it? And I would strongly suggest that it might be helpful but --

CHAIR: Okay, we'll take that under

advisement, but be prepared to do that. Okay, is everybody tired?

Okay, all right, so yes, so tomorrow morning we will come back, you'll present the model case, we'll go through some scenarios, and then, and talk about, you know, where we, where we want to land, right? Okay, so 9:00. Are you we good?

MR. JENNINGS: No it's noticed for 9:00, you can't start earlier. And just a reminder to the committee members, don't discuss this among yourselves tonight, please.

CHAIR: All right, this meeting is adjourned. Thank you.

(Thereupon, the above proceeding concluded.)

C E R T I F I C A T E

(STATE OF FLORIDA)

(COUNTY OF MIAMI-DADE)

I, NATHANIEL TORO, Reporter, certify that I was authorized to and did report the foregoing proceedings and that the transcript is a true and correct transcription of my notes of the proceedings.

NATHANIEL TORO, Reporter
Reporter Commission: GG 111434
Expires: 06/04/21