UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	)	Chapter 9
CITY OF DETROIT, MICHIGAN,	)	Case No. 13-53846
Debtor.	)	Hon. Steven W. Rhodes

DECLARATION OF MICHAEL ARTZ

I, Michael Artz, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am Associate General Counsel of the American Federation of State, County & Municipal Employees, AFL-CIO ("**AFSCME**"), and I submit this declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees' Amended Objection To The City Of Detroit's Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code* (the "**Objection**").

2. Attached to my Declaration are the following Exhibits referenced in the Objection:

Exhibit A	A copy of a transcript of the deposition testimony given by Governor Richard D. Snyder on October 9, 2013.
Exhibit B	A copy of a transcript of the deposition testimony given by Emergency Manager Kevyn Orr on September 16, 2013.
Exhibit C	A copy of a transcript of the deposition testimony given by Gaurav Malhotra on September 20, 2013.

Exhibit D	A copy of a transcript of the deposition testimony given by Charles Moore on September 18, 2013.
Exhibit E	A copy of a transcript of the continued deposition testimony given by Emergency Manager Kevyn Orr on October 4, 2013.

Executed on this 11th day of October, 2013 /s/ *Michael Artz* _____
Michael Artz, Esq.

EXHIBIT A

In Re: City of Detroit, Debtor

Governor Richard D. Snyder
October 9, 2013

Moretti Group
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800-536-0804

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Min-U-Script® with Word Index

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1 UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
2 SOUTHERN DIVISION - DETROIT
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3 In re: Chapter 9
4 CITY OF DETROIT, MICHIGAN, Case No. 13-53846
5 Debtor, Hon. Steven W. Rhodes
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6 V I D E O T A P E D D E P O S I T I O N O F
7 WITNESS: GOVERNOR RICHARD D. SNYDER
8 LOCATION: The Romney Building
111 S. Capitol Avenue
9 Lansing, Michigan
10 DATE: Wednesday, October 9, 2013
8:38 a.m.
11
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E X H I B I T I N D E X

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(Exhibits attached to transcript.)

- - -

Lansing, Michigan
October 9, 2013
8:38 a.m.

- - -

MR. WERTHEIMER: William Wertheimer on behalf of the Flowers Plaintiffs.

I would like to put on the record the fact that the order that Judge Rhodes entered under which we're conducting this and the other State depositions provides at Paragraph 7 that the State would complete its document production by October 5 provided the parties could mutually agree to extend that date.

That date has not been extended by agreement. As late as last night at 10:15 -- I woke up this morning to find that the State had produced a fourth production that is not in compliance with the order.

I want to make clear on the record that we may take the position that we may need to continue the Governor and the other State's depositions after we have reviewed those documents as we have not looked at any of those documents as of now.

MS. NELSON: This is Margaret Nelson on behalf of the State.

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1 The fourth production of documents was made
2 under the State's continuing obligation to
3 supplement its discovery responses. So the fact
4 that our production was completed by the fifth,
5 pursuant to the court order, is irrelevant to the
6 fact that we have an ongoing duty to supplement, and
7 that was the purpose for the additional document
8 production yesterday.
9 MR. WERTHEIMER: I'll leave further
10 argument for later.
11 VIDEO TECHNICIAN: Today's date -- hold on.
12 I have to start over again. Give me a second.
13 (A pause was had in the proceedings.)
14 VIDEO TECHNICIAN: Today's date is
15 October 9th, 2013, and we're on the record at
16 8:42 a.m.
17 This is the video deposition of Governor
18 Richard Snyder. We're at the Romney Office
19 Building, 111 South Capitol Avenue in Lansing,
20 Michigan.
21 Could the reporter administer the oath to
22 the Governor, please.
23 - - -
24 -GOVERNOR RICHARD D. SNYDER-
25 called as a witness, being first duly sworn, was

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1 examined and testified as follows:
2 EXAMINATION
3 BY MS. LEVINE:
4 Q. Good morning, Governor.
5 A. Good morning.
6 Q. My name is Sharon Levine. I'm with the law firm of
7 Lowenstein Sandler. I'm here on behalf of AFSCME,
8 and we appreciate your appearing for your deposition
9 today, so thank you.
10 Just for the record, when did you take
11 office as Governor of the State of Michigan?
12 A. January 1, 2011.
13 Q. And at the time you took office, was the State
14 providing greater financial -- a greater level of
15 financial support to the City of Detroit than it is
16 today?
17 A. I would have to check that.
18 Q. Would you be willing to support having the State
19 provide a greater level of financial support than it
20 is today in order to help the City of Detroit with
21 its plan of adjustment and particularly in order to
22 help fund the pension issues?
23 A. In terms of we have many competing interests for the
24 State of Michigan with respect to our budget. I
25 don't make those decisions by myself. It goes

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1 through the appropriations process with the
2 legislature and the Governor.
3 Q. My question was would you support an additional
4 level of support?
5 A. I said I've been supportive of improved services for
6 citizens, not necessarily the repayment of debts.
7 Q. That might have been responsive so I don't mean to
8 be argumentative, but the narrower question is would
9 you support an additional level of support for
10 Detroit in order to help deal with the so-called
11 underfunding pension issue?
12 MS. NELSON: Asked and answered. Go ahead.
13 Go ahead.
14 THE WITNESS: Oh. I view that as a --
15 that's a question that I couldn't answer because
16 it's a hypothetical. It would depend on the entire
17 situation for the facts depending on the potential
18 plan of adjustment for the debts.
19 BY MS. LEVINE:
20 Q. Well, between March 28, 2013 and June 14, 2013, did
21 you have discussions with Kevyn Orr about a business
22 plan or a restructuring plan or a redevelopment plan
23 for the City of Detroit?
24 A. Kevyn Orr was building a plan for creditors they
25 presented in June of this year.

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1 Q. Did you have discussions with him with regard to
2 that plan before the June presentation?
3 A. I had discussions that would have been subject to
4 attorney-client privilege.
5 Q. Is it your understanding that that plan includes a
6 two billion dollar note for unsecured creditors?
7 A. Yes.
8 Q. And what's your understanding of what that plan
9 includes with regard to vested pension benefits for
10 the citizens of Detroit?
11 A. The proposal includes some portion of that note
12 being allocated towards pensioners.
13 Q. So the plan does not include just leaving the vested
14 pension benefits alone, does it?
15 A. Well, with respect to the funded piece of pension
16 plans, that's available. There's an open question
17 with respect to the unfunded portion.
18 Q. Do you understand that in a Chapter 11 corporate
19 bankruptcy case that the Pension Benefit Guaranty
20 Corporation or the PBGC provides federal insurance
21 for beneficiaries of a pension if a defined benefit
22 plan is terminated?
23 A. Yes.
24 Q. And is it your understanding that in a Chapter 9
25 bankruptcy case there is no similar protection for

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1 vested pension benefits?
2 A. Yes.
3 Q. What's your understanding of how the Detroit
4 citizens, the AFSCME retirees will support
5 themselves assuming that there's a diminution in the
6 current level of pension benefit provided?
7 A. Could you clarify your question because you had
8 conflicting statements.
9 You asked about the citizens of Detroit and
10 then you asked about the retirees.
11 Q. Well, let's go with the retired citizens of Detroit
12 first.
13 To the extent that their pensions are
14 diminished and there is no PBGC or federal
15 protection for them, what's your understanding under
16 the plan of -- the proposed plan how they will
17 support themselves?
18 MS. NELSON: Objection; calls for
19 speculation, form, foundation.
20 THE WITNESS: Given that we're in the
21 Chapter 9 process, there's been no plan presented at
22 this point in time.
23 BY MS. LEVINE:
24 Q. We already had a little bit of a discussion that
25 you're aware of the plan that was presented to

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1 creditors in June of 2013, correct?
2 A. That was part of going through a process from the
3 City of Detroit asking its creditors for good faith
4 negotiations.
5 Q. Right. And under that plan, to the extent there was
6 an underfunding with regard to the pensions, there
7 was going to be some change made to the pension
8 benefits, correct?
9 A. That would depend on mutual agreement between the
10 parties.
11 Q. Well, assuming that there is a reduction for the
12 moment in pension benefits, have you had any
13 conversations with Kevyn Orr with regard to whether
14 or not there would be any other benefit or provision
15 made to the retirees of the City of Detroit that
16 were going to lose pension benefits as a result of
17 that plan?
18 A. Those discussions would have been subject to
19 attorney-client privilege.
20 Q. What's your understanding of the options that are
21 available to the City of Detroit?
22 A. Well, again, we're in bankruptcy now so there's been
23 no plan presented by the City at this point in time,
24 so that's a hypothetical.
25 Q. Do you believe it's fair to have the bankruptcy

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1 attorney and other bankruptcy professionals paid
2 ahead of retirees in connection with the Chapter 9
3 process?
4 A. I view that as a legal matter because that's a
5 subject matter of how Chapter 9 bankruptcies work.
6 Q. The question I was asking was whether or not you
7 believe it's fair. I'm not asking you whether or
8 not it's a legal matter.
9 A. Well, I view it as just speculation on my part
10 because we're in Chapter 9, so that would be part of
11 the legal process.
12 Q. Is it your understanding that the Wall Street
13 creditors, municipal bond holders will share in this
14 two billion dollar note alongside of the retirees
15 with regard to their unsecured claims?
16 A. Again, there has been no plan presented in
17 bankruptcy, so that would be a hypothetical. If you
18 go back to the proposal to the creditors, that was
19 to be part of good faith negotiations, and there was
20 an attempt to do that so that would have all been
21 consentual.
22 Q. Do you believe it's fair to pay Wall Street-type
23 municipal bond creditors ahead of retirees?
24 A. Again, that's part of the mutual negotiations that
25 were part of the proposal for creditors.

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1 Q. Prior to the time that Detroit filed for bankruptcy,
2 is it your understanding that House Speaker Bolger
3 had any involvement or discussions with Kevyn Orr
4 with regard to the bankruptcy filing?
5 A. I don't recall.
6 Q. Did he have discussions with you with regard to the
7 bankruptcy filing?
8 A. In terms of speaking to Speaker Bolger, occasionally
9 I would give updates on what was going on with the
10 City of Detroit.
11 Q. And did he express any views with regard to the
12 Chapter 9 filing?
13 A. Not that I recall.
14 Q. Did you have any conversations with Randy
15 Richardville prior to the Chapter 9 filing?
16 A. It would be the same with Speaker Bolger, that as
17 part of the normal process I would give updates on
18 where the situations stood.
19 Q. Do you have any recollection of what he said to you
20 with regard to those updates?
21 A. No.
22 Q. On or about July 18, when you authorized Detroit's
23 Chapter 9 filing, what was your understanding of the
24 dollar amount of the pension obligations that were
25 underfunded?

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1 A. It would be in the approximate three-and-a-half
2 billion dollar range based on the financial
3 statements.
4 Q. What was your source of the underfunding figure when
5 you say financial statements? What financial
6 statements are you referring to?
7 A. The statements that would have been provided by the
8 City of Detroit that would have been included in the
9 review team report.
10 Q. As we sit here today, do you -- is it your
11 understanding that that number is still the number
12 that you're working with?
13 A. My understanding is that there's been further work
14 done by actuaries and consultants that have come up
15 with differing numbers.
16 Q. And as you sit here today, what's your understanding
17 of what the underfunding obligation is with regard
18 to the Detroit pensions?
19 A. Potentially, these other reports could say the
20 underfunded amount was significantly larger.
21 Q. And by significantly larger, do you have a dollar
22 figure or an estimate that you could give us?
23 A. I wouldn't want to speculate. That's known in the
24 report.
25 Q. And what reports specifically are you referring to?

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1 A. I believe there's a report that Kevyn Orr had
2 commissioned with respect by actuaries to assess the
3 Detroit pension plans.
4 Q. And were those actuaries Milliman?
5 A. I believe so.
6 Q. Do you recall the date of the report?
7 A. No.
8 Q. Was it commissioned after the Chapter 9 filing?
9 A. Again, I didn't -- I was not partaking in the
10 commissioning of the plan itself. You'd have to ask
11 Kevyn Orr.
12 Q. Are you familiar with the litigations, specifically
13 three lawsuits commenced on or around July 3, 2013,
14 challenging the constitutionality of the appointment
15 of the emergency manager and/or certain aspects of
16 the emergency manager law, PA 436?
17 A. Generally, yes.
18 Q. During the period from July 3 to July 18, did you
19 follow this litigation?
20 A. To some degree.
21 Q. Did there come a point in time between July 3 and
22 July 18 that you learned that Kevyn Orr was putting
23 together a request for authorization to file
24 bankruptcy for Detroit?
25 A. That would have been subject to attorney-client

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1 privilege.
2 Q. Well, actually, I'm asking you your understanding
3 and not anything that you've discussed with your
4 lawyers.
5 I'm asking you your understanding of
6 whether sometime between July 3 and July 18 you
7 learned that Kevyn Orr was putting together a
8 request for authorization to file Detroit's
9 Chapter 9 petition?
10 A. He was considering a Chapter 9 request to me.
11 Q. Do you recall when you first learned that he was
12 considering a Chapter 9 request to you?
13 A. It would have been sometime between those dates. I
14 don't recall what specific date.
15 Q. But it was sometime between July 3 and July 18?
16 A. It would have been closer to the 18th.
17 Q. And the request came to you on July 16; is that
18 correct?
19 A. Yes.
20 Q. Did you ask Kevyn Orr to send you that request?
21 A. I left it to Kevyn Orr to make the decision.
22 Q. At the time that you received the request, did you
23 agree with the request for the authorization?
24 A. I wanted to review the request.
25 Q. On July 16, was it your understanding that the filed

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1 state court lawsuits, the so-called Flowers and
2 Webster litigations, were requesting injunctions
3 against among other things your authorizing the
4 Chapter 9 filing?
5 A. Yes.
6 Q. Did you believe that if the injunctions were granted
7 it would have interfered with Kevyn Orr's efforts at
8 restructuring Detroit?
9 A. I didn't consider that.
10 Q. You didn't consider at all the impact of whether or
11 not injunctions issued in those lawsuits would
12 impact the restructuring effort made by Kevyn Orr?
13 A. My concern was is when I received a request from
14 Kevyn, I wanted to make sure I appropriately
15 reviewed that request and in a thoughtful fashion
16 and responded appropriately was my primary concern.
17 Q. Was one of the criteria you used in your thoughtful
18 deliberation the status of those pending
19 litigations?
20 A. Not with respect to injunctions but with respect to
21 the sheer fact of many cases of litigation were
22 going on and that we were ending up in potentially
23 many different courts over many issues that could go
24 beyond the scope of just those lawsuits.
25 Q. So it's your testimony that you -- that although you

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1 took into account the volume of litigation, you did
2 not take into account the impact of the injunctions
3 which were being sought in those particular
4 litigations?
5 A. I view those as speculative. Again, there were
6 requests -- and those are common requests in many
7 lawsuits.
8 Q. Changing topics for a minute. NERDs, is that an
9 acronym for New Energy to Reinvest Diversity Fund?
10 A. Yes.
11 Q. Do you know who the donors are to the NERDs Fund?
12 MS. NELSON: Objection; outside the scope
13 of the protective order and the eligibility
14 objections for purposes of this deposition.
15 MS. LEVINE: You can answer.
16 MS. NELSON: No, he can't answer. It's
17 outside the protective order and the scope of this
18 deposition.
19 MS. LEVINE: How is it outside the
20 protective order?
21 MS. NELSON: The protective order limits
22 the scope of the deposition to the issues identified
23 in the eligibility objections, and there's nothing
24 in AFSCME's eligibility objections related to the
25 NERD Fund or specifically the donors to the NERD

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1 Fund.
2 MS. LEVINE: Okay. Well, I'm going to run
3 through my questions for the record, and if at the
4 end of the series of questions on the NERDs Funds
5 your position is the same, then we can have the
6 Governor not answer, but for the record since we
7 only have three hours I'm going to go through it.
8 BY MS. LEVINE:
9 Q. Do you know who any of the donors are?
10 MS. NELSON: Same objection.
11 BY MS. LEVINE:
12 Q. Was Kevyn Orr a donor?
13 MS. NELSON: Same objection.
14 BY MS. LEVINE:
15 Q. Is Jones Day a donor?
16 A. (No response.)
17 Q. Do you know if any of the retained professionals by
18 the City of Detroit, either the firms or the
19 individuals, are donors or any of the creditors of
20 Detroit donors or any of the SWOP party's donors?
21 A. (No response.)
22 Q. Would you be willing to produce those names?
23 A. (No response.)
24 Q. If it's not within your control, would you be
25 willing to ask NERDs to produce those names?

Page 23

1 A. (No response.)
2 Q. Do you know if any of the emergency manager's costs
3 or expenses are being paid for or reimbursed by the
4 NERDs Fund?
5 A. (No response.)
6 Q. Do you know if NERD made any other payments to or on
7 behalf of Kevyn Orr?
8 A. (No response.)
9 Q. Do you know if any of the NERDs donors also made
10 political contributions to your campaign? If so,
11 whom and how much?
12 A. (No response.)
13 Q. Do you know if any of the NERDs donors also
14 contributed to the campaign against PA 4, and, if
15 so, which donors were those?
16 A. (No response.)
17 MS. LEVINE: Is it still the State's
18 position that this is unrelated to eligibility?
19 MS. NELSON: Yes. Unless you can identify
20 specifically the objections in your eligibility
21 statement that they relate to.
22 MS. LEVINE: It's good faith. It goes to
23 good faith and it goes to conflict of interest with
24 regard to good faith.
25 MS. NELSON: In what context?

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1 MS. LEVINE: Well, I'm not going to use my
2 three hours to have that --
3 MS. NELSON: No, I understand that. I -- I
4 don't believe that it is -- if you'll let me confer
5 with my client, I'll ask him.
6 MS. LEVINE: I've learned how to use my
7 timer, so that's good my daughter taught me that.
8 VIDEO TECHNICIAN: Going off the record
9 then?
10 MS. LEVINE: Yes. Yes.
11 VIDEO TECHNICIAN: Off the record 8:58 a.m.
12 (A brief recess was taken.)
13 VIDEO TECHNICIAN: We are back on the
14 record at 9 a.m.
15 MS. NELSON: I've conferred with my client,
16 and in the spirit of cooperation and to move these
17 proceedings along, he's agreed to respond to your
18 questions and can do so fairly quickly.
19 THE WITNESS: Yeah, with respect to your
20 questions as to who the donors were and those --
21 that category of questioning, my answer would be I
22 don't know. There's an independent board that does
23 that work.
24 With respect to the question of expenses,
25 Kevyn Orr's agreement is such that some of his

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1 expenses can be reimbursed by the NERD Fund because
2 it was created to offset the burdens of government
3 and does similar things such as process auditorium
4 upgrades, help with expenses for travel.
5 BY MS. LEVINE:
6 Q. Do you know whether or not the NERD Fund contributed
7 to the campaign against PA 4?
8 A. I don't know.
9 Q. Or in favor of PA 4?
10 A. I don't know.
11 Q. Did you prepare for today's deposition?
12 A. I had time with my counsel.
13 Q. And who was that counsel?
14 A. The fine group you're seeing on the other side of
15 this table.
16 Q. Just because we have a transcript, and I don't know
17 if everybody's going to be seeing the videotape but
18 the lawyers aren't on the videotape, so for the
19 record could you just give the names of your
20 lawyers?
21 A. Yeah. My attorney, Margaret, who has already been
22 identified; Matthew Schneider and Mike Gadola and
23 Peter Ellsworth.
24 Q. Did you also meet with attorneys for the City of
25 Detroit to prepare for today's deposition?

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1 A. No.
2 Q. Did you review any documents to prepare for today's
3 deposition?
4 A. Yes.
5 Q. And what documents did you review?
6 MS. NELSON: Objection. That's privileged
7 and work product.
8 MS. LEVINE: Are you directing the witness
9 not to answer?
10 MS. NELSON: Yes.
11 BY MS. LEVINE:
12 Q. Was anybody else present at any of the meetings that
13 you had to prepare for the deposition besides you
14 and your counsel?
15 A. No.
16 Q. Is it your understanding that Kevyn Orr was
17 appointed emergency manager effective March 28,
18 2013?
19 A. I don't recall the specific date, but it sounds like
20 you have that.
21 Q. Do you recall whether or not Kevyn Orr was appointed
22 in or around March of 2013?
23 A. Yes.
24 Q. Is it your understanding that PA 436 became
25 effective in or around March of 2013?

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1 A. Yes.
2 Q. Is it your understanding that PA 436 was enacted in
3 December of 2012?
4 A. Yes.
5 Q. Is it your understanding that PA 4 was struck by
6 voter referendum in November of 2012?
7 A. Yes.
8 Q. Are you familiar with press coverage that indicates
9 that there's some sentiment that PA 436 was
10 criticized as a dictatorship or takeover mechanism
11 when it was enacted?
12 A. I'm aware there were many comments with respect to
13 many pieces of legislation.
14 Q. I'm asking specifically about those comments with
15 regard to PA 436.
16 A. Yes.
17 Q. Did you have any involvement in bringing PA 436 into
18 law?
19 A. Yes.
20 Q. What was your understanding of the purpose of PA
21 436?
22 A. It was to be responsive to the voters to actually
23 improve on a process that goes back a very long
24 time. It goes back to 1988 originally; that in 1990
25 Public Act 72 came into law under Governor

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1 Blanchard. That was an emergency manager law that
2 was in effect for a very long time and had been
3 utilized by several prior governors.
4 Q. So was --
5 A. Then beyond that --
6 Q. I'm sorry.
7 A. Excuse me. Public Act 72 came into place and was
8 used for quite a few years including my predecessor
9 who had appointed a number of the emergency managers
10 that were in place when I took office.
11 Following Public Act 72, I thought it was
12 important to make improvements to Public 72 because
13 it had two major challenge points. One, emergency
14 managers could be in place for too long, and there
15 was no early warning system to help avoid ever
16 needing an emergency manager.
17 So Public Act 4 was an improvement on
18 Public Act 72 to put in an early warning system
19 again --
20 Q. Let me -- I appreciate the commentary, but I only
21 have an hour and a half. Let me ask a more pointed
22 question. My mistake for not narrowing the
23 question.
24 A. Uh-huh.
25 Q. Was PA 436 enacted in part to overcome what were

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1 perceived to be the deficiencies or the cause for
2 the voter referendum with regard to PA 4?
3 A. Plus additional improvements over what was Public
4 Act 4 or Public Act 72.
5 Q. Did you have any involvement in drafting PA 4?
6 A. Yes.
7 Q. Was the hope that PA 436 would avoid a referendum by
8 the voters striking it down as well?
9 A. No.
10 Q. Is one of the differences between PA 4 and PA 436
11 the treatment of vested pension benefits?
12 A. Not that I recall.
13 Q. Is it your understanding that PA 436 prohibits any
14 changes to vested pension benefits?
15 A. Could you state that again because I'm not sure PA
16 436 really references pension benefits in terms of
17 what it covers.
18 Q. Okay. Is it your understanding that PA 436
19 authorizes the Governor, you, to authorize the
20 emergency manager to file for bankruptcy protection
21 under Chapter 9 of the Bankruptcy Code?
22 A. Yes.
23 Q. Is it your understanding that PA 436 among other
24 things authorizes the Governor to place
25 contingencies on the municipal proceeding under

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1 Chapter 9?
2 A. Yes.
3 Q. Is it your understanding as we sit here today that
4 one of the challenges to Detroit's Chapter 9
5 bankruptcy filing is that it was filed without
6 imposing as a condition a prohibition against
7 modifying the existing pension benefits?
8 A. Yes. I understand that's one of the elements of
9 objections.
10 Q. Is it your understanding that Article 9 Section 24
11 of the Michigan Constitution prohibits tampering
12 with the vested pension benefits?
13 A. That's not my understanding of what the Constitution
14 says. It does not literally say that.
15 Q. What's your understanding of what the Constitution
16 says with regard to vested pension benefits?
17 A. It talks about accrued financial benefits from the
18 State or a political subdivision being treated as
19 contractual obligations, and in that context they
20 shouldn't be impaired or diminished, which is
21 different than what you stated.
22 Q. Did you include -- using your definition, did you
23 include that limitation in -- let me ask this
24 differently.
25 Using your statement, why didn't you

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1 include that as a contingency or limitation on your
2 authorization to Kevyn Orr with regard to the
3 Chapter 9 filing for Detroit?
4 A. In terms of -- I didn't believe it was appropriate
5 to put contingencies in it because, as I stated in
6 my letter authorizing it, I believe that the process
7 is required to be a legal process, which would
8 address any legal questions through the bankruptcy
9 process, either through the plan or the judge's
10 review of the plan.
11 Q. So is it your understanding that any limitation on
12 the ability to impair or change vested pension
13 benefits under state law would also apply to the
14 Chapter 9 process?
15 A. That's starting to get into legal opinions, and I
16 thought it was best to leave to the judicial branch,
17 particularly a bankruptcy judge.
18 Q. I'm actually asking you what your understanding is.
19 A. My understanding is that would be resolved through
20 the bankruptcy process with the bankruptcy judge.
21 Q. Did you take an oath of office when you became
22 Governor?
23 A. Yes.
24 Q. Wasn't part of that oath to uphold the law?
25 A. It was to uphold the Constitutions of Michigan and

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1 the United States.
2 Q. Isn't this a provision of the Constitution of
3 Michigan?
4 A. And it also involves the Constitution of the United
5 States when you're talking Chapter 9 bankruptcy, and
6 I thought it best to leave to a judge, the judicial
7 branch, to make a determination of a legal question.
8 Q. When you signed the authorization letter, were you
9 concerned about how the pension issue would
10 ultimately get resolved through the Chapter 9
11 process?
12 A. It involved citizens of the State of Michigan, so
13 yes.
14 Q. Did you have any involvement in the selection of
15 Kevyn Orr as emergency manager or emergency
16 financial manager for Detroit?
17 A. Yes.
18 Q. When did the emergency manager or the emergency
19 financial manager process that resulted in Kevyn
20 Orr's selection begin?
21 A. You can argue that began sometime back in 2011. It
22 was a continuation of a process that goes back to a
23 preliminary review that started in 2011, that went
24 to a review team in 2012, that resulted in a consent
25 agreement in early 2012. It continued throughout

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1 that year.
2 When it was clear the consent agreement
3 wasn't working, there was a subsequent review
4 started in December of late 2012. The review team
5 came up with a determination that there's a
6 financial emergency without a sufficient plan. I
7 agreed with that conclusion. There was then a
8 hearing and a review process of that. That was
9 appropriately done.
10 I reaffirmed my review after receiving a
11 report that concluded the same measure, that there
12 was a financial emergency without a sufficient plan.
13 And given that circumstance, then we had a need for
14 an emergency manager.
15 Q. Okay. So the last step in that process, was that
16 the point at which you were interviewing candidates
17 that resulted in the selection of Kevyn Orr?
18 A. We started some -- the interview process prior to
19 that to be prepared as a contingency in case that
20 was the outcome of the review and the hearing
21 process.
22 Q. Were you involved personally in that selection
23 process?
24 A. Yes.
25 Q. Who else was involved with you?

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1 A. Rich Baird and several other people from the staff.
2 The Mayor of Detroit was involved in the process.
3 Q. Mayor Bing was involved?
4 A. Yes.
5 Q. Was Mr. Dillon involved?
6 A. Yes.
7 Q. Was your chief of staff involved?
8 A. Yes.
9 Q. Did you rely on any outside consultants, bankruptcy
10 attorneys, financial advisors in making this
11 decision also?
12 A. I didn't personally during that process.
13 Q. Did you establish a list of criteria or
14 qualifications that you were looking for that you'd
15 think favorably upon in making the selection as to
16 who should be the emergency manager for Detroit?
17 A. There was criteria we discussed to go through this
18 process.
19 Q. Did that criteria include familiarity with
20 bankruptcy?
21 A. It wasn't necessarily required. It could be viewed
22 as a positive and not in the context of bankruptcy
23 but bankruptcy and restructuring experience.
24 Q. Did you view as a positive ties to Detroit?
25 A. Yes.

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1 Q. Were you looking at residency?
2 A. Not necessarily residency but familiarity with
3 Detroit.
4 Q. Did you take into account political affiliations?
5 A. No.
6 Q. Race?
7 A. Again, that would be a factor that could be of some
8 consideration.
9 Q. Did you take into account any history of political
10 party ties, political involvement or political
11 appointments?
12 A. What I would say, those would be viewed as
13 negatives.
14 Q. Did you take into account any municipal
15 redevelopment background?
16 A. In terms of restructuring or having municipal
17 experience, that would be a positive.
18 Q. Would that also include municipal budgeting or
19 financial planning?
20 A. It could.
21 Q. Did you take into account any land use or zoning
22 experience?
23 A. We didn't get to that degree of specificity, as I
24 recall.
25 Q. Were there in-person interviews in connection with

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1 the selection process that resulted in the selection
2 of Kevyn Orr?
3 A. Yes.
4 Q. Who ran that process for you?
5 A. Rich Baird.
6 Q. And were you personally involved in the in-person
7 interviews?
8 A. Some.
9 Q. Did you personally interview Kevyn Orr?
10 A. Yes.
11 Q. Where did that interview take place?
12 A. I met with him more than once. I believe -- I don't
13 recall specifically which location.
14 Q. Was there a list or a slate of candidates that you
15 personally interviewed for the emergency manager
16 position?
17 A. I interviewed more than one candidate in person.
18 Q. How many candidates did you interview in person?
19 A. I recall two for sure.
20 Q. Were there more than two?
21 A. Not that I recall.
22 Q. Was Kevyn Orr a candidate before Jones Day was
23 interviewed as counsel for Detroit?
24 A. I don't believe so.
25 Q. Was he asked to be -- to consider the emergency

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1 manager position during the Jones Day interview?
2 A. I wasn't part of the Jones Day interview process.
3 Q. No. My question, was it your understanding that he
4 was asked to consider the emergency manager position
5 during the Jones Day interview?
6 A. Again, I couldn't speak to a process that I wasn't a
7 participant in.
8 Q. Do you know if he was offered by Jones Day as a
9 candidate?
10 A. He was not offered by Jones Day as a candidate. We
11 asked permission if we could talk to Kevyn Orr.
12 Q. Why in your mind was he better than the other
13 candidates you were considering?
14 A. That was an extensive process. What I would say is
15 a number of candidates sort of withdrew their
16 interest in participation also during this process.
17 But I think Kevyn Orr had very strong
18 criteria and a very strong background in terms of he
19 had ties to Michigan and Detroit both in terms of
20 family and school, he had extensive experience in
21 restructuring and bankruptcy, and he had very fine
22 communication skills.
23 Q. Isn't it true that Kevyn Orr also expressed a
24 hesitancy about accepting a position as emergency
25 manager?

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1 A. That would be speculative.
2 Q. Did he ever express to you a concern that he was
3 perhaps uncertain about accepting the position of
4 emergency manager if it was offered to him?
5 A. I would say -- I wouldn't -- I can't speak for
6 Kevyn. I think this is one of the most challenging
7 positions, to be emergency manager, in the United
8 States, and I think that most people would have some
9 degree of concern about taking this position.
10 Q. While he was grappling with that decision, did you
11 personally reach out to him and have any
12 conversations with him with regard to why you wanted
13 him to take the position?
14 A. I had several discussions with Kevyn about the
15 challenges of this position. And, to be open, I
16 made quite clear to him that I viewed this as one of
17 the most challenging positions in our country.
18 Q. Did you indicate to him that you thought it was
19 important that he accept because of his bankruptcy
20 experience?
21 A. In terms of emphasizing his bankruptcy experience as
22 a reason to do this, no. I viewed it as his overall
23 experience in terms of being a person dealing with
24 turnarounds, restructuring and bankruptcy was very
25 relevant to this situation.

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1 His experience with Chrysler I thought was
2 very helpful in terms of dealerships, of
3 understanding how to turn around a situation and see
4 it be successful.
5 Q. When did you make the final decision on Kevyn Orr?
6 A. I didn't make the final decision. I recommended
7 someone. The decision was made by the Emergency
8 Loan Board.
9 Q. Did anybody else recommend Kevyn Orr to the
10 Emergency Loan Board?
11 A. Well, I think some of the other people as part of
12 the interview process probably did, but I think I
13 was the one really making the recommendation.
14 Q. Were you involved in the decision to retain Jones
15 Day as restructuring attorneys to the City?
16 A. That was a decision by the City of Detroit.
17 Q. Try again. Were you involved in the decision to
18 retain Jones Day as restructuring attorneys for the
19 City?
20 A. No.
21 Q. Was Mr. Baird, Mr. Dillon or any other State
22 official involved in the interview process or the
23 decision-making process with regard to the retention
24 of Jones Day by the City of Detroit?
25 A. I don't know.

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1 Q. From June 2012 through the present, does Jones Day
2 provide any services or is it retained or an
3 approved attorney for the State?
4 A. I don't know. My understanding is Jones Day's
5 relationship is with the City of Detroit.
6 Q. Did you ever consider disqualifying either Jones Day
7 or Kevyn Orr because Kevyn Orr was a partner at
8 Jones Day?
9 A. They were separate processes. That the City of
10 Detroit was making a determination to retain Jones
11 Day, and they were making that through their own
12 decision-making processes.
13 We were looking for candidates for
14 emergency manager, and we specifically asked
15 permission if we could contact Kevyn Orr and have
16 that discussion. So I viewed them as separate
17 discussions.
18 Q. Did you ever consider that the close relationship
19 between Kevyn Orr and Jones Day created a conflict
20 or appearance of conflict?
21 A. Kevyn Orr, part of the requirement was is he
22 resigned as a partner and severed his ties with the
23 firm as part of becoming emergency manager to avoid
24 any conflict of interest.
25 Q. Well, were you concerned that he might be

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1 deferential to his partners or recent former
2 partners at Jones Day?
3 A. No. Because, in fact, the City of Detroit made the
4 determination to hire Jones Day, and they went
5 through with that process, and that was a separate
6 independent process that I believe actually occurred
7 prior to Kevyn Orr joining the City of Detroit as
8 emergency manager.
9 Q. Did you consider whether it would be difficult for
10 Mr. Orr to favor the interests of the City over the
11 interests of Jones Day?
12 A. I don't understand your question because I don't
13 understand why Jones Day would be in conflict with
14 the City of Detroit. They're representing the City
15 of Detroit.
16 Q. And aren't they being compensated by the City of
17 Detroit?
18 A. They are being compensated by the City of Detroit.
19 Q. Isn't there less of an appearance of conflict if it
20 had been a different law firm that had been retained
21 by the City of Detroit than Kevyn Orr's prior firm?
22 A. And that's why it was important that he resigned and
23 severed all ties.
24 Q. During the discussions that you had with Kevyn Orr
25 prior to the time that he was appointed as emergency

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1 manager or after he was appointed as emergency
2 manager but before July 18th, did you ever discuss
3 with Kevyn Orr outsourcing for the City of Detroit?
4 A. Could you explain what you mean by outsourcing?
5 Q. As part of the business plan for the City of
6 Detroit, the City of Detroit is looking at --
7 potentially looking at outsourcing some of the
8 services that are currently performed by City
9 employees; is that correct?
10 A. They're looking at the most efficient ways to
11 deliver services to the citizens of Detroit.
12 Q. Is that yes?
13 A. That would include that. In terms of looking at
14 other alternatives, some of those were outlined, in
15 fact, during the consent agreement in terms of
16 looking at opportunities such as having the Detroit
17 Economic Growth Corporation handle the planning and
18 zoning activities of the City of Detroit, and that
19 was done in the context of the Mayor and the City
20 Council approving that consent agreement.
21 Q. I'm going to try again.
22 Did you have any conversations with Kevyn
23 Orr prior to the time that he was appoint -- prior
24 to the time that he was -- during the interview
25 process, prior to the time that he was appointed as

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1 emergency manager or at any time during the period
2 of time that he was appointed as emergency manager
3 on July 18th with regard to outsourcing?
4 A. I don't recall with respect to the interview
5 process, and there has been discussions about
6 looking at providers of services in both internal
7 and external services for the City of Detroit since
8 that date.
9 Q. For that same period of time, during the interview
10 process and up to and including July 18th or 19th,
11 did you have any conversation with Kevyn Orr with
12 regard to selling or monetizing assets such as the
13 art, Belle Isle and water and sewer and other assets
14 of Detroit?
15 A. Those discussions would have been subject to
16 attorney-client privilege.
17 Q. Is it your understanding that the sale of assets are
18 one of the things that are under consideration in
19 connection with the restructuring plan that Kevyn
20 Orr proposed during June of 2013?
21 A. I don't recall that portion of the proposal.
22 Q. What's your view on monetizing these assets as part
23 of a restructuring plan including the art, Belle
24 Isle and water and sewer and some of the other
25 assets of Detroit?

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1 A. Again, that's a hypothetical discussion because it
2 would really come down to what's presented in the
3 plan of adjustment within the context of the
4 bankruptcy court, and it hasn't been done at this
5 point.
6 Q. Well, I'm asking your view of whether or not those
7 items should be on the table in connection with the
8 structuring of that plan?
9 A. I view those as primarily Kevyn Orr's decisions
10 because he's the emergency manager for the City of
11 Detroit.
12 Q. During the interview process, prior to Kevyn Orr's
13 selection but during the period of time you were
14 talking to him, did you ever express a view that
15 vested pension benefits should not be modified by
16 the emergency manager for the City of Detroit?
17 A. I don't recall.
18 Q. Did you have discussions prior to the time that
19 Kevyn Orr was selected with regard to your views
20 about whether or not vested pension benefits should
21 be modified?
22 A. I think that's just what -- what's different than
23 the prior question?
24 Q. Are you saying you don't recall?
25 A. I don't recall.

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1 Q. After the time that Kevyn Orr was engaged but before
2 July 18th, did you have any conversations with Kevyn
3 Orr with regard to your views on whether vested
4 pension benefits should be modified or not modified
5 as part of a restructuring for Detroit?
6 A. Those would have been subject to attorney-client
7 privilege.
8 Q. As we sit here today, what is your view of whether
9 vested pension benefits should be modified or not
10 modified as a result of a restructuring or plan of
11 adjustment for Detroit?
12 A. I view that that's part of the bankruptcy process.
13 Those are not my decisions to make. There's a plan
14 of adjustment that will be presented by the City,
15 assuming Chapter 9 goes forward, and that would be
16 adjudicated by Judge Rhodes.
17 Q. So is it your testimony today that you do not have a
18 view?
19 A. I would -- I'm not a decisionmaker in that process
20 with respect to deciding that the plan would be
21 adopted or not, and there has not been a plan even
22 presented at this point in time, so anything else
23 would be speculative.
24 Q. I'm asking you your view as to whether as part of
25 that process vested pension benefits should be

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1 modified or should not be modified?
2 A. Again, I view those as primarily legal questions.
3 Q. Did you review the June 14 proposal made by Kevyn
4 Orr before the June 14 meeting with the creditors of
5 Detroit?
6 A. I'd seen drafts.
7 Q. Did you approve it?
8 A. It wasn't mine to approve or not approve. That was
9 a decision of Kevyn Orr and the City of Detroit.
10 Q. Did you express a view about it before it was
11 presented?
12 A. I don't recall. Not any significant discussions, in
13 my view.
14 Q. Did you tell them not to present any aspect of it?
15 A. I don't recall.
16 Q. Did you participate at all in the development of the
17 proposal?
18 A. Those discussions would have been subject to
19 attorney-client privilege in terms of any meetings.
20 Q. I'm not asking what was said. I'm asking if you
21 participated in the development of the proposal.
22 A. Again, I saw early drafts. I don't -- I wouldn't
23 describe that as developing the proposal.
24 Q. Is it your understanding that the proposal complies
25 with the Michigan Constitution?

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1 A. The proposal was an effort to go talk to creditors.
2 It wasn't a plan of adjustment. It was simply a
3 document to say here's a beginning point to have
4 mutual negotiations over issues. That would have to
5 be consentual to arrive at a conclusion.
6 Q. At any time during the interview process for Kevyn
7 Orr did you discuss with Kevyn Orr the potential for
8 federal assistance in order to assist Detroit with
9 its restructuring efforts?
10 A. I don't recall.
11 Q. Do you believe it would be appropriate to seek
12 federal assistance to assist Detroit with its
13 restructuring efforts?
14 A. I'm publicly on the record saying that I didn't
15 believe it would be appropriate to go ask the
16 federal government for a bailout with respect to the
17 debts of the City of Detroit; that I thought it
18 would be appropriate to say are there normal
19 assistance procedures available to help improve
20 services to citizens.
21 Q. Have you assisted Kevyn Orr in going after federal
22 assistance in the places where you've identified it
23 as appropriate?
24 A. I have been part of that process, not only with
25 Kevyn Orr but with Mayor Bing.

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1 Q. Specifically, how have you been part of that
2 process?
3 A. Well, in fact, we just had a press conference where
4 several cabinet members came to Detroit along with
5 Gene Sperling from the Whitehouse and they announced
6 a package of federal programs. I was present
7 through that process.
8 Q. Was Mayor Bing present through that process as well?
9 A. Yes.
10 Q. And Kevyn Orr?
11 A. Yes.
12 Q. Do you believe there should be state assistance with
13 regard to the restructuring plan for Detroit?
14 A. We have been providing assistance with improved
15 services to the citizens.
16 Q. Give some examples of some of that assistance.
17 A. Sure. We've been active on the blight front in
18 terms of dealing with removing structures. We've
19 put significant resources towards that.
20 Another one is we did the new Detroit
21 Detention Center. The Department of Corrections did
22 that in partnership with the Detroit Police
23 Department.
24 Q. Have you looked at any avenues to use state
25 assistance to deal with the pension underfunding

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1 issue?
2 A. Not at this point in time.
3 Q. During the interview process with Kevyn Orr, did you
4 discuss the potential for a Chapter 9 filing?
5 A. In terms of those discussions, what I would say is
6 as a last resort we had to be aware that Chapter 9
7 might be the only available option.
8 Q. Did you discuss with Kevyn Orr whether vested
9 pension benefits could be reduced or modified in
10 Chapter 9?
11 A. I don't recall.
12 Q. Do you recall any discussions with Kevyn Orr during
13 the interview process with regard to vested pension
14 benefits?
15 A. I don't recall.
16 Q. During the period of time that you were interviewing
17 Kevyn Orr for emergency manager, did you have any
18 discussions with Mayor Bing with regard to your
19 proposed selection of Kevyn Orr?
20 A. Yes.
21 Q. What was discussed?
22 A. In terms of working relationships and did Mayor Bing
23 think Kevyn Orr could be a good candidate to be
24 emergency manager.
25 Q. And what did Mayor Bing say to you?

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1 A. I didn't speak to him specifically after that, but I
2 helped talk to him during that process. My
3 understanding was is he was supportive of Kevyn Orr.
4 Q. Were you personally involved in those discussions or
5 was it somebody on your behalf?
6 A. In terms of I had spoken to Mayor Bing about Kevyn
7 Orr being part of the process and some of the
8 feedback that he had early in the process, but by
9 the end of the process there were other people also
10 participating in that such as Rich Baird.
11 Q. Did you meet with Mayor Bing personally?
12 A. I spoke to him on the phone, as I recall.
13 Q. Prior to the time that you selected Kevyn Orr, did
14 you meet with any of the unions for the City of
15 Detroit to solicit their input with regard to the
16 selection of the emergency manager?
17 A. No.
18 Q. Did you speak with any retiree groups?
19 A. No.
20 Q. Did you speak to any of the City's so-called
21 Wall Street creditors, bond holders, larger
22 creditors?
23 A. No.
24 Q. Did you speak to the pension funds?
25 A. No.

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1 MS. LEVINE: Thank you, Governor.
2 THE WITNESS: Thank you.
3 VIDEO TECHNICIAN: Take a break, switch?
4 Off the record 9:31 a.m.
5 (A brief recess was taken.)
6
7 (Deposition Exhibit 1 was marked.)
8
9 VIDEO TECHNICIAN: Go back on the record at
10 9:40 a.m.
11 EXAMINATION
12 BY MR. DeCHIARA:
13 Q. Good morning, Governor. My name is Peter DeChiara.
14 I'm an attorney with the law firm of Cohen, Weiss
15 and Simon LLP. We represent the United Auto Workers
16 International Union in this proceeding.
17 I'd like to show you a document that I've
18 asked the court reporter to mark as Exhibit Number
19 1. It's -- I'll identify it for the record. It's a
20 July 16th, 2013 letter that was from Emergency
21 Manager Kevyn Orr to you and to Treasurer Andrew
22 Dillon.
23 You're familiar with this letter; are you
24 not?
25 A. Yes.

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1 Q. I'd like you to turn to the second page of the
2 letter and in particular the bottom of the letter.
3 The third line from the bottom in the middle of the
4 line there's a sentence that I'll read out loud. It
5 says "The City has over $18 billion in accrued
6 obligations, including: (a) 3.5 billion in
7 underfunding pension liabilities based on the most
8 recent actuarial analysis;..."
9 I'll finish the quote there. The sentence
10 goes on, and you can feel free to read the rest of
11 the sentence, but I just want to ask you about the
12 portion that I quoted.
13 When you received this July 16th letter
14 from Mr. Orr, did you read it?
15 A. Yes.
16 Q. Okay. And did you read this line that I just
17 quoted?
18 A. Yes.
19 Q. And did you take it as true that the City had over
20 $18 billion in accrued obligations, including 3.5
21 billion in underfunding pension liabilities?
22 A. The answer is yes, but it was also in the context of
23 the most recent evaluation, to say that there was an
24 open question did there need to be more evaluations
25 or additional work done.

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1 Q. I'm sorry. Your answer is yes, you did take that
2 statement as true?
3 A. Yes. Uh-huh.
4 Q. Okay. Did you undertake any independent
5 investigation or cause any independent investigation
6 to be undertaken to determine whether the statement
7 that I quoted was true?
8 A. I also looked back to prior review team reports
9 which in many cases had very similar information.
10 Q. Did -- were you aware that at the time this
11 July 16th letter was written, the pension funds
12 themselves were disputing the statement that the
13 amount of underfunding of the pension liabilities
14 was 3.5 billion? Were you aware of that fact?
15 A. I was aware that people were disputing it in terms
16 of both being higher or lower.
17 Q. Were you aware that the pension funds themselves
18 were saying the number was lower?
19 A. I don't recall that.
20 Q. Did Mr. Orr ever tell you that?
21 A. I don't recall.
22 Q. He might have told you that?
23 A. Again, I don't recall.
24 Q. Okay. Do you think it was important in your
25 determination as to whether to authorize Detroit to

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1 file for bankruptcy to know the correct amount of
2 the City's underfunded pension liabilities? Did you
3 think that was important?
4 A. I think that was one element of a much larger
5 question.
6 As you pointed out in the sentence, the
7 sentence talks about $18 billion of liabilities.
8 Q. But my question, Governor, is did you think at the
9 time you made your decision about whether or not to
10 authorize the Detroit bankruptcy filing that it was
11 important to know the amount of the City's
12 underfunded pension liabilities?
13 A. I would say it was important to know that there was
14 an underfunded amount of an order of magnitude in
15 relationship to the $18 billion. Again, people were
16 saying that number could be lower, it could be
17 higher, so I didn't assume that was necessarily the
18 exact number.
19 But in the context of $18 billion of
20 liabilities, there was clearly a problem that I
21 concurred with the recommendation.
22 Q. Well, if the amount of the underfunded pension
23 liabilities had been lower, the overall accrued
24 obligations would have been lower as well, correct?
25 A. One of the things I looked at --

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1 Q. Am I correct, Your Honor? I mean Governor.
2 A. The overall number would be lower. In terms of
3 context, though, one of the things I looked at was
4 prior reports that showed the current -- the City of
5 Detroit was paying $.38 on the dollar towards
6 historic or legacy liabilities; that there were
7 projections to show that by 2017 that number would
8 raise to $.60 on the dollar.
9 Q. Do you know whether -- at the time that you received
10 the July 16th letter from Mr. Orr, do you know
11 whether Mr. Orr or his staff at that time had
12 undertaken an analysis of the assets of the City of
13 Detroit to see what assets could be monetized to
14 address the City's financial problems?
15 A. There was -- it was clear that there was a need to
16 do a survey of assets and valuation of the assets of
17 the City whether those were to be monetized or not,
18 but there was a need to do an inventory of assets
19 and value those assets.
20 Q. My question is at the time you received the
21 July 16th letter, were you aware of whether Mr. Orr
22 or his staff had undertaken an analysis of the
23 assets of the City of Detroit to see which might be
24 monetized?
25 A. My understanding was a lot of that work still needed

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1 to be done.
2 Q. Okay. Did you think when you received the
3 July 16th, 2013 letter that it would be important to
4 know whether the City had assets that could be
5 monetized, and if so what those assets might be?
6 Did you think that was something important
7 to know?
8 A. Can you repeat that again?
9 Q. Sure. At the time you received the July 16th, 2013
10 letter from Mr. Orr, did you think at that time that
11 it would be important to know whether the City had
12 assets that could be monetized? And when I say
13 important, I mean important in the context of your
14 making your decision on whether to authorize the
15 bankruptcy filing.
16 A. I didn't view the valuation of assets being nearly
17 as relevant as understanding what the liabilities
18 were because the issue was were the liabilities so
19 large that there needed to be something done to
20 address them.
21 Understanding that, again, we had a $18
22 billion give or take kind of number that needed to
23 be addressed and that it would take some time to
24 understand what assets, what values they may have
25 and what might be available.

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1 Q. Have you ever been involved in a business, Governor
2 Snyder?
3 A. Yes.
4 Q. Isn't it true to assess the financial picture of a
5 business you need to know both the assets and the
6 liabilities of the business?
7 A. This is a different situation in terms --
8 Q. Could you answer my question?
9 A. Yes.
10 Q. The answer to my question is yes?
11 A. Yes.
12 Q. Okay. At the time you received Mr. Orr's July 16th,
13 2013 letter, do you know whether Mr. Orr or his
14 staff had undertaken an analysis such that they knew
15 with specificity the City's cash flow?
16 A. There had -- there was extensive work done doing
17 cash flow analysis of the City. Some of that work
18 was included in the proposal to creditors back in
19 June --
20 Q. Okay.
21 A. -- in addition to reports that had been provided
22 under his obligation as emergency manager.
23 Q. But at the time that you received the July 16th,
24 2013 letter, do you know whether Mr. Orr or his
25 staff had done an analysis which allowed them to

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1 know with specificity the extent of the City's cash
2 flow?
3 A. I believe they had.
4 Q. Okay. Did you ever discuss that with Mr. Orr?
5 A. That would be a matter of attorney-client privilege.
6 Q. Well, whether it's a matter of attorney-client
7 privilege is a legal question, and you have counsel
8 here who can object if she believes that a question
9 infringes on the attorney-client privilege, so I
10 would ask you to answer the question.
11 MS. NELSON: You can answer yes or no.
12 THE WITNESS: Yes.
13 BY MR. DeCHIARA:
14 Q. Yes, you did have discussions?
15 A. Yeah.
16 Q. And were those discussions -- were other people
17 present other than you and Mr. Orr in those
18 discussions?
19 A. Yes.
20 Q. Isn't it true you had one-on-one conversations with
21 Mr. Orr prior to the bankruptcy filing?
22 A. Yes.
23 Q. Okay. In any of those one-on-one conversations with
24 Mr. Orr did you ever have a discussion of the City's
25 cash flow?

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1 A. Not that I recall.
2 Q. Do you know whether a significant portion of
3 Detroit's unfunded pension liability is allocable to
4 the City's Water and Sewer Department?
5 A. I'm not aware of that relationship.
6 Q. Okay. Is that something that you think would be
7 relevant to a determination about whether or not the
8 City should pursue a bankruptcy?
9 A. I haven't considered that as a question.
10 Q. Okay. Let me now refer you to page six of
11 Exhibit 1, and at the bottom paragraph of the page
12 there's a reference to the June 14th creditor
13 proposal. Do you see that?
14 A. Yes.
15 Q. Okay. And you were familiar with that proposal when
16 you received this letter on July 16th?
17 A. Generally familiar. It's a 128-page document.
18 Q. Okay.
19
20 (Deposition Exhibit 2 was marked.)
21
22 BY MR. DeCHIARA:
23 Q. I'd like to mark as -- well, I've already marked as
24 Exhibit 2, and I'll ask you to identify what I'll
25 identify for the record as a July 18th, 2013 letter

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1 from you to Mr. Orr and Mr. Dillon.
2 Is Exhibit 2 your response to what's been
3 marked as Exhibit 1?
4 A. Yes.
5
6 (Deposition Exhibit 3 was marked.)
7
8 BY MR. DeCHIARA:
9 Q. Governor, I've had the court reporter mark as
10 Exhibit 3 a document which bears the title City of
11 Detroit Proposal for Creditors, June 14th, 2013.
12 Let me represent to you that this document
13 was attached to the Orr Declaration that was filed
14 in the bankruptcy proceeding as the City's proposal
15 for creditors.
16 Let me -- did you see this document in any
17 prior form before it was made public on or about
18 June 14th, 2013?
19 A. Yes.
20 Q. And do you plan -- were you shown drafts of the
21 document?
22 A. I'd seen a draft or so. I can't recall whether it
23 was one or more.
24 Q. Okay. And who showed them to you?
25 A. Again, I don't recall.

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1 Q. Okay. Did you comment on the draft?
2 A. I generally reviewed it and just gave general
3 feedback.
4 Q. To whom did you give feedback?
5 A. It would have been subject to attorney-client
6 privilege.
7 Q. Well, again, that's a legal question.
8 A. Yeah, it would have been to Kevyn Orr.
9 Q. To Kevyn Orr. Okay.
10 A. Yeah.
11 Q. How did you convey your comments to Kevyn Orr? Did
12 you speak to him?
13 A. Yes.
14 Q. Okay. By phone?
15 A. I don't recall.
16 Q. Okay. You don't recall whether it was by phone or
17 in person?
18 A. Correct.
19 Q. Okay. Do you recall who if anyone else was present
20 either on the phone or in person when you had those
21 communications?
22 A. There could have been several people including legal
23 counsel.
24 Q. Okay, but you don't know that for a fact; is that
25 correct?

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1 A. I know there would have been other people including
2 legal counsel.
3 Q. So you're sure that -- well, let's talk about in
4 the -- so the conversation you say may have been on
5 the phone?
6 A. Yeah.
7 Q. Are you sure that while you were on the phone with
8 Kevyn Orr speaking about the proposal for creditors
9 that there were legal counsel on the phone?
10 A. Yeah, I'm quite confident of that. Typically,
11 again, almost every time or every time I recall
12 there were a group of people, there was legal
13 counsel present. The only time I met separately
14 with Kevyn Orr was on subject matters that didn't
15 relate to matters like this.
16 Q. What did you tell Kevyn Orr when you spoke to him
17 about the June 14th, 2013 proposal?
18 MS. NELSON: Objection; attorney-client
19 privilege.
20 BY MR. DeCHIARA:
21 Q. Are you refusing to answer the question, Governor?
22 A. Yeah. There was counsel present.
23 Q. All right. Just for the record, to be clear, you're
24 refusing to answer the question?
25 A. Yes.

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1 Q. Okay. Let me direct your attention -- strike that.
2 Let me back up.
3 Did you put your comments in writing to
4 anyone -- your comments about the June 14th, 2013
5 proposal, did you put your comments in writing to
6 anyone whether by letter or email or phone text or
7 in any other written format?
8 A. I don't believe so. I don't believe so.
9 Q. Let me now turn your attention to page 109 of
10 Exhibit 3, and I'm going to in particular read the
11 second line of the third bullet point from the
12 bottom. It says "There must be significant cuts in
13 accrued vested pension amounts for both active and
14 currently retired persons."
15 Were you aware that the proposal said this?
16 A. I'm aware the proposal said that in the context that
17 this was to be a negotiation and a mutual agreement
18 between parties.
19 Q. My only question was --
20 A. Yeah.
21 Q. -- were you aware that this proposal said this?
22 A. Yes.
23 Q. And you were aware that at the time that you signed
24 what's been marked as Exhibit 2, the July 18th
25 letter, you were aware that the proposal contained

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1 the language I just read, correct?
2 A. Yes.
3 Q. So you were aware when you signed the July 18th,
4 2013 letter that it was Kevyn Orr's view that there
5 had to be significant cuts in accrued pension
6 liabilities, correct?
7 A. I would say it was Kevyn Orr putting a proposal out
8 to parties to say he believed this was necessary to
9 achieve an outcome, that they would need to agree to
10 that.
11 Q. I'm not sure that was responsive. Let me try that
12 question again.
13 A. Okay.
14 Q. Isn't it correct that at the time that you signed
15 your July 18th letter that you were aware that it
16 was Kevyn Orr's position that there had to be
17 significant cuts in accrued pension benefits?
18 A. Yes.
19 Q. Did you speak to Kevyn Orr about -- strike that.
20 Did you agree with that position as of
21 July 18th? And by the position I mean that there
22 had to be significant cuts in accrued pension
23 liabilities?
24 A. The approval of my letter was not addressing that as
25 an issue. It was about authorizing a bankruptcy.

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1 It doesn't say I agree with that or disagree with
2 that. It simply says I authorized it to go forward
3 where a plan would be presented to a judge that
4 could be the result of further negotiations,
5 mediations, all kinds of work that ultimately a
6 judge would decide.
7 Q. Okay. I'm not addressing your July 18th letter.
8 A. Yeah.
9 Q. I'm just pegging the question --
10 A. Okay.
11 Q. -- by time frame as of July 18th.
12 A. Okay.
13 Q. So as of July 18th, did you share Mr. Orr's view
14 that there had to be significant cuts in pension
15 liabilities?
16 A. Based on the current situations with negotiations,
17 that continued to be the position that would be on
18 the table going into bankruptcy.
19 Q. Again, I'm not sure that was responsive.
20 A. Uh-huh.
21 Q. As of July 18th, 2013, did you share Mr. Orr's view
22 that whether through negotiation or other means that
23 there as an end result had to be significant cuts in
24 accrued pension liabilities?
25 A. I wouldn't use the word had to be but likely could

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1 be.
2 Q. Okay. Well, Mr. Orr used the word "there must be".
3 A. Uh-huh.
4 Q. Did you share that view that there had to be?
5 A. Not necessarily.
6 Q. Okay.
7 A. Just as I said.
8 Q. Okay. So did you think about this issue as of -- or
9 as of the July 18th, 2013 time frame, had you given
10 thought to whether or not there had to be cuts to
11 accrued pension benefits?
12 A. I gave thought to the issue because I have concern
13 for the retirees, and that was why one of the
14 important questions in my view was to have a retiree
15 representative in the bankruptcy.
16 Q. And what was your -- since you said you gave thought
17 to it, can you articulate what your position was as
18 to whether or not there had to be cuts in accrued
19 pension liabilities? And I'm focusing on your views
20 on the matter as of July 18th, 2013.
21 A. My view going back prior to that is is I had hoped
22 that there would be negotiations to resolve this
23 short of bankruptcy because bankruptcy was a last
24 resort; that I hoped that people could come to the
25 table and come up with a mutual understanding and

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1 negotiation that would be satisfactory to the
2 parties involved.
3 That didn't happen in terms of that regard
4 but I still had hope to say that as you go through
5 the bankruptcy process I viewed it as likelihood
6 that there was less flexibility under the bankruptcy
7 process just because of the nature of federal
8 bankruptcy law than there probably was before.
9 Q. Was it your view that as of July 18th in the
10 bankruptcy one way or another accrued pension
11 liabilities would have to be reduced?
12 A. Based on the facts going into it, it was one of
13 those questions, as you said, there was a likelihood
14 of that happening.
15 Q. That's not my question.
16 A. Yes. Yeah, I believe there's a likelihood there
17 could be reductions in unfunded pension liabilities.
18 Q. Okay. I'm not asking --
19 A. Yeah.
20 Q. Governor, I'm not asking you to predict the
21 likelihood of what might have happened.
22 A. Okay.
23 Q. I'm asking you whether you believed that in
24 bankruptcy there would have had to be one way or
25 another reductions in Detroit's accrued pension

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1 liabilities?
2 A. I would say it's not a hundred percent belief.
3 Q. But was it a less than 100 percent belief that there
4 had to be reductions?
5 A. Again, if you looked at the numbers, as we discussed
6 earlier, those are significant numbers, and it would
7 be hard to see how it could be a hundred percent.
8 Q. Let me -- did you discuss with anyone other than
9 your legal counsel and Mr. Orr whether there had to
10 be cuts to Detroit's accrued pension liability?
11 A. When you say other people, there would be people
12 from the administration in the meetings that we had.
13 Q. Who did you discuss that issue with?
14 A. There could be any number of people that would
15 include my chief of staff, Andy Dillon, and other
16 people of the administration.
17 Q. And what did you and Andy Dillon discuss on that
18 issue?
19 MS. NELSON: I'm going to object on the
20 grounds of attorney-client privilege. These
21 discussions occurred in the meetings with Mr. Orr
22 and his counsel.
23 MR. DeCHIARA: Well, there hasn't been
24 testimony to that effect.
25 MS. NELSON: He just said it.

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1 THE WITNESS: Yeah. I said those were
2 meetings -- in those same meetings.
3 BY MR. DeCHIARA:
4 Q. The discussions you had with Mr. Orr, were those in
5 the presence of legal counsel?
6 A. Yes.
7 Q. Did you have any discussions with Mr. -- I'm sorry,
8 the discussions you had with Mr. Dillon, were those
9 in the presence of legal counsel?
10 A. They were in the same meeting in terms of --
11 Q. Did you have any discussions with Mr. Dillon outside
12 of the presence of legal counsel?
13 A. Mr. Dillon would on occasion bring forward ideas and
14 thoughts.
15 Q. On whether or not the pension liabilities had to be
16 cut?
17 A. On pensions in general. In terms of valuation and
18 pension plans.
19 Q. And did you discuss those with him?
20 A. I listened to him.
21 Q. Did you -- well, what did he say? What was his
22 views?
23 A. I don't recall all the details.
24 Q. Give me the best that you can recall.
25 A. Again, it was a question of them being underfunded

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1 and were there other alternatives or other ways to
2 deal with this and being concerned about retirees.
3 Q. Did Mr. Dillon say that in his view the pension
4 liabilities had be to cut?
5 MS. NELSON: Outside of this meeting you
6 mean?
7 BY MR. DeCHIARA:
8 Q. Yeah, I'm talking about meetings outside of the
9 presence of legal counsel the Governor has testified
10 occurred.
11 A. He was trying to bring forward ideas and thoughts
12 about were there other alternatives.
13 Q. That's not my question. It's actually a yes or no
14 question.
15 Did Mr. Dillon express to you the view that
16 the pension liabilities had to be cut?
17 A. I don't recall in terms of all the pieces. Again,
18 in some ways yes, but also he was trying to be
19 creative in saying are there other options or
20 alternatives.
21 Q. Was he saying that the pension liabilities had to be
22 cut but that alternatives to doing it --
23 A. Yeah.
24 Q. -- had to be explored?
25 A. It was more exploring alternatives.

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1 Q. Okay.
2 A. That's why I'm not trying to be difficult here.
3 It's more the --
4 Q. I appreciate it, and I'm not suggesting you're
5 trying to be difficult, Governor. I appreciate your
6 effort. And I know I'm posing questions that, you
7 know, take careful response, so I'm not suggesting
8 you're being difficult.
9 But we spoke over each other, and I'm not
10 sure the record was clear so let me just try it one
11 more time.
12 Is it fair to characterize Mr. Dillon's
13 comments to you on the subject to say that he said
14 to you that he thought the pensions had to be cut
15 but that there should be alternatives that should be
16 explored in connection with the pensions?
17 A. Yes.
18 Q. And did you respond to him when he said that?
19 A. I thanked him for his confidence.
20 Q. Did you say anything more substantive than that?
21 Did you express your own view?
22 A. What I did is I appreciated him coming forward with
23 trying to solve problems and that I said I would
24 follow up. And my followup was to make sure that
25 his comments were shared in the broader meeting

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1 context that we discussed earlier with Kevyn Orr,
2 other people and counsel.
3 Q. Did you -- are you aware that Attorney General Bill
4 Schuette has taken the position that --
5 A. Schuette.
6 Q. Schuette, thank you. I'm not from Michigan so
7 please excuse my mispronunciation. Schuette. Let
8 me write that down. I'll just say the Attorney
9 General.
10 Are you aware that the Attorney General has
11 taken the position that the Michigan Constitution
12 prohibits the reduction of accrued pension
13 liability?
14 A. I was aware the Attorney General filed a brief on
15 pensions.
16 Q. Okay. Before he filed that brief, were you aware --
17 well, do you know whether he had that position
18 before he filed the brief?
19 A. He contacted me before he filed the brief.
20 Q. How long before he filed the brief?
21 A. I don't -- it could have been a day, a few days.
22 Q. Okay. And did he before he -- did you speak to him
23 on that occasion?
24 A. Yes.
25 Q. Was it a telephone call?

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1 A. Yes.
2 Q. Who else was on the phone, if anyone?
3 A. Just the two of us.
4 Q. Okay. Before that phone call, did you speak to the
5 Attorney General on any prior occasion about his
6 position on whether the Michigan Constitution
7 prohibited the cutting of pension benefits?
8 A. I don't recall.
9 Q. What was said in that phone call?
10 A. I don't recall the specific exchange. The basic
11 gist of the call was is he was looking to file a
12 brief on this and he wanted to make sure I was aware
13 of it, and I thanked him for that because I said
14 you're exercising what you believe is appropriate as
15 a constitutional officer of the State of Michigan; I
16 appreciate you sharing that with you [verbatim], and
17 you should follow through with your duties just as
18 I'm responsible for following through with my
19 duties.
20 Q. Do you believe that the opinion of the Attorney
21 General of the State of Michigan on questions of
22 Michigan state law are entitled to weight?
23 A. Well, that's a separate issue. This was not an
24 opinion of the Attorney General. This was a brief
25 filed in a case.

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1 Q. Well, if you could answer my question, Governor.
2 MS. NELSON: Well, I'm going to object
3 because an Attorney General opinion has very
4 specific meaning here in Michigan under state law,
5 and that's what you're asking is an opinion, and
6 that's not what this is.
7 MR. DeCHIARA: Okay. Okay. I'm not --
8 when I use opinion I don't mean it in the sense of a
9 formal legal opinion.
10 THE WITNESS: Oh, that's why I take it when
11 you said that --
12 MR. DeCHIARA: I'm sorry, miscommunication.
13 It's miscommunication.
14 THE WITNESS: Because he does do formal
15 opinions.
16 BY MR. DeCHIARA:
17 Q. Okay. Let me use the word view. Okay?
18 A. Uh-huh.
19 Q. Do you believe that the view of the Attorney General
20 on questions of interpretation of Michigan state law
21 are -- should be accorded weight?
22 A. In terms of -- I respect the Attorney General. Many
23 parties submit briefs, and I assume The Court will
24 make the decision as to how to weight the brief of
25 the Attorney General.

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1 Q. I'm not sure you answered my question.
2 A. Yeah.
3 Q. Do you think the view of the Attorney General of the
4 State of Michigan on questions of Michigan state law
5 should be accorded weight?
6 A. Again, that's a very subjective thing. I don't view
7 them as being the same as Michigan law.
8 Q. No, I'm not suggesting they are. I'm asking in your
9 view should they be accorded weight?
10 A. Again, I would just hold out I have respect for the
11 Attorney General and their work product. They're
12 representing me here today.
13 MR. DeCHIARA: Let me ask the court
14 reporter to mark as Exhibit 4 an article that
15 appeared in the Detroit Free Press on July 29th,
16 2013.
17
18 (Deposition Exhibit 4 was marked.)
19
20 BY MR. DeCHIARA:
21 Q. And in the middle of the article that's Exhibit 4,
22 there's a -- the sixth paragraph, there's a quote at
23 the end of the paragraph. And the article purports
24 to quote the Attorney General as saying "The
25 Michigan Constitution is crystal clear on this.

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1 Article 9 Section 24 says pensions may not be
2 impaired, and I will fight to defend the
3 Constitution and the citizens it protects."
4 Governor, are you prepared to fight to
5 defend the Constitution and the citizens it
6 protects?
7 A. I do that every day.
8 Q. Are you prepared to revoke your authorization for
9 the bankruptcy filing of the City of Detroit?
10 A. I don't know why I would do that.
11 Q. Let me refer you back to Exhibit 1, and in -- it's
12 the July 16th letter, and in particular let me refer
13 your attention to the top of page 11.
14 On the second line starting in the middle
15 of the line and going onto the next line it says,
16 and I'm reading the middle of a sentence but feel
17 free, Governor, to read the entire sentence or the
18 entire document, but let me just quote what I want
19 to draw your attention to.
20 A. Which paragraph?
21 Q. It's page 11.
22 A. Yeah.
23 Q. The very top paragraph.
24 A. Okay.
25 Q. It's the -- I'm going to start reading from the

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1 middle of the second line on the top of page 11. It
2 says "The City has negotiated in good faith with the
3 creditors willing to engage in a discussion..."
4 And then I'll stop the quote there but,
5 again, feel free to read the rest of the sentence.
6 My question is did you accept as true
7 Mr. Orr's representation to you that the City had
8 negotiated in good faith with the creditors willing
9 to engage in discussions?
10 A. Yes. Excuse the delay. I just wanted to make
11 sure -- I was going to point out that in the letter
12 he actually gave examples of where they tried to do
13 that on page eight.
14 Q. Okay. Okay. Apart from the letter -- well, first
15 of all, did you think when you received and read
16 this letter on July 16th that it was important to
17 your decisionmaking whether or not the City had, in
18 fact, engaged in good faith negotiations?
19 A. Yes.
20 Q. Okay. And did you undertake any independent
21 investigation or cause to be undertaken any
22 independent investigation to determine whether, in
23 fact, Mr. Orr's representation to you that there had
24 been good faith negotiations, whether that was a
25 true representation?

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1 A. Yes.
2 Q. What was your -- what independent investigation did
3 you cause to be undertaken?
4 A. What I would say is I looked at this in addition to
5 the facts of what had been publicly filed, which
6 would include the lawsuits that -- I apologize, I
7 can't remember who's representing which lawsuits,
8 but it showed that rather than people continuing
9 negotiations that some of the parties that were in
10 negotiations with the City elected to go file
11 lawsuits, which showed there was a breakdown in
12 negotiations, that people were going to court rather
13 than continuing dialogue.
14 Q. Okay. So just so I understand your answer, your
15 acceptance of the truth of the assertion that there
16 had been good faith negotiations were based on what
17 you read in the July 16th letter?
18 A. Uh-huh.
19 Q. And also the fact that certain lawsuits had been
20 filed?
21 A. Yes.
22 Q. Okay. Was there anything else that you relied on to
23 conclude that there had been good faith
24 negotiations?
25 A. No.

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1 Q. Okay. Were you expecting to receive the July 16th,
2 2013 letter before you received it?
3 A. It was a work in process in terms of I didn't know
4 it was coming for sure, but I knew he was putting
5 together a letter.
6 Q. Who told you that -- I assume when you say he you
7 mean Mr. Orr?
8 A. Yes.
9 Q. Who told you Mr. Orr was putting together a letter?
10 A. That would have been Kevyn Orr himself.
11 Q. Okay. And how did he tell you that? Was it in
12 writing or spoken words?
13 A. It would have been in a meeting where we had
14 attorneys present.
15 Q. Okay. And at this meeting, he indicated to you that
16 he was going to be sending you a letter seeking
17 authorization to file for bankruptcy?
18 A. He said he was going to begin work on that.
19 Q. Okay. Apart from that communication at that
20 meeting, did you receive any other heads up, if I
21 can use that term, that the letter was on its way?
22 A. Well, again, there were people in that meeting that
23 were also aware of that, so there were discussions
24 if a letter was to come how would we respond.
25 Q. Okay. But apart from that meeting where you

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1 testified Mr. Orr told you that he was going to send
2 the letter -- first of all, when was that meeting,
3 do you know?
4 A. It was in the prior week.
5 Q. So it was a week before July 16?
6 A. Yeah.
7 Q. Okay. Between that meeting -- do you remember the
8 day?
9 A. No.
10 Q. Do you remember the date?
11 A. No.
12 Q. Okay. Between that meeting and when you received
13 the letter, did anyone else communicate to you that
14 the letter was coming?
15 A. Again, the context I would put it in is is there
16 were people looking -- people on my staff that were
17 looking to say if a letter was to come, how would we
18 communicate that in terms of if I was to respond and
19 what time would I respond to the public.
20 So it was more looking at the timeline of a
21 communications plan.
22 Q. I'm sorry, I'm not sure I understood.
23 A. So --
24 Q. Let me just ask a more specific question.
25 After the meeting that you've testified

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1 about and before you got the letter, did anyone tell
2 you that the letter was coming?
3 A. They didn't give me any information different than I
4 had received from Kevyn Orr.
5 Q. And the information from Kevyn Orr is what you
6 received at the meeting?
7 A. Yeah, an updated -- well, again, we continued to
8 talk after that so that wouldn't have been the only
9 discussion.
10 Q. Okay. You and Kevyn Orr continued to talk after the
11 meeting?
12 A. Yes.
13 Q. Was it a one-on-one conversation?
14 A. No.
15 Q. Was it in the context of subsequent meetings?
16 A. Or calls.
17 Q. Were there attorneys on those calls?
18 A. Yes.
19 Q. On each of the calls?
20 A. Yes.
21 Q. Okay. When you received the July 16th letter, which
22 asked for you to approve a bankruptcy filing, did
23 you immediately upon reading the letter know how you
24 were going to respond?
25 A. No.

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1 Q. And did you give consideration to anything before
2 you made the decision that is set forth in your
3 July 18th letter?
4 A. I contemplated. Actually, I said this was a major
5 decision, a very significant decision about Detroit
6 and implications for our state and for a number of
7 parties.
8 Q. And what were your -- what did you -- what were your
9 contemplations on?
10 A. It was, again, reviewing the letter that had been
11 provided. It included going back to the review team
12 reports. It had been looking at the totality,
13 because this is a situation again -- let me know if
14 you want to stop, but this is a process that I've
15 been addressing since becoming Governor that goes
16 back to 2011 going through preliminary reviews,
17 reviews, consent agreements. This has been a highly
18 structured process for close to three years.
19 Q. Between the time you received the July 16th letter
20 and when you signed your July 18th letter, did you
21 speak to anyone about your decisionmaking thinking
22 outside of the context or outside of the presence of
23 legal counsel?
24 A. No.
25 Q. Did you undertake or cause anyone to undertake any

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1 investigation of any facts or legal conclusions that
2 were in the July 16th letter before you made your
3 decision to sign the July 18th letter?
4 A. Well, I mentioned the lawsuit issue, but besides
5 that it was more looking at the consistency of what
6 was in this letter with prior reports from Kevyn Orr
7 and prior reports from the review team. Review
8 teams I should say.
9 Q. Let me refer you to page four of the July 18th
10 letter. At the top there's a paragraph that bears
11 the heading contingencies.
12 A. Uh-huh.
13 Q. And I'm going to read the first sentence. It says
14 "2002 PA 436 provides that my approval of the
15 recommendation to commence a Chapter 9 proceeding
16 may place contingencies on such a filing." That's
17 the end of the sentence. Then there's a legal
18 citation, and then the next sentence says "I am
19 choosing not to impose any such contingencies
20 today."
21 Did you consider at any point after you
22 received the July 16th letter placing any
23 contingencies on the City's bankruptcy filing?
24 A. My legal counsel made me aware that contingencies
25 were permitted under the law, but I chose not to

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1 place any.
2 Q. Okay.
3 A. Yeah.
4 Q. It's clear from your letter that you chose not to
5 place any.
6 My question is before you made that
7 decision not to place any, was there any period when
8 you considered placing any -- any contingencies on
9 the filing?
10 A. I'm not trying to be difficult, but the matter was
11 brought to my attention and I dismissed it without
12 major discussion with my legal counsel because the
13 way I viewed it was placing contingencies could only
14 cause -- most likely cause more delay or confusion
15 in the bankruptcy process; that I have confidence in
16 the bankruptcy process itself in terms of being a
17 legal process, an appropriately legal process; and
18 that's why, in fact, I wanted that sentence added.
19 Q. What sentence are you referring to?
20 A. The sentence about federal law already contains the
21 most important contingency, a requirement that the
22 plan be legally executable.
23 Q. Okay. And I'm going to ask you about that in a
24 minute, but I just want to focus first on your
25 decision not to place any contingencies.

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1 A. Well, that's why I didn't. I simply said I thought
2 that was the one contingency that was appropriate,
3 that it be in line with being legal.
4 Q. Okay. You were aware as of July 18th that some
5 people, some entities, argued that the Michigan
6 Constitution prohibited the reduction of accrued
7 pension benefits?
8 Were you aware of that as of July 18th?
9 A. Yes.
10 Q. Did you consider making the Detroit City bankruptcy
11 filing contingent on the City not seeking to cut
12 accrued pension liabilities? Did you consider that?
13 A. I considered it by adding this sentence, which
14 basically says it's a matter -- it's a legal
15 question to say Michigan Constitution versus federal
16 law versus other Michigan statutes, and I was going
17 to leave that, that's a legal question that I
18 thought best left to the courts.
19 Q. So is it your testimony that you did consider
20 putting that contingency on but you decided not to
21 because of the reason you just said?
22 A. Well, again, I viewed this as an overriding
23 statement that I thought whatever came out of this
24 process through the bankruptcy needed to be a legal
25 answer, because I do follow the law.

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1 Q. Okay. I just want to be clear --
2 A. Yeah.
3 Q. -- I'm understanding your testimony.
4 You did consider at some point before you
5 signed -- is it true that at some point before you
6 signed the July 18th letter that you considered
7 making the bankruptcy filing contingent on the City
8 not seeking to cut accrued pension benefits?
9 A. I would say -- I wouldn't describe it that way. I
10 would describe it not just on pensions or anything
11 else, just the totality of the situation to say that
12 there are many legal questions that are being
13 litigated through this bankruptcy process, as you
14 can see.
15 In terms of objections and my overriding
16 concern is that anything that should come out of
17 this needed to be legal. So that's where I did
18 basically -- rather than specifically even
19 considering contingencies on one area or another,
20 because I viewed that as a troublesome area to say
21 should there -- if you put one contingency could you
22 end up with 15 contingencies versus saying the
23 overriding concern is that this plan be legal, and
24 that's already provided for under federal bankruptcy
25 law.

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1 Q. Was it your understanding that you could have placed
2 just one contingency on the filing which is that the
3 City could not seek to cut accrued pension benefits?
4 A. Again, my concern is --
5 Q. I'm not asking your concern.
6 A. Yes.
7 Q. Was it your understanding that you, if you had
8 chosen to, could have placed just one contingency?
9 A. Yes.
10 Q. Okay. Let me now refer you to the last sentence of
11 the paragraph that says "Federal law already
12 contains the most important contingency, a
13 requirement that the plan be legally executable, and
14 then it cites 11 USC 943(b)(4)."
15 What was your understanding, if you had one
16 as of July 18th when you signed this letter, of what
17 11 USC 943(b)(4) was?
18 A. The statement was my primary concern. I had very
19 good legal counsel. My legal advisors work on the
20 citation. They thought it would be helpful.
21 Q. Okay. So whose -- I should have asked you earlier.
22 Who prepared this letter that's the
23 July 18th letter?
24 A. I did in conjunction with my legal counsel.
25 Q. Okay. Was it just you and legal counsel that

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1 prepared the letter?
2 A. Yes.
3 Q. Okay. And so it was legal counsel that suggested
4 putting in this citation to Section 943(b)(4)?
5 A. Yeah.
6 Q. And whose idea was it that -- to say that federal
7 law already contains the most important contingency,
8 a requirement that the plan be legally executable?
9 Was that your idea to put that in or was
10 that legal counsel's?
11 A. I'm not sure if we're getting into an area where
12 this would be more attorney-client privilege.
13 MS. NELSON: Absolutely. In terms of
14 actual analysis of what was going on, it's
15 attorney-client privilege. The letter stands for
16 itself.
17 BY MR. DeCHIARA:
18 Q. Did you think that making the -- the requirement
19 that the plan be legally executable was more
20 important than protecting the pensions of the
21 employees and retirees of the City of Detroit?
22 A. I don't view those as conflicting statements. I
23 view that as the legal process, there are legal
24 questions that needed to be addressed and that the
25 plan needed to be legal. Just what it says.

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1 Q. Did you -- why did you within two days of receiving
2 the July 16th letter issue your response? Why
3 didn't you -- if it was a major decision, as you
4 said, why didn't you wait longer?
5 A. That was an appropriate time period. When I got the
6 letter, I actually said I was going to wait some
7 time in terms of a day or two to look at it, and in
8 fact I did.
9 Q. Did you speak to Mr. Orr about the timing of when
10 the bankruptcy petition should be filed?
11 A. Again, we had -- there were general discussions,
12 yes.
13 Q. And was it more than one discussion with Mr. Orr on
14 that subject?
15 A. Yes.
16 Q. And were these -- were any of these in the
17 presence -- outside the presence of legal counsel?
18 A. No.
19 Q. I'd like to read to you from the transcript of the
20 deposition that Mr. Orr gave in this case on
21 September 16th, 2013, and I'm going to read from
22 page 210 of the transcript beginning line nine.
23 And this is Mr. Orr's testimony. It says
24 "I think we generally -- and he's referring to
25 discussions with you, Governor Snyder.

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1 He says "I think we generally discussed
2 the ongoing operational restructuring, the status
3 at a very high level. The Governor, you know, we
4 don't -- we typically do not discuss how many
5 meetings, who attended, what was said went back and
6 forth, it was just a very high level of how things
7 were going with the restructuring efforts and that
8 the lawsuits, this is just with the Governor, were
9 beginning to create the risk that we would lose the
10 initiative and I might be unable to discharge my
11 obligations under 436."
12 Did you have a one-on-one conversation just
13 with Mr. Orr, as he testified, in which you
14 discussed certain lawsuits beginning to create a
15 risk that Mr. Orr would lose the initiative and
16 might be unable to discharge his obligations under
17 436?
18 A. Yeah, I'm not sure what time frame you're talking to
19 with respect to -- you did mention that you were
20 giving me some quote.
21 Q. And let me represent that the questioning put the
22 time frame as best as I can tell as between July 3rd
23 and July 17th, 2013.
24 Did you have a one-on-one conversation with
25 Mr. Orr during that time frame in which you

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1 discussed certain lawsuits in connection to when the
2 bankruptcy filing should take place?
3 A. I don't recall that.
4 Q. Okay. Do you dispute Mr. Orr's testimony that he
5 had that discussion with you?
6 A. I -- I have a -- I don't recall any discussion of
7 lawsuits.
8 We would talk about how is he doing in
9 terms of the position, you know, the challenges, the
10 stress and operational issues when we did our
11 one-on-ones.
12 Q. But is your testimony that Mr. Orr is wrong when he
13 testified that this conversation with you occurred
14 or is your testimony that it might have occurred,
15 you just don't remember?
16 A. I wouldn't dispute him, but I clearly don't recall
17 that.
18 Q. Okay. You were aware of certain lawsuits that were
19 being filed against Mr. Orr in the time period of
20 July -- the first half of July of 2013, correct?
21 A. Yes.
22 Q. Okay. And you were aware that in those lawsuits
23 injunctive -- interim injunctive relief was being
24 sought?
25 MS. NELSON: I'm going to object because it

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1 mischaracterizes -- and I'm not exactly sure what
2 lawsuits you are referencing. In that time period
3 there was only one lawsuit filed against Mr. Orr,
4 and that was General Retirement System. I believe,
5 and perhaps we can correct for the record, on the
6 Flowers and Webster lawsuits were against -- only
7 against the Governor and the Treasurer.
8 MR. DeCHIARA: Okay. Let me just question
9 the Governor on the best of his memory.
10 BY MR. DeCHIARA:
11 Q. Governor, were you aware of there being one or more
12 lawsuits against Mr. Orr?
13 A. Again, I'm not sure which party was being sued, but
14 there were lawsuits, yes.
15 Q. Okay. You were aware -- and let me speak more
16 generally. You were aware that in the first part of
17 July there were certain lawsuits filed concerning
18 issues related to Detroit's ability to file for
19 bankruptcy?
20 A. Yes.
21 Q. Okay. And in those lawsuits, were you aware --
22 strike that.
23 Were you aware that in those lawsuits there
24 was interim injunctive relief sought by the
25 plaintiff or plaintiffs?

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1 A. Yes.
2 Q. Okay. And did that knowledge have any impact on
3 your view about when the bankruptcy petition should
4 be filed?
5 A. No.
6 Q. Okay. Did you ever discuss with anyone those --
7 apart from your legal counsel the fact that in one
8 or more of those lawsuits there were requests for
9 interim injunctive relief?
10 A. Again, those discussions would have been subject to
11 attorney-client privilege.
12 Q. Well, again, without the legal conclusion --
13 A. Yeah.
14 Q. -- were those -- did you have any discussions about
15 that subject outside of discussions with legal
16 counsel?
17 A. They're discussions about the lawsuits.
18 Q. Yes.
19 A. Yes.
20 Q. We're speaking past each other.
21 A. Yeah. Yeah.
22 Q. Did you have any conversations outside of the
23 presence of your legal counsel about the fact --
24 A. No. Legal counsel was --
25 Q. Let me finish just to clarify.

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1 MS. NELSON: Let him -- Governor, let him
2 finish the question again so that it's clear on the
3 record what he's asking.
4 THE WITNESS: Okay. Okay.
5 BY MR. DeCHIARA:
6 Q. Okay. Apart from any conversations you may have had
7 with your legal counsel, did you have any
8 discussions with anyone else about the fact that in
9 these lawsuits there were requests for injunctive
10 interim relief?
11 A. In any meeting, legal counsel would have been
12 present.
13 Sorry, there's a lot of attorneys involved
14 here.
15 Q. Goes with the territory.
16 MR. WERTHEIMER: We can all agree on that.
17 BY MR. DeCHIARA:
18 Q. Are you aware that -- this is going back a few
19 months -- on January 29th, 2013, there was a meeting
20 at which various law firms made a pitch to be hired
21 by the City of Detroit as their restructuring
22 counsel?
23 A. Could you repeat that?
24 Q. Were you aware that on or about January 29th, 2013,
25 there was a meeting at which various law firms made

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1 a pitch to be hired by the City of Detroit as the
2 City's restructuring counsel?
3 A. I couldn't speak to the specific date but,
4 generally, yes.
5 Q. Okay. You were aware that there was this meeting at
6 which certain law firms made pitches?
7 A. Yeah, and I wasn't sure it was one meeting or more
8 meetings because I was not part of that process, but
9 I was aware the City of Detroit was talking to law
10 firms.
11 Q. Okay. Richard Baird was part of that process,
12 correct?
13 A. I'm -- I'm not sure. I don't know.
14 Q. You don't know whether Richard Baird attended any
15 meetings at which --
16 A. I know he attended some meetings involving that
17 process, but I don't know if he had attended that
18 meeting.
19 Q. Okay. Well, do you know whether Richard Baird
20 attended a meeting at which the Jones Day law firm
21 made a pitch to be hired by the City of Detroit?
22 A. Yes.
23 Q. Okay. And did Mr. Baird speak to you about the
24 meeting at which Jones Day made a pitch to be hired
25 by the City of Detroit?

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1 A. I don't recall him coming to me about the meeting
2 per se with Jones Day and what they pitched.
3 Q. Did he ever show you what's been referred to in this
4 case and other depositions as a pitch book, a series
5 of slides that Jones Day presented at that meeting?
6 Did he ever show you that? Any document
7 like that?
8 A. I don't recall that.
9 Q. Okay. Let me show you a document I'll ask to have
10 marked as Exhibit 5.
11
12 (Deposition Exhibit 5 was marked.)
13
14 BY MR. DeCHIARA:
15 Q. Governor, have you ever -- let me just identify for
16 the record that Exhibit 5 is a document that says
17 Presentation to the City of Detroit; Detroit,
18 Michigan; January 29, 2013. There's date stamp on
19 it DTMI 00128731.
20 Governor, have you ever seen Exhibit 5?
21 A. I don't recall it.
22 Q. Okay. Did Mr. Baird speak to you about -- strike
23 that.
24 Did Mr. Baird express to you any views he
25 had about whether or not the City should hire Jones

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1 Day?
2 A. I don't recall that.
3 Q. Okay. Do you remember speaking to him about that
4 subject, about whether or not the City should hire
5 Jones Day?
6 A. No.
7 Q. Okay. Did Mr. Baird ever speak to you about whether
8 Kevyn Orr should be the emergency manager of
9 Detroit?
10 A. That was the context that I spoke to Mr. Baird
11 about. It was not being the emergency manager but
12 being a candidate for emergency manager.
13 Q. Okay. And were these discussions you had with
14 Mr. Baird about the subject of Mr. Orr's candidacy,
15 where did those discussions take place?
16 A. I don't recall.
17 Q. Were they phone calls or face-to-face meetings?
18 A. That's where I don't recall. I do many meetings and
19 phone calls.
20 Q. Do you recall with any certainty whether legal
21 counsel was present in any discussions you had with
22 Mr. Baird concerning the candidacy of Mr. Orr?
23 A. They very likely could have been for some of those
24 but I don't recall.
25 Q. Okay. Is it likely that there were at least some

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1 where it was just you and Mr. Baird speaking?
2 A. Yes.
3 Q. Okay. Do you recall in any of the meetings you had
4 with Mr. Baird what you two discussed when it was
5 just the two of you about Mr. Orr's candidacy?
6 A. Generally, what I would say is I was not involved in
7 this process at all other than understanding that
8 generally the City of Detroit was looking for
9 attorneys and that in that context Mr. Baird
10 identified Kevyn Orr as a potential candidate to be
11 emergency manager, and he brought up the concept of
12 going to the firm at some point and asking their
13 permission to -- on whether he could speak to him
14 separately in that capacity.
15 Q. Did Mr. Baird when he said that to you indicate why
16 he thought Mr. Orr should be contacted and spoken to
17 as a potential candidate?
18 A. Very impressed with his credentials and
19 presentation.
20 Q. Did Mr. Baird say anything, discuss with you at all
21 the views that Jones Day had or that Mr. Orr had
22 about Detroit's pension liabilities?
23 A. I don't recall any.
24 Q. Okay. Did Mr. Baird speak to you at all about any
25 views that Jones Day may have had or that Mr. Orr

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1 may have had about the Michigan Constitution?
2 A. I don't believe so.
3 Q. After Mr. Orr was appointed as emergency manager,
4 you had regular meetings with him, correct?
5 A. Correct.
6 Q. And those were formal meetings with legal counsel
7 and staff present, correct?
8 A. Yes, and informal meetings.
9 Q. Okay. At the informal meetings, were legal counsel
10 present?
11 A. No.
12 Q. Okay. Who was present at the informal meetings?
13 A. Generally, it was just Kevyn and myself.
14 Occasionally, it could have been Dennis Muchmore
15 with Kevyn and I. That would be much less frequent,
16 and more recently, potentially Greg Tedder.
17 Q. Who were the two people you just named?
18 A. Dennis Muchmore is chief of staff.
19 Q. Who was the other person?
20 A. Greg Tedder is essentially the person from our
21 office that's working with Kevyn Orr on his staff --
22 Q. Okay.
23 A. -- as a liaison between the Governor's office and
24 the City of Detroit.
25 Q. Okay. In any of the informal meetings, as you

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1 refer to them, were Mr. Muchmore and Mr. Tenor
2 acting as --
3 A. Tedder. Tedder. T-E-D-D-E-R. Sorry, I'm --
4 Q. Okay. Thank you. I appreciate it.
5 A. A lot like being out of state with the names.
6 Q. At any of the informal meetings, were Mr. Muchmore
7 and Mr. Tedder acting in the capacity as attorneys
8 for the City or the State?
9 A. No.
10 Q. Okay. Would there -- how often were these informal
11 meetings?
12 A. As I said, most of the meetings were just Kevyn Orr
13 and myself. The frequency was probably about every
14 two weeks or so.
15 Q. Over what period of time?
16 A. Since his appointment as emergency manager, and when
17 I say two weeks it wasn't necessarily every two
18 weeks but that was sort of the normal schedule
19 process.
20 Q. And when was he appointed emergency manager? Do you
21 remember the date?
22 A. March.
23 Q. Do you remember the date, specifically?
24 A. Again, there's appointment dates, effective dates.
25 Q. Right. Gets confusing.

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1 And up -- so it began -- these informal
2 meetings that occurred every two weeks or so began
3 in March, and have they continued through the
4 present?
5 A. Yes.
6 Q. Okay. In the informal meetings you had with Mr. Orr
7 prior to July 18th, 2013, did you ever speak with
8 him about the issue of Detroit's pension
9 liabilities?
10 A. In those meetings, no.
11 Q. What did you speak to him about in those meetings?
12 A. Two general topics that were reserved for those
13 meetings. One is is just personally how he's
14 dealing with the position that he's in and in terms
15 of how he's interacting with staff, his family
16 challenges given that his family is in Washington
17 D.C.
18 So it was more as an advisor helper kind of
19 person to help him support through that process and
20 then on operational matters, because the way it's
21 traditionally defined in our meetings, there are
22 three tracks that get discussed. One is the
23 bankruptcy process, one is the operational process,
24 and the third is about what would happen
25 posttransition when he is no longer emergency

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1 manager.
2 And so the tracks discussed in those other
3 meetings, the meetings we've just been discussing,
4 would tend to be on the operational track. And we
5 wouldn't discuss matters on the bankruptcy track
6 because, again, those should be reserved for where
7 there was legal counsel present.
8 Q. In the informal meetings, did you speak to Mr. Orr
9 about the prospect of the City filing for
10 bankruptcy?
11 A. Again, those would have been in the bankruptcy track
12 meetings with legal counsel present.
13 The operational track meetings, the topics
14 that would be -- things that would be discussed
15 potentially would be there's a request for proposal
16 for solid waste garbage pickup. Topics like that
17 that are important to the citizens in terms of
18 improved services.
19 Q. I'd like to read testimony by Mr. Orr from his
20 September 16th deposition. It's on page 84 of the
21 September 16th deposition. I'll begin on line 13.
22 Question: Now, at some point after you
23 became the emergency manager, did you have
24 discussions with the Governor about a Chapter 9
25 filing to among other things get out of the pension

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1 obligations that the City owed?
2 Mr. Shumaker: Objection to form.
3 Answer: Yes, I believe so.
4 Question: And when did those take place?
5 Answer: Since becoming emergency manager
6 on the 25th, I've had regular conversations with the
7 Governor, typically weekly. I don't recall the
8 specific conversations when they came up. I will
9 say that it wasn't within our initial conversations.
10 Did -- having heard me read Mr. Orr's
11 testimony, let me ask you, Governor, did you have
12 discussions with Mr. Orr about a Chapter 9 filing to
13 among other things get out of the pension
14 obligations that the City owed?
15 A. Again, in terms of getting out of pension
16 obligations, we had discussions that were these
17 larger meetings or meetings where counsel was
18 present that would discuss the prospect of
19 bankruptcy, and in many cases during the earlier
20 days it was how to avoid bankruptcy by going through
21 a negotiation process.
22 Q. In any of the informal meetings where counsel
23 wasn't present, was there any discussion about a
24 bankruptcy -- a possible bankruptcy filing?
25 A. Again, the topic would come up, but then we would

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1 try to move back to operational issues and not get
2 into bankruptcy track issues because they were
3 reserved for the other meetings.
4 Q. But sometimes the topic came up at the informal
5 meetings?
6 A. Well, again, that it's something that's been out
7 there because it would most likely be in the context
8 of press accounts.
9 Q. My question is in your informal meetings with
10 Mr. Orr, did the topic come up, the topic of
11 Detroit's bankruptcy filing?
12 A. Did the word bankruptcy come up, yes. In terms of
13 discussing bankruptcy, no.
14 Q. Well -- okay. You interviewed Mr. Orr, did you not,
15 in the middle of February 2013?
16 A. Yes.
17 Q. I believe you went out to lunch with him with
18 Mr. Baird?
19 A. I don't believe I went out to lunch with him but I
20 did interview him.
21 Q. Okay. Thank you. I may have misspoken.
22 In that meeting, did you speak about
23 Detroit's pension liabilities?
24 A. I don't recall.
25 Q. Did you speak about Detroit's -- possibility of

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1 Detroit filing for bankruptcy?
2 A. Generally, yes.
3 Q. And what was your recollection of what you and
4 Mr. Orr said about that subject during the
5 interview?
6 A. A big part of it was making sure he understood the
7 history here, that this had been a process going on
8 for over two years and in a very methodical way;
9 again, review teams, consent agreement, going
10 through that whole process so he'd get the context
11 and make sure it was clear that bankruptcy was to be
12 a last resort; that the real question here is is
13 there a way to work this out in a mutual fashion;
14 that would be extremely challenging because there
15 are a large number of parties, but we should make a
16 very good faith effort to work this out.
17 Q. Governor, I'd ask you to focus on what words you
18 said in the interview on that subject --
19 A. Yeah.
20 Q. -- and what words Mr. Orr said.
21 Do you have a recollection of what words
22 you said?
23 A. I just recounted generally this has been my position
24 that I wanted to really make it clear to him. I
25 also made it clear to him that I viewed it as he was

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1 the -- in this context, not in terms of just
2 bankruptcy, but he was responsible for really
3 helping make those decisions for the City of Detroit
4 in terms of going through the negotiation process,
5 working with people, working through the process;
6 that I was to be a supportive resource.
7 Q. Did you speak to him about or did he speak to you in
8 that interview when a bankruptcy filing might take
9 place?
10 A. Again, it would be after a good faith effort to try
11 to resolve these issues short of bankruptcy.
12 Q. And who said those words that you just said?
13 I'm focusing on what was said in the
14 interview. So did someone say that?
15 A. Yeah. I couldn't tell you who said them first, but
16 we both -- I believe -- my recollection is we would
17 both agree that was a very important criteria.
18 MR. DeCHIARA: Could we go off the record
19 for a second?
20 VIDEO TECHNICIAN: Off the record
21 10:47 a.m.
22 (A brief recess was taken.)
23 VIDEO TECHNICIAN: We're back on the record
24 at 10:58 a.m.
25 EXAMINATION

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1 BY MR. WERTHEIMER:
2 Q. Governor, we met before. My name is
3 Bill Wertheimer, and I represent the Flowers group
4 of plaintiffs who were plaintiffs in one of those
5 early state court lawsuits and are now creditors in
6 the bankruptcy proceeding.
7 A. Uh-huh.
8 Q. I'd like to ask you a couple of follow-up questions.
9 You were asked early on about conversations
10 you had with Mr. Bolger and Mr. Richardville.
11 A. Uh-huh.
12 Q. They are Republican political figures in Michigan;
13 are they not?
14 A. Yes.
15 Q. I just don't know who is who --
16 A. Okay.
17 Q. -- so I'm not trying to be pejorative.
18 A. No. Jase Bolger is Speaker of the House and Randy
19 Richardville is the Senate Majority Leader.
20 Q. And you did indicate that you had some conversations
21 with them early on about the possibility of Detroit
22 going into bankruptcy?
23 A. It wasn't in the context of Detroit being bankrupt.
24 I would try to give them regular updates on what was
25 going on over the last two or three years; for

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1 example, going back to the review team, going on the
2 consent agreement, the whole process.
3 Q. In any of these conversations did either or both of
4 them ever communicate to you that they would not be
5 in favor of the State taking any responsibility for
6 the pension benefits of the City?
7 A. I don't recall.
8 Q. They might have -- one or both of them might have,
9 you just don't recall one way or the other?
10 A. I don't recall one way or the other.
11 Q. Okay. Fair enough.
12 You were asked a couple of questions about
13 your preparation for this deposition.
14 On how many occasions did you prepare?
15 A. I believe it was two. Or three. I'm sorry, three.
16 Q. Three? And when did they occur? When were they?
17 A. One was a couple weeks ago and then yesterday and
18 then this morning.
19 Q. And how long in total did you take to prepare, if
20 you can add up the time, or we can go through the
21 three.
22 A. In terms of meeting with counsel?
23 Q. Yes. Yes.
24 A. Yeah.
25 Q. I'm not going to get into the content, but I'd like

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1 to know how long you met with your attorneys talking
2 about your deposition.
3 A. Yeah. No, that's fine. I just wanted to make sure
4 I ask.
5 Q. Yes. Yes.
6 A. I would say probably three hours, three and a half
7 hours.
8 Q. Total?
9 A. Total.
10 Q. Okay. Now, you were asked some questions about
11 conversations you had with Mr. Orr, and counsel read
12 you a question and answer which indicated that
13 Mr. Orr recalls a conversation after he became
14 emergency manager but before the Chapter 9 filing
15 where, quoting, "Among other things, the talk was to
16 get out of the pension obligations that the City
17 owed."
18 Do you recall that subject coming up with
19 Mr. Orr after he became emergency manager and before
20 the Chapter 9 filing?
21 A. Yeah, I don't recall that outside the context of a
22 meeting where we would have had counsel present.
23 Q. Well --
24 A. And, again, I don't believe I would characterize it
25 as getting out of pension obligations.

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1 Q. But a discussion of the fact that you would -- it
2 would be easier to deal with the pension issue in
3 bankruptcy than not in bankruptcy? Did you have any
4 such discussions like that with Mr. Orr?
5 A. Again, those would have been in attorney-client
6 meetings.
7 Q. Well, for the record, Mr. Orr has testified as to
8 those -- that conversation, at least one, and has
9 not asserted the attorney-client privilege. So it's
10 my position that any attorney-client privilege would
11 have been waived.
12 A. I don't recall anything outside those meetings.
13 Q. No, I understand.
14 A. Okay.
15 Q. But what I'm suggesting to your counsel is that you
16 should answer the question even as to those meetings
17 because Mr. Orr, who is asserting a common interest
18 privilege with the State of Michigan, has answered
19 that question and has not asserted the
20 attorney-client privilege.
21 So I'd ask you to answer the question as to
22 the meeting the attorneys were present at.
23 MS. NELSON: I disagree with that analysis,
24 number one. Number two, the context in which that
25 conversation occurred has not been explained, the

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1 foundation for it, or when that meeting happened or
2 who else was present.
3 I disagree that it waives attorney-client
4 privilege, and having read the deposition it was
5 very clear that Mr. Orr on the 16th of September and
6 in his next subsequent deposition on October 4th was
7 very careful to preserve attorney-client privilege.
8 The question of whether there was a
9 specific discussion about getting out of pensions
10 was answered by the Governor just now. He did not
11 recall it in that context, so ask your next
12 question.
13 MR. WERTHEIMER: No, but he -- the Governor
14 excluded conversations with attorneys present.
15 And you're correct, Mr. Orr was very
16 careful to assert the attorney-client privilege at
17 his deposition. He did not assert it as to this
18 question. And your characterization that the
19 context isn't clear is wrong.
20 BY MR. WERTHEIMER:
21 Q. As counsel read the Governor, the question was: At
22 some point after you became emergency manager, did
23 you have discussions with the Governor about a
24 Chapter 9 filing to among other things get out of
25 the pension obligations that the City owed?

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1 Object to form.
2 Answer: Yes, I believe so.
3 Question: And when did these take place?
4 Answer: Since becoming emergency manager.
5 Which is exactly how I phrased my question;
6 that is, between the time that Mr. Orr became
7 emergency manager and the time of a Chapter 9
8 filing, do you recall any conversations including
9 conversations at which attorneys were present in
10 which you and Mr. Orr discussed among other things
11 getting out of the pension obligations that the City
12 owed?
13 MS. NELSON: You can answer yes or no to
14 that. That's the question. Yes, do you recall it;
15 no, you don't recall it.
16 THE WITNESS: Well, I wish it was that
17 simple. I sort of object. I don't believe I had
18 discussions about getting out of pension
19 obligations. We had discussions regarding pension
20 obligations.
21 That would be yes to discussing pension
22 obligations, and the context of getting out of --
23 BY MR. WERTHEIMER:
24 Q. Okay. Fair enough.
25 A. -- I'm not -- I would not accept that as a

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1 characterization.
2 Q. Let me rephrase the question then or ask another
3 question.
4 A. Yes.
5 Q. Do you recall any conversations you had with Mr. Orr
6 with or without attorneys present between the time
7 that he became emergency manager and the Chapter 9
8 filing relating to the pension issue that he might
9 have construed in such a way that he would answer
10 affirmatively a question about getting out of the
11 pension obligations that the City owed?
12 MS. NELSON: Objection; form, foundation,
13 calls for speculation. He can't testify about how
14 Mr. Orr might have thought or formed or understood a
15 question.
16 MR. WERTHEIMER: Go ahead, you can answer,
17 Governor.
18 MS. NELSON: Go ahead.
19 THE WITNESS: I just want to make sure I
20 understand it. You're saying whether it was
21 potentially covered by privilege or not.
22 BY MR. WERTHEIMER:
23 Q. Yes, whether it's covered by privilege or not.
24 A. Yes. Was there a discussion on pension liabilities?
25 Q. Well, yes, or any other kind of discussion where

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1 somebody of Mr. Orr's sophistication might have as a
2 result of that conversation answered a question
3 affirmatively about getting out of pension
4 obligations.
5 MS. NELSON: Same objection. Go ahead.
6 THE WITNESS: Yes.
7 BY MR. WERTHEIMER:
8 Q. Okay. And what do you remember you said and what
9 did he say relative to that, as best you remember?
10 MS. NELSON: If you --
11 THE WITNESS: Okay.
12 MS. NELSON: You can answer that.
13 THE WITNESS: I'm just checking. I'm
14 sorry.
15 BY MR. WERTHEIMER:
16 Q. No, no. That's okay.
17 A. You guys have been objecting enough, I'm trying to
18 figure out --
19 Q. For what it's worth, after she makes an objection
20 unless she instructs you not to answer --
21 A. Yeah.
22 Q. -- she's making an objection for the record.
23 A. No, I was just double-checking.
24 Q. I understand, yeah. No, that's fine.
25 A. Could you run it by me one more time then, and I

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1 won't look at her this time.
2 Q. Feel free to look at her.
3 I'd like to know what you can tell me you
4 said and Mr. Orr said in the conversation you did
5 have, the one or more conversations you had, between
6 the time he became emergency manager and the
7 Chapter 9 filing relative to the pension obligations
8 that the City owed?
9 A. Yeah, I would say there would be two or three pieces
10 to that. One is a concern about who is representing
11 the retirees.
12 Q. Who's saying what -- to the extent you can,
13 Governor, and I understand you're not going to
14 remember exact words, but to the extent you can I'd
15 like you to break down what you're saying and what
16 Mr. Orr is saying so that we can identify who is
17 saying what to the extent you remember.
18 A. Okay.
19 Q. Go ahead.
20 A. Sure. Well, let me start at the terms of the
21 discussion. One is is there is clearly a concern
22 for the retirees. These are people that worked for
23 the City for many years. And I shared this thought
24 that I am concerned about the retirees.
25 The second piece ties into what was the

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1 situation about representing the retirees. Mr. Orr
2 brought that to my attention because he was having
3 difficulty finding people to represent the retirees.
4 The way it was described to me is there are a number
5 of unions that were not willing to potentially
6 represent the retirees versus their active members;
7 that all the retirees were not going to have
8 representation in some capacity during the
9 negotiation process with creditors. And that was a
10 concern because there are many parties to this.
11 This is very complex. We're talking potentially
12 20,000 retirees.
13 In terms of that, again, I'm kind of --
14 time frame, we had a general discussion about that
15 being a problem. When it ultimately came down to
16 looking at the bankruptcy -- possibility of a
17 bankruptcy filing, one of the things that he brought
18 forward and I really pushed was the issue about
19 asking very quickly that there be representation for
20 the retirees as part of the bankruptcy process
21 because I believe it's important.
22 And I've been public with that in addition
23 to those private discussions that it's very
24 important that they have a seat at the table so
25 their voice can be heard during this process and

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1 they can have adequate legal representation. So
2 that would be one track in terms of that.
3 In terms of the pension liabilities
4 themselves, there was discussion about the funding
5 in terms of the actuarial assessment of the pension.
6 The stated numbers according to the review team and
7 the other reports was approximately three and a half
8 billion dollars. Again, there was work to be done
9 following that to say -- I can't remember if
10 Milliman or whoever was doing the report, to do an
11 assessment, other people are doing assessments,
12 there's a real issue of the valuation of the pension
13 plans and how the pension plans were operated.
14 Again, there's many questions. Again,
15 there's other litigation going on about 13 Month
16 Checks.
17 Q. Okay. But it's pretty clear, isn't it, from the
18 question and answer that was posed to Mr. Orr that
19 he recalls a conversation in one way or another
20 where there's an advantage to a Chapter 9 filing?
21 He's not talking about I understand the
22 advantage of then you can deal with the retirees
23 because you set up a committee and you have somebody
24 to bargain with. I get that. But he's answering
25 affirmatively a question that just ties the

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1 Chapter 9 filing to getting out of pension
2 obligations.
3 Do you recall any conversation you had with
4 Mr. Orr in any way, shape or form that related to
5 that subject; that is, Chapter 9 would give you some
6 advantages vis-a-vis getting out of pension
7 obligations that another route would not have?
8 MS. NELSON: Objection; asked and answered.
9 Go ahead, answer it again.
10 BY MR. WERTHEIMER:
11 Q. Go ahead.
12 A. Yeah, the context of something that would -- could
13 be viewed as a positive during the process is it
14 could be -- there could be certainty as to
15 resolution by going through a bankruptcy in the
16 sense that the judge addressing the plan and
17 approving the plan could resolve it as opposed to
18 having multiple continuing lawsuits that could go on
19 even if it was done in a consentual fashion if some
20 party didn't agree or some party had a different
21 version; that one of the potential advantages of
22 bankruptcy, again viewing bankruptcy as a last
23 resort, could be is there could be more a finality
24 of a resolution to this issue as opposed to having
25 lawsuits continue for multiple years.

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1 Q. Do you recall anything anymore specific than that
2 that would relate at all to Mr. Orr's view that the
3 discussion related to getting out of the pension
4 obligations that the City owed or not?
5 A. Again, in terms of looking at it, there could be --
6 this is -- are there other options or alternatives
7 in terms of looking at the pension plans. Again,
8 waiting for an assessment of how these reports come
9 back, and what I hope could be mediations during
10 this process.
11 Are there other things possible in terms of
12 continuing the existing pension plans, looking at
13 alternatives to the pension plan versus health care
14 liabilities or other liabilities. Again, this is
15 where I view it as hopefully an open discussion that
16 would be reviewed by a judge because this then gets
17 into legal opinions as to the relative class of
18 different types of creditors.
19 And this is beyond my area of expertise.
20 One of my concerns about not going into bankruptcy,
21 wanting to avoid it, is I was concerned you could
22 have less flexibility in bankruptcy than outside
23 because if mutual parties agreed and everyone agreed
24 you could have a resolution.
25 Q. Well, in terms of your background, you did -- you've

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1 graduated from law school, correct?
2 A. Thank you.
3 Q. I meant it -- I phrased it that way only because I
4 understand that you've not --
5 A. I've never --
6 Q. You don't practice law, correct?
7 A. Yes.
8 Q. Or have never practiced law.
9 A. Yes.
10 Q. Sorry for wording. Unintentional.
11 At the time you were talking to Emergency
12 Manager Orr between the time he's an emergency
13 manager and you file Chapter 9 --
14 A. Yes.
15 Q. -- you knew, did you not, that Article 9 Section 24
16 of the State Constitution existed?
17 A. Yes.
18 Q. And that it provided certain rights for pensioners?
19 A. Yes.
20 Q. Didn't you also know at that point in time that the
21 best way to reconcile Article 9 Section 24 -- let me
22 rephrase it.
23 Didn't you know at the time you were
24 talking to Mr. Orr that bankruptcy was the only
25 place where you could at least even arguably, in the

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1 words of Mr. Orr, trump that state constitutional
2 provision? Didn't you kind of know that as a
3 general matter?
4 A. No.
5 Q. Okay. Did you think there were other places where
6 you could -- other ways in which you could trump
7 Article 9 Section 24 other than getting the
8 agreement of the retirees, which you've acknowledged
9 had not happened and was going to be very difficult
10 given trying to deal with thousands of people
11 outside the bankruptcy arena?
12 A. I'm trying to see if that was a yes no question or
13 you were asking for --
14 (Reporter read pending question.)
15 MS. NELSON: Objection; form, foundation,
16 use of the word trump. You can answer the question
17 if you can.
18 THE WITNESS: Yeah, in terms of one area
19 that this is a legal question that I thought would
20 be good to get resolved and could be resolved inside
21 or outside of bankruptcy. I don't believe it had to
22 go to bankruptcy to solve the question, and that is
23 in regard to what the constitutional provision
24 actually says which treats it as a contractual
25 obligation, which in many cases -- we've seen cases

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1 with emergency managers they could set aside
2 contractual obligations.
3 BY MR. WERTHEIMER:
4 Q. Well, let's move to that. If you were looking for a
5 legal answer, you knew as of July 3rd or shortly
6 thereafter that you were going to get a legal answer
7 in state court; did you not?
8 A. I was not going to speculate as to the timing of how
9 State lawsuits get resolved.
10 Q. Well, you knew, did you not, that the Flowers
11 plaintiffs filed their suit on July 3rd. You knew
12 that shortly after that; did you not?
13 A. Yes.
14 Q. I mean --
15 A. Or one of those.
16 Q. -- it was all over the press?
17 A. Yes.
18 Q. And that Webster and another group of individuals
19 filed suit the same day, July 3rd, correct?
20 A. Yes.
21 Q. It was also all over the papers that the same day
22 that suit was filed Judge Aquilina signed orders to
23 show cause why injunctive relief should not issue
24 and scheduled those hearings for July 22nd.
25 You knew that at least generally; did you

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1 not? That is, that there was going to be a date at
2 which the judge would make a preliminary decision as
3 to the issues in front of her?
4 A. A preliminary decision on an injunction is much
5 different than an adjudication of a legal issue that
6 would be resolved through a court trial process.
7 Q. But you did know that there would be a state court
8 resolution -- that the issue you were concerned
9 with, that is the relationship between Article 9
10 Section 24 of the State Constitution and these
11 efforts to try and bring the City back, were going
12 to be resolved in state court based on these
13 lawsuits if nothing else was done; did you not?
14 A. That could take a year or longer to get that
15 resolution.
16 Q. I didn't -- I did not ask you any question about
17 length. I asked you whether you didn't know as
18 someone trained in the law and knowing that these
19 suits were pending and knowing kind of generally
20 what they were about, you knew that the state courts
21 were dealing with the issue?
22 A. I knew I would not get a short-term final answer.
23 Q. You did understand that in -- and then a few days
24 after those first two suits were filed, just so
25 we've got the record -- and your counsel is correct.

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1 Those two suits were against you as the Governor,
2 not personally, and the State Treasurer.
3 And then a few days later the pension
4 funds, or whatever the technical name is for them,
5 filed a lawsuit that did include Mr. Orr. Do you
6 recall that?
7 A. Yes.
8 Q. And then at that point there were multiple suits
9 pending?
10 A. Yes.
11 Q. Correct?
12 A. Yes.
13 Q. And did you understand that all -- each of those
14 suits dealt one way or another with Article 9
15 Section 24 of the State Constitution; that is, the
16 pension issue?
17 A. Yes.
18 Q. Okay. Between the time that those suits were filed
19 and the filing of the bankruptcy, which is about two
20 weeks plus a day or two, did you have any
21 discussions with anyone about what the likely
22 outcome of those cases would be on the merits; that
23 is, on the issue of does Article 9 Section 24 apply
24 even if the State goes into bankruptcy?
25 MS. NELSON: I'm going to object to the

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1 extent that it calls for a discussion of
2 conversations he had with his legal counsel, as
3 those are attorney-client privilege.
4 BY MR. WERTHEIMER:
5 Q. Outside of conversations you had with attorneys
6 present, did you have any conversations -- well, let
7 me ask specifically.
8 Did you have any conversations with
9 Treasurer Dillon without attorneys present about
10 what the chances were as to the results of these
11 state court suits?
12 A. No, I don't recall.
13 Q. Did you have conversations with anyone else
14 excluding conversations you had either with
15 attorneys or with attorneys present between the time
16 those suits were filed and the filing of the
17 bankruptcy?
18 A. I'm sorry, without attorneys present?
19 Q. Without attorneys present.
20 A. Yeah, I don't recall.
21 Q. Okay. You did know, did you not, shortly after
22 those suits were filed, it was all over the papers,
23 that Judge Aquilina was going to hold a hearing on
24 whether to issue an injunction Monday, July 22nd;
25 did you not?

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1 A. Yes.
2 Q. And the initial plan was to file the bankruptcy
3 Friday the 19th; was it not?
4 A. There was a timetable for communications that said
5 it would be on Friday the 19th.
6 Q. And that timetable came out of your office or was
7 done for you --
8 A. Yes.
9 Q. -- as the Governor of the State, correct?
10 A. Yes.
11 Q. And that timetable was written up on the 17th, was
12 it not, at least one version of it?
13 I've got it here as an exhibit. I can show
14 you if -- I'm not trying to --
15 A. No, I don't -- I -- that's fine. I would say yes.
16 Q. Okay. Fair enough.
17
18 (Deposition Exhibit 6 and 7 marked.)
19
20 MR. WERTHEIMER: And let's just -- I'll
21 move the admission of Exhibit 6, Margaret.
22 MS. NELSON: May I see Exhibit 6?
23 MR. WERTHEIMER: That's the one I think you
24 took.
25 MS. NELSON: No, you gave me Exhibit 7.

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1 MR. WERTHEIMER: I'm sorry, I apologize,
2 yes.
3 MS. NELSON: I don't have Exhibit 6.
4 MR. WERTHEIMER: You will.
5 MS. NELSON: And would you please show it
6 to the Governor?
7 MR. WERTHEIMER: Yeah, sure. Absolutely.
8 BY MR. WERTHEIMER:
9 Q. Okay.
10 A. Yes.
11 Q. That's consistent with your memory?
12 A. Yes.
13 Q. And this is the document or something like it is
14 what you were just referring to?
15 A. Yes.
16 Q. Would I be correct in reading the upper right
17 V71713 is indicating that this document was prepared
18 on that date? Is that what that is?
19 A. I can't speak to that.
20 Q. Oh, okay. You don't know?
21 A. Yeah, I didn't do the document so I can't speak to
22 that.
23 Q. You -- this is a normal document that is used in
24 your role as Governor to deal with --
25 A. I would say this was not a normal circumstance so

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1 this would not be a normal document.
2 Q. Okay. The only reason I ask that is I did see some
3 other kind of rollout documents.
4 A. Yeah.
5 Q. For example, there's a similar document, is there
6 not, for the June 14th creditors proposal that
7 Mr. Orr was coming out with? There's a similar
8 document from your end; is there not?
9 A. Yeah. I'm not aware of that.
10 Q. Oh, okay. Fair enough. Fair enough.
11 A. Yeah.
12 Q. So you don't know whether the 717 up in the upper
13 right is the normal place that the author of the
14 document would advise people reading it as to its
15 date of its origin?
16 A. Yeah, I'd have to say I don't know.
17 Q. You don't know. Okay.
18 In any event, the document gives a lot of
19 detail as to what's going to happen before and after
20 this filing, which the document assumes is going to
21 be on the 19th, correct?
22 A. Uh-huh. Yes.
23 Q. Now, there are -- were press reports that indicated
24 that the reason for the 19th filing was to have it
25 precede the 22nd hearing in front of Judge Aquilina.

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1 Do you have any knowledge first or
2 secondhand as to whether that is true or not?
3 A. I don't recall that.
4 Q. Do you recall a reason that the 19th was selected as
5 the date that Mr. Orr would file bankruptcy?
6 A. One of the factors most likely was probably my
7 schedule, because this was a major media rollout, in
8 terms of availability.
9 Q. Okay.
10 A. At that -- the letter was coming and I wanted time
11 to contemplate and then we would look at the
12 schedule to say when is there a good opportunity to
13 have good communications.
14 Q. Leaving aside conversations you had with your
15 attorneys --
16 A. Uh-huh.
17 Q. -- in the days preceding the 17th say, say earlier
18 that week --
19 A. Yeah.
20 Q. -- were you privy to any conversations where the
21 idea was thrown out that if we have the filing on
22 the 19th that would oust Aquilina of jurisdiction on
23 the 22nd? Do you understand what I'm asking, or
24 words to that effect?
25 A. Yeah, I don't recall it.

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1 Q. You don't recall?
2 A. And again, that would be -- this is where we're back
3 to if there were other discussions, it would've been
4 attorney-client privilege, but I don't recall even
5 in that context.
6 Q. We know that, in fact, the filing was made on the
7 18th?
8 A. Uh-huh.
9 Q. Correct?
10 A. Correct.
11 Q. That would be an unusual circumstance; would it not?
12 That is, that you put together this very detailed
13 rollout down to what's going to happen at 11 a.m. a
14 couple days later and what's happening at noon and
15 1:30. It would be rare in terms of your work as
16 Governor for a significant event like this for the
17 date to move at the last minute; would it not?
18 A. Well, this is a unique circumstance.
19 Q. Yeah. On that we agree.
20 Was the unique circumstance the fact that
21 the litigants in the three cases were in court on
22 the 18th in front of Judge Aquilina in the afternoon
23 seeking emergency injunctive relief?
24 A. I had signed my letter prior to that.
25 Q. It's not what I asked you, Governor.

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1 A. Well, you did ask me. You said they were in the
2 courtroom, did then I act. And I acted prior to
3 them being in the courtroom.
4 Q. No. Okay. Fair enough.
5 A change was made between the 19th and the
6 18th as to the filing itself. You understand that?
7 A. Uh-huh.
8 Q. Correct?
9 A. Yes.
10 Q. And I'll represent to you that at Mr. Orr's
11 deposition he confirmed that the typed in date of
12 the 19th on the bankruptcy petition, the handwritten
13 eight was his handwriting.
14 Do you know anything about why the change
15 was made from the 19th to the 18th?
16 A. Yes.
17 Q. What do you know about it? Just tell me.
18 A. I made the decision that I was comfortable in my
19 conclusion that it was appropriate to file.
20 When the letter came to me on the 16th in
21 terms of recommending bankruptcy, I had set aside to
22 say I wanted an extended period of time to review
23 and to contemplate the situation. So I actually set
24 aside enough time that would have led to the Friday
25 morning situation to say I wanted more than one

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1 night to sleep on this because the importance of
2 this act.
3 And as I proceeded through the thought
4 process to say do I concur, am I going to authorize
5 the bankruptcy, I started discussions with my legal
6 counsel on how we would prepare a letter, how we
7 would go through that process and my thought
8 process, and I felt I didn't need to wait. I had
9 made my decision, I had consulted with legal
10 counsel, we had prepared a letter authorizing
11 bankruptcy, and I said we should just go ahead and
12 get this done.
13 Q. And as far as you know, that decision, the fact that
14 there was -- were requests for immediate injunctive
15 relief on that day in state court had nothing to do
16 with moving up the time?
17 A. People showed up in state court after that, and what
18 I would say is the consideration I had was the
19 filing of -- the lawsuits being filed in the prior
20 week or two weeks had some impact on my
21 decision-making process.
22 Q. Right.
23 A. And the reason I said that is because I could see
24 lawsuits being filed not only on pension issues but
25 could be filed by other creditors, by financial

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1 institutions, by many other parties to say it is
2 clear there's a breakdown of what I believe were
3 good faith negotiations, and given that there is a
4 breakdown of good faith negotiations we were at that
5 last resort point.
6 And this is a financial emergency, I'm
7 concerned about the citizens of Detroit, and I was
8 going to move forward with this because I'm stepping
9 up for the citizens of Detroit and Michigan.
10 Q. You've talked generally about the lawsuits and the
11 role they played?
12 A. Uh-huh.
13 Q. I'm trying to get your recollection specifically as
14 to the fact that parties were in court on the 18th
15 and that the Pension Board was there formally with a
16 request for an injunction that day.
17 A. That was after the fact, and I don't speculate on
18 what happens in court hearings.
19 Q. What is your basis for saying that that was after
20 the fact?
21 A. Well, you told me that.
22 Q. No.
23 MS. NELSON: I'm going to object at this
24 point. He's asked and answered.
25 Your question was was the unique situation

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1 the result of the fact that attorneys were in the
2 courtroom seeking a TRO and he answered no and he
3 signed the authorization before the attorneys were
4 in the courtroom.
5 So what is it that you're now asking? He's
6 already answered that question, so asked and
7 answered.
8 MR. WERTHEIMER: Are you done?
9 MS. NELSON: I'm done.
10 MR. WERTHEIMER: Okay.
11 BY MR. WERTHEIMER:
12 Q. Do you have any -- are there any documents that the
13 State has that can confirm the time of day that your
14 letter was signed on the 18th? Do you know?
15 A. I'm happy to attest when I signed that.
16 Q. You already have.
17 A. I'm under oath. I signed that --
18 Q. What time did you sign it?
19 A. I signed it in the afternoon.
20 Q. What time in the afternoon?
21 A. It was earlier rather than later, but I don't have
22 the specific time.
23 Q. Okay. I believe the Pension Board had filed their
24 papers the day before and were scheduled to go into
25 court that afternoon. So it was out there that at

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1 least in one of those lawsuits that a request was
2 going to be made that afternoon.
3 MS. NELSON: Objection.
4 BY MR. WERTHEIMER:
5 Q. And you moved up your filing -- or you moved up --
6 well, the filing was moved up from the 19th to the
7 18th.
8 MS. NELSON: Objection; assumes facts not
9 in evidence. There had not been any motion filed
10 with the -- if you're referring to the General
11 Retirement System case, that was filed on the 17th,
12 but there had not been a TRO filed with the
13 Complaint, and that was not filed until late in the
14 afternoon on --
15 MR. WERTHEIMER: Margaret --
16 MS. NELSON: I'm correcting your facts.
17 There had not been a TRO filed the day before when
18 the General Retirement System Complaint was filed.
19 MR. GALLAGHER: Objection to counsel's
20 testimony.
21 MR. WERTHEIMER: Margaret.
22 MS. NELSON: I'm objecting to form and
23 foundation and speculation.
24 MR. WERTHEIMER: No, you're providing
25 testimony and you're providing facts which are not

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1 accurate.
2 MS. NELSON: Well, you are too,
3 Mr. Wertheimer. So if you're going to ask
4 speculative inappropriate questions, at least have
5 your facts correct.
6 So my objection is form, foundation, calls
7 for speculation.
8 The Governor has answered this question in
9 terms of his understanding of the timing.
10 MR. WERTHEIMER: Margaret, I would not
11 otherwise testify, but I will tell you that the
12 Pension Board was in front of Aquilina in the
13 morning and that I drove from Detroit to Lansing and
14 got there about three in the afternoon; that the
15 AG's office asked us to please delay, and we ended
16 up in front of Judge Aquilina eight minutes after
17 the bankruptcy petition was filed, and I'm entitled
18 to find out from the Governor whether all that is
19 coincidental.
20 MS. NELSON: Well, I will correct you --
21 MR. WERTHEIMER: Now, if you're done, I'll
22 ask --
23 MS. NELSON: No. Well, I will correct you
24 then also because the AG's office did not learn of
25 the TRO applications and anybody coming to court

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1 until after 3:00 in the afternoon.
2 It was approximately 3:05 when I received
3 the phone call that attorneys were coming to court
4 to present motions for TRO to the judge. There was
5 no conversation or information about anything being
6 filed that morning. It was after 3:00 when the call
7 was made to our office and attorneys were sent over
8 to respond if appropriate.
9 BY MR. WERTHEIMER:
10 Q. What time did you sign on the 18th, Governor?
11 A. Again, the specific time -- one of the ways to look
12 at that is I would have signed it prior to the email
13 transmission to Kevyn Orr.
14 Q. And do you recall when the email transmission was?
15 A. No, but that's --
16 Q. That's somewhere that we can find out?
17 A. Yes. Yes.
18 Q. Okay. Fair enough.
19 When was it that Attorney General Schuette
20 called you to let you know what legal position he
21 was going to be taking in the bankruptcy? He filed
22 it August 19th, if that helps.
23 A. It would have been a couple -- again, within the two
24 or three days before that.
25 Q. I take it it sounds like it's kind of a courtesy

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1 call?
2 A. It was a courtesy call because we have a working
3 relationship.
4 Q. Had you ever consulted with Attorney General
5 Schuette about this issue of whether Article 9
6 Section 24 would apply in bankruptcy before that
7 courtesy call?
8 A. I don't recall.
9 Q. You may have?
10 A. I don't recall.
11 Q. Do you recall whether when Attorney General Schuette
12 made his position public or when he told you about
13 it that you were surprised in any way?
14 In other words, was it news to you at that
15 point that the Attorney General was going to take
16 the position that Article 9 Section 24 applied in
17 bankruptcy?
18 A. I would say -- could you repeat the question?
19 Q. Do you recall whether --
20 A. Yeah.
21 Q. -- you knew any time before this courtesy call that
22 the Attorney General's position was that Article 9
23 Section 24 applied in bankruptcy; in other words,
24 that bankruptcy would not trump it but that rather,
25 according to the Attorney General, Emergency Manager

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1 Orr would be required to propose a plan consistent
2 with Article 9 Section 24?
3 Did you know that or anything like it any
4 time before he made this courtesy call to you?
5 A. Yeah, I'm not being difficult. I started becoming
6 more aware as the call was being scheduled. Why was
7 the Attorney General wanting to talk, because I was
8 out on the road.
9 Q. Okay. So you may have learned just before?
10 A. Again, it's like I was traveling in the upper
11 peninsula, as I recall, and I need to talk to
12 call -- I need to talk to the Attorney General.
13 That gets my attention.
14 Q. You knew before this that this was a serious issue,
15 did you not, that is how -- what's the interplay
16 between the State constitutional provision and any
17 potential filing? As a general matter, you knew
18 that; did you not?
19 A. Yes.
20 Q. Did you ever consult with the Attorney General about
21 that?
22 A. Not directly.
23 Q. Did you consult indirectly?
24 A. Again, my legal counsel may have had discussions. I
25 didn't participate in those.

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1 Q. Do you recall asking either directly or indirectly
2 for the Attorney General's opinion?
3 A. I don't recall.
4 Q. Could you identify Exhibit 7 for me?
5 A. This is an email from Greg Tedder to me regarding a
6 Power Point presentation that Kevyn Orr was going to
7 use as part of his 45-day plan that he was going to
8 do I believe from later on it appears two public
9 meetings.
10 Q. And would I be correct in reading it as indicating
11 that you were involved in detail to the extent that
12 you didn't like a particular slide; that is, slide
13 22?
14 A. I believe, if my email is incorporated in this, that
15 they --
16 Q. I think it is.
17 A. Yeah. They sent me the Power Point presentation and
18 I made a very brief review and just gave them three
19 points of feedback.
20 Q. And those are indicated on the exhibit?
21 A. Yes.
22 Q. Okay. Do you recall communications you had with
23 Treasurer Dillon in early July after the suits were
24 filed but before the bankruptcy?
25 A. I don't recall.

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1 MS. NELSON: Which one is which?
2 MR. WERTHEIMER: Eight is July 8th.
3
4 (Deposition Exhibit 8 and 9 marked.)
5
6 BY MR. WERTHEIMER:
7 Q. Since we're doing it this way, why don't you take a
8 look at Exhibit 8, Governor, please. It's a July 8
9 email that was produced in discovery from Treasurer
10 Dillon to you.
11 Might as well just read it and then I'll
12 ask you a question or two about it.
13 A. Okay. Want me --
14 Q. Yes. If you would, just read it to yourself.
15 A. Thanks. I was trying to figure out what --
16 Q. No, that's fine. I understand.
17 As to the July 8 email, do you recall
18 receiving it?
19 A. Yes.
20 Q. Do you know what -- can you explain to us what the
21 reference is to the pension fund recent suits
22 against he and you? Is that a reference to the
23 suits we've been talking about?
24 A. I would assume so, but I can't definitively say that
25 because I didn't write the email.

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1 Q. Fair enough. Did you talk to Treasurer Dillon about
2 it?
3 A. Yes, I believe so.
4 Q. Did the conversation relate at least in part to
5 those lawsuits?
6 A. No. Well, it was really he was just re -- as I
7 recall, he was recalling what's in that second
8 paragraph, just to say that there's an issue here,
9 that the consultants were coming up with a different
10 answer.
11 Q. And he was indicating the pensions -- the
12 consultants were saying that pensions were going to
13 have to be cut significantly; was he not?
14 A. Again, yes.
15 Q. Okay. And you knew at that point in time, did you
16 not, that the only practical way you were going to
17 be able to cut those pensions would be by filing a
18 Chapter 9; did you not?
19 At that point, in other words, July 8
20 Treasurer Dillon tells you we're going to have to
21 cut pensions significantly. You knew that that
22 meant you've got to file Chapter 9; did you not?
23 A. I wouldn't necessarily conclude that. I would, in
24 fact, cite the second email you gave us, Exhibit 9,
25 towards the bottom where the bottom paragraph second

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1 sentence and third sentence: In my view, which is
2 Andy Dillon speaking, it's way too early in the
3 process to respond to hypothetical questions, remain
4 in many ways at the informational stage.
5 Q. Well, isn't that just his effort to kind of deal
6 with the politics and say there's no reason you have
7 to get out there publicly and say that pensions are
8 going to be reduced?
9 A. Not necessarily. Again, this is --
10 Q. Okay. Isn't that one reading of his --
11 A. I'm not going to speculate on his reading.
12 Q. All right.
13 A. I'm saying this is the information from consultants
14 that's in the early stages. It's informational, and
15 he was giving me a heads up to know that there could
16 be an issue ultimately coming about because of work
17 of consultants that had not been fully reviewed and
18 vetted.
19 Q. Do you recall this second email?
20 A. Yes.
21 Q. Did you have any conversations with Treasurer Dillon
22 about either of these emails at around this time?
23 A. As I mentioned earlier --
24 Q. I'm sorry, go ahead.
25 A. I recall a phone call that night of the 8th after

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1 the first email.
2 Q. Go ahead.
3 A. Sort of reiterating what's in the email, saying he's
4 concerned about this, and then the second email
5 said -- sort of answered a lot of the questions to
6 say that the meeting's going ahead and there's work
7 to be done, that we're in the early stages.
8 Q. Okay. He's calling you?
9 A. I believe he called me.
10 Q. Okay.
11 A. I can't tell you whether I had to call him back or
12 not but I believe we had a conversation that night.
13 Q. He initiated it as a followup to his first email?
14 A. Yes. Yes.
15 Q. And then he sent you another email the next day?
16 A. Sort of answering a number of questions he raised
17 the night before and in the email.
18 Q. Fair enough. And there were no other lawsuits that
19 you can think of that were out there that he could
20 have been referencing as far as you know than the
21 three we've been talking about?
22 A. As far as I know.
23 Q. Okay. Just a couple more questions.
24 We have requested what's called a 30(b)(6)
25 deposition of the State; that is, that the State

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1 produce a witness -- one or more witnesses on
2 various issues. And on a couple of them the State
3 has indicated that they -- without designating you
4 as a 30(b)(6) witness and requiring you to do the
5 kind of preparation that would be involved with that
6 otherwise, that you would be the best person to ask
7 these questions.
8 A. Okay.
9 Q. So I'd like to ask the question exactly as it's
10 framed in the deposition notice and have you answer
11 that question as best you can.
12 A. Okay.
13 Q. Okay? The question is or the matter for examination
14 is "The reason or reasons the Governor decided not
15 to place contingencies on this bankruptcy filing, as
16 expressly permitted by Section 18(1) of 2012 Public
17 Act 436; particularly why no contingency related to
18 Article 9 Section 24 of the Michigan Constitution
19 was placed on the filing.
20 Can you answer that?
21 A. Yes. I had -- I placed no contingencies because I
22 had a concern that it would add complexity,
23 confusion or delay to the bankruptcy process given
24 that this is an emergency situation.
25 It's about taking care of the best

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1 interests of the citizens of Detroit. And the
2 reason I felt confident and comfortable in doing
3 that act is why we reviewed -- I reviewed with my
4 legal counsel and added that statement to say any
5 plan that has to come out of this process of the
6 bankruptcy has to be legally executable.
7 Q. That's going to be the next question, but okay.
8 Let me just ask a followup.
9 A. Sorry I was giving you --
10 Q. That's okay. We're on the same wavelength.
11 At the time you authorized the filing, you
12 knew, did you not, that if you placed the
13 contingency relating to Article 9 Section 24 on the
14 filing it would make it more difficult for the
15 Detroit emergency manager to deal with the pension
16 issue; did you not?
17 A. I did not know that. That would be a legal
18 conclusion.
19 Q. But didn't you generally understand that?
20 I understand it technically may be a legal
21 conclusion, but didn't you understand that if you
22 had done a contingency that said as to this 3.5
23 billion in unfunded liabilities, the Michigan
24 Constitution says you're going to have to -- you're
25 not going to be able to get any relief from that?

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1 A. No, I didn't believe that. Again, you asked my
2 question. I answered it.
3 Q. I'm just not sure I got an answer to that. Could
4 you -- and I apologize if I'm asking the same
5 question, but --
6 A. No, I didn't believe -- again, I believed -- I
7 didn't -- state your question again so we can make
8 sure we get this.
9 Q. Didn't you understand at the time you authorized the
10 filing that if you had placed a contingency on the
11 filing telling the Detroit emergency manager that in
12 bankruptcy, for example, consistent with Schuette's
13 opinion, that any plan he proposed would have to
14 recognize the applicability of Article 9 Section 24?
15 Didn't you understand that if you did
16 something like that it would make Emergency Manager
17 Orr's job more difficult?
18 A. I did not consider that.
19 Q. Okay. What did you consider relative to not
20 including Article 9 Section 24 as a contingency?
21 A. I viewed it as is that's something that the legal
22 questions were being appropriately framed by
23 lawsuits, by parties, by various people being
24 represented in this process, and that as Governor of
25 the State of Michigan I take my responsibility

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1 seriously. It's to execute the laws of the State of
2 Michigan.
3 That these were multiple legal questions
4 that were being framed through multiple lawsuits
5 that were going to continue in the bankruptcy
6 process, and I thought the best answer is the
7 judicial branch should be resolving these questions
8 to give me clarity as to best how to follow through
9 in implementing what comes out of this process.
10 Q. You did not check with Attorney General Schuette at
11 the time you filed to determine what his view was as
12 to whether any contingency related to Article 9
13 Section 24 should put -- should be put on your
14 authorization, did you?
15 A. I did not.
16 Q. The -- back to the 30(b)(6) Notice.
17 A. Uh-huh.
18 Q. And you partially answered this, but again, I think
19 it would be helpful if I just read the question and
20 you answer it in full. And don't assume that you've
21 already answered part of it even though you have.
22 A. Okay.
23 Q. The reason or reasons the Governor included the
24 following statement in his 18 July 2013
25 authorization to commence Chapter 9 bankruptcy

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1 proceeding "Federal law already contains the most
2 important contingency - a requirement that -- a
3 requirement that the plan be legally executable,
4 11 USC section number."
5 Can you answer that?
6 A. Yeah. I thought it was important to include that
7 because coming out of this process, I thought the
8 bankruptcy judge would go through an analysis and
9 make decisions that would come out with a plan that
10 was appropriate in the context of the legal process
11 in terms of answering these difficult legal
12 questions with certainty and resolution, so then
13 there could be a plan because this is a crisis.
14 The City of Detroit is having huge issues,
15 and I wanted to make sure that it was being done in
16 a thoughtful fashion, being reviewed by the
17 judiciary that then could be executed so we could
18 provide the best services to the citizens, take care
19 of the citizens of the State as quickly and as best
20 possible.
21 Q. At the time you put that contingency on --
22 A. I didn't put a contingency on.
23 Q. I'm sorry. At the time you -- I stand corrected.
24 A. Okay.
25 Q. At the time you made the reference to the federal

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1 law contingency, shall we say --
2 A. Uh-huh.
3 Q. -- you knew, did you not, that Emergency Manager Orr
4 was publicly stating that federal law would trump
5 the State Constitution? Trump, that that was the
6 word he used. It was in the Free Press, I believe
7 in the News. It was all over.
8 You knew that at the time you thought that
9 this language about federal law being the most
10 important contingency was put in your authorization;
11 did you not?
12 A. Yes. But, ultimately, Judge Rhodes makes that
13 decision, not Kevyn Orr.
14 Q. Did you know at the time that only -- that under
15 Chapter 9 only the debtor can propose a plan?
16 A. Subject to approval by the judge.
17 Q. And the debtor is represented by Kevyn Orr, correct?
18 A. He represents the City of Detroit, yes.
19 Q. And you knew that the debtor was taking the position
20 that the pensions would have to be cut; did you not?
21 A. That's not a correct statement. There had been no
22 plan proposed and there still has not been a plan
23 proposed. Until there is a plan proposed, it would
24 be speculative on anything with respect to how the
25 City is going to present a plan.

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1 Q. Well, in the creditor's plan back in June, didn't
2 Emergency Manager Orr make very clear that to the
3 extent the pension benefits were funded that those
4 monies couldn't be touched, which is legally of
5 course correct, but to the extent that they weren't
6 funded that the retirees would become unsecured
7 creditors like everybody else?
8 Wasn't that part of the June presentation?
9 A. The June presentation was to be part of a mutual
10 negotiation that would require consent of all
11 parties.
12 Q. Are you saying --
13 A. That was not a plan of adjustment and bankruptcy.
14 Q. Are you saying, Governor, that at the time you put
15 this provision in your authorization that you --
16 that there was some question in your mind as to
17 whether Emergency Manager Orr would honor or not
18 honor Article 9 Section 24 in the bankruptcy?
19 Let me ask it a different way.
20 A. Okay.
21 Q. I think it was a little confusing.
22 Wouldn't you have had every reason to know
23 by the point you put this language in that Emergency
24 Manager Orr was going to propose a plan that did not
25 recognize the fact that pensions could not be

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1 reduced because of Article 9 Section 24?
2 A. I don't necessarily come to that conclusion because
3 a plan has not been presented.
4 Q. But this -- the guy who is going to present the plan
5 is publicly stating that federal law trumps
6 Article 9 Section 24. You knew that; did you not?
7 A. Yes.
8 Q. Wouldn't you suppose that that means that one of the
9 reasons -- one of the things that Emergency Manager
10 Orr is going to do in the bankruptcy is make an
11 argument to Judge Rhodes that federal law trumps
12 Article 9 Section 24?
13 A. It is possible for him to make that argument.
14 Again, I view this as legal speculation because
15 there are multiple mediations going on and multiple
16 discussions going on short of going to the judge and
17 asking for opinions.
18 Q. And you now know that that speculation is
19 inconsistent with the Attorney General of the State
20 of Michigan's position, which is that Orr has no
21 right to do that. You know that now; do you not?
22 MS. NELSON: Objection; form, foundation.
23 What do you mean by speculation?
24 MR. WERTHEIMER: I was using the word the
25 Governor used, so I was using however he used it. I

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1 was trying to be helpful, Margaret.
2 Can you read it back? Let me just look at
3 it and maybe I can just rephrase it.
4 BY MR. WERTHEIMER:
5 Q. You now know that the Attorney General is of the
6 view that Article 9 Section 24 applies in
7 bankruptcy?
8 A. He filed a brief to that effect.
9 Q. Okay. That's all I have. Thank you. I have no
10 further questions.
11 MS. NELSON: Okay.
12 MR. WERTHEIMER: Just take a minute. I
13 assume there will be other questions. I just want
14 to make sure that I'm done.
15 VIDEO TECHNICIAN: Off the record
16 11:55 a.m.
17 (A brief recess was taken.)
18
19 (Deposition Exhibit 10 was marked.)
20
21 VIDEO TECHNICIAN: Back on the record at
22 11:59 a.m.
23 BY MR. WERTHEIMER:
24 Q. Let me show you what's been marked, Governor, as
25 Exhibit 10. Would you take a look at -- actually,

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1 you'll see the -- it's a transmittal letter of your
2 July 18 letter.
3 A. Uh-huh.
4 Q. Are you with me?
5 A. Yes.
6 Q. And you had indicated in your earlier testimony that
7 we should find the email transmission, and I'm
8 wondering if this is it. That is, is this the email
9 transmission where you communicate to Emergency
10 Manager Orr that you have signed the authorization?
11 A. Actually, it would have been much earlier, so this
12 is where -- just to clarify I would say is I
13 don't -- I would have to double-check. Normally, it
14 could have been by email, but it might have been
15 faxed or otherwise communicated, but I know it was
16 much earlier than this during the day because this
17 says 7:47 at night.
18 Q. And it's within 13 minutes of what your rollout
19 communications plan indicates when you're going to
20 sign. That is, it indicates 8 p.m. correct?
21 A. Again, are you going to the earlier exhibit?
22 Q. I'm sorry. That exhibit with the rollout indicates
23 that you're going to actually sign the letter at
24 8 p.m. on the 18th, correct?
25 A. I signed it much earlier than that.

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1 Q. That's not what I asked.
2 A. Yes.
3 MS. NELSON: Here, you have it.
4 BY MR. WERTHEIMER:
5 Q. The communications rollout plan document indicates
6 that the filing was going to be on the 19th but that
7 you were going to sign the letter at 8 p.m. on the
8 18th, correct?
9 A. That's what this exhibit says.
10 Q. All right. And you indicated in earlier testimony
11 when I asked you if you could give me the time that
12 you signed the letter that I should look for the
13 email where you transmitted it. Did you not?
14 A. Yes.
15 Q. Okay. And I have found that email, have I not, or
16 someone on this side has found that email. And it
17 indicates that you sent the authorization letter to
18 Emergency Manager Orr at 7:47 p.m.; does it not?
19 A. Yes. And that's why I wanted to clarify.
20 Apparently, our main transmission would have been
21 earlier in that day and it would have been done by
22 some other means.
23 So I'd want to clarify and correct that to
24 say we should go look to find out when the earliest
25 transmission was.

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1 Q. I agree, and I assume your counsel will do that, and
2 I would make that request on the record that you
3 provide --
4 A. Yeah.
5 Q. -- whatever documentary support in whatever form it
6 is.
7 A. I apologize for having you go through an effort to
8 find --
9 Q. That's okay. We need to get straight on it and
10 that's fine.
11 A. Yeah.
12 Q. With that I have nothing further. Thank you,
13 Governor. I appreciate it.
14 MS. NELSON: To the best of my knowledge
15 it's in the production that we sent out.
16 MR. WERTHEIMER: Well, Margaret, no offense
17 but there's X hundred thousand --
18 MS. NELSON: No, I understand that, but so
19 it has been produced. It's my understanding it has
20 been produced.
21 MR. WERTHEIMER: I am not suggesting that
22 it has not been produced, but it would be helpful
23 if --
24 MS. NELSON: Hold it. We have a hand up.
25 VIDEO TECHNICIAN: No, I was just moving

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the camera.
MR. WERTHEIMER: It would be helpful if you could identify it for us. Right now all we have on the record is 7:47 p.m.
MS. GREEN: I will say on the record that that email was given to me by Jones Day in response to the request made by Retirement Systems that the City produce the email that transmitted the authorization letter to Kevyn Orr.
That was the only email that was specifically produced.
MS. NELSON: Well, it might not have been an email. It could have been a fax earlier in the afternoon. So I guess we'll produce the document that we have but obviously it was transmitted before the filing and the filing was at 4:06 p.m.
So we'll find it. If you want us to search for it, we will look amongst and get it to you.
MR. WERTHEIMER: Why?
MS. NELSON: Well, it could have been by other than an email.
MR. WERTHEIMER: Margaret, no offense.
MS. NELSON: No, I'm saying --
MR. WERTHEIMER: We want you to look for it. We now have on the record that the Governor

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said it was in an email and we have the email being 7:47 so I would suggest --
MS. NELSON: He just corrected that. He indicated it could have been by some other means and that it was earlier than this time frame, so we'll get it to you.
MS. LEVINE: Let's talk for a second. We have a lot of attorneys testifying. I think they should stop it.
MS. NELSON: Correct.
MS. LEVINE: To the extent that there's a transmittal other than this one that exists, we'll ask the State to produce it to us. In response to the direct request, we've got the production from Jones Day with regard to the transmittal.
MR. GADOLA: I'm confident we can do that.
MR. SCHNEIDER: That's fine.
MR. WERTHEIMER: Thank you.
MS. NELSON: Absolutely.
MR. WERTHEIMER: Thank you, Governor.
THE WITNESS: All done?
MR. WERTHEIMER: All done.
THE WITNESS: Okay. Thank you.
VIDEO TECHNICIAN: Deposition's concluded at 12:04 p.m.

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MS. GREEN: The Retirement Systems join the prior objection and reservation of rights placed on the record earlier. We also received documents late last night from the City, and those documents relate to both City and State officials.
To the extent our rights have been prejudiced and those documents reveal a need for further deposition testimony, we hereby join the prior objection placed on the record by counsel.
(Deposition concluded at 12:05 p.m.)
- - -

(Deposition Exhibit 11 was marked post deposition)

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CERTIFICATE

STATE OF MICHIGAN }
COUNTY OF OAKLAND } SS:

I, LAUREL A. JACOBY, Certified Shorthand reporter, a Notary Public, hereby certify that I recorded in shorthand the examination of GOVERNOR RICHARD D. SNYDER, the deponent in the foregoing deposition; and that prior to the taking of said deposition the deponent was first duly sworn, and that the foregoing is a true, correct and complete transcript of the testimony of said deponent.
I further certify that no request was made for submission of the transcript to the deponent for reading and signature and that no such submission was made.
I also certify that I am not a relative or employee of a party or an attorney for a party; or financially interested in the action.

_____
LAUREL A. JACOBY, CSR-5059, RPR

Notary Public, Oakland County, Michigan
My commission expires: 9/1/18
Dated: This 11th day of October, 2013.

$

$18 (6)
52:5,20;54:7,15,19;
56:21
$38 (1)
55:5
$60 (1)
55:8

[

[verbatim] (1)
73:16

A

ability (2)
31:12;92:18
able (2)
142:17;146:25
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EXHIBIT B

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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re — Chapter 9
CITY OF DETROIT, MICHIGAN, — Case No. 13-53846
Debtor. — Hon. Steven W. Rhodes
_____/

VIDEOTAPED DEPOSITION

DEPONENT: KEVYN ORR
DATE: Monday, September 16, 2013
TIME: 10:08 a.m.
LOCATION: MILLER CANFIELD PADDOCK & STONE PLC
150 West Jefferson, Suite 2500
Detroit, Michigan
REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267

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Detroit, Michigan
Monday, September 16, 2013
* * *

THE VIDEOGRAPHER: This is tape number one to the videotaped depositions of Kevyn Orr being heard before the U.S. Bankruptcy Court, Eastern District of Michigan, Case Number 0227543.0001. This deposition is being held at 150 West Jefferson, Detroit, Michigan on September 16, 2013 at 10:08 a.m.

My name is Mark Meyers, I am the videographer, the court reporter is Jeanette Fallon. And will the court reporter please swear in the witness.

KEVYN ORR

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

EXAMINATION

BY MR. ULLMAN:

Q. Good morning, Mr. Orr.

A. Good morning.

Q. My name is Anthony Ullman, I represent the Retirees Committee. I'm going to be asking you some questions this morning, as will some others.

A. Okay.

MR. ULLMAN: Before we begin I would just like to note for the record that we received the document production that the City made on Friday and it was in image file, essentially TIF images, over a hundred thousand pages which were essentially, as the City knows, very difficult to work with. We obviously have not been able to get through them all in time for this morning's deposition. We're going to continue to review the documents and we're reserving our rights to recall Mr. Orr for further deposition if after review of the documents we feel it's appropriate to do so.

MR. SHUMAKER: We'd just note for the record that we're abiding by the schedule set by the Court and that the documents that were produced were responsive to the more than hundred document requests that the City received in connection with this motion and so we reserve all rights and I'm sure we'll oppose any effort to continue the deposition.

MR. ULLMAN: Duly noted.

Q. Mr. Orr?

A. Yes.

Q. You've been deposed before; correct?

A. Yes.

Q. So you know I will ask questions and I would

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1 appreciate if you wait until I finish before you
2 answer; and likewise, I'll wait until you finish
3 answering before starting the next question.
4 A. Yes.
5 Q. And if there's any question of mine you don't
6 understand, please let me know and I'll rephrase it.
7 A. Okay.
8 Q. You were appointed Emergency Manager on March 14th,
9 2013; is that right?
10 A. No.
11 Q. Okay, technically you were appointed Emergency
12 Financial Manager on March 14th; is that right?
13 A. No.
14 Q. Okay. When were you appointed the Emergency Financial
15 Manager?
16 A. I think the final papers were signed on March 25th or
17 the 26th. The announcement or rollout was on the 13th
18 and 14th.
19 Q. Okay. So it was announced on the 13th or 14th that
20 you were going to be the Emergency Manager?
21 A. Yes, effective March 25th.
22 Q. And then when -- you're familiar with PA 436?
23 A. Yes.
24 Q. So your original appointment was as the Emergency
25 Financial Manager; is that right?

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1 A. Yes.
2 Q. And then when PA 436 became effective, you became the
3 financial manager?
4 A. No.
5 Q. I'm sorry, the Emergency Manager; is that right?
6 A. Yes.
7 Q. And PA 436 became effective on March 28th; is that
8 right?
9 A. Yes, I believe so.
10 Q. Okay. And PA 436 followed PA 4. Are you familiar
11 with PA 4?
12 A. Yes.
13 Q. And were you aware that PA 4 was struck by
14 referendum -- by voter referendum in Michigan in
15 November 2012?
16 A. Yes.
17 Q. Now, did you have any involvement in Public Act 4 in
18 Michigan?
19 A. No.
20 Q. Was there any involvement by Jones Day to your
21 knowledge?
22 A. Not to my knowledge.
23 Q. Now, PA 436 was enacted in December of 2012; is that
24 right?
25 A. I believe the statute speaks for itself, but I do

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1 believe that's right.
2 Q. Okay. And among other things it authorized the
3 governor to give authorization to the Emergency
4 Manager to file for bankruptcy under Chapter 9; is
5 that right?
6 A. Yes.
7 Q. And the text authorizes but does not require the
8 governor to place contingencies on the municipalities
9 proceeding under Chapter 9; is that right?
10 A. Statute speaks for itself, but I believe that's
11 correct.
12 Q. And when did you first became aware of those
13 provisions in PA 436?
14 A. Probably mid to late January or February.
15 Q. Now, did you have any involvement in the drafting of
16 PA 436?
17 A. No, none whatsoever.
18 Q. Did Jones Day to your knowledge?
19 A. No, none whatsoever.
20 Q. Now, prior to the enactment of 436 did you have any
21 communications, written or oral, with anyone from the
22 city of Michigan -- I'm sorry, the City of Detroit or
23 the State of Michigan regarding PA 436?
24 A. I believe that's a compound question, but I'll answer
25 it. No.

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1 Q. Now, at the time that you indicated you were
2 effectively made the -- became known that you would be
3 the Emergency Manager around the 13th or 14th of
4 March, you were a practicing lawyer; is that right?
5 A. Yes.
6 Q. And you were at Jones Day; correct?
7 A. Yes.
8 Q. And you've been engaged in the practice of law for a
9 number of years prior to 2013; correct?
10 A. Yes, since 1983. I was licensed in February 1984.
11 Q. And your expertise was bankruptcy law; is that right?
12 A. Started out as a trial attorney, eventually became a
13 bankruptcy litigator, eventually into all aspects of
14 bankruptcy law.
15 Q. So as of 2013 is it fair to say that you have
16 expertise with bankruptcy law?
17 A. Yes.
18 Q. In fact that's what you're best known for; isn't it?
19 A. At this point I think so.
20 Q. And you worked on the Chrysler bankruptcy in 2009; is
21 that right?
22 A. Yes, 2008 through 2013.
23 Q. Okay.
24 A. Okay.
25 Q. And you also spent a number of years at the office for

Page 13

1 the US trustee; is that right?
2 A. Yes.
3 Q. And what was your role there?
4 A. I was initially brought in as deputy director of the
5 US Trustee's office and upon the retirement of my
6 mentor and prior director, Jerry Patchan, I became
7 director of that office.
8 Q. Okay. And was your role there in a legal capacity in
9 terms of working with the department?
10 A. No, I was one of -- I was a component head of one of
11 the 36 components in the United States Department of
12 Justice, which was more in the nature of managerial as
13 opposed to legal responsibility.
14 Q. Okay. So did you ever serve as an actual trustee in a
15 bankruptcy case?
16 A. At the US Trustee's office?
17 Q. Yes.
18 A. No.
19 Q. And you also work for the RTC; is that right?
20 A. Yes.
21 Q. And that was in a litigation capacity?
22 A. Yes, litigation and supervisory.
23 Q. Now, you've never -- prior to becoming the Emergency
24 Manager you never ran a city; did you?
25 A. No.

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1 Q. Did you -- prior to becoming the Emergency Manager did
2 you have any position that had responsibility for the
3 operations of a municipality?
4 A. I'm just thinking through the various career positions
5 I had. Let me correct something. I think your
6 question was was I ever receiver or bankruptcy
7 receiver? Which one was it?
8 Q. I think I asked whether you were ever a trustee.
9 While you were at the --
10 A. Not as the US Trustee, but I had served in Florida as
11 a receiver and a trustee in a matter whose name
12 escapes me, it was some years ago. Had I ever done
13 anything in the operations of a city inside? No.
14 Q. And as of 2013 did you have any experience or
15 expertise with local or state budgeting?
16 A. Yes.
17 Q. What was that?
18 A. At various times in my practice in Florida I was also
19 a land use attorney and from time to time would be
20 involved with various officials regarding planning and
21 zoning issues.
22 Q. Okay, but -- and the involvement was limited to
23 planning and zoning?
24 A. No, planning, land use and zoning, not inside the
25 government as a private practitioner.

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1 Q. Okay. Did you have any involvement or experience in
2 actual budgeting for general, state or local
3 operations for all the various departments that are
4 involved in the running of a state or a city?
5 A. I'm trying to be accurate without overstating my prior
6 experience.
7 Q. Uh-huh.
8 A. There were times where I was involved in various
9 campaigns, political campaigns, and as I said, land
10 use, planning and zoning, which would look at various
11 functions, but not for an entire city.
12 Q. Okay, not for budgeting the various operations for
13 sanitation, for police, for all the functions that go
14 into a city or a state?
15 A. No, let me be clear. If your question is was I ever
16 responsible for budgeting all the operations like in
17 Detroit, which has 44 departments, the answer is no.
18 Q. Did you ever run a corporation?
19 A. I actually think I did.
20 Q. What was that?
21 A. With the RTC I was appointed as an officer for one of
22 the financial institutions.
23 Q. Okay, and when was that?
24 A. I was at the RTC from '91 through '96 so sometime in
25 that period.

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1 Q. And what position did you hold?
2 A. I don't recall.
3 Q. And what were your responsibilities; do you remember
4 -- first of, all do you remember what corporation it
5 was?
6 A. I don't. It was one of the many savings and loans
7 that we had. I think it was in New Orleans. The head
8 of the division sent me down to take it over with a
9 team.
10 Q. Do you remember the name of the S&L?
11 A. I do not.
12 Q. How long that lasted?
13 A. I think I was commuting off and on for two to four
14 years.
15 Q. Do you recall how many people worked for you at the
16 S&L?
17 A. Several hundred.
18 Q. And that was obviously focused solely on the business
19 of that particular S&L; correct?
20 A. Yeah, there were a bunch of other issues, regulatory
21 issues, liability issues, insurance, but the business
22 of a savings and loan or holding -- could have been
23 the holding company for a savings and loan.
24 Q. Outside of that have you ever worked in business?
25 A. At a managerial level?

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1 Q. Yeah.
2 A. As I said, I think I was a receiver in another case in
3 Florida and perhaps a special master in another matter
4 in Florida.
5 Q. But just as a regular, working for a company?
6 A. No, I've been an attorney all my professional career.
7 Q. Do you have any particular expertise in finance?
8 A. Other than being a bankruptcy attorney, no, my degrees
9 are in political science and law.
10 Q. And you indicated that you served as a trustee or
11 receiver once in Florida and what was the nature of
12 the company that you acted as receiver for?
13 A. I don't recall. I would be speculating. It was
14 affiliated with real estate in some fashion.
15 Q. Okay. And do you have an accounting degree?
16 A. No.
17 Q. Are you an actuary?
18 A. No.
19 Q. Is it fair to say that as of the time of your
20 appointment as Emergency Manager, your sole expertise
21 was in law and particularly in bankruptcy law?
22 A. No. I think that while my principal expertise was in
23 law and bankruptcy law that in that capacity we
24 obviously as bankruptcy professionals deal with
25 financial issues and requirements that require us to

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1 make judgment calls. I would not say that that
2 typically would include the level of expertise as an
3 actuary.
4 Q. Okay. And your sole -- your involvement in financial
5 issues as you indicated was gained in your capacity as
6 a bankruptcy lawyer; is that right?
7 A. Well, gained in my capacity as I said through the arc
8 of my career having to do with first trial attorney,
9 business law, banking and finance at the FDIC, then
10 the RTC, then the Department of Justice and
11 bankruptcy.
12 Q. Now, you had discussions with the governor of Michigan
13 or people working with or for him prior to becoming
14 Emergency Manager; is that right?
15 A. Yes.
16 Q. Can you tell me about those?
17 A. Yeah, I believe when you say people either working
18 with or for him, the initial discussion was at the end
19 of January, could have been early February, but I
20 think it was the end of January when we came in to
21 pitch for the restructuring work for the City of
22 Detroit before a restructuring team of advisors, which
23 excluded -- the governor was not involved in that
24 presentation.
25 Q. And when was it first discussed -- when was the

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1 possibility of your acting as Emergency Manager first
2 raised?
3 A. I believe it was raised within a few days of us coming
4 back from that presentation.
5 Q. And how did that come about? What was said?
6 A. Someone called my managing partner, as I understand
7 it, I wasn't on that call, and asked if I might be
8 interested in serving as Emergency Manager and my then
9 managing partner relayed that conversation to me.
10 Q. And that -- is that the first time that you became
11 aware that you were being considered for the Emergency
12 Manager position?
13 A. Yes, I believe that was in February.
14 Q. Now, you had attended the presentation or the pitch
15 for Jones Day that you just referred to before the
16 restructuring committee of advisors?
17 A. Yes, Jones Day was one of I believe 21 law firms that
18 made presentations to that group about representing
19 the City.
20 Q. And what were the qualifications of Jones Day that
21 were presented at that presentation?
22 A. We had prepared a book of the qualifications of the
23 various attorney and the law firm and other
24 representations both in court and out of court
25 restructuring, having to do with healthcare, employee

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1 benefits, labor issues, having to do with
2 environmental, bankruptcy, litigation, analyses,
3 negotiations, mediation, the full panoply of work that
4 the firm did.
5 Q. And did you make any personal presentation at that
6 meeting, did you pitch anything?
7 A. We all spoke.
8 Q. Okay, and what did you speak about as regards what you
9 would bring to the table?
10 A. No, there were no presentations made so much with
11 regard to what I personally might bring to the table.
12 Q. Okay.
13 A. Although we did discuss the experience of the team.
14 There was no presentation for why any of us, for
15 instance, should be Emergency Manager. There was
16 discussion about what we perceived to be the difficult
17 status of the City and how our law firm could provide
18 representation to the City.
19 Q. And was anything said to the committee at the meeting
20 either through the book or orally as to your
21 particular credentials and expertise?
22 A. My credentials were included in the book, as were the
23 other attorneys at the presentation.
24 Q. Okay. And your --
25 A. Please.

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1 Q. Did I -- were you done?
2 A. No, no, I was done, yeah.
3 Q. Okay. And were your credentials presented that
4 presented you as primarily as a bankruptcy lawyer?
5 A. As primary as a bankruptcy and restructuring attorney,
6 yes.
7 Q. And was there any discussion specifically of the
8 possibility of a Chapter 9 filing at this
9 presentation?
10 A. I don't think so. I don't recall -- I don't -- I
11 don't -- I don't recall, and the reason I say I don't
12 recall is there -- no, wait a minute. I don't know if
13 there was a discussion about the City. There was a
14 discussion about other Chapter 9 cases, other cities.
15 Q. And what specifically do you recall being said about
16 the Chapter 9 filings in the other cases? Let me put
17 it this way. Did Jones Day refer to experience it had
18 in doing other Chapter 9 filings?
19 A. Yes, yes, various members of the team referred to that
20 experience, yes.
21 Q. And is it fair to say that the Chapter 9 experience
22 was a substantial part of the pitch that Jones Day was
23 making to this committee?
24 A. No.
25 MR. SHUMAKER: Object to the form.

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1 A. No, it was a component of the presentation.
2 Q. That -- you said there was a written presentation or
3 written material?
4 A. There was a book, yes, there were written materials.
5 Q. And do you know whether that's been produced?
6 A. I do not.
7 MR. ULLMAN: I would like to call for the
8 production of that, please.
9 MR. SHUMAKER: We'll look into it. I would
10 ask here that if you're going to ask for documents
11 throughout the deposition, that you follow-up with a
12 letter and email.
13 MR. ULLMAN: Sure.
14 Q. And do you recall whether there was any discussion at
15 this presentation as to the major problems that were
16 facing Detroit at the time?
17 A. I think there were discussions about Detroit's issues,
18 various issues at the time, yes.
19 Q. And do you recall any discussion about the issues that
20 Detroit was facing regarding its pension liabilities?
21 A. I don't recall specific discussions and -- no, I don't
22 recall specific discussions but there may have been.
23 Q. Okay. And the same question for retirement benefits
24 in general apart from pension benefits. Do you recall
25 any discussion of that?

Page 23

1 A. I don't recall specific discussions, but there may
2 have been. The discussions were more at a high level
3 as opposed to detailed level.
4 Q. And do you recall at a general level there being
5 discussion that Detroit was facing major issues
6 regarding its pension and other retirement benefit
7 liabilities?
8 A. I know, to be candid with you, the pitch book
9 contained the information regarding employee benefits
10 and labor attorneys. One of the attorneys on the team
11 was a labor attorney, but I don't recall there being
12 specific discussions in detail about those issues.
13 Q. Do you recall in general at the committee discussion
14 being raised that Detroit was in fact facing
15 substantial issues concerning its pension and other
16 retirement benefits and needed to find a way to deal
17 with those?
18 A. Here again I don't recall specific discussions. There
19 may have been. I just don't recall.
20 Q. Okay. Let me show you some documents, Mr. Orr.
21 A. Thank you.
22 Q. You can't thank me until you've seen the documents.
23 A. It may refresh my recollection. I just don't recall.
24 MR. ULLMAN: Let's mark the first one as
25 Orr 1.

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1 (Marked Exhibit No. 1.)
2 Q. Are there other copies of that? Thanks.
3 A. Okay.
4 Q. Okay, what we're marked as Orr Number 1 is an email,
5 bears the Bates stamp ending in 113.
6 A. Yes.
7 Q. Now, these either -- there are a couple of emails on
8 this chain from January of 30 -- January 30, 2013.
9 A. Yes.
10 Q. And the bottom one states that it's from Richard Baird
11 to Corinne Ball. Who is Richard Baird?
12 A. Richard Baird is the governor's transition manager on
13 contract to the State of Michigan.
14 Q. And he says -- the message is to Corinne, sorry I
15 missed your call. Basically says, I'm inquiring about
16 the potentiality of actually hiring a member of your
17 team for the Detroit EM spot.
18 A. Yes.
19 Q. And is this what you were referring to before in your
20 testimony?
21 A. Yes. Says, was on the phone with Steve Brogan. He
22 can fill you in, but basically thinking about
23 potential -- yes, that's what I was talking about.
24 Q. And it's your testimony that prior to this you had not
25 had discussions with anyone from the State of Michigan

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1 or the city of Michigan (sic) about the possibility of
2 becoming Emergency Manager?
3 A. Absolutely not.
4 Q. And at the top it says, bet he asked if Kevyn could be
5 EM, and that in fact is why he was calling?
6 A. Yes, I see that.
7 Q. And then that's what happened? He did call and -- he
8 had called Corinne Ball to ask about you being the EM?
9 MR. SHUMAKER: Object to the form.
10 A. This document -- I don't know. My testimony is that I
11 believe Rich had called my managing partner, who was
12 Steve Brogan. I don't know if he called Corinne Ball.
13 This seems to be an email exchange between him and
14 Corinne Ball and then Heather Lennox and Amy Ferber.
15 Q. Okay, fair enough. But you recall around that day
16 someone telling you that Baird had called talking
17 about the EM position and then shortly thereafter you
18 in fact got a call; is that right?
19 MR. SHUMAKER: Object to the form.
20 A. Yeah. I don't know if it was -- it was soon
21 thereafter. I don't know if it was that specific day,
22 but it was soon thereafter.
23 Q. And you then got -- did you get a call from Mr. Baird
24 directly?
25 A. No.

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1 Q. Who did you get a call from?
2 A. Steve Brogan.
3 Q. Okay, that's your managing partner?
4 A. Yes.
5 Q. And he told you that Baird wanted you to be the EM?
6 A. He told me that they had inquired whether I was
7 interested in applying to become the EM.
8 Q. Okay, and your response was?
9 A. No.
10 Q. Okay. And I take it there were further conversations?
11 A. Yes. That conversation was no. I did not want to
12 leave the firm and that we would tell them that.
13 Q. And did you have a conversation with Richard Baird
14 concerning the possibility of your becoming the EM on
15 or about this time frame at the end of January of
16 2013?
17 A. Yeah, I don't know if it was end of January, here
18 again being in February, but I recall having a
19 conversation with Rich Baird soon thereafter.
20 Q. Okay, let's look at the next document, which we'll
21 mark as Orr 2.
22 (Marked Exhibit No. 2.)
23 Q. What we've marked as Orr 2 is a document ending in
24 Bates number 303.
25 A. Yes.

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1 Q. You've seen this email chain before, Mr. Orr?
2 A. Yes.
3 Q. And in fact you are on both emails; are you?
4 A. I think I wrote the top one.
5 Q. Okay. Now, what is the role of Jones Day at this
6 time? Does it have an official role with Detroit or
7 with the State of Michigan?
8 A. No, at this time, as far as I recall, Jones Day was a
9 candidate to be the attorneys for the City.
10 Q. Now, starting with the bottom email, this is from
11 Corinne Ball to you.
12 A. Yes.
13 Q. And she goes on to talk about food for thought for
14 your conversation with Baird. Obviously referring to
15 a conversation expected between you and Baird. She
16 makes reference to the Bloomberg Foundation and
17 talking about whether someone should ask Baird about
18 financial support for the project and in particular
19 the EM. Can you tell me what that's referring to?
20 A. This is Corinne's email to me and I think she was
21 talking in some form about the Bloomberg Foundation
22 supporting Detroit efforts with the EM. And I think
23 -- I don't know if in this email or subsequently said
24 something along the lines of I don't want anything to
25 be extraordinary, but I think at that point -- as I

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1 said, on the 31st, so it wasn't on the 30th, it was
2 the 31st -- that I wasn't interested in the job.
3 Q. Do you know what financial support she's referring to?
4 Did you have a conversation with her about this?
5 A. He we did not have a -- well, we may have had a
6 subsequent conversation about financial support. We
7 -- I don't want to speculate but there may have been a
8 conversation about supplementing the EM salary.
9 Q. An additional salary that would be funded privately?
10 Is that what you're saying?
11 A. Yeah, I think the statute allows the EM to have
12 additional compensation and that may have been what
13 this was referring to or it may have been about the
14 Bloomberg Foundation helping Detroit directly. I'm
15 not sure, but there may have been that discussion.
16 That seems to remind me of something along those
17 lines.
18 Q. The next statement from -- or the last sentence in
19 Ms. Ball's email says, I can ask Harry for contact
20 information. This kind of support in ways
21 nationalizes the issue in the project.
22 Do you have an understanding of what she's
23 referring to?
24 A. I do not.
25 Q. You don't know what she meant when she said -- she

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1 used the word nationalized?
2 A. No, I don't know if she meant raises the profile of
3 the issues to help Detroit, I don't know.
4 Q. And you never asked her what she meant?
5 A. I don't recall asking her what she meant.
6 Q. In the top email in this exhibit you say that you had
7 a good conversation with Rich Baird this morning.
8 This is the 31st of January?
9 A. Yes.
10 Q. So obviously either you called him or you called him
11 as of the 31st of January?
12 A. Yes, yes.
13 Q. It says in this email that you told him you were
14 interested in the job but there were some things that
15 made it impractical. Is that a fair summary of
16 your --
17 A. Yes.
18 Q. -- your conversation with Baird?
19 A. Yes.
20 Q. And then he suggested you give it additional
21 consideration and you said you could say that there's
22 a glimmer of hope you would take it?
23 A. Right.
24 Q. And then you agreed to get back in touch next week?
25 A. Right.

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1 Q. He said -- you go on to say that he tells you, he
2 Baird, that he likes your presentation, he's pulling
3 for us to represent the City.
4 A. Yes.
5 Q. Is that what he told you?
6 A. Yes.
7 Q. Do you remember anything else about that conversation
8 with Mr. Baird?
9 A. No, I remember we had a conversation. I said I was
10 flattered, but I really wasn't interested in the job,
11 I was very comfortable at Jones Day, didn't want to
12 leave my family, I had young children, but I would
13 give it some consideration and I think we ended it by
14 saying, you know, I probably don't want to take the
15 job but I am committed to working and I did say
16 working in lockstep with the City and would be willing
17 to take any role in this respect.
18 Q. And was there any discussion during this conversation
19 as to what you would do if you ultimately did take the
20 job of EM?
21 A. No. As I recall in this conversation based upon this,
22 the discussion was very high level and I think
23 Mr. Baird asked me to at least give it some reflection
24 and consideration and not turn it down outright.
25 Q. And you accommodated that request; right?

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1 A. I started considering it, yes.
2 Q. Now, when he says we're pulling for us to represent
3 the City, that's as a restructuring counsel as you
4 talked about before?
5 A. Yes.
6 Q. And there was a program, wasn't there, that had been
7 designed to solicit counsel to act as restructuring
8 counsel for Detroit?
9 A. I don't know if it was a program. I know that there
10 was a process that we and 20 other firms participated
11 in. I believe it was one day, maybe two, where we
12 flew out to the airport and presented our credentials
13 over 45 minutes.
14 Q. And was there a particular firm that had designed or
15 that oversaw that process?
16 A. I don't know.
17 Q. Were you aware that Buckfire -- are you familiar with
18 Buckfire?
19 A. I know Miller Buckfire. They were at the
20 presentation. I don't know if they designed it.
21 Q. Were you aware they were playing a role in the --
22 A. Selection process?
23 Q. -- in the selection process?
24 A. Yes.
25 Q. And are you aware that they were in fact effectively

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1 assigning points to the various firms that
2 participated and doing some sort of tally to help a
3 decision be made?
4 A. Yes.
5 MR. SHUMAKER: Objection, foundation.
6 Q. And is it correct that Miller Buckfire was a banker
7 for Chrysler in the Chrysler bankruptcy?
8 A. No.
9 Q. They weren't?
10 A. No. I'm trying to think. Did Miller Buckfire play a
11 role in Chrysler? I -- let's put it this way, I had
12 not met anyone from Miller Buckfire in the Chrysler
13 representation.
14 Q. Okay. Let me show you the next document, which we'll
15 mark as, what are we up to, 3?
16 (Marked Exhibit No. 3.)
17 Q. What we've marked as Exhibit 3 is a chain of emails,
18 the first page ends in Bates number 300. Have you
19 seen these before, Mr. Orr?
20 A. Yes.
21 Q. Let's first look at the first three emails in this
22 chain.
23 A. Uh-huh.
24 MR. SHUMAKER: The last chronologically or
25 the first ones?

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1 MR. ULLMAN: No, the 207.
2 A. These are follow-on from the prior email?
3 Q. Uh-huh.
4 A. Okay.
5 Q. If we look at the one that's at the bottom of Bates
6 300 that carries over to the next one, this is an
7 email from Mr. Moss, from Daniel Moss, to you?
8 A. Yes.
9 Q. And I take it Mr. Moss is someone you worked with at
10 Jones Day; is that right?
11 A. Yes.
12 Q. And were you still at Jones Day at this time?
13 A. Yes.
14 Q. And Mr. Moss writes that nationalizing this -- making
15 this a national issue is not a bad idea. He goes on
16 to say it gets political cover for the State
17 politicians. He goes on to say that if it succeeds,
18 there will be more than enough patronage to allow
19 either Bing or Snyder to look for higher callings
20 whether a cabinet, senate or corporate. Further this
21 would give you cover and options on the back end to
22 make up for lost time there.
23 Can you tell me what he's referring to?
24 MR. SHUMAKER: Objection, form, foundation.
25 A. Yeah, I would have to say that the document speaks for

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1 itself. I think it also says that indeed this gives
2 them either greater incentive to do this right. I
3 think my response says no.
4 Q. Let me ask you questions about this. Mr. Moss says,
5 making this a national issue is not a bad idea. Do
6 you have an understanding as to what he's referring to
7 when he says making this a national issue?
8 A. No. What I think he's probably referring to is
9 raising the profile of Detroit and the crisis it's in
10 so it can get some help.
11 Q. Did you have any conversations with Mr. Moss about
12 what he meant when he wrote this email?
13 A. No, other than this email exchange I don't recall any.
14 I think we probably did, though. We talk on a regular
15 basis.
16 Q. Do you recall anything more specific about what he
17 meant when he wrote this is a national issue based on
18 the conversations you had with him?
19 A. No. There were emails going back and forth and I
20 think my email back to him approximately eight minutes
21 later addressed the issue.
22 Q. Well, he goes on to say that if this gives them -- it
23 provides political cover to state politicians and it
24 gives them even greater incentive to do this right.
25 Do you have an understanding as to what the this is,

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1 to do what right?
2 A. I think this is trying to fix Detroit right in a broad
3 sense.
4 Q. And is that based on your conversations with Mr. Moss
5 or is that based on your reading of this email?
6 A. That's based on probably my reading of this email.
7 But let me think about conversations. It could have
8 meant to do this process right, whatever that is,
9 restructuring, out of court or in court.
10 Q. So as you sit here now, you don't have a specific
11 recollection or understanding as to exactly what
12 Mr. Moss meant; is that right?
13 A. I have worked closely with Dan Moss for a number of
14 years. We have conversations about a number of
15 issues, but when you say do this right, I don't want
16 to give the wrong impression that there was some
17 conversation about what this right exactly meant. I
18 assumed it meant to do the process right, whatever
19 that is.
20 Q. But you don't know what specifically Mr. Moss had in
21 mind because you never actually asked?
22 A. No. If you're trying to ascribe a specific thing or
23 process to it, no.
24 Q. In the last sentence Mr. Moss writes, this would give
25 you cover and options on the back end to make up for

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1 lost time there.
2 A. Yeah.
3 Q. Do you have an understanding as to what he was
4 referring to when he wrote that, he Mr. Moss?
5 A. No, but I think what my -- my impression is, I think
6 what he was trying to say is if you can get -- make
7 the issue a national issue and elevate it so that you
8 get national support, that you may have greater
9 success and be able to get back to my life.
10 Q. You mean success as Emergency Manager?
11 A. Success for the City of Detroit, yeah.
12 Q. Well, he writes this would give you cover and options
13 on the back end, you Kevyn Orr --
14 A. Yeah, but I think if you read it in conjunction -- I'm
15 sorry, I didn't mean to cut you off.
16 Q. So my question was is he talking about you, Kevyn Orr,
17 in the context of being an Emergency Manager as you
18 understood it?
19 A. No, I don't want to parse the email and try to ascribe
20 meaning to it that's not true. You asked for my
21 understanding and my testimony is I think this is Dan
22 saying to me if you nationalize the issue, that it
23 brings greater attention and perhaps the opportunity
24 for people to do this, meaning the project, right and
25 if it succeeds, then the other political members will

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be given acknowledgment for the success. Further, it might give me the ability to come back to the firm and make up for the time that I'd lose if I did this job.

Q. The job being the Emergency Manager job?

A. Yes.

Q. Okay. Now, in the next email that's going up the chain that is on the first page you say you wouldn't do it.

A. Yes.

Q. And when you say you wouldn't do it, again, do you have -- what is the it that's being referred to? So far no one's ever really identified what nationalizing meant.

A. I'm telling you what I can think, what I meant by this writing.

Q. Okay.

A. What I meant was I wouldn't necessarily make it a national issue and I think I say it would just bring in the Demo/Republican polarization on a national scale and make Detroit a fall for the agendas of both sides, meaning that people would try to use it as an allegory for whatever their particular perception was. I go on to say that the president would have to criticize the trampling of democracy, and that's been done here, not by the president I might add, and the

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Republicans would rail against any further federal bailouts and that's been said, plus if the feds did anything for Detroit, a number of other municipals would have their hands out at a time when no one's in the mood to dole out federal largess. I think I go on to say this is a morass of problems.

So my thought was there, to be clear, that I did not think it, meaning to try to give the issues of Detroit national prominence, was particularly productive.

Q. Now, in the top email you write -- or I'm sorry, Mr. Moss writes back to you and in the second paragraph he goes on to say, it seems the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly Chapter 9. And then he goes on to say that that avoids a political fight over the scope of any appointed Emergency Manager, moves the ball forward. And then he goes on to say, appointing Emergency Manager whose ability to actually do anything is questionable, would only serve to kick the can down the wrong path.

A. Yes.

Q. And can you tell me -- obviously this is -- Mr. Moss here is referring to the possibility of a Chapter 9

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filing?

A. Yes.

Q. And was this something that you discussed specifically with Mr. Moss?

A. We probably did.

Q. Okay. And did you discuss the possibility -- so at this point it was understood that one possibility, one potential route of action, would be to file a Chapter 9 for Detroit if you took the Emergency Manager job; is that right?

A. Yeah, I think that since we have been reviewing background information on Detroit and the possibility of a Chapter 9 filing had been mentioned in 2005, 2006, 2009, 2011, 2012, up until this point, in fact I think it was, as I said, I testified earlier this morning, the possibility of Chapter 9s in other cities have been discussed, that the issue of a potential Chapter 9 filing for the City of Detroit was not a particularly surprising discussion. That had been discussed on many levels in the national press, in the local press, it had been recommended by a prior -- in 2005 I think it was recommended by a prior employee -- senior employee of the City, so I think that discussion was the typical type of discussion that you'd have with your colleagues.

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Q. And were you in fact at this time having those types of discussions with your colleagues at Jones Day as to the possibilities of a Chapter 9 filing if you took the Emergency Manager job and how that would be implemented?

A. Yes, but I don't want to give you the wrong impression because I think based upon what I've seen from some of the briefing and some of the interrogatories the impression is that that was predetermined and that's not true. The reality is there was much discussion about what the alternatives would be and the need to bring something that would bring order and efficiency to the process given the number of interests that were involved.

Q. But it was certainly one of the possibilities that was on the table as a course that might need to be followed; is that right?

A. Oh, sure, it had been discussed for the better part of the prior decade.

Q. And in fact, Mr. Moss is recommending the simplest thing, the best option would be to have the -- Snyder and Bing, the mayor and the governor, both agree to go through an orderly Chapter 9?

MR. SHUMAKER: Object to form, calls for speculation.

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1 Q. That's what it says here; doesn't it?
2 A. Well, I mean, the document speaks for itself.
3 Q. My question is did you agree with that?
4 A. No. In fact, I think we had discussions back and
5 forth about, one, me not wanting to take the job and
6 two, whether or not the parties could reach concession
7 short of a Chapter 9, which would provide benefit to
8 the City in an orderly way.
9 Q. And ultimately that didn't happen; did it? The City
10 did file Chapter 9; didn't they?
11 A. Well, I mean, I think that we took a lot of time, I
12 took 30 days when I came into the City, I said --
13 Q. Mr. Orr, I don't mean to interrupt you, but I don't
14 want to waste time. My question was pretty simple. I
15 was simply asking ultimately the City did file a
16 Chapter 9; didn't it?
17 A. Yes, and I was giving you an explanation for why that
18 occurred.
19 Q. I'll get to that later.
20 A. Okay.
21 Q. Now, in this email Mr. Moss goes on to say, appointing
22 of Emergency Manager whose ability to do anything
23 questionable would only serve to kick the can down the
24 wrong path. And he's referring there to the can of
25 the Chapter 9 filing; isn't he?

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1 MR. SHUMAKER: Objection, form. Calls for
2 speculation.
3 A. No, no.
4 Q. Now, in this email Mr. Moss recommends or suggests the
5 best path would be for Snyder and Bing to voluntarily
6 go through a Chapter 9 and not go through the
7 Emergency Manager process; is that right?
8 A. No, you've asked that question before but you put a
9 little color on it this time and I don't think that's
10 accurate.
11 Q. Well --
12 A. Perhaps you can rephrase it.
13 Q. Certainly. He says, he Moss says, it seems the ideal
14 scenario would be that Snyder and Bing both agree that
15 the best option is to simply go through an orderly
16 Chapter 9. This avoids an unnecessary political fight
17 over the scope of authority of any appointed Emergency
18 Manager. I'm not going to read the rest.
19 You see his recommendation, his advice, his
20 belief that the best option is for Bing and Snyder to
21 file Chapter 9?
22 MR. SHUMAKER: Objection to form.
23 A. I think you're coloring the email. As I said before,
24 this is pretty typical banter between co-workers and
25 colleagues about what could happen. You said it was

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1 advice and recommendation. To the best of my
2 knowledge we hadn't been retained then and we were
3 just going back and forth about potential options.
4 Q. Okay.
5 A. So I don't want to give -- my testimony to give this
6 email more import and lead to the conclusion as some
7 have already said in this litigation, that there was a
8 predetermination to file Chapter 9.
9 Q. But ultimately it was the Emergency Manager, the
10 appointed Emergency Manager, who filed the Chapter 9,
11 not Bing and Snyder; is that right?
12 A. Yes, after he had been sued multiple times and didn't
13 get a comprehensive proposal from any interested party
14 or creditor.
15 Q. Let me show you another document, which we'll mark as
16 Exhibit 4.
17 (Marked Exhibit No. 4.)
18 Q. This is a chain of emails, it starts with Bates number
19 295.
20 A. Yes.
21 Q. Have you seen this before, Mr. Orr?
22 A. Yes.
23 Q. In fact, you wrote some of this; didn't you?
24 A. Yes.
25 Q. If we focus on the top email --

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1 A. Yes.
2 Q. -- you're talking again -- at this point in time had
3 you decided whether to accept the Emergency Manager
4 job? This is later in the afternoon on January 31.
5 A. No, I didn't. I -- no, there was no time in the
6 initial two days that this came up that I decided to
7 accept the Emergency Manager job.
8 Q. Okay. And in this email you're giving some thoughts
9 on some of the issues that pertain to that; aren't
10 you?
11 A. Yes.
12 Q. And in particular you start talking about the
13 legislation that pertains to the EM position. You
14 said you went back and reviewed various laws; do you
15 see that?
16 A. Yes.
17 Q. And you talked about some laws in DC control board and
18 then you go on in the last sentence -- or I'm sorry,
19 the second to the last sentence to write, and I quote,
20 "By contrast Michigan's new EM law is a clear
21 end-around the prior initiative that was rejected by
22 the voters in November."
23 You wrote that?
24 A. Yes.
25 Q. And by the new EM law, you were referring to PA 436?

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A. Yes, I believe so.
Q. And by the end run you're talking about the voter -- the fact that PA 436 was enacted in response to the fact that the voters had rejected the prior law, PA 4; is that right?
A. Yes.
Q. And PA 436 was able to avoid another referendum by including tacking onto it a relatively minor appropriation provision; is that right?
MR. SHUMAKER: Objection, calls for speculation.
A. I don't know if that's the sum total of the difference between 436 and the prior law, but that was one of the components, yes.
Q. And when you wrote this question, Michigan's new EM law is a clear end-around the prior initiative, it was rejected by the voters in November, were you writing truthfully?
A. I think I was writing my opinion at that time, yes.
Q. And then you go on and you say, the -- and that was based on the analysis that you had done as of that date?
A. Yeah, I think you would recognize that between the 30th when this first came up and the 31st, I think this is later that afternoon, I spent some time just

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going through the other laws on a very cursory basis to try to get a better understanding of what was being asked.
Q. And the conclusion you reach is what you set out in the email here; correct?
A. At that time.
Q. You go on to say, the new EM law gives local governments four choices and you go on to list them?
A. Yes.
Q. And that is the list of the four choices you have, that comes from the statute PA 436; doesn't it?
A. I believe so. I don't have it in front of me, I have it here, but I believe so without looking at it.
Q. And so at that point in time you obviously were familiarizing yourself with 436 and had read it; correct?
A. Yes, I think what happened during this day is that I initially thought of rejecting the concept of being an EM, I then went back and said let me start informing myself on what's required EM in looking under the law, and then I was providing musings and streams of consciousness about what my initial conclusions were.
Q. And you mention that in your writing here that one option is a Chapter 9 bankruptcy with the governor's approval; correct?

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A. Yes.
Q. And you also make note that another option is Emergency Manager; is that right? State appointed EM is what you say?
A. Yes.
Q. And under PA 436 the Emergency Manager also had the authority with the governor's approval to file for Chapter 9; is that right?
MR. SHUMAKER: Objection, calls for legal conclusion.
A. Yeah, the statute speaks for itself, but yes.
Q. And you were aware of that at the time you wrote this email; correct?
A. I don't know if I read through the entire statute at this time. As I said, I have trying to get some familiarity. I think it's fair to say that I at some point pretty close -- if I wasn't aware of it at that time, I pretty closely became aware of it.
Q. Because you would certainly want to know what powers the Emergency Manager would have if you decided to take the job; correct?
A. I began to inform myself about the powers that the Emergency Manager would have. But please understand here again at this time I was trying to avoid taking the job.

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Q. And you go on then in the -- and you were -- I guess -- were you aware that for either the case of the Chapter 9 being filed with the governor's approval without the Emergency Manager being involved or the Chapter 9 filing with the Emergency Manager, that in either case PA 436 did not require the governor to impose any contingencies on the bankruptcy filing?
MR. SHUMAKER: Objection, calls for legal conclusion.
A. I don't recall if I had done a deep dive in that question at this time. Please understand, counselor, at this time I was doing a preliminary review of the statute based upon I believe some published reports and a look at it online. I may have gotten to that point, I just don't recall if at this time during that day I had.
Q. Okay.
A. But I did at some point.
Q. But you certainly knew that ultimately?
A. At some point I did, sure.
Q. Obviously. And then you go on in the next sentence in this email to say, "So although the new law provides the thin veneer of a revision, it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for Chapter 9 filing."

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1 A. Yes, I said that.
2 Q. And were you writing truthfully when you said that?
3 A. Yeah, and I think the balance of the paragraph, the
4 news reports state that opponents of the prior law are
5 already lining up to challenge this law. So as I just
6 testified, this was my preliminary analysis based upon
7 a number of sources, some of them were the news
8 reports.
9 Q. And you were aware in fact that as you just indicated
10 that there were either challenges already made or that
11 were going to be made to the law?
12 A. I was not aware that there were challenges already
13 made. I was aware the news report states that
14 opponents of the prior law were already lining up to
15 challenge the law.
16 Q. And did you have any understanding at this time as to
17 what those grounds of challenge were or may be?
18 A. No. As I said, this was, you know, within the span of
19 a day when this was going back and forth about what it
20 may require, I was beginning to familiarize myself to
21 some degree with the statute.
22 Q. Your email goes on to say you're going to speak with
23 Baird in a few minutes and see what his thinking is.
24 A. Yes.
25 Q. Did you speak with Mr. Baird that day?

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1 A. I don't recall, but I probably did.
2 Q. And do you recall any discussions with Mr. Baird that
3 day on the subject of the possibility of a Chapter 9
4 filing by the City?
5 A. No. I don't recall any discussions with Rich Baird
6 about the possibility of a Chapter 9 filing at this
7 point, no.
8 Q. Okay. But clearly at this point in time one of the
9 things you were focused on was the possibility of a
10 Chapter 9 filing and the legal issues that might
11 pertain to that as reflected in this email; correct?
12 A. As I have said before, the issue of a Chapter 9 filing
13 had been discussed many, many times with regard to
14 Detroit for the better part of the prior decade, so in
15 doing my sort of due diligence of what the statute
16 required, part of what I was doing was reading some of
17 those very articles that I mentioned earlier today
18 where some of the prior City employees were
19 recommending that there was a filing in 2005 in
20 connection with the cops, 2006 with the cops, 2009
21 with the SWAPs, so yes, Chapter 9 had been discussed
22 many, many times in the papers I was reading.
23 Q. And from all the discussions that you had to date with
24 various people including those at Jones Day, were you
25 aware that one of the issues with PA 436, one

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1 potential ground for challenge, was that it allowed
2 the governor to authorize a bankruptcy filing without
3 imposing a condition that would prevent pension
4 obligations from being impaired?
5 A. I don't know if I was aware of that issue at this
6 time, no.
7 Q. Well, were you aware -- you became aware of it if not
8 then at some point shortly thereafter; correct?
9 A. Yeah, let me say this. There was no broad based
10 concern at this point about with what the authority
11 was with regards to pensions so any sort of
12 insinuation that that was the focus at this point is
13 just inaccurate. That wasn't true. This as I said
14 before was a very cursory and initial sort of review
15 of what I was being asked to do so when I had a
16 discussion with Mr. Baird later I would have some
17 information and that's what I gleaned based upon a few
18 hours since apparently I got the call -- I was
19 informed that day, that morning or the day before to
20 the time I was going to have a call that afternoon.
21 Q. But I take it at some point in time you became aware
22 that Article 9, Section 24 of the Michigan
23 Constitution protects pension benefits from being
24 diminished or impaired?
25 A. I believe at some point in time I became aware that

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1 Article 9, Section 24 purports to protect pensions and
2 benefits in certain circumstances, yes.
3 MR. ULLMAN: Let's mark Exhibit 5.
4 (Marked Exhibit No. 5.)
5 Q. Exhibit 5 is just a printout of Article 9, Section 24
6 of the Michigan Constitution. Do you recognize it as
7 such?
8 A. I mean, the document speaks for itself, but that
9 appears to be what it is, yes.
10 Q. Okay, and I think your last answer you said that in
11 your view Section 24, Article 9 purports to protect
12 pensions and benefits in certain circumstances.
13 A. Yes.
14 Q. And are you contending that the words of Article 9,
15 Section 24 means something other than what they say?
16 MR. SHUMAKER: Objection, calls for legal
17 conclusion.
18 A. Yeah, I -- here again, I think the document speaks for
19 itself. I think that my response to that issue is
20 throughout the arc of my career, whether in federal
21 government or in private practice at the Chrysler
22 case, there have been many state laws, some of them
23 quite sacrosanct, that have been abrogated by federal
24 law, not just bankruptcy law. At the RTC we preempted
25 state, New York state, rent control litigation, law;

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1 we preempted California state escheat law; we
2 preempted -- and that was the model for 50s. In
3 Chrysler, we preempted 50 states have dealer franchise
4 laws that were preempted. So when I said I recognize
5 this, there are federal laws that preempt state laws.
6 MR. ULLMAN: I'm going to move to strike as
7 nonresponsive.
8 Q. Mr. Orr, I appreciate your perhaps trying to be
9 helpful, but my question was really very limited and I
10 would appreciate it if you could just answer it.
11 MR. ULLMAN: Could I have my question read
12 back, please?
13 (Record read back as requested.)
14 A. I think that calls for a legal conclusion and I
15 contend that they speak for themselves.
16 Q. Now, you made mention in your -- I think when you were
17 giving your prior response, you made some allusion to
18 federal law.
19 A. Uh-huh.
20 Q. Is there any question in your mind that apart from
21 anything that may come into play under federal law,
22 that the constitution of Michigan, Article 9, Section
23 24, prohibits pension rights from being diminished or
24 impaired?
25 MR. SHUMAKER: Objection, calls for legal

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1 conclusion.
2 A. The document, as I said, speaks for itself. Certainly
3 I think I've said before that parties can negotiate a
4 resolution of contracts.
5 Q. That's -- that's not my question.
6 MR. ULLMAN: Could you -- can you read my
7 question back? If there's anything about it you don't
8 understand, I would be glad to rephrase.
9 THE WITNESS: Uh-huh.
10 (Record read back as requested.)
11 MR. SHUMAKER: Objection to form, calls for
12 legal conclusion. You can answer.
13 A. Yeah, I think it does call for legal conclusion, but
14 as I said, contractual obligations can be negotiated
15 at any time.
16 Q. Let me rephrase it.
17 You understand what the constitution is
18 talking about is diminishing or impairing is
19 nonconsensual; correct?
20 MR. SHUMAKER: Objection, calls for legal
21 conclusion.
22 Q. Let me rephrase it so there can't be any ambiguity.
23 Clearly parties can if they so choose change their
24 contract; rights?
25 A. Yes.

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1 Q. Is there any question in your mind that Article 9,
2 Section 24 of the Michigan Constitution protects
3 pension rights from being diminished or impaired if
4 the beneficiaries of those rights do not agree
5 consensually to such diminishment or impairment?
6 MR. SHUMAKER: Objection, calls for legal
7 conclusion.
8 A. I think I've answered that before. I think there's
9 certain federal laws that allow for preemption --
10 Q. I'm asking about independent of any federal law. The
11 Michigan Constitution on its own, apart from any
12 overlay that you say may apply from federal law, is
13 there any question that the Michigan Constitution,
14 assuming that the beneficiaries of the retirement
15 obligations don't consent, any question that in that
16 circumstance the Michigan Constitution prohibits
17 pension rights from being diminished or impaired?
18 MR. SHUMAKER: Objection, calls for legal
19 conclusion.
20 A. Here again, Mr. Ullman, you're asking me -- I'm a fact
21 30(b)(6) witness, you're asking me for a legal
22 conclusion about what the statute says. I'll say that
23 the statute speaks for itself and I certainly have
24 heard that people take that position.
25 Q. Okay, and I'm asking you -- I'm not asking you to give

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1 a legal view. You took the position as an Emergency
2 Manager, which is a nonlegal position; correct?
3 A. Yes.
4 Q. And I'm asking whether in your position as Emergency
5 Manager you came to an understanding as to what the
6 Michigan Constitution provides in the course of
7 carrying out your duties as a Michigan -- or City of
8 Detroit Emergency Manager.
9 A. Let me put it to you this way. I certainly have heard
10 that parties maintain that you cannot diminish based
11 upon this constitutional provision. For a whole host
12 of reasons whether that's accurate or not there are
13 legal arguments being made. I understand you want me
14 to say that I understand what this statute says or
15 what the constitution says and I say the language
16 speaks for itself. I understand what it says in plain
17 language.
18 Q. So you really just won't answer the question; will
19 you?
20 MR. SHUMAKER: Objection to form.
21 A. No, I've answered your question the best I can.
22 Q. So is it your contention that apart from getting
23 advice from others, from counsel, as to what it means,
24 it the Michigan Constitution, you yourself have no
25 independent view as to what the import of the Michigan

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1 Constitution is as regards pension rights?
2 A. I think the Michigan Constitution speaks for itself
3 and as I've said many times, I have a view in other
4 matters I've been involved with where state laws have
5 been preempted and I have a view that people can
6 negotiate contractual obligations. If you're asking
7 for a legal conclusion as to what the constitution, I
8 don't think that's appropriate for me to make. I do
9 understand what the statute says, though.
10 Q. Fair enough.
11 Let's go onto the next email, which is --
12 will be marked as Exhibit 6.
13 (Marked Exhibit No. 6.)
14 Q. This is an email, you were involved in it.
15 A. Uh-huh.
16 Q. It ends -- the first page ends in Bates number 216.
17 These are emails between Richard Baird and you; do you
18 see that?
19 A. Yes.
20 Q. Now, is it correct that as of this time it had been at
21 least informally decided that you would take the EM
22 position?
23 A. I don't know if that's correct as of February 20th.
24 What I do know -- let me -- well, let me read the
25 email.

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1 I don't know if I had actually informally
2 agreed to take the job at that time. What I do know
3 is that there were discussions about me taking the job
4 and that I believe the mayor had said that he wanted
5 to meet me and have a discussion about what the
6 relationship between the Emergency Manager and the
7 mayor would be.
8 Q. Let me look -- and direct your attention to the bottom
9 email, second sentence. This is from Baird to you.
10 A. Yeah.
11 Q. It's talking about a conversation Baird had with the
12 mayor. He says, he Baird, writes, told him, the
13 mayor, that there were certain things I would not
14 think we could agree to without your review.
15 He's writing to you?
16 A. Yes.
17 Q. So this is Kevyn Orr's review?
18 A. Yes.
19 Q. Assessment and determination (such as keeping the
20 executive team in its entirety).
21 A. Yes.
22 Q. Aren't those -- the ability to have the mayor's
23 executive team kept on in its entirety, isn't that
24 something that's within the authority of the Emergency
25 Manager?

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1 A. Yes.
2 Q. And so in saying that we can't make this determination
3 without Kevyn Orr's review and determination, does
4 that not indicate that by this time that you had at
5 least told them you would take the position of EM?
6 A. No.
7 Q. So if that's the case, why, as you understand it,
8 would Mr. Baird be telling the mayor that there are
9 things he couldn't agree with without getting your
10 sign-off on?
11 A. As I recall at this time, we were still discussing
12 whether or not I would take the job. I don't recall
13 how it came up, but there was some discussion about
14 what the EM's, quote unquote, partnership would be
15 like with the mayor. I also recall at this time I was
16 told that there were other candidates that were being
17 reviewed, but that they wanted to, meaning Rich,
18 wanted to continue to have discussions going forward
19 and this is one of the issues that came up in those
20 discussions.
21 Q. You agree that he, Baird, is writing this email that
22 he couldn't agree to changing the mayor executive team
23 without your, Kevyn Orr's, review and determination;
24 correct?
25 MR. SHUMAKER: Objection, form.

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1 A. I think the document speaks for itself. That's what
2 it says, but in February, as I said, it was still
3 preliminary and in fact I think the discussion that we
4 were having at that time was that even the mayor
5 wanted to meet me, I have certainly interested in
6 meeting him, prior to me deciding to take the job.
7 Q. And this email does not say that Baird can't make --
8 may reach an agreement without the assessment, review
9 and determination of whoever it is that ends up taking
10 the EM position; does he?
11 A. No, the document speaks for itself, but I have no way
12 of knowing if similar emails were sent to other
13 candidates. I don't know.
14 Q. Now, at the end of this email Mr. Baird writes, we'll
15 broker a meeting via note between you and the mayor's
16 personal assistant that is not FOIAble.
17 Do you have an understanding of what that
18 means to be nonFOIAble?
19 A. I think that means that whatever discussions they have
20 aren't subject to the Freedom of Information Act
21 either state or federal.
22 Q. And you have an understanding as to why Mr. Baird
23 wanted meetings between you and the mayor's personal
24 assistant to be not subject to FOIA?
25 A. I don't -- I don't read this email as saying a meeting

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1 meeting between me and the mayor's personal assistant.
2 Q. He says, we'll broker a meeting via note between you
3 and the mayor's personal assistant who is not FOIAble?
4 A. Yeah, as I read this email -- I never met with the
5 mayor's personal assistant so let's get that out of
6 the way. As I read this email, we were talking about
7 a meeting between me and the mayor.
8 Q. Right, and isn't he -- fair enough. And isn't Baird
9 saying that he wants to set up a meeting via going
10 through the mayor's personal assistant who is not
11 FOIAble?
12 A. I think that's a fair reading.
13 Q. And do you know why he wanted to go through the route
14 of setting up this meeting through someone who is not
15 FOIAble?
16 A. No.
17 Q. Did you subsequently have a meeting with the mayor?
18 A. Yes.
19 Q. And what was said at that meeting?
20 A. I think the first meeting was -- my impression of the
21 first meeting was just a meet and greet. I think the
22 mayor wanted to get an assessment of who I was as
23 potentially coming into the City as a potential
24 Emergency Manager and to sort of get to know me, start
25 to get to mow me.

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1 Q. How many meetings were there with the mayor before you
2 became the EM?
3 A. At least two.
4 Q. Do you recall when they took place?
5 A. I do not.
6 Q. Okay.
7 A. Somewhere around this time frame.
8 Q. And was the subject of Chapter 11 filing discussed at
9 either of those meetings?
10 A. No.
11 Q. Was the subject of a potential Chapter 11 filing
12 discussed at either of those meetings? I'm sorry.
13 Let me rephrase my question.
14 A. I can answer your question. No, neither Chapter 9 nor
15 Chapter 11.
16 Q. So you didn't discuss even the potentiality of a
17 Chapter 9 filing at either of those meetings with the
18 mayor; is that your testimony?
19 A. Yes. I don't recall -- let me. We may have -- I was
20 a bankruptcy attorney, we may have discussed it, but I
21 don't recall discussing specific issues regarding
22 Chapter 9 or to the extent people are suggesting that
23 that was predetermined. I don't recall those kinds of
24 discussions.
25 Q. Do you recall any discussion with the mayor as to the

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1 issues that the City faced as a result of the pension
2 obligations?
3 A. No. Frankly, our first meeting was more me telling
4 him how happy I was to meet him, I was a basketball
5 fan, particular fan of his for many years, getting his
6 understanding of the City --
7 Q. I'm sorry, Mr. Orr, I don't mean to interrupt you, but
8 that really wasn't responsive. My question was really
9 a yes or no question. I didn't ask tell me everything
10 you said. I asked a specific question.
11 MR. ULLMAN: Why don't you read it back?
12 THE WITNESS: What was your question again?
13 (Record read back as requested.)
14 A. No, I don't recall that discussion.
15 Q. And the same question for both meetings, so I'm not
16 sure if that question was limited to the first
17 meeting.
18 A. I don't recall having those discussions in either
19 meeting.
20 Q. Do you recall any discussion in either meeting with
21 the mayor about the issues the City was facing with
22 its obligations for healthcare benefits for retirees?
23 A. No, I don't recall either meeting having those
24 discussions.
25 Q. Show you the next document, which we'll mark as

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1 Exhibit 7.
2 (Marked Exhibit No. 7.)
3 Q. And I would like you to in particular if you would to
4 focus on the email at the top of -- let me identify
5 this first. This is an email chain beginning at Bates
6 page 459 and what I would like you to do, Mr. Orr, is
7 focus on Bates page 461, the email at the top of that
8 page.
9 A. 461?
10 Q. Please.
11 A. Yes.
12 Q. You see at the top there's an email from you to
13 Mr. Baird?
14 A. Yes.
15 Q. Eight o'clock, 8:17 at night?
16 A. Yes.
17 Q. And you talk among other things about what would be
18 expected on day one. Do you see that at the bottom?
19 A. Yes.
20 Q. So is it fair to say that by this time you had already
21 known that you were going to take the EM job?
22 A. No.
23 Q. So why were you then asking about what you can expect
24 on day one?
25 A. Because at this point I was still considering whether

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1 or not I would take the job, but I was doing my due
2 diligence. As you can see from the email, there was
3 this proposed partnership agreement that the mayor
4 submitted. I say that my intent is not to undermine
5 the mayor's role or the good faith with which I
6 suspect all parties will move forward, but I wanted to
7 include qualifications not just from my role as EM but
8 also for the future. So there was still no
9 determination that I would take the job, but I was
10 moving forward on trying to get an idea of what was
11 expected of me if I were to take the job and also, for
12 instance, when I look at the documents, representative
13 samples of the CBAs and the SWAP and related
14 agreements.
15 Q. You write in the last paragraph that you've been
16 pouring over the law and the board's findings to
17 assure that you have some idea about what's
18 permissible and expected on day one; correct?
19 A. Yes.
20 Q. And by permissible and pouring over the law you meant
21 you wanted to understand and be aware of what was
22 permissible under the law; is that right?
23 A. Yes. As I said earlier today, my initial look was
24 very high level and cursory and then as this
25 discussion evolved, I started digging down more into

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1 the law.
2 Q. And on the attachment that we have here, which begins
3 at Bates page 463, the attachment to this email chain;
4 do you see that?
5 A. Yes.
6 Q. And this is a list of various items that are under
7 discussion; is that right?
8 A. Yes.
9 Q. And you see item 7?
10 A. Yes.
11 Q. It says labor, retiree and benefit initiatives will be
12 pursued jointly by the mayor and the manager to the
13 extent permitted by law?
14 A. Yes.
15 Q. And that was part of the current thinking at the time,
16 was it, that that's one of the things the EM was going
17 to do?
18 A. Yes, I think it was envisioned in the statute and this
19 I believe came off of the mayor's initial proposal,
20 but yes.
21 Q. And the retirees and benefit initiatives, those
22 included initiatives to deal with pension and
23 healthcare costs; is that right?
24 A. To be honest with you, as you can see from my email on
25 page 461, I was still trying to get an idea of exactly

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1 what they included by asking for the CBAs and the
2 background documentation so I don't want to give you
3 the wrong impression that item number 7 has the level
4 of specificity that you seem to be suggesting. I was
5 still getting an idea of what they were.
6 Q. I'm -- I wasn't suggesting anything. I was asking
7 whether the retiree and benefit initiatives that are
8 referred to in item 7 included initiatives related to
9 the pension and retirement healthcare costs?
10 MR. SHUMAKER: Objection, form.
11 A. They might, but to be honest with you, at this time
12 there wasn't that level of specificity. They
13 certainly -- the document speaks for itself. Seven
14 says labor retiree and benefits initiative, but to the
15 extent your question is trying to suggest that there
16 were detailed levels, no, I was still doing my due
17 diligence.
18 Q. There was some general understanding that there were
19 issues pertaining to pension and healthcare benefits;
20 is that right?
21 A. I -- yes, I think there had been issues concerning
22 pension and healthcare benefits for years as I poured
23 over the consent decree and the various reports made
24 by the State from 2010 forward, yes.
25 Q. You were aware that the pension costs and healthcare

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1 costs were among the more pressing issues that the
2 City of Detroit was facing at the time?
3 A. I'm not sure I was aware that they were among the more
4 pressing issues at that time. I certainly knew that
5 they were significant. Frankly, at that time I was
6 looking at debt.
7 Q. And at this point in time did you do any analysis as
8 to what was permissible under law regarding retiree
9 benefits?
10 A. No, I think my prior email at Bates stamp 461 says I
11 needed to get more documentation to get an
12 understanding.
13 Q. And your email here at the top of page 461 says, I've
14 been pouring over the law --
15 A. Yes.
16 Q. -- to find out about what is permissible. And my
17 question was did that involve any consideration of
18 what was permissible under the law as regards pension
19 and healthcare benefits?
20 A. It might have, but the permissible that I was
21 referring to was permissible writ large as far as what
22 were the Emergency Manager's duties, which necessarily
23 could have included, but I don't want to give you the
24 wrong impression that that was the fundamental focus
25 or the primary focus of what I was saying here. It

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1 wasn't. It was the Emergency Manager's duties writ
2 large.
3 Q. And when you say you were pouring over the law, you
4 yourself were doing legal analysis, reading various
5 laws; is that right?
6 A. Yes, I was trying to get background information, yes.
7 Q. And as part of that background information did you
8 read Article 9, Section 24 of the Michigan
9 Constitution?
10 A. I may have.
11 Q. Is there any question in your mind that you didn't?
12 A. I -- if you have a document to refresh my
13 recollection, I'm happy to look at it. Sitting here
14 on this day on February 20th, I don't recall whether
15 or not I read that article of the constitution.
16 Q. There's no question that at some point after February
17 20th you read Article 9, Section 24 of the Michigan
18 Constitution; correct?
19 A. My testimony is it may have been before or after the
20 20th. I don't recall whether I did that sitting here
21 today.
22 Q. Okay, but it was either one or the other, but you
23 certainly have read it?
24 A. Yes, I've read it. I read it today.
25 Q. And you read it before you became Emergency Manager;

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1 didn't you?
2 A. Yes.
3 Q. One other question on this document actually. As you
4 look at page 460, at the bottom there's a February 21
5 email.
6 A. Yes.
7 Q. And it refers to point 8 of the attachment. This
8 again has to do with the mayor's existing executive
9 team; right?
10 A. Yes.
11 Q. And in this time -- this is from Mr. Baird again;
12 right?
13 A. Yes.
14 Q. And he's really explicit. He says, other than a few
15 grammatical nits, and some more language around point
16 8, so we can manage expectations if Kevyn needs to
17 make some personnel changes. So he's clearly
18 referring here to you making personnel changes that
19 could affect the mayor's existing executive team;
20 isn't he?
21 A. Yes, this wasn't written to me, but I'll read it. I
22 mean to myself. Yes, document speaks for itself, but
23 that seems to say that.
24 Q. Isn't it clear at this point that it was envisioned
25 and understood that Kevyn Orr, you Mr. Orr, were in

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1 fact going to be the Emergency Manager for the City of
2 Detroit?
3 MR. SHUMAKER: Objection, calls for
4 speculation.
5 A. No.
6 Q. And you agree the document speaks for itself; don't
7 you?
8 A. I just said that.
9 MR. ULLMAN: Maybe this would be a good
10 time for a break.
11 THE VIDEOGRAPHER: Going off the record at
12 11:28 a.m.
13 (A brief recess was taken.)
14 THE VIDEOGRAPHER: We're back on the record
15 at 11:42 a.m.
16 BY MR. ULLMAN:
17 Q. Mr. Orr, is it correct that prior to the official
18 announcement that you said was in March -- on March
19 13th or 14th you had had conversations with the State
20 where you said that you would take the OM job -- I'm
21 sorry, the EM job?
22 A. I think at that time in all fairness it was EFM.
23 Q. Correct.
24 A. Prior to the official announcement? I think at some
25 point I became the candidate select, but I don't think

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1 that I actually accepted the job -- that I was going
2 to take the job until the day I resigned, which was
3 March 15th. I mean, I may have said yes, I'm all in
4 or something like that, subject to background
5 investigation and stuff like that.
6 Q. And that would have been sometime prior to March 13th?
7 A. I think I became the finalist sometime prior to March
8 13th, yes.
9 Q. And that's when it became final subject to passing the
10 background, yes?
11 A. Right, and resigning from the firm and some other
12 things.
13 Q. Now, at that point and time and up to the time that it
14 became official that you were going to be the EM, did
15 you have any conversations with anyone at the state or
16 city level about the possibility of the Chapter 9
17 filing?
18 A. Probably, yes.
19 Q. And can you tell me with whom those conversations took
20 place and when?
21 A. No, I don't think I had them -- those types of
22 conversations with Rich Baird, those were more about
23 the job requirements and background. If you have
24 something to refresh my recollection.
25 Q. I'm just asking a question.

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1 A. Yeah, I don't recall -- I may have had about filing a
2 Chapter 9 or about the possibility of a Chapter 9?
3 Q. Either, both.
4 A. Okay. I don't recall.
5 Q. Okay. Now, at some point you -- when you became the
6 Emergency Manager or the Emergency Financial Manager,
7 you became an officer of the state and subject to the
8 state laws; is that right?
9 A. No. I am a contractor to the state.
10 Q. But you do -- you are subject to the state laws; are
11 you not?
12 A. Yes, I think --
13 Q. And in fact, you're obligated to uphold the state
14 laws; are you not?
15 A. I don't know if my contract says that I'm obligated --
16 I think my contract says I'm obligated to do my duties
17 to the best of my abilities and I think it requires me
18 not to have any obligations due to the state, but I
19 don't know if it requires me to uphold state laws.
20 Q. Is it your view that as Emergency Manager you are not
21 required to comply with state laws and obey state
22 laws?
23 A. I think it's my view as the Emergency Manager that I'm
24 required to discharge my duties as the best of my
25 ability to rectify the financial emergency of the

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1 City.
2 Q. Okay, thank you.
3 MR. ULLMAN: Can you have my question read
4 back, please? And I would like an answer.
5 (Record read back as requested.)
6 A. The reason I said what I said is because I think the
7 statute allows me to abrogate certain state laws and
8 so when you say you comply with state laws, 436
9 clearly allows me not to comply with certain laws,
10 so --
11 Q. And -- okay, so it's your view that under PA 436 you
12 have the ability not to comply with certain state
13 laws?
14 A. Yes.
15 Q. And what section of 436 gives you that ability?
16 A. There's section 12 gives me the authority to abrogate
17 contracts, to readdress financial agreements, there
18 are a number of powers in the statute, take over
19 underfunded pensions, if that's what you're looking
20 for. There are a number of provisions in the statute
21 that mean I don't have to comply with state law.
22 Q. Okay. And PA 436 is itself part of state law; right?
23 A. Yes.
24 Q. So if you did something that's specifically authorized
25 under PA 436, would it be in violation of state law?

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1 A. No.
2 MR. ULLMAN: Objection, calls for legal
3 conclusion.
4 Q. So I'm asking you is there anything in PA 436 that
5 specifically says that you're entitled to not comply
6 with state law?
7 A. I -- we're being somewhat circular here.
8 Q. It's like cat and mouse. Is there a general provision
9 in PA 436 that says the Emergency Manager need not
10 comply with the laws of Michigan State?
11 A. My testimony is --
12 Q. Can you just answer my question? You could say yes,
13 no or I don't know.
14 A. I'm trying to answer your question, if you let me.
15 Q. No, I would like a direct answer to my question, not a
16 speech.
17 A. I'm trying to give you a direct answer.
18 Q. Okay, let's hear it.
19 A. I was going to give it to you. The statute allows the
20 Emergency Manager to take certain actions which by
21 definition would impact certain state laws. Your
22 question was whether there's a general prohibition
23 that exempts. That may be a legal conclusion, because
24 there are many powers under 436 and someone may
25 conclude, the Court for instance, that generally the

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1 intent is to allow the Emergency Manager to do certain
2 things in a financial emergency. I'm trying to
3 respond to your question as the Emergency Manager.
4 There are certain laws that clearly under 436 I have
5 the authority to abrogate.
6 Q. Is the constitution of the State of Michigan one of
7 those?
8 A. I think that's a legal conclusion.
9 Q. No, I'm asking your understanding as the Emergency
10 Manager.
11 A. My understanding is that's a legal conclusion.
12 Q. You -- apart from saying it's a legal conclusion, do
13 you have a view on that one way or the other? I'm not
14 asking for your legal opinion, I'm asking for your
15 view in your capacity as Emergency Manager whether PA
16 46 allows you to disregard the strictures of the
17 Michigan Constitution?
18 A. I think that's a legal conclusion. I'll explain it,
19 if you want me to.
20 Q. I'm just asking whether you have a view.
21 A. Yes, I think it's a legal conclusion.
22 Q. And what is the legal conclusion that you believe
23 exists?
24 A. Without going into discussions with attorneys and
25 others, the legislature of the State of Michigan is

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1 presumed to have an active 436 with a full
2 understanding of other state laws including the
3 constitution prohibition you're focusing on.
4 Q. I didn't focus on the constitution prohibition.
5 A. Well, you focused on it today.
6 Q. In my question I asked a general question. I did not
7 focus on a specific provision.
8 A. Okay, then we'll do it generally. My understanding is
9 that the Michigan legislature is presumed to have
10 understood the requirement of other state laws and in
11 choosing to enact 436 gave the Emergency Manager
12 certain powers which may conflict with those state
13 laws.
14 Q. I'm asking about the constitution now.
15 A. Including the constitution. I said it was.
16 Q. Does the legislature of the State of Michigan have the
17 power through an enacted law to allow people acting
18 for the state or for the local governments of the
19 state to disregard the Michigan Constitution?
20 MR. ULLMAN: Object to form, calls for
21 legal conclusion.
22 A. Here -- that's why I started this discussion by saying
23 to you that calls for a legal conclusion. In fact,
24 some of those issues are being briefed now.
25 Q. And it's your position that the Michigan legislature

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1 does have that authority?
2 A. It's my position that that calls for a legal
3 conclusion.
4 Q. Okay, so you won't answer my question?
5 A. No, I think it calls for a legal conclusion.
6 Q. That's an objection your counsel can make. I'm asking
7 you what your view is. I'm entitled to your view.
8 Whether it's a legal conclusion goes to the weight of
9 it.
10 A. I just gave you my view.
11 Q. Your only view is that it's a legal conclusion?
12 A. No, my view is that the Michigan legislature is
13 presumed to have understood what it was doing when it
14 enacted it --
15 Q. That's not my --
16 A. You're not allowing me to answer.
17 MR. ULLMAN: Why don't you read the
18 question again?
19 MR. SHUMAKER: Why don't you read the
20 question back?
21 (Record read back as requested.)
22 Q. That is, the authority to allow people acting for the
23 state or the local governmental units to disregard the
24 constitution of the State of Michigan?
25 MR. ULLMAN: Objection, calls for a legal

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1 conclusion.
2 A. I would suggest that since these issues are being
3 briefed, my opinion is that I am acting within my
4 authority as Emergency Manager that allows me to
5 abrogate certain provisions, which may or may not
6 include the constitution.
7 Q. And I'm simply asking for your understanding as to the
8 question I asked which is whether it is your
9 understanding, your understanding and belief, that the
10 legislature of Michigan has the power to allow those
11 acting for the state or the local governments to
12 disregard the Michigan Constitution. Your
13 understanding, Mr. Orr.
14 A. I think the legislature might, but here again, that's
15 a legal conclusion.
16 Q. Now, we have been talking more specifically about
17 Section 24 of Article 9 of the Michigan Constitution;
18 is that right?
19 A. Yes.
20 Q. Is there anything in PA 436 that makes specific
21 reference to the Emergency Manager being able to
22 disregard the strictures of Article 9, Section 24?
23 A. I'm going to say again, within the powers afforded the
24 Emergency Manager one of those powers is to abrogate
25 contracts. The Article 9, Section 24 you're speaking

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1 to says it's contractual obligation. That's what it
2 said. The reason I'm saying it calls for legal
3 conclusion is because 436 says the Emergency Manager
4 can break contracts and you're talking in Article 9,
5 Section 24 about a contractual obligation. Judges
6 will ultimately have to decide this issue, I suppose,
7 but the way the statute is written it could be
8 interpreted that way.
9 Q. Are you aware that there are provisions in PA 436 that
10 specifically require the Emergency Manager not to
11 violate Article 9, Section 24, do anything that would
12 diminish pension rights that are protected by that
13 article?
14 A. If you could point me to a specific provision.
15 Q. Okay. So you're not aware is your answer?
16 A. No, I'm -- that's why I keep telling you. This area
17 that you're in calls for legal conclusions that are
18 currently being briefed and quite frankly I'm
19 reluctant to give you a legal conclusion as far as my
20 understanding. My understanding is 436 gives the
21 Emergency Manager certain powers. My understanding is
22 that the statute that you're talking about, Article 9,
23 Section 24, speaks for itself. But amongst those
24 powers in 436 is the ability to breach contracts.
25 Q. Let me ask you this and then we'll move on. Are you

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1 aware of any words in PA 436 that specifically
2 authorize the Emergency Manager to disregard the
3 strictures of Article 9, Section 24? I'm asking about
4 words, in haec verba, I'm not asking interpolations or
5 extrapolations. I'm asking whether to your knowledge
6 if there is anything in PA 436 that explicitly says
7 that.
8 A. I'm going to stay away from explicitly, but I'll try
9 to answer your question. If your question is is there
10 anything in 436 that says the Emergency Manager is
11 exempt from Article 9, Section 24, I've not read that
12 in the statute. But when you say explicitly, as I've
13 said several times now, those interpretations require
14 legal conclusions that are in fact being discussed and
15 briefed as we want, so I'm being very careful not to
16 give an interpretation as the Emergency Manager that's
17 contrary to what the statute provides. Ultimately I
18 suspect a jurist will have to resolve that issue.
19 Q. You took an oath of office when you became the
20 Emergency Manager; did you not?
21 A. Yes, yes, I did.
22 Q. And I think these are the words you swore. You said,
23 I do solemnly swear that I will support the
24 constitution of the United States and the constitution
25 of this state and that I will faithfully discharge the

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1 duties of the office of Emergency Financial Manager,
2 City of Detroit, according to the best of my ability.
3 Do you remember giving that oath?
4 A. Yes.
5 Q. And were you speaking truthfully when you gave that
6 oath?
7 A. Yes.
8 Q. And did the oath you give apply equally to how you've
9 conducted yourself as Emergency Manager when PA 436
10 became effective?
11 A. I believe so.
12 Q. Now, after you became the Emergency Manager, you
13 certainly specifically considered the question of a
14 Chapter 9 filing; right?
15 A. Yes.
16 Q. Okay. And did you consider specifically the issue of
17 whether the City had in the course of a Chapter 9
18 filing the right to seek relief that would adversely
19 affect pensions that were vested?
20 A. Yes.
21 Q. And isn't it correct that the retirement obligations
22 were among the largest obligations that are facing the
23 City of Detroit?
24 MR. ULLMAN: Objection, form.
25 A. Retired -- retired obligations meaning both OPEB and

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1 what we call unfunded pension obligations.
2 Q. Both, I'm asking collectively.
3 A. Yes, they're the largest cohort of unsecured claims.
4 Q. And at the time that you became the EM, how large did
5 you understand the un -- I'm sorry?
6 A. No, I'm just saying at the time it came to me, how
7 large I understand the unfunded amount to be?
8 Q. The unfunded retirement obligations to both the
9 pension and what you call OPEB.
10 A. It was unclear, because at the time I became Emergency
11 Financial Manager, there were reports issued by the
12 State that put the total debt of the City at
13 12 billion I believe it is, then there were subsequent
14 reports that followed on that and put it at
15 14 billion. So at various times the figure grew.
16 Q. And the two aspect components I've asked about, the
17 pension and the OPEB, those were very large; were they
18 not?
19 A. I don't think they're large. There were still several
20 billions of dollars.
21 Q. They were in the billions of dollars?
22 A. Yes.
23 Q. And those were among -- there were obviously a number
24 of issues but those were among the financial issues
25 that were impediments to Detroit's fiscal health; is

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1 that right?
2 A. I believe so.
3 Q. And did the governor share that view with you?
4 A. No.
5 Q. He thought that the pension and OPEB obligations were
6 not impediments to Detroit's fiscal health?
7 A. No, the governor -- the only discussion I had with the
8 governor was at a very high level about the dire
9 straits of the City and the need for some -- it was
10 actually the dire straits of the City and the need for
11 some reform. There was no specific discussion about
12 pension or OPEB.
13 Q. Now, at some point after you became the Emergency
14 Manager, did you have discussions with the governor
15 about a Chapter 9 filing to among other things get out
16 of the pension obligations that the City owed?
17 MR. SHUMAKER: Object to form.
18 A. Yes, I believe so.
19 Q. And when did those take place?
20 A. Since becoming Emergency Manager on the 25th I've had
21 regular conversations with the governor. Typically
22 weekly. I don't recall the specific conversation when
23 they came up. I will say that it wasn't within our
24 initial conversations.
25 Q. Okay. And we're talking -- these conversations, are

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1 we talking about from the time you became the
2 Emergency Financial Manager or the EM? In other
3 words, would it be -- are we talking about the early
4 or the late March time frame?
5 A. Yeah, I don't think after the rollout and me becoming
6 effective on the 25th, I think the new statute came
7 into play within days of that. I don't think the
8 governor and I had any discussions from the -- I'm not
9 trying to draw a gap between EFM and EM.
10 Q. So this would have been within a few weeks?
11 A. Yes.
12 Q. After you became the EM would it be fair to say by
13 then you certainly had the discussions with the
14 governor?
15 A. Yeah, but here again they weren't specific discussions
16 about pension and OPEB, they were more discussions
17 about getting to what the numbers were and the initial
18 processes of getting into the City.
19 Q. Okay. And in the course there were discussions that
20 you indicated about the possibility of filing a
21 Chapter 9?
22 A. Yes, those discussions came on later.
23 Q. And one of the things the Chapter 9 filing would
24 potentially allow you to do is get out of the pension
25 obligations; is that right?

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1 A. Yes.
2 MR. SHUMAKER: Object to form.
3 Q. Now, I take it after you became Emergency Manager you
4 explored what the issues and the options were with,
5 among other things, the pension liabilities that the
6 City faced?
7 A. Not -- no, the initial thing we started to do was to
8 try to drill down on the extent of the City's
9 financial obligations.
10 Q. That really wasn't my question. I didn't ask what the
11 first thing you did was.
12 MR. ULLMAN: So why don't you just read
13 back my question?
14 (Record read back as requested.)
15 A. At some point.
16 Q. And do you recall when -- scratch that.
17 And did you look at various options that
18 were available to you as EM to reduce the pension
19 liabilities that existed for the City?
20 A. Among other things.
21 Q. And did you look at what avenues existed under state
22 law without recourse to any federal law? In other
23 words, independent of what any federal law might
24 apply, what remedies or relief if any was available
25 under state law only?

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1 A. I'm taking my time because I'm trying to remember.
2 There were a number of different analyses and briefing
3 papers and -- that would come across the desk and I'm
4 not sure any of them focused solely on state law.
5 Q. Okay. And what else -- what other law did they focus
6 on if not solely state law?
7 A. They may have focused on state law and federal law.
8 Q. So you don't recall if there was any analysis that
9 just looked at state law?
10 A. No, sitting here today, I don't recall. There may
11 have been, but I don't recall.
12 Q. And were you aware prior to the bankruptcy filing that
13 under state law alone the pension obligations could
14 not be diminished or impaired?
15 A. This is the discussion we had about five to ten
16 minutes ago about whether or not state law permitted
17 it and I will go back to my answer with that. It
18 seems to suggest a legal conclusion based upon what
19 the statute 436 provides and the intent of the
20 legislature.
21 Q. Let me ask you a different question.
22 Is there anything in PA 436 that allows in
23 your view the Emergency Manager to impact or adversely
24 affect pension rights in the absence of a Chapter 9
25 bankruptcy filing?

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1 MR. SHUMAKER: Objection, calls for legal
2 conclusion.
3 A. It's the same discussion we had five to ten minutes
4 ago that I want to be very careful with and I don't
5 want to draw legal conclusion that says there's
6 nothing there. It's a discussion we had about 436,
7 the intent of the legislature and Article 9.
8 Q. I'm asking independent of Article 9, Mr. Orr. Please
9 focus on the question.
10 A. I don't -- I don't understand your question because
11 parties can negotiate anything.
12 Q. I'm asking -- okay, putting aside negotiation --
13 A. Uh-huh.
14 Q. -- I'm asking apart from the possibility of a Chapter
15 9 filing, and by the way when we talk about impair or
16 diminish, understand that if the state is impairing or
17 diminishing, it's nonconsensual. Right? That's the
18 whole point?
19 A. No, that's -- that's a conclusion that you're making.
20 Parties can agree to I am -- an impaired class can
21 agree to diminish their interests. If you're reading
22 it that way that says it's nonconsensual, that's a
23 conclusion you're drawing but the language itself --
24 Q. We don't need to get into this.
25 A. Okay.

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1 Q. Let's put aside consensual reduction in benefits.
2 A. Okay.
3 Q. Is there anything in PA 436 as you understand it that
4 allows the Emergency Manager without going through a
5 Chapter 9 filing -- so I'm taking Chapter 9 off the
6 table; okay? Anything in PA 436 without consideration
7 of Chapter 9 that allows the Emergency Manager to
8 reduce or adversely affect pension rights?
9 MR. SHUMAKER: Objection, calls for legal
10 conclusion.
11 A. It's the discussion we had a few minutes ago that it
12 might and subject to briefing and a conclusion, the
13 Court could conclude that 436 after it was enacted --
14 duly enacted by the legislature intended to have that
15 very result.
16 Q. Can you point to any provision in PA 436, and I can
17 show you the statute if you would like to take a look,
18 that specifically says that the Emergency Manager can
19 abrogate or impair pension rights, again without
20 reference to either consensual diminishment or the
21 filing of a Chapter 9 bankruptcy?
22 MR. SHUMAKER: When you say explicitly, do
23 you mean expressly?
24 MR. ULLMAN: Yes, those words.
25 A. We discussed that ten minutes ago.

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1 Q. And I never got a straight answer. So are you aware
2 of any --
3 A. I'll give you the same answers that I gave then.
4 MR. SHUMAKER: Object to form. Calls for
5 legal conclusion.
6 Q. Why don't we get out the statute? We can take a quick
7 look.
8 MR. SHUMAKER: Sure.
9 Q. I've highlighted some parts but that won't affect
10 anything. You can take a quick look and tell me if
11 there's anything that you can point to that allows the
12 Emergency Manager, again this is without the regard to
13 the possibility of a Chapter 9 filing and putting
14 aside consensual diminishment of pension rights, that
15 allows the Emergency Manager to abrogate or diminish
16 vested pension rights.
17 MR. SHUMAKER: Objection, calls for legal
18 conclusion.
19 A. We had this discussion a few minutes ago and I'll try
20 to be responsive. I said that within certain
21 provisions of the statute you had --
22 Q. Just for the record I see that Mr. Orr has his own
23 copy --
24 A. I do.
25 Q. -- of PA 436 with his own annotations.

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1 A. I do.
2 Q. Okay, could we have that introduced as an exhibit?
3 A. No.
4 Q. Well, you're looking at it.
5 A. Well, no, it's confidential. I'll tell you what --
6 MR. ULLMAN: It's not confidential now that
7 he's looked at it as a deposition exhibit.
8 THE WITNESS: No.
9 MR. ULLMAN: Mr. Shumaker, I would request
10 that you please have that marked as a deposition
11 exhibit.
12 THE WITNESS: That has interlineations and
13 comments. It wasn't intended to --
14 MR. ULLMAN: I would like that marked as an
15 exhibit.
16 THE WITNESS: I would say we go to the
17 judge with that. This is my private copy and I was
18 trying to assist you and --
19 MR. SHUMAKER: And it will reflect
20 communications with -- attorney-client communications.
21 So if you want to ask questions based upon that
22 exhibit, please do.
23 MR. ULLMAN: Okay, we're reserving our
24 rights to have that document produced to us and so we
25 don't hold up the deposition, I'll show you another

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1 copy.
2 THE WITNESS: Okay. I was just trying to
3 help you. Okay. And your question is?
4 Q. Is there anything in PA 436, and putting aside
5 consensual diminishment of pension rights or the
6 possibility of a Chapter 9 filing, that allows the
7 Emergency Manager to abrogate or diminish pension
8 rights that are protected by Article 9, Section 24 of
9 the Michigan Constitution?
10 MR. SHUMAKER: Objection, calls for legal
11 conclusion.
12 A. I would point out to you and I see you have
13 highlighted in section 12(1)(M)(2), that it says the
14 -- the language speaks for itself. The Emergency
15 Manager shall fully comply with Public Employee
16 Retirement System Investment Act; okay? And Section
17 24, Article 9 of the State Constitution of 1968; okay?
18 But the provision that you were talking to, talking
19 about earlier today, okay, has that constitutional
20 provision. But as I said, and I'll say again, there
21 may be legal reasons; for instance, in section 5 where
22 the legislature specifically talked about pensions;
23 okay? There may be legal arguments that apply here.
24 So rather than draw a legal conclusion I'll say to you
25 again; okay? There may be an explanation for what is

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1 provided in the statute subject to a determination by
2 a court. The language of the statute speaks for
3 itself.
4 Q. And since it does speak for itself and you have read
5 it, and putting aside -- I understand your position
6 that there may be arguments that can be made, did you
7 see anything in that statute that, putting aside
8 Chapter 9 and putting aside the possibility of
9 consensual diminishment, states that the Emergency
10 Manager has the authority to diminish or impair
11 pension rights that are protected under Article 9,
12 Section 24?
13 MR. SHUMAKER: Objection, this witness
14 certainly has not had time to review the entire
15 statute as he sits here. You're talking about ever?
16 Q. How many -- how many times have you reviewed the
17 statute, Mr. Orr?
18 A. I don't know. Certainly several dozen.
19 Q. Okay. And you have your heavily annotated copy there?
20 A. I have a copy of the statute.
21 Q. So I assume if there were words in the statute that
22 specifically said, yeah, the Emergency Manager can
23 violate Article 9, Section 24, you would know where
24 they are; wouldn't you?
25 MR. SHUMAKER: Objection to form.

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1 A. I don't know if they say violate. But here again, I
2 keep saying to you again and again these issues calls
3 for legal conclusions. Statute speaks for itself. I
4 think we discussed earlier today was there anything
5 that expressly said that and we said no, but I don't
6 want to be in a position where we foreclose any
7 potential arguments. I'm being very careful.
8 Q. In your consideration of the pension issue is it
9 correct that the conclusion that you reach was that
10 one way to get -- for the City to diminish and get out
11 of its pension obligations would be to go through a
12 Chapter 9 filing?
13 THE WITNESS: Could you read the question
14 back?
15 (Record read back as requested.)
16 A. Yes, I think at some point that we reached that
17 conclusion.
18 Q. And do you recall when that conclusion was reached?
19 A. No.
20 Q. Let me show you another document. We'll mark this as,
21 what are we up to, 8?
22 A. Uh-huh.
23 (Marked Exhibit No. 8.)
24 Q. You're familiar with Exhibit 8; aren't you? It's the
25 financial and operating plan of May 12th, 2013?

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1 A. Yes.
2 Q. And this is something that you put out; isn't it?
3 A. Yes.
4 Q. And this was after you were Emergency Manager; yeah?
5 A. Yes.
6 Q. Okay. And do you recall giving an interview on radio
7 about the plan?
8 A. I gave many interviews on the radio. Is there a
9 specific one?
10 Q. Yeah, there is. There is one that was made on May
11 12th, 2013 on WWJ and there's one piece of it that I
12 would like to focus on in particular. I'll read it to
13 you. I have the article in which it's quoted, but
14 maybe you remember saying this.
15 A. Okay.
16 Q. The quotation is -- about this plan, I believe it's
17 this plan, you said the public can comment but it is
18 under the statute, it is my plan and it's within my
19 discretion and obligation to do it. This isn't a
20 plebiscite. We are not like negotiating the terms of
21 the plan. It's what I'm obligated to do.
22 Do you recall making that statement on the
23 radio?
24 A. Yes.
25 Q. And you were talking about the May 12th plan when you

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1 said that?
2 A. Yes, financial and operating plan.
3 Q. And the May 12th plan referred to the possibility of
4 reducing or eliminating retirement benefits; didn't
5 it?
6 A. Yes.
7 Q. And in fact, just going through this briefly on pages
8 16 through 17, if I have this right, you're reporting
9 about 5-point billion in unfunded medical costs; is
10 that right?
11 A. Yes.
12 MR. SHUMAKER: Get to the page. I'm sorry,
13 what page was that, counsel?
14 MR. ULLMAN: Sixteen.
15 MR. SHUMAKER: Sixteen. At the bottom.
16 A. Yes.
17 Q. Then on the next page you wrote that as part of the
18 comprehensive restructuring plan, the Emergency
19 Manager will evaluate options to reduce or eliminate
20 certain healthcare costs for both active and retired
21 employees?
22 A. Yes.
23 Q. And that was a true statement?
24 A. Yes.
25 Q. And then if you turn back a little to page 3 of this

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1 document, I think you indicate that the pension
2 liabilities are underfunded by at least 600 million
3 and possibly more, possibly significantly more?
4 MR. SHUMAKER: Can you direct his
5 attention?
6 MR. ULLMAN: Yeah, it's in the first full
7 paragraph, the last three lines.
8 Q. It says, the city's pensions are underfunded by at
9 least 0.6 billion and perhaps significantly more once
10 appropriate actuarial assumptions and current data are
11 considered?
12 A. Yes.
13 Q. And that was -- you view that as an accurate statement
14 also; correct?
15 A. Yes.
16 Q. And then if you go to page 20 to 21, beginning on page
17 20 you sort of resummarize these obligations, these
18 liabilities and then you make a couple statements on
19 page 21 at the top you say, restructuring the City's
20 liabilities in a fair and equitable manner across all
21 relevant stakeholders is necessary for the City's
22 operational and financial survival. Do you see that?
23 A. Yes.
24 Q. You go on to say that the restructuring of the City's
25 debt and other liabilities is essential to provide the

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1 City with a strong balance sheet and it continues. Do
2 you see that? It's kind of in the middle of that top
3 paragraph.
4 A. Yes.
5 Q. And then the next paragraph that says, this plan
6 recognizes that interest rates, amortization, it
7 mentions some other things, continues with security
8 interests, legacy liabilities and all other aspects of
9 short- and long-term debt must be evaluated as part of
10 the City's comprehensive restructuring. It goes on,
11 significant and fundamental debt relief must be
12 obtained to allow the City's revitalization to
13 continue and succeed?
14 A. Yes.
15 Q. In all those statements they all applied to
16 obligations that were owed as well to retirees; is
17 that right?
18 A. I believe so. I believe we were talking about we
19 needed to do something to address those obligations.
20 Q. And that's what you refer to here as legacy
21 liabilities, the pension and healthcare obligations?
22 A. In part, yes.
23 Q. They're included in legacy liabilities; right?
24 A. Yes.
25 Q. And the plan here was, as you're saying here, that the

Page 99

1 plan is to reduce them; true?
2 A. No, I think what we said here is that they must be
3 adjusted in a fair and equitable manner across all
4 stakeholders which would necessarily mean an
5 adjustment, yes.
6 Q. In your view didn't that mean they had to be adjusted
7 downwards?
8 A. What we have said and what I said at May 12th and
9 subsequently throughout is we needed -- we needed to
10 have a dialogue about what the status of an adjustment
11 would be, because it was clear the City couldn't pay.
12 Q. That's all I'm getting at, Mr. Orr. The question was
13 very simple. That what you are saying here is that
14 you needed to get these benefits reduced?
15 A. Yes, that's what I said.
16 Q. And is it correct that under Michigan law, again just
17 under Michigan law without reference to the bankruptcy
18 statute, you didn't have the authority or the ability
19 to reduce pension benefits?
20 MR. SHUMAKER: Objection, calls for legal
21 conclusion.
22 A. This is the same line of inquiry that we've gone
23 through before. I'll state the same response, if you
24 would like.
25 Q. No, I can accept that your response would be the same.

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1 A. Okay.
2 Q. Let me ask you a different question.
3 A. Thank you.
4 Q. Prior to the bankruptcy filing did you identify any
5 course of action under Michigan law, putting aside the
6 possibility of a consensual resolution, that would
7 allow the Emergency Manager to reduce pension benefits
8 without going through Chapter 9?
9 A. Here again, to the extent it calls for legal
10 conclusion, my prior answer, but I'll try to be
11 responsive. Yes, we did.
12 Q. And what were those alternatives?
13 A. Well, that's why we continued to say to the various
14 interested groups we needed to engage in a dialogue.
15 Q. I'm saying apart from a consensual resolution.
16 A. Okay.
17 Q. Okay. And what I'm asking is apart from the idea that
18 people could get together and agree --
19 A. Uh-huh.
20 Q. -- did you come up with any other course of action
21 under Michigan law that did not involve a bankruptcy
22 filing and that would allow the Emergency Manager to
23 reduce pension benefits to retirees?
24 A. I don't mean to be evasive or trulish, but there were
25 a number of different alternatives that were

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1 discussed. Some of them, frankly, by keeping the City
2 in a steady state would have effectively reduced those
3 pension obligations, yes.
4 Q. So the course that was considered was simply not
5 meeting the pension obligations as they came due; is
6 that right?
7 A. No, it's just what I said. By keeping it in a steady
8 state we weren't meeting our obligations there
9 currently.
10 Q. And that would include also not meeting the pension
11 obligations?
12 A. Yes. As I said, keeping in a steady state would by
13 definition reduce liabilities. That's what the City
14 was already doing.
15 Q. And was there any other avenue that was considered as
16 potentially viable to reduce the pension benefits
17 apart from what you just said and apart from going
18 through a Chapter 9 filing and again putting aside
19 some sort of negotiated resolution?
20 A. Well, we didn't consider the steady state alternative
21 viable.
22 Q. Uh-huh.
23 A. We thought that was quite problematic. Putting aside
24 the discussion we had earlier this morning about legal
25 conclusions and what we possibly could do under the

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1 statute, were there any other -- other than
2 consensually inviting resolutions, a potential Chapter
3 9 filing, any other alternatives? And a steady state,
4 those three, any other? I don't think there were any
5 other alternatives.
6 Q. Okay. Let's move on to the next document, which we'll
7 mark as Exhibit 9.
8 (Marked Exhibit No. 9.)
9 (Discussion held off the record.)
10 Q. Okay, let's look at Exhibit 9. This is a proposal for
11 creditors, June 14, 2013. You've indicated you're
12 familiar with it?
13 A. Yes.
14 Q. Now, this document, as I understand it, spells out in
15 general terms what you thought the problems were
16 facing Detroit and what you wanted to do about them?
17 A. Well, it spells out in general terms what we think the
18 problems are and it makes a proposal to what we think
19 we should do about them.
20 Q. Okay. And among the significant issues facing the
21 City were retirement obligations we've discussed;
22 right?
23 A. Yes.
24 Q. And the proposal refers to cutting them; correct?
25 A. Point me to a specific page, please.

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1 Q. Doesn't it say that they need to be reduced? Doesn't
2 it say that?
3 A. Yes.
4 Q. And it says they're unsustainable; doesn't it?
5 A. Yes. I think generally speaking it says that, yes.
6 Q. And we'll go through some of the specifics.
7 A. Okay.
8 Q. I think in here early on, around pages 23 to 24, you
9 note -- I think we discussed this a little bit -- that
10 the unfunded pension liability right now as of June
11 14th is more or less on the books as 643 million, but
12 it could be as large as 3.5 billion; is that right?
13 A. Yes.
14 Q. And that figure, that 3.5 billion figure, that's work
15 that's been done for the City by the Milliman firm; is
16 that right?
17 A. Well, among others, I think Milliman worked off on
18 initial Gabriel Rotors projections and then did their
19 own, yes.
20 Q. And are you aware that that number, the 3.5 billion,
21 has been disputed by various parties or objectors as
22 regards the actuarial assumptions that were used?
23 A. Yes.
24 Q. And at least one firm has taken the position that the
25 number should be much less than 3.5 billion?

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1 A. I think several entities and firms have taken that
2 position yes.
3 Q. And you indicated you're not an actuary; correct?
4 A. That's correct.
5 Q. So you have no expertise in that?
6 A. I rely on our professionals and consultants, yes, who
7 are actuaries.
8 Q. So the accuracy of the 3.5 billion or some other
9 figure will be an issue that's going to be ultimately
10 decided by a court if this matter proceeds; is that
11 right?
12 A. We think it's accurate, but it may ultimately be
13 decided by a court.
14 Q. Now, on pages 90 to 91, if I understand this, and
15 particularly on 91, this is showing the current
16 projections, right, as I understand this particular
17 schedule?
18 A. Yes, it's the ten-year projections.
19 Q. Right. Under what I think has been referred to as a
20 steady state? In other words, this is without the
21 restructuring?
22 A. Yes, I think this is the ten-year steady state General
23 fund only projection.
24 Q. If you look at page 91, it shows, if nothing changes,
25 projections for both pension, contributions and

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1 healthcare benefits, right, and then the top headings?
2 A. Yes.
3 Q. And for pensions, just using 2014 as an example, we
4 see the number is 199.5 million?
5 A. Yes.
6 Q. And for the health benefits for 2014 it's
7 140.7 million?
8 A. Yes.
9 Q. And obviously if you look over the next several years,
10 it goes up?
11 A. Yes.
12 Q. Okay. And then so that I understand this, if you look
13 at pages 97 to 98, this is the same spreadsheet but
14 now showing what the figures would look like if this
15 proposal for restructuring were to go through; is that
16 right?
17 A. Yes.
18 Q. And so if we look again comparably for 2014, let's
19 see, and let's start with -- I guess we can start with
20 the pensions. On page 97, for 2014, we now see an
21 item DC pension contribution.
22 A. Uh-huh.
23 Q. And that's -- that DC stands for what?
24 A. You mean the DC?
25 Q. Yeah, what do the words stand for?

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1 A. Defined contribution.
2 Q. Defined contribution?
3 A. Uh-huh.
4 Q. Now, the existing -- the pension plan that exists
5 under the steady state projections, is that defined
6 contribution plan?
7 A. That would be switched over. No, no, defined -- the
8 steady state scenario?
9 Q. That's a defined benefit?
10 A. That's a defined benefit plan.
11 Q. So what you're projecting here is a switch over to a
12 defined contribution program and for 2014 we see the
13 number for the city's contributions is now
14 25.4 million; is that right?
15 A. Yes, that's -- yes.
16 Q. And that compares with the -- what was the figure?
17 199.5 million that we saw under the as is?
18 A. Yes, projections.
19 Q. Yes. So the diminution it looks just on the rough
20 math that the City's pension contributions under the
21 restructuring are being cut by about 80 percent; is
22 that right?
23 A. Under 75 million, 80 percent, sure, roughly.
24 Q. And for health, the health benefits, which we saw that
25 were, what, under the current scenario something like

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1 147 million?
2 A. Retiree health, yes.
3 Q. For retiree health?
4 A. Uh-huh.
5 Q. Under this proposal, the restructuring proposal, I
6 don't see any line entry for the retiree health
7 benefits.
8 A. Yes.
9 Q. So they're essentially being cut; correct?
10 A. Well, the obligation is being provided with a
11 different program, but yes, the City would not have an
12 obligation going forward of that magnitude.
13 Q. And going back to the pension contributions, you know,
14 we had talked about a diminution on the order of 80
15 percent from the 199.5 figure, and I think it's the
16 City's contention that the 199.5 figure is really
17 understated, right, because the obligations are really
18 a lot higher?
19 A. I think we think the liabilities -- this is the steady
20 state projection on 91. I think we think the
21 liabilities are higher because what we represented on
22 the second page of 98 is the estimated undersecured
23 claims for out years as opposed to a ten-year
24 projection.
25 Q. Right. And if the liabilities were really greater

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1 than the diminution from the steady state to the
2 restructuring scenario would be greater than 80
3 percent; wouldn't it?
4 A. It might be. I mean, we've said 80 percent. I mean,
5 199.5 less 25, you know, you just roughly cut those in
6 half, that's a 12 and 1/2 percent, but you know, 88
7 percent, somewhere in that neighborhood.
8 Q. Now, the people who are -- the retirees who are
9 getting impacted from these -- by these cuts in the
10 proposed restructuring, these are who? These are men
11 and women who previously served the City and are now
12 retired?
13 A. Yeah, they're two pension plans: one for General
14 services and the other for Police and Fire.
15 Q. And these individuals that serve the City in both
16 public safety and nonpublic safety capacities?
17 A. Uniform and nonuniform, yes.
18 Q. And were these -- I guess the issue comes because the
19 pension liabilities and the healthcare benefits that
20 may be due are not -- there's not sufficient funding
21 that was put into them; correct?
22 A. Well, the healthcare benefit has no funding, the
23 $5.7 billion. And the pension underfunding has our
24 estimate of the level of underfunding, the unfunded
25 portion of the pensions, in them. There are assets

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1 within both pension funds, it's the level of
2 underfunding that we're talking to.
3 Q. Right. And it's the underfunding that's resulting in
4 the cuts to the retirees; correct?
5 A. Well, this is a proposal I'll say again. We have said
6 again and again we want to have a discussion so we can
7 figure out what the rightsizing is.
8 Q. Can you please just answer the question, Mr. Orr?
9 A. I am, but you say cuts, you say cuts and that has a
10 different connotation and I'm trying to explain it
11 fully.
12 Q. This proposal the benefits get cut substantially;
13 don't they?
14 A. Yes, but we need to have a discussion.
15 Q. Now, the individuals whose rights and expectations and
16 benefits are being impacted under this, they weren't
17 themselves responsible for the lack of funding that's
18 resulted in these problems; were they?
19 MR. SHUMAKER: Objection, form, foundation.
20 A. That's -- that's a loaded question about
21 responsibility and --
22 Q. I'm asking if the individual retirees whose pensions
23 and healthcare benefits may be impacted under this.
24 A. That's a loaded question.
25 MR. SHUMAKER: Same objection.

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1 A. I'm going to be very careful here because while
2 recognizing that these are typically rank and file
3 employees, there's a whole bunch of issues regarding
4 responsibility and some of it has been written about
5 quite extensively.
6 Q. And you're aware that at least the vast majority of
7 the City employees, the retirees, count on their
8 pension and healthcare benefits in order to help make
9 ends meet?
10 A. I don't know if I'm aware of that as a fact. I know
11 certainly that pensions are important to retirees.
12 Q. Now, going back to page 98 of this restructuring
13 proposal, you pointed to a box --
14 A. Yes.
15 Q. -- that shows a very large unsecured claim amount for
16 unsecured pension and OPEB?
17 A. Yes.
18 Q. And that's 9.2 billion?
19 A. Yes.
20 Q. And as I understand this proposal, the retirees who
21 fall into this category whose pensions and healthcare
22 benefits are being cut back by this would end up with
23 unsecured claims and get a share of the notes that the
24 City is intending to issue; is that right?
25 A. The retirees whose pensions and healthcare benefits we

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1 propose to reduce would get a share of the note, yes.
2 Q. And is there any way to tell from this document how
3 much any individual retiree would ultimately get if
4 the notes go ahead and are issued?
5 A. Not from this document.
6 Q. There's no way to tell how much cash value any retiree
7 would receive under this plan that's laid out here
8 where they get notes?
9 A. It is my understanding that there are a number of
10 different plans and benefits and factors that go into
11 that determination for any specific retiree.
12 Q. Okay. Now, Chapter 9 is not referred to in this
13 restructuring plan; is it?
14 A. I don't think we did.
15 Q. And I think you indicated before that if this was not
16 agreed to by the various constituencies, then the only
17 way to implement this restructuring plan would be, if
18 at all, would be to try to go ahead and do that
19 through Chapter 9; is that right?
20 A. I think what I said before, I think you're referring
21 to the May 12th 45-day operating plan, but I think
22 what I said before on June 10th and June 14th is we
23 needed to engage in a dialogue, because we didn't want
24 to go to Chapter 9.
25 MR. ULLMAN: That wasn't my question. Can

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1 you read my question back?
2 (Record read back as requested.)
3 A. Yeah, I indicated that here today.
4 Q. I'll just ask the question again. As you understood
5 it, if the proposal here were not agreed to or some
6 other consensual resolution was not reached, was there
7 any way for you as Emergency Manager to implement this
8 plan other than to try to get it put in place through
9 a Chapter 9 filing?
10 A. Subject to the discussion that we've had a couple of
11 times earlier today, what I have said is that Chapter
12 9 is an option to achieve these goals.
13 Q. And were you at this point aware of any option to
14 achieve these goals other than Chapter 9 if a
15 consensual resolution was not reached?
16 A. There were various briefing memos and discussions, but
17 given the time frames that we were under, and I said
18 this at the June 10th meeting and I said it at the
19 June 14th meeting and I want to be responsive, that if
20 we didn't, Chapter 9 was an alternative.
21 Q. And I don't think that's fully responsive at this
22 point. Had you identified anything else as of June 14
23 to get this plan implemented, any other course,
24 putting aside consensual resolution, other than a
25 chapter 9 file?

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1 A. Nothing that would give us an orderly and
2 comprehensive resolution of these problems.
3 Q. Now, you gave an interview, that I'm sure you're
4 familiar with, with the Detroit Free Press on or
5 around June 14th. Do you remember it? I'll just tell
6 you what -- I believe you said -- and I'm sure you
7 remember this one and you can tell me. If not, I have
8 the quote.
9 A. Yeah, you can give me the quote. There's so many
10 interviews, but I'll trust your quote.
11 Q. Okay.
12 A. Okay.
13 Q. This is the quotation. Question, you said in this
14 report, referring to the June 14th proposal, that you
15 don't believe there is an obligation under our state
16 constitution to pay pensions if the City can't afford
17 it? Answer, the reason we said it that way is to
18 quantify the bankruptcy question. We think federal
19 supremacy trumps state law.
20 A. Yes.
21 Q. You don't deny making that statement?
22 A. No, I think I've said that several times.
23 Q. And the state law you were referring to that you
24 referred to as being trumped was Article 9, Section 24
25 of the state constitution; is that right?

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1 A. I believe so.
2 Q. There's no other state law that you view as relevant
3 to the pension issue; is there?
4 A. Subject to the discussions that we had earlier today.
5 Q. As being trumped? There's no other state law that you
6 regarded as being trumped; is there?
7 A. No, there's no other as being trumped.
8 Q. Trumped.
9 A. Right.
10 Q. So the answer to my question -- just so the record is
11 clear, the answer to my question is no other?
12 A. We're not referring to another state law.
13 Q. Okay, thank you.
14 A. Okay.
15 Q. Now, ultimately -- so when the subsequent bankruptcy
16 filing was made -- which it was; right?
17 A. Yes.
18 Q. The intention -- specific intention was indeed to
19 trump Article 9, Section 24 of the state constitution;
20 correct?
21 A. That wasn't the only intention.
22 Q. But that was an intention; was it not?
23 A. That was one of the objectives.
24 Q. Now, ultimately you did request authorization for the
25 governor to file; right?

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1 A. Yes.
2 Q. I'm just going to put these letters into the record so
3 we have them.
4 A. Okay.
5 Q. I'm not sure I'm going to ask you much about them.
6 The first one is what we're going to mark
7 as Exhibit 10.
8 (Marked Exhibit No. 10.)
9 Q. This is 10. This is 10.
10 A. Thank you.
11 MR. ULLMAN: And I might as well mark 11
12 also. They kind of go together.
13 THE WITNESS: Okay.
14 (Marked Exhibit No. 11.)
15 Q. Okay, what we've marked as Exhibits 10 and 11
16 respectively are the July 16th, 2013 letter from you
17 to the governor and to the treasurer and then the
18 governor's response letter of July 18, 2013.
19 A. Yes.
20 Q. And you're obviously familiar with these documents?
21 A. Yes.
22 Q. And you wrote Exhibit 10, you signed it at least?
23 A. Yes.
24 Q. And Exhibit 11 is the governor's response; correct?
25 A. Yes.

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1 Q. Now, did you have discussions with the governor's
2 office or anyone on the governor's team leading up to
3 the request letter that you sent in?
4 MR. SHUMAKER: Objection to form.
5 A. Leading up to?
6 Q. Yeah, before.
7 A. Before that. I think there were discussions with the
8 treasurer and even the governor that if we weren't
9 making progress on negotiations, I might have to
10 submit the letter.
11 Q. Okay. And in those conversations was there any
12 mention of the impact that the bankruptcy filing might
13 have or was intended to have as regards the pension
14 benefits?
15 A. Probably, yes.
16 Q. And do you recall anything specific about that?
17 A. I -- um -- as I said, I had regular meetings of the
18 governor and his staff, we probably discussed this. I
19 don't recall a specific discussion.
20 Q. Do you recall telling the governor and his staff in
21 general that one of the purposes, I'm not saying the
22 only purpose, one of the purposes or intentions of the
23 Chapter 9 filing would be to allow you to cut back the
24 pension benefits?
25 A. Yeah, I don't want to give the misimpression that that

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1 was the singular focus. I think most of our
2 discussions were about the need for the City to deal
3 overall with its balance sheet and its obligations,
4 which would include pensions.
5 MR. ULLMAN: Uh-huh. Okay, can you read my
6 question back? Listen a little more closely because I
7 was really -- it was a little more specific of a
8 question.
9 THE WITNESS: Okay.
10 (Record read back as requested.)
11 A. We probably had that discussion. I don't recall
12 anything specific, but we probably did.
13 Q. And do you recall any discussion during those same
14 conversations with the governor or anyone from his
15 staff as to the impact, if any, of Article 9, chapter
16 -- Section 24 of the Michigan Constitution as regards
17 pension benefits?
18 A. I don't recall having discussions in that regard. No.
19 Q. Now, if you look at the governor's response letter,
20 okay, and the last page, you see at the top there's a
21 heading called contingencies?
22 A. Yes.
23 Q. And it says 2012 PA 436 provides that my approval of
24 the recommendation to commence a Chapter 9 proceeding
25 may place contingencies on such a filing and it gives

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1 the citation. It continues, I am choosing not to
2 impose any such contingencies today. Federal law
3 already contains the most important contingency, a
4 requirement that the plan be legally executable,
5 11 U.S.C. Section 943(b)(4). Do you see that?
6 A. Yes.
7 Q. And did you have any discussions with the governor or
8 anyone from his staff about that language before you
9 received this letter back?
10 A. No.
11 Q. Were you -- did you have any understanding before
12 receiving this that as to whether or not the governor
13 was going to place any contingencies on the bankruptcy
14 filing?
15 A. No, but I was concerned about it.
16 Q. And what were you concerned about?
17 A. I was concerned that the governor might place some
18 contingency in any regards, not just related to the
19 pensions and others, but that the inner array on
20 limiting what authority I might have would impact what
21 discretion I would have under either 436 or Chapter 9.
22 I was just concerned about contingencies.
23 Q. And was one of the contingencies that you were
24 concerned about the contingency that could impair your
25 ability or restrict your ability to cut back the

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1 pensions?
2 A. I was concerned about all contingencies. I didn't
3 know what the governor was going to say.
4 Q. That's really not my question. Can you read my
5 question?
6 A. Yes, I was concerned about all of them. That's what I
7 said.
8 Q. And that includes specifically the one about not being
9 able to affect the pensions; correct?
10 A. All contingencies.
11 Q. Thank you.
12 Had you discussed within your staff the
13 possibility of the governor putting a contingency that
14 would prohibit the Emergency Manager from taking
15 actions that would impair pensions?
16 A. My staff, including my legal counsel and consultants,
17 the entirety of staff at large?
18 Q. Yes.
19 A. Yes.
20 Q. And did you view the risk as substantial, that the
21 governor was going to do that?
22 A. Without disclosing any attorney-client confidences, I
23 don't know if we handicapped the risk. It was just a
24 general discussion. I had submitted a letter, I
25 wasn't sure what I was going to get back.

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1 Q. And did you have any plan in place as to what you
2 would do if the letter came back that imposed a
3 contingency that in any Chapter 9 filing nothing could
4 be done that would affect pension rights that were
5 protected under the Michigan Constitution?
6 A. No.
7 Q. Now, in his letter the governor -- the portion we've
8 just looked at on the back of page 5, the governor
9 says, having a legally executable plan under Section
10 943(b)(4). That's a reference, 943(b)(4), the
11 bankruptcy code; isn't it?
12 A. I believe so.
13 Q. So he says, he the governor says, having a legally
14 executable plan under Section 943(b)(4) of the
15 bankruptcy code is a contingency for Detroit's filing
16 a bankruptcy petition. Correct?
17 MR. SHUMAKER: Objection, document speaks
18 for itself.
19 A. That's -- I was going to say the document speaks for
20 itself. You're sort of reading it, you know, just
21 inversing it, but it says federal law already contains
22 the most important contingency requirement that the
23 plan is legally executable.
24 Q. Right. And this is in the context of him asking or
25 noting that under PA 436 he could, he the governor,

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1 could place contingencies on a Chapter 9 filing;
2 right?
3 A. Yes.
4 Q. And he goes on to say that federal law also contains
5 what he calls the most important contingency on the
6 Chapter 9 filing, that it be legally executable;
7 correct?
8 A. Yes, the letter speaks -- that's the language of the
9 letter.
10 Q. Did you agree with the governor's analysis here?
11 A. I -- do I agree? Yes, I mean, I agree that that's the
12 most important contingency that we get to, yes.
13 Q. Now, petition was filed -- the bankruptcy petition was
14 filed on July 18th, like at 4 in the afternoon, 4:05,
15 something like that?
16 A. That's what I was told. I don't know the specific
17 time.
18 Q. Now, in doing -- in making your bankruptcy filing,
19 were you intending to do something that was in
20 violation of state law?
21 MR. SHUMAKER: Objection, calls for legal
22 conclusion.
23 A. Here again, subject to all the discussions that we had
24 earlier today, I was intending to aleve the City of a
25 very dire situation and provide it with the maximum

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1 ability to restructure itself.
2 MR. ULLMAN: I'm going to move to strike as
3 nonresponsive. Can you read back my question, please,
4 and can you answer it, Mr. Orr?
5 (Record read back as requested.)
6 A. No.
7 Q. And at this time were you aware that a bankruptcy
8 filing that would allow you to impair pension benefits
9 was at least arguably in violation of state law?
10 A. I was aware that various parties had taken that
11 position, yes.
12 Q. So you were aware there was an argument? I'm not
13 saying you were agreeing with it.
14 A. I didn't agree with it, but there was an argument.
15 Q. Now, did you give consideration to that argument?
16 A. Yes, I suppose I did.
17 Q. And what did you do to give consideration to that
18 argument?
19 A. I discussed it with counsel.
20 Q. Okay, which counsel?
21 A. My legal counsel.
22 Q. Legal counsel being?
23 A. Jones Day.
24 Q. Jones Day.
25 A. Uh-huh.

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1 Q. Did you make any inquiries of the State Attorney
2 General?
3 A. I know at some point -- and I'm going to be careful
4 here because as a state contractor, I want to be very
5 careful about whether or not the Attorney General also
6 is my counsel. I know at some point I met with the
7 Attorney General, but I don't recall when that was. I
8 don't recall if it was before or it was after the
9 filing. It might have been before.
10 Q. Okay. Well, if it was before, do you recall what
11 advice you got from the State Attorney General as to
12 whether it was legal under Michigan law for you to go
13 ahead with the bankruptcy filing but didn't protect
14 the pensions?
15 MR. SHUMAKER: Objection. I caution the
16 witness that to the extent it calls for
17 attorney-client communication, not to reveal those
18 communications.
19 A. I don't think I can answer the question without going
20 into attorney-client communications.
21 Q. But you don't recall specifically whether you actually
22 consulted the State Attorney General prior to the
23 filing; do you?
24 A. I recall meeting with the Attorney General at one -- I
25 may have had a couple -- I think I've had a couple of

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1 telephone conversations with him and I recall meeting
2 with him. I don't recall whether it was prior or
3 after the filing. I know from time to time -- I just
4 don't recall when it was.
5 Q. Would there have been any reason for you not to
6 consult the Attorney General prior to the bankruptcy
7 filing on that issue?
8 A. No, I think the State Attorney General made his
9 position known prior to the filing.
10 Q. Now, as of this time the petition was filed there were
11 various state court litigations that had been begun?
12 A. Yes.
13 Q. And those challenged, among other things, PA 436;
14 correct?
15 A. Yes.
16 Q. And its constitutionality?
17 A. Yes.
18 Q. And in fact, the petition was filed just prior to the
19 start of a TRO hearing in one of those state
20 litigations; wasn't it?
21 A. I was told that either that night or the following
22 day.
23 Q. And are you aware that certain objectors in this
24 proceeding have stated that the bankruptcy petition
25 was filed just before the judge in the case was about

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1 to issue a TRO prohibiting the bankruptcy filing from
2 taking place?
3 A. I heard that after the fact, yes.
4 Q. And are you aware that these objectors have stated
5 that in fact the state lawyers asked for a short delay
6 before the ruling was issued so they could get the
7 bankruptcy filing in before the judge came down with a
8 TRO?
9 A. I don't know if I heard it -- I may have read that
10 later. I don't know if I heard it.
11 Q. Did you have any involvement in those actions?
12 A. No, no.
13 Q. Do you deny that that's what occurred?
14 A. I only know what I've heard and I have no personal
15 knowledge, I just know what I've heard and what I've
16 read.
17 Q. And isn't it correct that you wanted to get the
18 bankruptcy petition filed as soon as possible because
19 you knew there was a risk that the state might rule it
20 was illegal -- the state court might rule it was
21 illegal under state law for the bankruptcy proceeding
22 to be filed?
23 A. No, that wasn't the reason.
24 Q. Is there a particular reason that the bankruptcy
25 filing was made at 4:06 in the afternoon of the same

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1 day a TRO was being heard in the state court other
2 than to get the jump on the state court ruling?
3 MR. SHUMAKER: Object to the form.
4 A. Not to the best of my knowledge.
5 Q. Now, you're aware that the state court in that
6 litigation in fact later issued a ruling that PA 436
7 is unconstitutional to the extent that it authorizes a
8 proceeding under Chapter 9 in the way that could
9 threaten to impair or diminish accrued pension
10 benefits?
11 A. Yes, I was informed that there are I believe three
12 TROs after the bankruptcy filing.
13 Q. And you have proceeded with the bankruptcy petition
14 notwithstanding; correct?
15 A. Well, the bankruptcy petition had been filed. There
16 were open questions about the application of the stay.
17 There was also a question about an appeal, which was
18 taken up I believe by the Attorney General's office.
19 So when you say you proceeded with the petition, we
20 filed the petition, there was a ruling, and there were
21 appeals.
22 Q. Okay. And in light of the state court ruling that
23 PA 436 was unconstitutional, you did not take any
24 steps to withdraw the bankruptcy petition from filing;
25 did you?

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1 A. No.
2 Q. And you have not taken any steps to stop the
3 bankruptcy proceeding from going forward; have you?
4 A. No.
5 MR. ULLMAN: Would this be a good time to
6 stop for lunch, a quick lunch?
7 MR. SHUMAKER: Sure.
8 MR. ULLMAN: I'm ready to continue but I
9 know --
10 THE WITNESS: You got another -- how much
11 -- do you have another line of inquiry? Whatever
12 everybody --
13 MR. ULLMAN: I'm about to switch subject
14 matters.
15 THE VIDEOGRAPHER: Going off the record at
16 12:52 p.m.
17 (Luncheon recess between
18 12:52 p.m. and 1:30 p.m.)
19 THE VIDEOGRAPHER: We're back on the record
20 at 1:35 p.m.
21 BY MR. ULLMAN:
22 Q. Welcome back, Mr. Orr.
23 A. Good afternoon.
24 Q. One other question about the June 14th proposal.
25 Referring to page 98, we talked about the defined

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1 contribution benefit plan?
2 A. Yes.
3 Q. Okay. Is it correct that under that plan
4 contributions are being made only for people who would
5 be current City employees?
6 A. Will the plan be closed?
7 Q. Yes.
8 A. Yes, I believe so.
9 Q. So under the restructuring plan there would be no
10 pension contributions made for retirees; correct?
11 A. I believe that's correct.
12 Q. Now, you I believe said that the June 14th proposal
13 was presented at a meeting to representatives of
14 various creditors, I think you said that in your
15 declaration?
16 A. On June 14th, yes.
17 Q. Okay. Did you speak at that meeting?
18 A. Yes.
19 Q. And who else spoke?
20 A. I believe all -- several members of our team, I
21 believe it was Mr. Heiman, David Heiman, I believe it
22 was Ken Buckfire, I believe Heather Lennox was on, I
23 believe Bruce Bennett was there, I believe Ken
24 Buckfire may have spoken. I'm trying to recall if
25 there was anyone else.

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1 Q. And this meeting took about two hours total; is that
2 right?
3 A. Approximately that time.
4 Q. And you indicated in your -- the declaration that you
5 filed here that at the June 14th meeting you presented
6 the proposal and you presented the executive summary
7 and people got the full proposal as they exited and I
8 think you said that you answered questions posed by
9 the attendees?
10 A. I believe that's correct.
11 Q. Is that an accurate and truthful description of what
12 happened at the June 14th meeting?
13 A. Yes.
14 Q. There were no actual negotiations at that meeting;
15 were they?
16 A. I don't think that -- you know, be careful of the word
17 negotiations, but no, not as it's generally
18 understood.
19 Q. Now, the next meeting that I believe took place was on
20 June 20; is that right?
21 A. Are you reading through my declaration?
22 Q. Uh-huh.
23 A. Page 55 has a list of meetings, around that
24 approximate time.
25 Q. Uh-huh.

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1 A. Okay, yes.
2 Q. So the next one was June 20; is that right?
3 A. If that's what it says in my declaration, yes.
4 Q. And there were both morning and afternoon sessions; is
5 that right?
6 A. Yes.
7 Q. And this was six days after the proposal had been
8 presented; correct?
9 A. Yeah, I haven't done the counting, but 14th to 20th,
10 yeah, it would be six calendar days, yes.
11 Q. And it was a two-hour morning session and about 90
12 minutes for the afternoon session?
13 A. That sounds about right.
14 Q. And in your affidavit or your declaration you
15 indicated that at this meeting, these meetings, the
16 City presented a more in-depth look at its analysis of
17 the health and pension obligations and suggested for
18 proposals -- suggested proposals for the modification
19 thereof that the City could fund within its means
20 going forward and you provided handouts of the
21 presentations. Are those accurate descriptions of
22 what --
23 A. Yes.
24 Q. So there were no actual negotiations at that meeting
25 either; were there?

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1 A. I'm going to defer as to whether or not those
2 constitute negotiations. There was a give and take is
3 my understanding, but I'm not going to testify that
4 those did not constitute negotiations.
5 Q. Well, was there any actual sit down, you know, and
6 bargaining as to what the City would agree to as an
7 alternative to what was put in the June 4th (sic)
8 proposal and what it would not?
9 A. Here again, let me be careful here. The obligation to
10 collectively bargain is suspended for five years so I
11 just want to state that for the record. We are not in
12 any way by answering this question seeking to waive
13 that right, as it is traditionally understood. That
14 being said, I think at those meetings and all the
15 meetings I've referenced we generally asked during
16 those meetings for proposals which could be
17 characterized as negotiations.
18 Q. Did the City make any counterproposals to the June
19 14th proposal at the June 20 meetings?
20 A. Well, we wouldn't bargain against ourselves.
21 Q. It's a yes or no question; okay?
22 A. Sir, throughout the day I'm trying to give you a
23 response. I know you want yes or no questions for
24 purposes of your briefing, I suppose, but I'm trying
25 to give you an accurate response.

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1 Q. I would appreciate it if you could answer the question
2 without making speeches.
3 MR. ULLMAN: Can you have the question
4 read back, please?
5 THE WITNESS: It's not a speech, it's a
6 response.
7 MR. ULLMAN: Question read back.
8 (Record read back as requested.)
9 MR. SHUMAKER: Object to the form.
10 A. We didn't receive any counterproposals so there was
11 nothing to counter.
12 Q. And did you make any further mod -- did you make any
13 modifications on June 20 to the proposal you had made
14 on June 14th?
15 A. Here again, I'm going to be careful as to whether or
16 not what we discussed at the 20 referred to
17 modifications but suffice it to say we went over in
18 detail as I said in my declaration our proposal on the
19 14th and asked for responses.
20 Q. Okay. The next meeting I believe took place in July;
21 is that right? July 10th and 11th?
22 A. Yes, here again, if you're reading my declaration,
23 that's what I state.
24 Q. Now, in this set of meetings there were -- first of
25 all, were you present there?

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1 A. I don't -- I don't recall which of those meetings. I
2 know I attended the 14th in person, I had my June 10th
3 meeting in person, and I know I attended one or some
4 of these other meetings, but I don't recall if I was
5 present at that meeting.
6 Q. Okay. So I take it then that you have no personal
7 recollection as you sit here now as to what happened
8 at those meetings?
9 A. No, only as reported to me by my staff or consultants.
10 Q. Okay. And so what is set out in your declaration that
11 you filed in the bankruptcy case regarding the July
12 10th and 11 meetings is essentially a recitation of
13 facts that were reported to you by others?
14 A. Yeah, my information and belief, yes.
15 Q. And so far as you were aware, the description of the
16 meetings that you put in your declaration were full
17 and complete and accurate?
18 MR. SHUMAKER: Object to the form.
19 A. Yes.
20 Q. And we're talking about the meetings for July 10th and
21 11th just to be clear?
22 A. Yes.
23 Q. Okay.
24 MR. ULLMAN: I'm going to show you a
25 document that we will mark as --

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1 THE COURT REPORTER: Eleven -- excuse me,
2 12.
3 THE WITNESS: Twelve.
4 MR. ULLMAN: Twelve.
5 (Marked Exhibit No. 12.)
6 Q. Exhibit 12 is a letter on the letterhead of the
7 Detroit Firefighters Association dated July 12, 2003
8 (sic) to Evan Miller and David Heiman of Jones Day.
9 A. Yes.
10 Q. Are you familiar with this letter?
11 A. I've seen this letter before, yes.
12 Q. Okay. And in this letter the authors refer to the
13 July 10 meeting and say that in the third paragraph
14 you stated you wish to discuss pension restructuring
15 proposals, you were then asked by the DPOA president,
16 Mark Diaz, for specific City pension restructuring
17 proposals -- I'm sorry, I think I omitted the word
18 benefit. For specific City benefit restructuring
19 proposals. You declined to give any specific
20 proposals.
21 As far as you're aware, is that an accurate
22 statement?
23 A. Yes.
24 Q. And they go on to say, we are reviewing and will
25 provide the City with specific proposals.

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1 As of this time, has the City received any
2 specific proposals from any of the potentially
3 interested parties?
4 A. Not to the best of my knowledge.
5 Q. And the authors go on to say it would be productive if
6 the City could provide us with its specific proposals
7 on pension benefit restructuring as soon as possible.
8 We have had only two meetings -- I'm sorry, we have
9 had two meetings where the similar pension benefits
10 were addressed and still have only the general
11 observation that pension benefits must be reduced.
12 Is that a fair characterization as to the
13 status as of July 12th?
14 A. Well, I'm assuming that it's fair to say there were
15 two meetings. I'm not sure that they have the City's
16 general observation. My understanding was that there
17 were discussions besides the meetings and follow-up
18 regarding pension benefits, but that's to the best of
19 my knowledge.
20 Q. And they go on to say, sufficient -- we hope
21 sufficiently provide to our next meeting the City will
22 provide us with specific proposals on pension benefit
23 restructuring so that our meetings can be genuine,
24 good faith negotiations on the City's debt.
25 A. Yes, I see that.

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1 Q. And I think you indicated at this time the City had
2 not provided any specific proposals to these
3 gentlemen?
4 A. No. No, no, that's not what I indicated.
5 Q. Okay.
6 A. No, I think we did provide a proposal on June 14th and
7 I think the testimony was that we flushed those out
8 subsequently.
9 Q. So the only proposal that had been provided so far is
10 a proposal on June 14th and nothing beyond that?
11 MR. SHUMAKER: Object to the form.
12 A. No, I think we said that there were other discussions;
13 in fact, you said based upon my declaration that there
14 were further discussions that followed up after June
15 14th.
16 Q. Maybe I was unclear in my question.
17 A. Okay.
18 Q. There were no proposals that had been put out by the
19 City subsequent to the June 14th proposal; correct?
20 THE WITNESS: I guess someone was on the
21 call. Are we okay?
22 A. No proposals put out by -- well, you keep saying
23 proposals. There's nothing as comprehensive that was
24 proposed as we put on June 14th. There was additional
25 data and additional information that was provided

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1 after June 14th.
2 Q. So we're clear, no additional proposals that provided
3 for the pension cuts or the health benefit cuts in a
4 way that was different from what was in substance set
5 out on June 14?
6 A. Well, you say what was different.
7 Q. You haven't changed what was set out in the June 14th
8 proposal; have you?
9 A. You're not letting me respond. Can I respond?
10 Q. Let me withdraw the question.
11 A. Okay.
12 Q. Had there been any modifications to the June 14
13 proposal as of July 12, 2003 -- '13?
14 MR. SHUMAKER: Object to the form.
15 A. There could have been discussions that could qualify
16 as modifications, but generally speaking, the broad
17 outline of the proposal we submitted on June 14th was
18 still the proposal that we were talking about.
19 Q. Okay, and what were the discussions that you were
20 referring to that you said could qualify as
21 modifications?
22 A. Discussions we had with all members at the due
23 diligence follow-up sessions where we requested their
24 input.
25 Q. And was there any bargaining that took place at those

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1 sessions where the City said it would be willing to
2 agree to something that was different from what was in
3 June 14?
4 A. Here again, I'm going to stay away from bargaining as
5 a legal conclusion, duty to bargain is suspended. I
6 will say there was a back and forth and my
7 understanding discussions and invitations for further
8 information.
9 Q. Thank you.
10 I'm going to show you the next document,
11 which is a response to the one that we have as Exhibit
12 12, which we'll mark as Exhibit 13.
13 (Marked Exhibit No. 13.)
14 Q. Exhibit 13 a letter from Jones Day in response to what
15 we have marked as Exhibit 12; do you see that?
16 A. Yes, I believe so.
17 Q. And you see this is -- the letter starts out by
18 thanking the authors for their letter of July 12th?
19 A. Yes.
20 Q. And then in the second paragraph Jones Day goes on to
21 say, consistent with the position Dave Heiman and I
22 expressed at the meeting, we still think it makes
23 sense to first try to reach common ground with key
24 unions and association leaders on actuarial
25 assumptions and methods and the amount of PFRS

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1 underfunding and then tackle contributions and
2 attendant benefit changes. Do you see that?
3 A. Yes, it speaks for itself.
4 Q. And was that the position of the City as of July 17,
5 2013?
6 A. Yes, we said that before.
7 Q. As of July 17th now, 2013, had the City presented any
8 proposals that were different from the proposals set
9 out in the June 14th document?
10 A. As I said previously, subject to that testimony about
11 discussions that were had at these meetings, I think
12 this letter speaks for itself. We were requesting
13 input from the various interested parties as far as
14 our June 14th proposal.
15 Q. And the discussions were the same ones that you
16 answered about in the very last question --
17 A. Yes.
18 Q. -- when I asked you what the discussions were?
19 A. Yes.
20 Q. And as of June 17th -- I'm sorry, July 17th, had the
21 City actually sat down with any union or retiree
22 association to attempt to reach an agreement on a
23 restructuring plan that had terms that were different
24 from the terms in the June 14th proposal?
25 A. July 17th?

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1 Q. I'm sorry, yes.
2 A. Yes.
3 Q. If I misspoke, I'm asking as of July 17th.
4 A. Yes, we may have.
5 Q. You say you may have. Did you?
6 A. I was aware that there were ongoing confidential
7 negotiations with at least one union --
8 Q. Okay.
9 A. -- about a proposal.
10 Q. Okay. Were you present during those negotiations --
11 those discussions?
12 A. I have -- I have not -- I have met with members'
13 representatives of those unions. I'm not sure I was
14 in on all negotiations.
15 Q. Are these discussions that the City has stated are
16 subject to privilege under Federal Rule of Evidence
17 408?
18 A. Yes.
19 Q. Okay. And other -- so will you tell me what was said
20 at those sessions?
21 MR. SHUMAKER: Objection to the extent it
22 calls you to reveal privileged communications.
23 A. Yeah, those discussions are ongoing and so I'm -- I
24 have to be a little circumspect. Suffice it to say
25 there were discussions along the line of this exchange

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of letters of what could be addressed based upon our June 14th proposal.
Q. Okay. And with whom were those discussions? Which groups? You said you met with one or two groups or you were aware of meetings with one or two groups.
A. I think those are confidential, because as I said, those discussions are ongoing, so I don't want to interfere with settlement negotiations or breach confidentiality so I'm reluctant to answer your question.
Q. Okay, well, will you answer my question or will you not?
A. I don't think I can. I think they're supposed to be confidential.
Q. Well, you know, you have to answer the question unless your counsel instructs you not to.
MR. SHUMAKER: If you think it's going to reveal privileged communications, I'm going to instruct you not to answer.
THE WITNESS: I'll be -- I don't know so much -- can I consult with my counsel?
MR. ULLMAN: Yes.
THE WITNESS: Can we go off the record?
MR. ULLMAN: Yes.
THE WITNESS: Let's step out.

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THE VIDEOGRAPHER: Going off the record at 1:53 p.m.
(A brief recess was taken.)
THE VIDEOGRAPHER: We're back on the record at 1:57 p.m.
BY MR. ULLMAN:
Q. Okay, will you answer my question, Mr. Orr?
A. No, I think this is -- concerns commercially sensitive potentially confidential settlement negotiations and implicates the attorney-client privilege so I cannot answer your question.
Q. Okay, so apart from the discussions that you won't tell me about, would the City actually sit down with any union or retiree association in an attempt to reach an agreement on a structuring plan on terms that are different than the terms set out in the June 14th proposal as of July 17th?
A. As I said before, subject to the meetings we've had, we've exchanged information which may constitute the type of sit down you're talking about. Other than the ones that have been recounted and phone calls and meetings I may not be aware of, this is what I know in my declaration.
Q. And as of June 17th then, I take it you had not received any actual proposal -- I'm sorry, I keep

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saying June.
A. July.
Q. As of July 17th, you had not received any actual proposal outside possibly with the settlement discussions you were talking about from any union or retiree association; is that right?
A. Outside of those settlement negotiations --
Q. Yes.
A. -- that is correct.
Q. Now, as of July 17, had the City told any union or retiree association that it would in fact be willing to proceed with the restructuring on terms that did not include the elimination of ongoing pension contributions for retirees?
A. When you mean the City, you mean all of my consultants and others; correct?
Q. Yes.
A. There may have been discussions in that regard. I think I recall hearing that there was -- I can't recall a specific meeting, a discussion about how that would be arranged, but I'm not sure.
Q. So you personally did not make any such statement; did you?
A. Statement about?
Q. Saying to anyone -- to any union or retiree

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association that the City would in fact be willing to agree to a restructuring that did not involve the elimination of ongoing pension contributions for retirees.
A. No, I didn't say that.
Q. And do you know in fact whether anyone working on your team ever said that to any union or retiree association?
A. No.
Q. Okay. During the time from June 14th to July 17, did you or anyone else from your team tell any union or retiree association that the City acknowledged that under Michigan law pension rights were explicitly protected from being impaired or diminished?
A. I don't --
MR. SHUMAKER: Objection, form, calls for speculation.
A. I don't recall anyone saying that, but it may have happened.
Q. But you personally didn't make that statement; did you?
A. I don't recall saying that. I may -- you know, anything is possible, I just don't recall saying it.
Q. And as of July 17, had the City, you or anyone working for you, told any union or retiree association that it

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1 would in fact be willing to agree to a restructuring
2 plan that did not effectively eliminate the prior
3 existing health benefits for retirees?
4 MR. SHUMAKER: Objection, foundation, calls
5 for legal speculation.
6 A. Healthcare benefit for retirees?
7 Q. Yeah.
8 A. That did not eliminate it?
9 Q. Yeah, that you --
10 A. Did not adjust it in some fashion?
11 Q. Did not essentially cut it out the way it was being
12 cut out in the June 14th proposal.
13 A. Yeah, I want to be careful with the frame cut out,
14 because I think there were subsequent discussions
15 about what would be provided instead --
16 Q. Uh-huh.
17 A. -- as a proposal, so I don't want my testimony to seem
18 as if we were not proposing an alternative to the
19 existing healthcare plan and that had not been
20 discussed prior to July 17th, but subject to those
21 qualifications the answer to your question is yes.
22 Q. Now, I've been asking you as of July 17 and then the
23 bankruptcy filing was the very next day; correct?
24 A. Yes.
25 Q. Now, in your declaration do you recall making

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1 statements to the effect that there were expressions
2 by certain union representatives that they would not,
3 and I quote, countenance discussions over proposals to
4 modify either retiree healthcare or pensions?
5 A. Yes, I think those are quite publicly stated.
6 Q. And you refer in your declaration to newspaper reports
7 from June 20 and 21?
8 A. Yes, and I'm trying to recall if people said that to
9 me personally as well. Yes, but I do recall the press
10 reports, yes.
11 Q. And those are in fact press reports that you referred
12 to as you said?
13 A. Yeah, but I think -- and I'm just -- was your question
14 asked about union representatives or union members?
15 Q. Union representatives.
16 A. Could that include members?
17 Q. I'm not asking about people who are just members and
18 not officials in the union.
19 A. So you're talking about union officials?
20 Q. Union officials.
21 A. Okay. That they would not countenance any change
22 to --
23 Q. I think the language from your declaration is that
24 they would not countenance discussions over proposals
25 to modify either retiree healthcare or pensions.

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1 A. Yeah, I don't think that was just a function of press
2 reports, I think that was relayed to me upon my
3 information and belief by others as well.
4 Q. Upon your information and belief sounds like you
5 didn't hear it personally?
6 A. No, I just don't recall whether I heard it personally.
7 I have heard it personally in other meetings from
8 union representatives prior to July 17th, sure.
9 Q. With respect to the statements that you quote in the
10 newspaper, those are just newspaper reports; right?
11 A. Well, if they're newspaper -- they speak for
12 themselves if they're newspaper reports, but have I
13 heard that from union representatives?
14 Q. I'm --
15 A. I'm responding to your question. Have I heard that
16 from union representative? Yes.
17 Q. I'm going to get these in two phases; okay?
18 A. Okay.
19 Q. For the newspaper reports, you're relying on what was
20 said in the newspaper?
21 A. Yes.
22 Q. So you have no personal knowledge as to whether the
23 quotation in the newspaper was accurate or anything
24 like that?
25 A. Unless I was there, I'm not the reporter, yes.

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1 Q. Now, what statements were made to you outside of what
2 you read in the newspaper?
3 A. Quite early on I had heard from union representatives,
4 I believe at DFFA, DPLSA, DPOA, I'm not sure it
5 includes AFSCME, UAW, but I had heard statements in
6 that regard in many of the meetings that I've had with
7 them previously prior to July 17th.
8 Q. And did they specifically -- what statements, saying
9 specifically what?
10 A. Generally -- you know, I don't know the exact quotes,
11 but generally speaking what I said. They would not
12 countenance cuts to healthcare and benefits.
13 Q. That wasn't actually what you said in your
14 declaration.
15 A. That's what I said generally.
16 Q. What you said in your declaration is they would not
17 countenance discussions over proposals to modify
18 either retiree healthcare or pensions.
19 A. Yeah, healthcare, okay, yes.
20 Q. So who said what -- I would like to know specific as
21 to who said what to you when?
22 A. As I said, I had meetings early on with DFFA, I don't
23 recall the specific members, but I recall the meeting,
24 they were quite heated. Might have been one with
25 Mr. McNamara, Mr. Shinsky and others. I've had many

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1 meetings with DPLSA, Rodney Sizemore and Mark Young.
2 I've had meetings with DPOA, Mark Diaz, where that was
3 said prior to July 17th.
4 Q. Okay. And you're aware that the -- at least two of
5 the individuals that you mentioned are signatories to
6 what we've marked as Exhibit 12?
7 A. Yes.
8 Q. So you're not suggesting, are you, that those people
9 were saying that their unions would not in any event
10 negotiate with the City; were you?
11 A. I didn't -- that's not my testimony. That's what I
12 say in my declaration. I think most of the
13 discussions that were had were, here again, staying
14 away from the traditional concept of negotiating
15 because I'm not waiving any rights, but the general
16 concern is we're not going to change pension and
17 healthcare benefits, there were a lot of discussions,
18 these are affecting people's lives, these are promises
19 that the City has made, all the things you've heard
20 before. Those were recounted to me many times.
21 Q. Okay. And as we saw from the document we've marked as
22 Exhibit 12, the DFFA was in fact interested in getting
23 specific proposals from the City and said it would be
24 making its own proposal; correct?
25 MR. SHUMAKER: Objection, calls for

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1 speculation.
2 A. The letter speaks for itself, but it says it would be
3 productive if the City could provide us with specific
4 proposals on pension benefit restructuring as soon as
5 possible. I think that there had been discussions in
6 some of those meetings about pension benefits, but I
7 guess they're asking for more detailed information.
8 Q. And it also says as we went through before in the
9 fourth paragraph, we are reviewing and will provide
10 the City with specific proposals; correct?
11 A. Yeah, that's the information I got and they said they
12 were going to provide us with specific proposals.
13 Q. Okay. And -- okay.
14 And then we saw the response to that was in
15 Exhibit 13 again; correct?
16 A. Yes, this is the given for the discussions I talked
17 about.
18 Q. And then the bankruptcy filing was the very next day;
19 correct?
20 A. Yes.
21 Q. Did you personally have any discussions with
22 representatives of any retiree associations?
23 A. Yes.
24 Q. Which ones?
25 A. Fire, Detroit -- Police and Fire I think, yes. Early

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1 on with --
2 Q. The Police and Fire?
3 A. Yes.
4 Q. And what was the substance of those discussions?
5 A. This was concerns expressed about potential impact to
6 pensions and healthcare obligations.
7 Q. And are you aware that the police and firefighters
8 association, RDPP -- I'm sorry, RDPFFA, that's who
9 you're referring to?
10 A. Right, RDPFFA, yes.
11 Q. Retired Detroit Police and Firefighters Association,
12 they represent retired police and firefighters;
13 correct?
14 A. Yes. I assume. That's their name, yeah.
15 Q. Did anyone from that organization tell you that they
16 were refusing to negotiate with the City?
17 A. No, I don't think the discussion was of that nature
18 and character about refusing to negotiate. I think it
19 was quite -- by some members of that meeting made
20 quite clear that they were not interested -- refusing
21 is a big word. It was made quite clear they were not
22 interested in hearing about adjustments to pension
23 benefits.
24 Q. But you're not saying that that organization said it
25 refused to negotiate with the City; are you?

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1 A. Like I said, refused is a big word. There was a lot
2 of stridency in the conversations.
3 Q. But to be clear, your testimony is not that the
4 retiree association for the police and firefighters
5 said that they would refuse to enter into any
6 negotiations with the City?
7 A. No, I keep saying it's not a question of refusing, it
8 was that you can't do this. So they didn't say and
9 we're not going to ever talk to you again. That did
10 not occur. What was was very strident about you can't
11 do this.
12 Q. And you could understand why they were strident about
13 what was being done to their retirement benefits;
14 can't you?
15 A. Well, nothing's been done to their retirement
16 benefits. We've held them harmless for the balance of
17 this entire year. There was a proposal.
18 Q. You can understand about the retirees would be upset
19 about what was proposing to be done; can't you?
20 A. I've said that before, sure.
21 Q. I want to show you another document. Was that the
22 only retiree association you had discussions with?
23 Any discussions with the Detroit Retired City
24 Employees Association?
25 A. I'm trying to think. None that I recall. None that I

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1 recall.
2 Q. Okay. Let me show you another document.
3 A. There may -- none that I recall with specificity.
4 Q. Okay. And you were aware that they represented other
5 nonuniformed retirees?
6 A. Yes.
7 Q. But you can't recall anything --
8 A. None I recall with specificity.
9 MR. ULLMAN: Okay. Let's mark the next
10 document, which is, what, 15?
11 THE COURT REPORTER: Fourteen.
12 MR. ULLMAN: Fourteen.
13 (Marked Exhibit No. 14.)
14 Q. Okay, 14 is a document entitled retiree legacy cost
15 restructuring, September 11, 2013.
16 A. Yes.
17 Q. Are you familiar with this document?
18 A. Yes.
19 Q. And does this represent the City's current position as
20 to what it's going to do, what it's going to provide
21 for retirees?
22 A. This represents the slide deck that we proposed last
23 week at the initial meeting with the retiree
24 committee.
25 Q. Okay, and does it represent the position for the City

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1 currently as to what it's --
2 A. Yes, this is the current --
3 Q. -- planning to propose or planning to put through?
4 A. Yes, this is the City's current thinking.
5 Q. And as I understand this roughly, on the health side
6 what the City was saying it will do is essentially the
7 retirees who are Medicare qualified can sign up for
8 some various Medicare plans and the City will help
9 them with the payment of the premium for that?
10 A. Yes.
11 MR. SHUMAKER: Objection, document speaks
12 for itself.
13 A. But yeah, on page 4 it starts that discussion, yes.
14 Q. Okay. And essentially for nonMedicare retirees in
15 terms of getting healthcare, they're on their own and
16 the City says it will give them $125 stipend; is that
17 right?
18 MR. SHUMAKER: Objection to form.
19 A. Yeah, you say they're on their own, but I think
20 there's a proposal here that they be able to go onto
21 the exchanges provided by the Affordable Care Act and
22 the City would give them a stipend.
23 Q. Right, and that's if to the extent they can do it, but
24 it's up to them to do something like that; right?
25 A. Yeah, like Harris Teeter did last week, yes.

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1 Q. And on the pension side of things has there been any
2 change from what was set out in the June 14th
3 proposal? As I understand this, it's still a defined
4 contribution plan for current employees and no
5 contributions being made by the City for retired --
6 for retirees; is that right?
7 MR. SHUMAKER: Object to the form.
8 A. Yeah, the general consensus is that you would close
9 the plan and there would be contributions for
10 currents, yes.
11 Q. And so again, just to be clear, that means for
12 retirees no ongoing contributions provided by the
13 City?
14 A. None other than their participation in the note that's
15 proposed in the June 14th proposal.
16 Q. And with no new funding for their pensions the
17 payments will stop -- to the retirees would stop being
18 made when the retirement funds run out; is that right?
19 A. That's a loaded question. I mean, the -- and the
20 reason I say it's a loaded question, some of the
21 retirement funds have said their payments won't run
22 out so that's why we want to have a dialogue. We
23 think they're at risk. They've told us they're not.
24 Q. And by the City's estimation the pension funding will
25 run out when? If no new funds are put in?

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1 A. Well, as you can see from our proposal, we have -- not
2 so much from the proposal but June 14th as well, we
3 made certain assumptions as to when the funds might
4 run out if nothing is adjusted one way or the other.
5 We've been told that we're wrong so --
6 Q. I'm asking. I'm asking the City's point of view.
7 A. The City's point of view is that we've made an
8 accurate and fair assumption that the funds will run
9 out at some point within the next two decades.
10 Q. And that's if no new money is contributed?
11 A. If -- well, and I'm being very careful. It's not just
12 if there's no new money, it depends upon actuarial
13 rates, it depends upon rate of return. Pensions could
14 invest in the Microsoft of their day and have more
15 than enough funds for the foreseeable future. But
16 assuming certainly reasonable assumptions that is the
17 conclusion of the City.
18 Q. And just to be clear, and that assumption as to when
19 it would run out assumes no further contributions by
20 the City; correct?
21 A. Yes, it assumes we close the plan. Other than the
22 note.
23 Q. And do you have any more specific recollection as to
24 when the funds would run out other than within the
25 next two decades?

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1 A. It's in my papers. If you want to point me to it,
2 that's fine, but I'll stand by what's in the papers.
3 Q. Now, you recall of course putting in a declaration in
4 the bankruptcy?
5 A. Yes.
6 Q. I guess I can actually give you a copy in case you
7 want to refer to it.
8 A. Okay.
9 MR. ULLMAN: Which we'll mark as 15.
10 (Marked Exhibit No. 15.)
11 Q. Okay, and Exhibit 15 is your declaration?
12 A. Yes.
13 Q. There's a lot of financial information that you put
14 out in your declaration; right?
15 A. Yes.
16 Q. One thing I didn't see in here is a balance sheet
17 showing the assets and liabilities of the City.
18 A. That is correct.
19 Q. Does one exist?
20 A. Not in the traditional sense that you're speaking of.
21 I think in our June 14th proposal we try to provide --
22 and in other proposals we try to provide for some
23 listing of the City's potential assets of any
24 substantial form. But is their traditional corporate
25 balance sheet, for instance, for the City, no, not

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1 yet.
2 Q. Do you have schedules of assets and liabilities that
3 exist, though?
4 A. Yes, yes.
5 Q. Have those been produced?
6 A. I don't know if we've completed the schedules so --
7 you're talking about the schedules of assets and
8 liabilities? I don't know.
9 MR. ULLMAN: I'll call for their
10 production.
11 MR. SHUMAKER: We will see.
12 MR. ULLMAN: I'm sorry?
13 MR. SHUMAKER: We'll look into it. I'm not
14 sure whether they've been produced or not right now as
15 I sit here.
16 A. Well, just to be clear, as you know, under Chapter 9
17 the time frame of it --
18 Q. That wasn't my question.
19 A. But I'm answering your question so it won't be unclear
20 on the record.
21 Q. But there isn't a question.
22 A. No, I'm being responsive. So it won't be unclear on
23 the record. Under Chapter 9 they're actually not due
24 yet, so let's just be clear.
25 Q. Now, at paragraphs 52 through 57 of your declaration

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1 you make a number of statements about insolvency?
2 MR. SHUMAKER: What page?
3 MR. ULLMAN: Sure, it's 37.
4 A. Yes.
5 Q. And in particular you cite a lot of figures with
6 respect to cash flow and you give projections?
7 A. Yes.
8 Q. Now, I think you indicated you're not an accountant?
9 A. No, I'm not.
10 Q. And is it correct that you yourself did not prepare
11 the cash flow numbers and projections?
12 A. That is correct.
13 Q. The underlying work was done by others?
14 A. Yes.
15 Q. And in your declaration you cite a number of sources
16 for the figures that you give in paragraphs 54 through
17 57?
18 A. Yes.
19 Q. You don't cite Ernst & Young as one of the sources?
20 A. No, that's because Ernst & Young submitted a parallel
21 affidavit at the time of this filing of Gaurav
22 Malhotra.
23 Q. Didn't the City in fact retain Ernst & Young to
24 prepare these cash flow projections?
25 A. The City retained Ernst & Young I believe over two

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1 years ago to work on liquidity, cash flow and
2 analysis. I don't think it was limited to just cash
3 flow projections.
4 Q. But that's one of the things that Ernst & Young did?
5 A. Yes.
6 Q. And that's one of the things in fact that -- what's
7 his name -- Gaurav Malhotra did?
8 A. Gaurav Malhotra.
9 Q. I'm sorry.
10 A. No problem.
11 Q. And Mr. Malhotra was in fact one of the lead Ernst &
12 Young players involved in working with the City;
13 wasn't he?
14 A. Yes, he's a principal at Ernst & Young.
15 Q. And is it correct that the figures that you're citing
16 in these paragraphs of your declaration in fact come
17 from work that come from Mr. Malhotra?
18 MR. SHUMAKER: Which figures are we talking
19 about, counsel?
20 MR. ULLMAN: Basically by my recollection
21 all of -- pretty much all of the figures. Certainly
22 in 54 these numbers about the 225 million, the
23 schedule that appears on page 39, the information
24 about the retiree legacy obligations being 8 percent
25 of revenues and this was all -- and going on, I just

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1 tried to chart it out briefly. It looked to me
2 basically all this was taken or appeared also in the
3 affidavit or declaration of Mr. Malhotra.
4 MR. SHUMAKER: I object to all this.
5 That's why I'm trying to ask you to be specific so
6 that the witness can give a responsive answer.
7 A. Yeah, let me say --
8 MR. SHUMAKER: Paragraphs 54 through what?
9 MR. ULLMAN: Fifty-seven.
10 THE WITNESS: Fifty-seven.
11 MR. SHUMAKER: Through 57.
12 A. Let me say this generally. If you look at Gaurav
13 Malhotra's declaration, he states that this
14 information is compiled by him in conversations with
15 City employees and other consultants as well. So I
16 don't want to give the impression that he's the sole
17 source for the data that we recovered. It is a
18 compilation of data from a number of different sources
19 and I relied on those same sources too and as this is
20 reported in the various footnotes to source the
21 material, they may have come from Mr. Malhotra but
22 they may have come from a number of different sources
23 in the process of him developing the work.
24 Q. But either way they were not done by you personally?
25 A. No, they were not done by me personally.

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1 Q. Did you do anything to verify the numbers, the
2 figures, the calculations done in paragraphs 52
3 through 57 of your declaration were accurate?
4 A. Yes.
5 Q. What did you do?
6 A. I discussed them with Mr. Malhotra and a number of
7 different consultants. We discussed them with the
8 economists at Ernst & Young and other accountants. I
9 discussed some of them with City employees.
10 Q. Okay, so you essentially satisfied yourselves that the
11 people who prepared these numbers did what they were
12 supposed to do and made what you thought were
13 reasonable assumptions in coming to them; is that
14 fair?
15 A. Yes. I mean, some of them are just factual
16 statements, but yes, to the extent there were
17 assumptions and work being done, there was some
18 participation in the organic work.
19 Q. Okay, and you relied on the information that was being
20 provided to you?
21 A. Yes, by the professionals.
22 Q. By the people -- by the professionals you hired to
23 perform that task?
24 A. Yes.
25 Q. Now, is it correct that in the years prior to the time

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1 you got there Detroit was subject to various scandals
2 including financial mismanagement?
3 A. Yes.
4 Q. And one of the former mayors in fact went to jail for
5 corruption; isn't that right?
6 A. He's been convicted. I don't know if he's sentenced,
7 but certainly that's been widely written about.
8 Q. Right. And do you know whether the books and records
9 that survived that administration were complete and
10 accurate?
11 A. I know that the, for instance, the CAFR, Consolidated
12 Annual Financial Report, was based on certain books
13 and records. I know that there have been questions
14 raised about the quality and competence of Detroit's
15 books and records. My testimony would be that to the
16 best extent possible based upon the data that we got
17 we relied on those books and records.
18 Q. And is it correct that the books and records -- and
19 those were the same books and records that
20 Mr. Malhotra relied on; right?
21 A. Yes, I think --
22 MR. SHUMAKER: Objection, calls for
23 speculation.
24 A. I think Mr. Malhotra's declaration states that Ernst &
25 Young did not audit the books and records of the City.

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1 Q. And did anyone else audit the books and records of the
2 City before these numbers that appear in your
3 declaration were prepared?
4 A. There may have been. I'm not sure, because depending
5 upon at any given time where the numbers come from
6 they may have been subject to an audit or they may
7 have been subject to a review, for instance the
8 pension numbers. Gabriel Rotor, which was GRS's
9 traditional actuary, may have done some balance. So
10 in my understanding based upon both the information I
11 received and discussion from Malhotra's declaration,
12 Ernst & Young did not audit them and I'm not an
13 auditor so that's my understanding.
14 Q. But do you know whether or not anyone else audited --
15 A. I don't know.
16 Q. And is it correct that if the underlying data of the
17 books and records that were being used to prepare
18 these cash flow numbers and projections have material
19 inaccuracies, that those would affect the projections
20 and the figures as well?
21 MR. SHUMAKER: Object to the form.
22 A. That's a hypothetical, but I think it's fair to say
23 that if they had material inaccuracies, they would
24 have an impact, but I'm unaware that they are
25 materially inaccurate.

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1 Q. But that's never been subject to an audit; has it?
2 A. To the best of my knowledge I don't know when they
3 have or when they haven't.
4 Q. Okay. And I think you indicated that in coming up
5 with these figures various people were consulted in
6 various fields and a number of assumptions were made;
7 is that right?
8 A. I believe so.
9 Q. And I think you also indicated in your structuring
10 proposal from June 14th that the numbers are subject
11 to various assumptions which could or could not prove
12 right; correct?
13 A. Well, I think in June 14th we've said that it's a
14 proposal and there may be various issues that may or
15 may not be correct.
16 Q. Yeah. Okay, and obviously if any of the assumptions
17 that went into the underlying numbers that appear in
18 your declaration are wrong, then the numbers
19 themselves would also be subject to inaccuracy; true?
20 A. Let me say this about that. Both in June 14th
21 presentation and in this declaration, we've tried to
22 present an accurate picture of the City's books and
23 records and status to the best extent possible that we
24 have. Where there were questions we have tried to err
25 on the side of reasonable assumptions as opposed to

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1 unreasonable assumptions either way. But your general
2 question as to whether or not if the information going
3 in was inaccurate, revealed an inaccurate result, I
4 think it's true as a matter of just common sense and
5 logic.
6 Q. And the same thing as to assumptions. If the
7 assumption made was wrong, then the output would be
8 wrong also?
9 A. I think that's why we asked several times to have a
10 discussion about the assumptions that are necessary
11 for pension benefits.
12 Q. Now, the cash flows that are being reported in your
13 declaration, those do not include any assumptions as
14 to the monetization of various assets that the City
15 continues to hold; is that right?
16 MR. SHUMAKER: This is paragraph 56 that
17 you're referring to, counsel?
18 MR. ULLMAN: Yeah, I'm looking in general.
19 MR. SHUMAKER: In cash flow?
20 MR. ULLMAN: Yeah, cash flow.
21 A. You're talking about generally do the cash flows
22 include any monetization of any City assets?
23 Q. Yeah.
24 A. No, they do not.
25 Q. And obviously if assets currently held by the City

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1 were monetized, that would provide additional cash to
2 pay obligations including retirement and health
3 obligations; correct?
4 A. Well, additional cash from onetime asset sales may not
5 necessarily equal cash flows. As I understand the
6 analysis we've tried to present is cash flows based
7 upon a recurring basis as opposed to onetime assets
8 but it would yield additional cash.
9 Q. Yes. If you sold an asset and had money, you would
10 have the money available to pay something?
11 A. Yeah, you might have a onetime -- I'm not an
12 accountant, but you might have a onetime cash charge,
13 yes.
14 Q. And if the cash, the amount you got was large, it
15 could last for a long period of time; correct?
16 A. Well, it depends upon what --
17 MR. SHUMAKER: Objection, form.
18 A. Depends upon what it was used for. I mean, what are
19 you talking about? When you say could last for a long
20 period of time, it could be a one -- you could sell
21 one asset for $5 million and that wouldn't last a
22 month.
23 Q. Yes, and depending on the amount of assets that were
24 sold, if you got a substantial amount of money, that
25 could enable the City of Detroit to pay ongoing bills

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1 for some period of time; true?
2 MR. SHUMAKER: Objection to form.
3 A. Here again, depending upon the size of the asset, but
4 anything is possible.
5 Q. Okay. Now, the City of Detroit owns certain pieces of
6 art that are stored at the Detroit Institute of Art;
7 is that right?
8 A. Yes.
9 Q. And how many is that?
10 A. I think the City owns approximately 66,000 pieces of
11 art.
12 Q. Now, those --
13 A. No, strike that. Let me be clear so we can move on.
14 Q. Yeah.
15 A. I think there are 66,000 pieces of art over at Detroit
16 Institute of Art. I'm not sure the City owns all
17 66,000 pieces. I've been informed that it owns 35,000
18 of those pieces in an undisputed capacity.
19 Q. Okay, that's what I was getting at. And that's
20 distinct from art that is subject to a public -- or is
21 or may be subject to a public trust or something like
22 that. This is 35,000 pieces that the City owns, as
23 you said, in an undisputed capacity?
24 A. Outright, yes.
25 Q. Outright. Now, is it correct that the City has

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1 retained Christie's to appraise this City-owned art?
2 A. Yes.
3 Q. And have you gotten back any information yet from
4 Christie's as to the appraised value?
5 A. No.
6 Q. And do you have any understanding as to the value of
7 the appraised -- of the art that's being appraised
8 independent of what -- of Christie's as a source?
9 A. Only what I've read in various news articles and
10 blogs.
11 Q. And I think you've seen press reports indicating that
12 for some of the most important works alone the value
13 could be at least 2.5 billion or something on that
14 order?
15 A. We talked about press reports earlier and I was
16 cautioned to be careful so I'm going to say the same.
17 Q. I'm just asking.
18 A. I'm trying to respond to your question. I'm going to
19 say the same thing about press reports here. I have
20 seen press reports reporting various values for the
21 art.
22 Q. And have you seen press reports reporting for the most
23 important pieces alone values on the order of
24 2.5 billion?
25 A. I don't recall if I've seen those specific press

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1 reports.
2 Q. Do you have any reason to believe that the value of
3 the City-owned art is less than something on that
4 order of magnitude?
5 A. I'm relatively agnostic on the value of the art at
6 this point. I'm waiting to see the appraisal.
7 Q. Do you have any understanding as you sit here today as
8 to what the value of the City-owned art is?
9 A. No.
10 Q. Are you considering selling the City-owned art to
11 generate cash?
12 A. What I've said consistently is all options on the
13 table, but we first have to decide what we're talking
14 about.
15 Q. Do you have any understanding as to how long it would
16 take to sell the art if a decision were made to sell
17 it?
18 A. No.
19 Q. Have you considered other ways to monetize the art
20 besides an outright sale?
21 A. All options are on the table.
22 Q. Well, have you considered any others in particular?
23 A. We have not made -- meaning my team and I have not
24 made any decisions with regard to the art contained at
25 DIA.

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1 Q. I'm not asking about decisions, I'm just asking what
2 you considered.
3 A. We considered a lot of things, yes.
4 Q. And have you -- well, then can you answer my question
5 more specifically? What if any ways to monetize the
6 art have you considered other than an outright sale?
7 A. I think there's been discussions about some form of --
8 and I'm not clear because to be direct, I know that
9 some of my -- I've never been to DIA, I don't think
10 I've ever spoken with their board, I know that some of
11 my consultants have been over there and have had
12 various discussions about the art. I think the
13 discussions were very high level and very general.
14 That's what I know.
15 Q. Okay, that's really very nonspecific. Are you aware
16 of any specific consideration given to any form of
17 monetizing the art other than an outright sale?
18 A. No, nothing specific.
19 Q. Could be a lease -- sorry, but nothing has been
20 identified as a possible route to monetize?
21 A. Nothing specific. There have been discussions, but
22 nothing specific.
23 Q. Have there been discussions of leasing as a possible
24 way to monetize?
25 A. Possibly, yes.

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1 Q. Okay. And do you have any understanding of the amount
2 of cash flow that could be generated on an annual
3 basis if the art were leased?
4 A. Sitting here today, no.
5 Q. Has that number been talked about? Is there a
6 document that might discuss that?
7 A. No, no, there's no document. I -- I -- in an effort
8 to be accurate, I think I had a discussion with one of
9 the representatives at Christie's that was generally
10 speaking leasing is a very difficult thing to do.
11 That's the nature of the discussion, that you would
12 have to have the right pieces at the right time at the
13 right market to generate cash.
14 Q. So there was no discussion about the amount of money
15 it could generate?
16 A. No, no, it -- there was some discussion about
17 $1 million, for instance, or something like that, but
18 it's nothing substantive.
19 Q. Okay. Now, the City also has a department of water
20 and sewers; is that right?
21 A. Yes.
22 Q. And as I understand it, the department of water and
23 sewers operates as a separate entity for accounting
24 and operating purposes?
25 A. As a result of Judge Cox's opinion, it has separate

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1 procurement, accounting and managerial
2 responsibilities, but as it's stated in that opinion,
3 it remains an asset in the department of the City.
4 Q. And is it correct that the water and sewer department
5 has issued secured bonds?
6 A. Yes, they're in my June 14th proposal.
7 Q. Okay, and I don't recall. What was the value of the
8 bonds that were issued?
9 A. The secured portion of the bonds all in, but this also
10 includes some parking -- parking was 95 million, some
11 dedicated state revenue bonds was a couple hundred
12 million, but generally speaking about 5.7 billion.
13 Q. And those bonds -- the 5.7 billion is secured by the
14 assets of the department?
15 A. Yes, yes.
16 Q. And as you understand it, does the value of the assets
17 of the department of water and sewers exceed the
18 values of the secured bonds?
19 A. I don't know if there's been a formal appraisal, but I
20 certainly would hope so.
21 Q. Do you have an understanding of the value of the water
22 and sewer assets?
23 A. Not sitting here today.
24 Q. Do you have a general understanding, a general
25 recollection?

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1 A. When you talk about asset values, you're talking about
2 switches, pipes, valves, things along that nature. I
3 don't think I've ever seen an appraisal of the value
4 of the assets of the water and sewer department.
5 Q. Do you have a general understanding of what the value
6 of the assets --
7 A. No.
8 Q. -- is worth?
9 A. No.
10 Q. Have you taken any steps to monetize the value of the
11 assets owned by the water and sewer department?
12 A. When you say monetize, I'm going to respond to the
13 question on the basis that monetize is in the broad
14 sense --
15 Q. Uh-huh.
16 A. -- not whether it's a lease, whether it's a sale,
17 getting authority.
18 Q. Just get money for it.
19 A. Get money for it, get some dough, okay, just want to
20 be clear. Discussions are ongoing in that regard.
21 Q. What are those discussions in a nutshell?
22 A. Those are commercially sensitive so I don't want to
23 interfere. Suffice it to say, the -- Judge Cox's
24 opinion spoke to the possibility of creating an
25 authority that would remove the water and sewer

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1 department's operations, not the assets, from the City
2 and perhaps increase additional value as a byproduct
3 of that process.
4 Q. And this is what is referred to in the June 14th
5 proposal or this transaction with this new authority?
6 A. Yes.
7 Q. And that would involve some sort of payment by the
8 authority to the City?
9 A. Yes, some sort of lease payment or like kind payment.
10 Q. Do you have any understanding -- can you give me any
11 idea as to the value that would be achieved by that,
12 the amount of cash that the City would be achieving,
13 realizing, if that went through?
14 A. Judge Cox's opinion, and I'm referencing the opinion
15 to state what's already in the record, references I
16 believe a $62 million payment, which he called wildly
17 speculative. But there may be payments in that
18 regard, somewhere between 40 or lower to maybe up to
19 100. It's unclear.
20 Q. Right now who has control over the revenues that are
21 taken in by the department of water and sewers?
22 A. City does.
23 Q. Now, the department of water and sewers also had
24 retirement obligations for its --
25 A. Well, they have employees that are members of the

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1 General retirement fund.
2 Q. Right. And how were payments to the retirement fund
3 for those employees to be made? In other words, were
4 they to be made directly by the department of water
5 and sewer, to the Retirement Systems or were they made
6 by the department of water and sewer to the City,
7 which then was to remit them to the Retirement
8 Systems?
9 A. You're talking about the transaction or steady state
10 now?
11 Q. The steady state.
12 A. Steady state now. My understanding is that's part of
13 the City's obligation.
14 Q. So the DWS, department of water and sewers, is to give
15 the money for the retirement to the City, the City
16 was --
17 A. City makes it.
18 Q. -- was then supposed to make the payment to the
19 Retirement Systems?
20 A. Uh-huh.
21 Q. And are you aware of any funds that were transmitted
22 by the department of water and city (sic) to the City
23 for the purpose of funding pensions that were then
24 used by the City for other purposes?
25 A. I don't know if you can identify specific water and

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1 sewer funds and transactions. I know that the City
2 has borrowed from the General Retirement System from
3 time to time.
4 MR. ULLMAN: So that's not really answering
5 my question. Can I have my question read back please?
6 THE WITNESS: Okay, sure.
7 (Record read back as requested.)
8 A. Am I aware? It would be speculative. I've -- no.
9 Q. So is it your testimony that all monies that were
10 transmitted by department of water and sewer to the
11 City to make payment for pension benefits were in fact
12 properly applied to the Retirement Systems as pension
13 contributions?
14 A. No, that's a conclusion on my statement I wasn't
15 aware. That may have occurred, but sitting here
16 today, without speculating, I'm not aware of a
17 specific transaction or transactions.
18 Q. So it may have occurred, you just don't know one way
19 or the other?
20 A. I just don't know.
21 Q. Now, you indicated that the City has control over the
22 money that's taken in by the department of water and
23 sewers; yes?
24 A. City has control over the department of water and
25 sewer. There are certain obligations due from the

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1 department of water and sewer, but yes.
2 Q. Okay. So if the department of water and sewer has
3 money that it wants to spend for a particular purpose,
4 is it correct that the City could decide that the
5 money should not be spent for that purpose and used
6 for something else?
7 A. That would depend upon the nature of the bond
8 obligations at department of water and sewer because
9 although the department remains a department of the
10 City, the bond obligations that are secured have
11 certain security interests in that revenue stream.
12 Q. Okay. Is there anything that restricts the City from
13 taking money from the department of water and sewer
14 that the department of water and sewer wishes to use
15 for and has earmarked for capital improvements to the
16 water and sewer system?
17 A. Yes, there's probably restrictions in the bond
18 instruments.
19 Q. And other than what may be in the bond instruments is
20 there any legal prohibition on the City taking the
21 money that the DWS would otherwise use for capital
22 improvements?
23 A. Yes, there might be under Judge Cox's opinion.
24 Q. But without reviewing the specifics of Judge Cox's
25 opinion, you don't know that?

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1 A. I don't know that.
2 Q. Now, are you aware that in its most current proposals
3 the department of water and sewer is proposing over
4 the next several years to spend hundreds of millions
5 of dollars on capital projects?
6 A. Yes.
7 Q. And have you given any consideration to not having
8 that money used for capital improvements to water and
9 sewer including new projects but in fact to have that
10 money used to satisfy other existing City obligations,
11 which may include but not be limited to pension or
12 healthcare obligations?
13 A. Have we given some consideration? Here again, this is
14 wrapped up in the potential transaction that is being
15 discussed and I think it's been reported with a number
16 of counties and other parties so I want to be careful
17 that I don't impact commercially sensitive
18 information. I know that the capital improvement plan
19 at DWSD is a component of ensuring that its
20 creditworthiness remains separate and apart from the
21 City and is at a higher rate. Your question was have
22 I given any consideration to not having them make that
23 capital improvements?
24 Q. Or to having make a lesser capital improvement,
25 thereby obtaining money for the City to use for other

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1 purposes?
2 A. And my response to that would be that's all wrapped up
3 in the discussions regarding transaction and what's
4 necessary to maximize the ability of that department
5 to generate income for the benefit of the City.
6 Q. So is that something that you're looking at and
7 considering to take money that would otherwise be used
8 for capital improvements and apply it to satisfy
9 existing obligations?
10 A. As this is a potential transaction that we talked
11 about on June 14th, that's currently under discussion
12 with some of our customer base including other
13 counties. I want to be very careful that I don't
14 interfere with those negotiations by saying something
15 that would not enhance the value or maintain the value
16 of that asset. Suffice it to say, we are aware of the
17 situation and it is wrapped up in the discussions
18 we're having about a potential transaction.
19 Q. Okay, and at this potential transaction, take that off
20 the table, assume it doesn't go through or is
21 withdrawn, have you given any consideration to simply
22 looking at the capital monies that are available at
23 DWSD and using some or all of them to fund existing
24 obligations rather than new capital improvements or
25 capital improvements to existing work at the

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1 department?
2 A. Let me say it this way. We have examined a number of
3 options and alternatives related to DWSD including
4 those that might be implicated by your question.
5 Q. So is the answer to my question yes, you have
6 considered that?
7 A. We have considered all operations at DWSD including
8 those that might be implicated by your question. I
9 said before I'm going to be very careful so I don't
10 interfere with the commercial aspects with what's
11 going on now.
12 Q. And can you tell me how much you believe or understand
13 the City can take from the capital fund from DWSD in
14 order to satisfy its ongoing obligations if it chose
15 to do that?
16 A. I didn't say --
17 MR. SHUMAKER: Objection to form.
18 A. I didn't say that we would take any capital, I said
19 we'd consider it.
20 Q. I didn't -- I'm asking can you tell me how much would
21 you understand is available to take if the City
22 decides to go down that route?
23 A. No, I can't tell you that.
24 Q. Have you done any analysis of that?
25 A. Analysis is a strong word. Have we looked at the

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1 options and related to the transaction all
2 potentialities, but I can't tell you what that number
3 would be.
4 Q. Who within the City would be most knowledgeable about
5 the capital funds that are available at the DWSD?
6 A. At the City?
7 Q. Yeah.
8 A. Probably the operations at DWSD.
9 Q. You also made reference in the June 14th proposal to
10 the parking systems that the City owns.
11 A. Yes.
12 Q. And as I understand it there are nine garages?
13 A. Yes.
14 Q. Two lots with over 1,200 spaces?
15 A. Yes.
16 Q. And over 3,400 meters?
17 A. Yes.
18 Q. Do you have an understanding as to the value of those
19 assets?
20 A. No, we're currently doing our analysis as to the value
21 of those assets now.
22 Q. And you have no preliminary view as to what they're
23 worth? Nothing's been reported back to you on at
24 least a tentative basis?
25 A. No, nothing has been reported back to me on -- because

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1 when you talk about values, there's a range of values
2 from asset disposition and outright sale and
3 privatization to creating an operation or an authority
4 where someone has brought in, as has been done in
5 Washington, D.C., to actually operate the garages and
6 meters. So we're looking at a range of alternatives
7 to determine what those values could be.
8 Q. What's the range of values you're looking at so far?
9 A. We don't have that yet.
10 Q. How concrete have you -- let me withdraw that.
11 What specific steps have been taken so far?
12 A. Our investment advisors and consultants are beginning
13 discussions with various parties that undertake these
14 types of operations within a range of alternatives to
15 try to assess values.
16 Q. And the investment advisors, would that be Buckfire?
17 A. Yeah, it would be our investment banker, Ken Buckfire,
18 Miller Buckfire.
19 Q. Okay. In the June 14th proposal you also make
20 reference to about 22 square miles of land that the
21 City owns?
22 A. City-owned land, yes.
23 Q. Do you have an understanding as to the value of that
24 land?
25 A. I've been informed that some of the value is at best

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1 nominal, but no, sitting here today, I do not have a
2 number as to the value of the land.
3 Q. Have any steps been taken to try to monetize that
4 value, to get dough as you put it?
5 A. Yeah. Well, here again, you're -- to get income
6 realization perhaps I should say more articulately,
7 but here again, we're at the preliminary steps of
8 examining potential alternatives regarding land.
9 Q. So you don't know yet?
10 A. No.
11 Q. The Belle Isle Park, that's also referenced in the
12 June 14th proposal?
13 A. Yes.
14 Q. It's indicated that there's a prospective lease to the
15 state?
16 A. Yes.
17 Q. Okay. And do you expect that to go through?
18 A. I'm going to ask for it. It was proposed and was not
19 accepted in time so the state withdrew it, but I do
20 believe we're going to intend to ask that that lease
21 be renewed.
22 Q. And what's the annual rent the City would get under
23 that lease?
24 A. The City has a $6 million maintenance obligation and
25 that would be taken up by the state so that wouldn't

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1 be cash to the City, that would relieve us of an
2 obligation. It has several millions to tens of
3 millions of dollars in deferred maintenance at some of
4 the structures on the island and the state would
5 undertake that obligation as well.
6 Q. So it would essentially relieve the City of Detroit --
7 A. Take it off.
8 Q. -- of debt burden it would otherwise bear?
9 A. Yes.
10 Q. You also mention the Joe Louis Arena?
11 A. Yes.
12 Q. Any steps taken to monetize that?
13 A. Here again, we're under initial analysis and
14 appraisals about what can be done with that.
15 Q. Do you have any understanding so far as to what the
16 potential cash value is that could be gotten from the
17 use of that stadium?
18 A. Well, there are existing statements regarding cash
19 flows and use of that stadium, but we're reviewing
20 different ways to look at it in some fashion.
21 Q. Do you have any understanding or belief as to the
22 value that can be realized from that?
23 A. No.
24 Q. Now, in your June 14th proposal you also make
25 reference to trying to increase the tax collection

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1 rate.
2 A. Yes.
3 Q. Does the City keep a ledger, a line item, for
4 uncollected taxes?
5 A. The City keeps many line items. I think we -- you
6 mean uncollected taxes?
7 Q. Yeah, listing of --
8 A. Yes.
9 Q. -- this is the amount for uncollected taxes?
10 A. Yes.
11 Q. Are you aware of any uncollected taxes that have in
12 the past been written off the City's books in the
13 recent tax but may in fact be collectible?
14 MR. SHUMAKER: Objection to form.
15 A. No. No. In fact, discussions that I've had is that
16 that -- the 50 percent compliance rate is not linear,
17 that is for every dollar put in to collect additional
18 taxes doesn't necessarily mean you're going to yield a
19 dollar plus in doing it. It might actually be a loss
20 leader so we're examining ways of trying to increase
21 collections. I assume you're talking about real
22 estate property taxes or income taxes?
23 Q. Or income, any kind of taxes.
24 A. Yeah, we're examining a number of different
25 alternatives in that regard, but we're trying to

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1 determine whether or not it would yield a net positive
2 benefit.
3 Q. Are you aware in the recent past of a tax write-off,
4 an actual write-off of taxes, on the order of around
5 700 million?
6 A. I have -- I didn't hear that particular figure. I had
7 heard that there was a write-off. Am I aware of it?
8 Yes, I'm aware of it.
9 Q. And what's your understanding as to what that
10 write-off was? Was it 700 million, 800 million?
11 What's the figure you heard?
12 A. I don't know what the figure was, but I heard that it
13 was based on noncollectibles. That the probability of
14 collecting it was very low.
15 Q. Are you aware of any report that indicates that there
16 was a write-off on the order of 700 million, possibly
17 more, the figure I heard was 700 million, that may in
18 fact be collectible?
19 A. I've heard that some people have maintained that is
20 collectible, but I've also heard that the general
21 consensus is it may not be.
22 Q. Okay, and is there a specific set of taxes that that
23 pertains to, this figure we're talking about, seven or
24 800?
25 A. I don't know. I know that that is one of the -- in

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1 the presentation we talk about various City assets,
2 airport, Belle Isle, parking, City-owned land,
3 City-owned buildings, others, we also have talked
4 about account receivables and I know that that fits in
5 that bucket, potential account receivables.
6 Q. Are you aware that the treasurer, Andy Dillon, has
7 acknowledged that there's a report that exists that
8 talks about the 700 or so million figure written off
9 that really is collectible?
10 A. That's what I had heard. That's what I meant when I
11 said I heard to that extent, yeah.
12 Q. And do you know what this report is?
13 A. No, I just -- I just heard about it coming in in the
14 process of doing some due diligence, but one, I
15 haven't seen it; two, we're looking into it.
16 Q. So you're in the process of trying to run down that
17 report and see what it is?
18 A. We're trying to run down a number of reports, rumors
19 and suggestions that there are account receivables due
20 the City.
21 MR. ULLMAN: And I would like to request a
22 copy of that report.
23 MR. SHUMAKER: We'll look into it.
24 THE WITNESS: If we have it.
25 Q. Now, did the City put in place tax programs -- tax

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1 amnesty programs?
2 A. Has the City put in place?
3 Q. Yes.
4 A. Since I've been here?
5 Q. Yes.
6 A. A tax amnesty program?
7 Q. Yes, to try to get people who owe money --
8 A. No, not yet, no.
9 Q. Is that something you're considering?
10 A. We have had discussions in that regard. I know that
11 it's done for parking tickets and tax amnesty and
12 other municipalities, particularly in Washington,
13 D.C., but we have not done that yet.
14 Q. And I think you indicated that the City has not been
15 very efficient in collecting taxes; has it?
16 A. I think that's a fair statement.
17 Q. Do you have an understanding as to how much tax there
18 is that's collectible, in fact could be collected if
19 the City did a more efficient job in going after tax
20 debtors?
21 A. Yeah, as I said, the discussions we've had is that
22 collection efforts are not necessarily linear; that
23 is, for every dollar spent you're going to get more in
24 taxes. And in fact, there have been some discussions
25 that to the extent you try, it could actually be

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1 deleterious to the billion dollars of revenue that we
2 anticipate -- on average that we anticipate receiving
3 in the out years. So we're examining those
4 discussions to see if you can get more recovery by
5 additional collection efforts or if you can be more
6 efficient in your ongoing collection efforts as well
7 as more user-friendly for those who want to pay their
8 taxes. We're looking at the full range of enhancing
9 both tax collections as well as tax payments.
10 Q. Do you have any understanding as to how much value
11 could be achieved if those goals were realized?
12 A. Not sitting here today.
13 Q. And are there any ongoing reports that have been
14 prepared or documentation talking about what the
15 realization to the City could be if it got its tax
16 collection act more in line?
17 A. I don't know if it's a report. I've seen some
18 correspondence about tax rates, yes.
19 MR. ULLMAN: Okay, I would like to request
20 copies of those documents also.
21 Q. Okay, and then, Mr. Orr, in your testimony this
22 morning I think you made reference to some other cases
23 that you were aware of where you said that as a result
24 of going into Chapter 9, state laws were effectively
25 trumped and you gave some examples of things, Escheat

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1 law and rent control law; is that right?
2 A. No, the -- those were Chapter 9 cases. The cases I
3 was talking about having rent control and Escheat was
4 while I was at RTC. The state dealer law cases was a
5 Chapter 11 case for Chrysler.
6 Q. Okay.
7 A. So it was federal law under FIRREA. If you remember
8 the discussion, I said Financial Institution Reform
9 Recovery Enforcement Act of 1989 as amended trumps
10 state laws.
11 Q. So are you aware of any cases involving a Chapter 9
12 bankruptcy where as a result of going into Chapter 9 a
13 state law was held unenforceable or was held not to
14 apply in a particular situation?
15 A. I remember reading -- well, this is a communication
16 from counsel.
17 MR. SHUMAKER: Let me caution you.
18 THE WITNESS: Okay.
19 MR. SHUMAKER: Don't reveal a communication
20 from counsel.
21 THE WITNESS: Okay.
22 MR. SHUMAKER: The question is are you
23 aware of any cases.
24 A. Am I aware of any cases, yes.
25 Q. And what is that case?

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1 A. I can't -- it was an attorney-client communication.
2 Q. And are you aware of any cases where, to use your
3 phraseology, as a result of a Chapter 9 filing by a
4 municipality the state constitution was trumped?
5 A. Chapter 9 filing?
6 Q. Yes.
7 A. I'm not sure, because the case I'm aware of, I don't
8 know if it was a state constitution. I don't recall.
9 MR. ULLMAN: Okay, I have no more questions
10 at this time. But I may reserve the right, we have
11 some other people that are going to ask questions, at
12 the end of that to ask some follow-ups, if that's
13 possible.
14 THE WITNESS: Okay.
15 MR. SHUMAKER: You want to take a quick
16 break?
17 MR. ULLMAN: Yeah, why don't we take a
18 break. Someone else has to sit here.
19 THE VIDEOGRAPHER: Going off the record at
20 2:53 p.m.
21 (A brief recess was taken.)
22 THE VIDEOGRAPHER: We're back on record at
23 3:07 p.m.
24 EXAMINATION
25 BY MS. LEVINE:

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1 Q. Good afternoon, Mr. Orr. Thank you for appearing
2 today. Your deposition is continued, you're still
3 under oath. To save some time I'm not going to repeat
4 some of the instructions we went through at the
5 beginning of the deposition.
6 For the record Sharon Levine, Lowenstein
7 Sandler, for the American Federation of State, County
8 and Municipal Employees and with me Michael Artz,
9 in-house counsel of AFSCME.
10 A. Okay. Thank you and I understand.
11 (Discussion held off the record.)
12 Q. Okay, sorry for that.
13 A. Okay.
14 Q. Mr. Orr, there was some colloquy --
15 MR. SHUMAKER: Mic.
16 Q. There was some colloquy this morning with regard to
17 negotiations or discussions --
18 A. Yes.
19 Q. -- prior to the filing of the bankruptcy case.
20 A. Yes.
21 Q. Are you familiar with concessionary bargaining
22 historically in Detroit?
23 A. Could you -- I have read to some degree about the
24 labor history and concessionary bargaining in Detroit
25 stemming from Walter Reuther on forward, even

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1 concessionary bargaining going forward from I would
2 say Mayor Kilpatrick, Mayor Cockrel and Mayor Bing and
3 in specific the 10 percent wage cuts and other
4 concessions, but if there's something else that you
5 would like to talk about, please explain it.
6 Q. So that's yes?
7 A. Yes.
8 Q. Generally?
9 A. Well, generally, but if there's something specific,
10 please, yes.
11 Q. Is it your view that concessionary bargaining can
12 result in concessions with the -- with regard to
13 benefits without a Chapter 9?
14 MR. SHUMAKER: Objection, calls for legal
15 conclusion.
16 A. It was my hope -- and here again, I'm going to say the
17 same statement that I said earlier today, collective
18 bargaining and concessionary bargaining, however you
19 call it, is suspended under Paris. I don't want to
20 waive any rights that the City may have under 436. Do
21 I recognize people certainly aren't in agreement.
22 Um --
23 Q. Let me rephrase the question. I just want to clarify.
24 A. Okay.
25 Q. I was asking for your view. I'm not asking for a

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1 legal conclusion. We don't have to do the reservation
2 of rights.
3 A. Okay.
4 Q. I'm just asking Mr. Orr, as he's sitting here today,
5 his understanding of whether or not it's possible
6 without a legal conclusion to arrive at a consensual
7 agreement, with or without calling it negotiations,
8 discussions or proposals, with regard to retiree --
9 with regard to benefits without a Chapter 9?
10 A. Is it possible?
11 Q. Yes.
12 A. Yes, anything a possible. I think I've said that.
13 Q. Okay, now, historically in Detroit isn't it a fact
14 that there were concessionary provisions made with
15 regard to benefits that impacted retirees previously
16 that did not involve Chapter 9?
17 MR. SHUMAKER: Objection, foundation.
18 A. Over what period of time?
19 Q. Is it your understanding that at any point in time?
20 A. As I said --
21 Q. No, no, it's a very -- it's a yes or no question. At
22 any point in time prior to the bankruptcy filing have
23 there been concessionary discussions, negotiations,
24 whatever, in Detroit that have resulted in
25 concessionary changes to benefits that impacted

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1 retirees?
2 MR. SHUMAKER: Objection, foundation.
3 A. Not within the time frame that I have.
4 Q. So you're not aware of that?
5 A. No, I'm aware there have been concessionary bargaining
6 changes. My testimony is in my view that they
7 appeared to not being able to occur within the time
8 frame I had to work with.
9 Q. I wasn't asking you what you did or didn't do. I was
10 just asking you if you're aware that there -- whether
11 or not there have been in the history of Detroit
12 concessionary changes to benefits that were
13 implemented that impacted retiree benefits without
14 there having to be a Chapter 9?
15 MR. SHUMAKER: Same objection.
16 A. Well, the reason I said not within my -- you're asking
17 my view.
18 Q. I'm not asking you --
19 A. Are you now going away from my view?
20 Q. No, I'm asking -- this is the question.
21 A. Okay.
22 Q. The question is --
23 MS. LEVINE: Can you read back the
24 question?
25 (Record read back as requested.)

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1 A. Yes, I am aware that in the history of Detroit there
2 have been concessionary bargains to certain benefits
3 without a Chapter 9.
4 Q. Okay, now, prior to the filing of this Chapter 9 --
5 A. Uh-huh.
6 Q. -- are you aware of any concessionary bargaining
7 changes that affected retirees?
8 A. I'm hesitating because I'm trying to recall the
9 briefing papers I went through and your specific
10 question is retirees. I'm well aware of concessionary
11 bargaining changes for actives, now I'm thinking about
12 retirees. I don't know.
13 Q. Prior to the filing of this Chapter 9 petition you
14 previously discussed what I believe were four
15 meetings, June 10, June 20, July 10 and July 11; is
16 that correct?
17 A. Yes. I think we were talking about -- there were more
18 meetings than that, but I think we were talking about
19 the four meetings that were referenced on page I
20 believe 55 I believe of my declaration. Well,
21 actually it starts on 54. Okay.
22 Q. What other meetings were there?
23 A. I had had -- meetings with?
24 Q. Meetings -- well, my understanding is that the
25 meetings on June 10, 20, July 10 and July 11 were with

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1 employees or retirees. Did you have other meetings
2 with employees or retirees?
3 A. You mean in a time frame?
4 Q. Yes.
5 A. Yes. Those were the formal structured meetings that
6 we recounted. My understanding is there were other
7 meetings that occurred outside of a formal process and
8 certainly a number of phone calls.
9 Q. With whom -- who is the counterparty to those
10 meetings?
11 A. I'm not sure I can capture every counterparty to every
12 meeting because my professional team and staff would
13 have various discussions, but I tried to recount ones
14 that I'm aware of and who the counterparties were in
15 my declaration.
16 Q. Was AFSCME one of the counterparties that you met with
17 outside of the four meetings we were previously
18 discussing?
19 A. I didn't meet with them, but I understand that there
20 may have been meetings or telephone calls with others.
21 Q. Were there meetings with others?
22 A. I don't know if there were meetings or phone calls.
23 There may have been meetings or phone calls.
24 Q. Were there phone calls?
25 A. I don't know. I understand there may have been.

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1 Q. Who would have placed those phone calls on your
2 behalf?
3 A. I don't know if they would have placed or if they
4 would have received them. I'm not sure, but if they
5 would have been, it would have been somebody probably
6 on labor benefits team, Evan Miller, Brian Easley or
7 others who work with them or others on the City's
8 labor department.
9 Q. If they were substantive meetings with anybody on
10 behalf of AFSCME, would that have been reported to
11 you?
12 A. More than likely, yes.
13 Q. Were there any substantive meetings with AFSCME prior
14 to the filing?
15 MR. SHUMAKER: Objection to form.
16 A. I'm going to -- outside of the meetings I mention in
17 my declaration?
18 Q. Outside of what we'll call the big four.
19 A. Okay, big four. Thank you. Sitting here today none
20 that I recall.
21 Q. Are you familiar with the so-called Webster
22 litigation?
23 A. Yes.
24 Q. Okay, that litigation was filed on July 3?
25 A. I believe so.

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1 Q. And you sent your request to Governor Snyder on July
2 16th?
3 A. Yes.
4 Q. And Governor Snyder authorized the Chapter 9 filing on
5 July 18th?
6 A. Yes.
7 MS. LEVINE: Could we have it marked as Orr
8 16?
9 (Marked Exhibit No. 16.)
10 (Discussion held off the record.)
11 Q. We've just marked a document as Orr 16. It's
12 really -- it's just a Detroit News report from July
13 18th or July 17th actually at 11:00 p.m.
14 MR. SHUMAKER: I'm sorry, counsel. I see a
15 July 16 reference at the bottom.
16 MS. LEVINE: Sorry, July 16th at 11:00 p.m.
17 MR. SHUMAKER: Yeah.
18 Q. Mr. Orr, do you recall reading this press coverage at
19 the time that it was -- that it came out?
20 A. I do not recall reading this, but I can read it now.
21 Q. The -- is it your understanding that as of the date of
22 this article, the governor was not thinking about --
23 actually I'm going to correct myself. It looks like
24 according to the printout at the bottom of the page
25 it's September 13 -- no -- that's when it was printed,

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1 never mind.
2 Was it your -- is it your understanding
3 that as of the time of this press coverage, Governor
4 Snyder was not yet recommending a Chapter 9 filing for
5 Michigan --
6 MR. SHUMAKER: Objection, foundation.
7 Q. -- for Detroit?
8 MR. SHUMAKER: Sorry. Objection,
9 foundation, form.
10 A. I don't think -- I think I was the one recommending
11 and Governor Snyder was either going to approve or
12 disapprove of my request. This is 11:00 p.m. I
13 haven't seen this and it appears to be 11:00 p.m. It
14 says -- so give me your question again.
15 Q. What was your understanding at this point in time of
16 Governor Snyder's view with regard to whether or not
17 he would recommend -- he would accept your
18 recommendation that Detroit file a Chapter 9 petition?
19 A. It was unclear. I had gotten to the point at least on
20 the 16th of thinking it was time for me to make the
21 recommendation. It was unclear what the response was
22 going to be.
23 Q. Did you discuss the Webster litigation with the
24 governor?
25 A. I don't think so.

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1 Q. Did you discuss the Webster litigation with anybody in
2 the governor's office?
3 A. Was the Webster litigation the first lawsuit filed
4 against the governor and the treasurer on the 3rd?
5 And then the next week AFSCME joined that litigation?
6 Was that by the UAW the first litigation and AFSCME
7 joined that litigation the next week?
8 Q. One was Flowers and one was Webster.
9 A. Right. So I want to make sure we're talking about the
10 right one. So you're talking about Webster?
11 Q. Did you discuss either the Flowers or the Webster
12 litigation with the governor?
13 A. No, I didn't discuss it with the governor.
14 Q. Did you discuss either the Webster or the Flowers
15 litigation with anybody at the state?
16 A. You mean on the 16th?
17 Q. No, at any point in time.
18 A. At any time. Let me -- let me -- let me then clarify
19 my answer. I think -- my recollection is that there
20 were lawsuits being filed that we did not discuss at
21 the beginning of July. I think there was a piece of
22 litigation that had been filed the morning of the 16th
23 -- in direct response to your question did I discuss
24 the litigation with the governor? At some point, yes.
25 Q. Do you recall whether you had that discussion with the

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1 governor before July 18th?
2 A. Yes, I believe I did.
3 Q. And was it before July 18th?
4 A. Yeah, I believe it was.
5 Q. What did you discuss?
6 A. Well, was it? I think generally, and here I'm going
7 to be very careful, there were discussions I had --
8 I'm not sure I had any discussions with the governor
9 without either my counsel being on the line or counsel
10 on behalf of the state and the governor being on the
11 line so I don't know if that implicates
12 attorney-client.
13 MR. SHUMAKER: It certainly could.
14 THE WITNESS: Okay.
15 A. Without disclosing what was discussed, we had
16 discussions.
17 Q. Okay, so it's your position -- well, let's go back.
18 So on July 3rd, for example, who was your
19 counsel?
20 A. Well, my restructuring counsel was Jones Day, but --
21 Q. And who was the governor's counsel?
22 A. The governor's counsel would be -- I believe in the
23 governor's office generally heading up that group
24 would be Mike Gadola and Valerie Brader and I think
25 this corrects the discussion I had earlier this

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1 morning. I may clarify a discussion I had earlier
2 this morning but I -- well, direct response to your
3 question, those are the people in the governor's
4 office.
5 Q. Okay, so if you and the governor were on the phone --
6 A. Right.
7 Q. -- then those conversations -- I'm not asking you
8 about conversations that you had just you and
9 Jones Day, I'm asking you what conversations you had
10 with representatives -- with either the governor or
11 representatives of the state prior to July 18th after
12 the Webster and Flowers litigations were filed on July
13 3.
14 A. Okay. I think we did have conversations. I'm not
15 sure they're not protected by attorney-client
16 because --
17 MR. SHUMAKER: If you believe lawyers were
18 on those phone calls.
19 THE WITNESS: I know lawyers were on the
20 phone, I just don't -- I'm not acting as an attorney
21 so I don't know -- I know there were lawyers on the
22 phone. I know my lawyers were on the phone so I
23 don't --
24 MR. ULLMAN: The fact that there were
25 lawyers on the phone doesn't make it a privileged

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1 conversation.
2 MS. LEVINE: Well, let him get the
3 statement out and then we'll --
4 THE WITNESS: I believe there was a common
5 interest. Can I consult my attorneys?
6 MR. SHUMAKER: Certainly. You want to take
7 a quick break?
8 THE VIDEOGRAPHER: Going off the record at
9 3:24 p.m.
10 (Discussion held off the record.)
11 THE VIDEOGRAPHER: We're back on the record
12 at 3:31 p.m.
13 BY MS. LEVINE:
14 Q. Did you reach a --
15 MS. LEVINE: Can you read back my last
16 question?
17 Actually I'll rephrase it.
18 Q. Prior to July 17th did you have conversations with the
19 governor or anybody in the governor's office?
20 A. Prior to July 17th?
21 Q. But since July 3.
22 MR. SHUMAKER: About?
23 Q. About Flowers and Webster.
24 A. Oh.
25 MR. SHUMAKER: Yes or no?

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1 A. Yes.
2 Q. Prior to July 17th but after July 3, did you have any
3 discussions with the governor or anybody in the
4 governor's office about filing a -- filing for Chapter
5 9 for Detroit?
6 A. Between the 3rd and 17th?
7 Q. Yes.
8 A. Yes.
9 Q. With whom did you have the discussions about the
10 Flowers litigation, the Flowers/Webster litigations?
11 A. Attorneys in the governor's office.
12 Q. Which ones?
13 A. I believe Valerie Brader and Mike Gadola.
14 Q. Anybody else?
15 A. I'm trying to recall if in one of my discussions with
16 the governor we discussed that specific litigation or
17 just that there were cases being filed and I don't --
18 I don't recall any specific discussion about that
19 particular piece of litigation, just that there were
20 lawsuits being filed.
21 Q. So you discussed with Valerie Brader and Mike Gadola
22 the Flowers and the Webster litigation, you discussed
23 with the governor just the fact that there was the --
24 the litigations were pending now? And we're still
25 within the July 3 through July 17 time frame.

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1 A. I don't know if I ever discussed both cases. I think
2 I discussed one with Brader and/or Gadola.
3 Q. Okay, and what did you discuss about the litigation
4 with Brader or Gadola?
5 MR. SHUMAKER: Objection. I'm going to --
6 the question calls for the witness to reveal
7 privileged attorney-client communications as part of a
8 common interest agreement with the state and therefore
9 I'm going to instruct him not to answer.
10 MS. LEVINE: Okay, we'll reserve our
11 rights.
12 MR. SHUMAKER: Understood.
13 Q. With regard to the conversations that you had with the
14 governor with regard to July 3 through July 17, with
15 regard to the potential for filing for Chapter 9, do
16 you recall specifically on what days you had those
17 conversations?
18 A. No.
19 MR. SHUMAKER: Objection to form.
20 THE WITNESS: Oh, okay.
21 MR. SHUMAKER: Counsel, you're saying just
22 between him and the governor? No one else?
23 Q. Did you have conversations that involved the governor
24 between July 3 and July 17 with regard to the
25 potential for filing a Chapter 9 for Detroit?

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1 MR. SHUMAKER: Where counsel was not a part
2 of the conversation?
3 MS. LEVINE: No, no, I'm just asking if he
4 had conversations. I haven't asked him yet who's
5 participating and it's not privileged even with a
6 joint defense agreement, which we're reserving our
7 rights about, for him to tell me that conversations
8 took place, then we will get into who participated and
9 which conversations and then we'll decide whether or
10 not he can talk to me about them.
11 MR. SHUMAKER: Okay, I'm just making sure
12 the witness doesn't reveal anything.
13 THE WITNESS: Okay, and waive anything.
14 MR. SHUMAKER: And waive anything.
15 THE WITNESS: For the record there is no
16 effort to waive anything. But I'm trying to be
17 accurate.
18 Q. Let me try to ask it more succinctly so that we can
19 parse it, because I'm going to ask you questions with
20 regard to conversations where you and the governor
21 participated and there were other people present.
22 A. Right.
23 Q. I'm going to ask you questions with regard to you and
24 other people --
25 A. Right.

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1 Q. -- in the governor's office.
2 A. Right.
3 Q. And then we'll find out whether or not lawyers were
4 present at some or all of those conversations and then
5 we'll figure out what we do about that.
6 A. Okay, okay.
7 Q. Okay?
8 A. Okay.
9 MR. SHUMAKER: Okay.
10 Q. So let's start with just you and the governor. Did
11 you have conversations with just the governor between
12 July 3 and July 17th with regard to filing Chapter 9
13 for Detroit?
14 A. There's no mystery, I just don't want to run up
15 against a privilege. I believe at one of my -- when
16 was -- this was July 3rd? Oh, this is -- okay. Now,
17 it -- I think that both the governor and I were on
18 vacation over the 4th of July weekend so we may not
19 have had -- and he was on vacation I believe the
20 following week, so we probably did not have our weekly
21 meeting. That's why there was a gap. At some point
22 it is possible for us to have had a meeting after --
23 just the governor and I -- and when I say just the
24 governor and I'm including other nonlawyers, his chief
25 of staff, his deputy chief of staff, people along

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1 those lines, I'm not thinking any of those are
2 attorneys and if they are, I'm not waiving any
3 privilege --
4 Q. Okay.
5 A. -- but it's possible we had meetings after that time
6 with just the governor. Okay.
7 Q. What did you discuss?
8 A. Because he's waived the deliver the process privilege.
9 I think we generally discussed the ongoing operational
10 restructuring, the status at a very high level the
11 governor, you know, we don't -- we typically do not
12 discuss how many meetings, who attended, what was
13 said, went back and forth, it was just a very high
14 level of how things were going with the restructuring
15 efforts and that the lawsuits, this is just with the
16 governor, were beginning to create the risk that we
17 would lose the initiative and I might be unable to
18 discharge my obligations under 436.
19 Q. Did you have any conversations without counsel between
20 you and the governor between June 14 and July 3?
21 A. June 14 and July 3?
22 Q. The big four was June 14, June 20, July 10 and July
23 11.
24 A. Without counsel?
25 Q. Uh-huh.

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1 A. I may have.
2 Q. Did you discuss the June 14 meeting with the governor?
3 A. Yes, I believe, but that may have been -- between July
4 -- give me the dates again.
5 Q. Well, let's make it easier. Anytime after the June 14
6 meeting --
7 A. Yes.
8 Q. -- did you discuss the June 14th with just the
9 governor?
10 A. Well, with just the governor. I typically --
11 occasionally I will meet with just the governor, but
12 whenever you say just the governor, my answer should
13 include those meetings where I have members of his
14 senior staff as well.
15 Q. When you say members of his senior staff, who are you
16 referring to?
17 A. His chief of staff.
18 Q. What's the name?
19 A. Dennis Muchmore; John Roberts, his deputy chief of
20 staff; sometimes my chief of staff, Shani Penn; my
21 senior advisor, Sonya Mays; occasionally Treasurer
22 Dillon. Is Andy an attorney?
23 MR. ESSAD: Yes.
24 A. Yes, he is, so I've got to be careful. So -- huh. I
25 think Andy was sometimes at those meetings so I've got

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1 to be careful.
2 Q. Okay, so at meetings where there were no counsel
3 between June 14 and July 3, did you have any
4 discussions with regard to the June 14 or the June 20
5 meeting?
6 A. I don't think there were any meetings where there were
7 no counsel between June 14th and July 3.
8 Q. Okay, how many times did you meet between June 14 and
9 July 3 with the governor by in person or by telephone?
10 A. I am not sure.
11 Q. More than once?
12 A. Probably.
13 Q. More than twice?
14 A. Likely.
15 Q. More than six times?
16 A. I don't think -- I don't think more than that.
17 Q. Okay, so somewhere between two and six and at every
18 single one of those meetings you believe counsel was
19 present or on telephone if it was a telephonic
20 meeting?
21 A. Yes, sometimes we would do conference calls and there
22 would be counsel present on the phone so I'm being
23 very careful here, yes, there's a possibility there
24 was counsel present at each of those meetings.
25 Q. I'm going to ask a question, but your counsel has to

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1 speak first. Are you claiming the joint defense for
2 the Flowers and the Webster litigation or are you
3 claiming joint defense with regard to the thought
4 process leading up to the filing of the Chapter 9?
5 MR. SHUMAKER: Claim --
6 MS. LEVINE: Let me ask the question and
7 then you can assert it, but I don't want to be tricky,
8 I'm not trying to be tricky.
9 THE WITNESS: Thank you, thank you.
10 Q. During those conversations that took place prior to
11 the filing of the Webster and the Flowers litigation
12 from June 14 through July 3, did you have any -- did
13 any of the conversations that you had with the
14 governor in person or by telephone conference involve
15 discussions with regard to the filing of the Chapter 9
16 petition?
17 A. Between the 14th and the 3rd?
18 Q. Uh-huh.
19 A. I don't recall any specific discussions, but they may
20 have.
21 Q. Did you have conversations with the governor during
22 June about the -- about filing for Chapter 9 at which
23 counsel wasn't present either in person or by
24 telephone? And when I say meetings, I'm talking about
25 either in person or by telephone.

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1 A. I think I can say this. My weekly Detroit subject
2 meetings typically include the governor, his chief of
3 staff or deputy chief of staff, Treasurer Dillon and
4 one of his employees, Tom Saxon, and/or some of our
5 advisors and attorneys. I do not recall a meeting or
6 a phone conference with the governor, it may have
7 happened, I just -- I'm not recalling it and I'm
8 trying very hard to. I do not recall a meeting or
9 phone conference where, for instance, Treasurer Dillon
10 was not either there or on the phone. And I'm trying
11 to -- in the few times that the governor and I have
12 occasion just one-on-one meetings, I'm trying to
13 recall if we discussed a Chapter 9 filing. I'm now
14 just talking about the governor of one-on-one
15 meetings. It is possible not in terms of timing, just
16 generally speaking, because here again, it was not at
17 the grand level.
18 Q. Just to clarify, I believe that your counsel will
19 allow you to answer whether or not there's been
20 discussions with regards to a Chapter 9 filing with
21 the governor so long as counsel wasn't on the phone.
22 MR. SHUMAKER: Correct.
23 A. Yes, these are the meetings I'm talking about.
24 Q. Treasurer Dillon is not counsel.
25 A. Well, he's an attorney and I don't know if the

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1 privilege attaches.
2 MR. SHUMAKER: If you believe he was acting
3 as an attorney, then I would caution you and instruct
4 you not to answer. If Mr. Dillon was acting as the
5 treasurer and the treasurer alone --
6 THE WITNESS: Right.
7 MR. SHUMAKER: -- as a businessperson, then
8 you can answer.
9 THE WITNESS: Okay. Okay. That -- okay.
10 A. Yes, then that means at some of those meetings we
11 probably did discuss potential Chapter 9 filing
12 without attorneys but with Treasurer Dillon.
13 Q. Prior to July 3 what was the timing that you were
14 discussing with regard to a potential Chapter 9
15 filing?
16 A. We weren't. Generally it was consistent with what I
17 had said at the June 10th and June 14th meetings,
18 which is after June 14th we will use the next 30 days
19 to assess where we are and what progress we're making
20 and if we're making progress and I think I said at
21 that June 14th meeting in the nature of a term sheet
22 agreement in principles or concepts moving forward,
23 that we might be a position to be able to extend that.
24 I said that at June 14th assuming a steady state.
25 Q. After July 3 but before July 17 --

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1 A. Uh-huh.
2 Q. -- did you have any conversations with the governor or
3 his senior staff at which counsel wasn't present?
4 A. Excluding Treasurer Dillon or --
5 Q. Excluding.
6 A. Acting as -- I don't think he was acting as an
7 attorney, I think he was acting as treasurer.
8 Q. Correct.
9 A. Okay. Yes, I believe so.
10 Q. And did you -- during -- how many of those meetings
11 did you have?
12 A. Here again, we -- the meeting of the week after the
13 4th of July holiday I think we did not have, because I
14 went the week before and I think the governor was on
15 Mackinac the week after so I don't know if we had a
16 meeting then. That would leave you said July 17?
17 Q. July 3 to July 17.
18 A. Okay, so that would leave roughly another week or two.
19 There may have been a meeting the following week and
20 I'm trying to recall if any attorneys were at that
21 meeting. There was probably a meeting the following
22 week or the week thereafter. There may have been
23 attorneys at one of those meetings from the governor's
24 staff.
25 Q. How many meetings did you participate in between July

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1 3 and July 17 at which -- with the governor at which
2 attorneys were present as opposed to meetings with the
3 governor where attorneys were not present?
4 A. I think we only had one or two meetings and attorneys
5 were present at either one or both of those meetings.
6 Excluding Treasurer Dillon. I'm talking about
7 attorney attorneys, not lawyers.
8 Q. Who drafted your July 16th letter? Was that you?
9 A. No, I got a draft and I edited it.
10 Q. Who prepared the draft for you?
11 A. I think it was a number of folks. It was -- I
12 forgot --
13 Q. Was it Jones Day?
14 A. It was more than likely Jones Day, yes, restructuring
15 guys.
16 Q. Did you direct the draft be prepared?
17 A. Yes, we --
18 MR. SHUMAKER: You can say. You can
19 testify to that.
20 A. Without discussing exactly what was said, yes, I did.
21 Q. What was the date that you gave Jones Day that
22 direction?
23 A. I think that direction was either to start getting the
24 letter in shape that Friday, I'm not sure, either that
25 preceding week or over the weekend. Yes.

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1 Q. But after the commencement -- but that would have been
2 after July 3?
3 A. Yes, yes, it was after July 3.
4 Q. Did you advise the governor that you had started the
5 process of drafting that letter?
6 A. I don't recall --
7 MR. SHUMAKER: If -- if -- if the
8 communications with the governor were with counsel
9 present, then I don't want you to reveal what was
10 said.
11 THE WITNESS: Okay. Okay.
12 MR. SHUMAKER: If at another meeting where
13 there was not counsel present, that's a different
14 story.
15 THE WITNESS: Right.
16 A. Within that time frame, because I believe that was a
17 weekend, I do not recall communications with the
18 governor or communications with the governor where
19 counsel was not present. There may have been a
20 discussion with the governor -- no, I don't recall an
21 independent discussion with the governor.
22 Q. In addition to conversations in which you participated
23 in, were there conversations between your consultants
24 and the governor's office and/or his counsel between
25 July 3 and July 17?

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1 A. I believe -- well, when you say the governor's office,
2 that includes the treasurer?
3 Q. Yes.
4 A. Yes, I believe so.
5 Q. The state?
6 A. The state, yes, I believe so.
7 Q. How many of those meetings are you aware of where you
8 did not participate?
9 A. I --
10 MR. SHUMAKER: Object to foundation, but --
11 A. Where any meetings I didn't. There were -- the
12 investment bankers, for instance, will talk with
13 treasury from time to time about a number of matters
14 and I'm sure that I wasn't on all of those
15 conversations. And my legal team might talk with the
16 governor's attorney on various matters and I'm pretty
17 confident I wasn't involved in all those discussions
18 either. So it's not like it happened every day or it
19 was happening every half hour, but I'm sure there were
20 discussions between them that I was either not
21 involved with or aware of.
22 Q. Did any of those discussions between either the
23 investment bankers directly or your counsel and the
24 state governor's office or whomever involve
25 discussions with regard to the filing of the Chapter 9

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1 for Detroit and/or the timing of that filing?
2 MR. SHUMAKER: Object to form.
3 A. Yes, they probably did.
4 Q. When you say they probably did, were you getting
5 reports from your investment banker and your counsel
6 with regard to the conversations they were having with
7 the governor and other representatives of the state?
8 A. Not necessarily every -- not necessarily every
9 conversation, but generally speaking, so I was getting
10 reports, but I cannot testify that I was privy to
11 every conversation that everyone either on legal side
12 or the investment side -- banking side or them
13 together had.
14 Q. When did you first start thinking that the timing for
15 the Chapter 9 filing was going to be sooner rather
16 than later?
17 A. As opposed to?
18 Q. Let me rephrase.
19 When did you decide that the timing of the
20 Chapter 9 filing should be July 18th or July 19th?
21 A. Well, I didn't. I decided to make the request and my
22 intent was to have the ability to file available and
23 possibly executed as soon as I got it. It was without
24 talking or waiving privileges from my counsel or
25 counsel and investment bankers, the concerns about us

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1 losing control or being put in a situation because of
2 the ongoing litigation where I would not be able to
3 discharge my duties in an orderly fashion, in a
4 comprehensive matter to put the city on a sustainable
5 footing because of the litigation grew throughout June
6 and it was made clear to me that my desire to try to
7 continue to engage in discussions was running the risk
8 of putting my obligations under the statute in peril
9 and I think I was even counseled that I was being
10 irresponsible.
11 Q. When did you first advise or have your consultants
12 first advise the governor or anybody affiliated with
13 the state that you were starting to draft your July
14 16th request?
15 A. Outside of attorney-client communications?
16 MR. SHUMAKER: No.
17 Q. No, no, I'm talking about when did you tell the
18 governor. I'm not sure it's you or --
19 A. But I may have --
20 Q. -- or I'm not sure if it's your counsel who made that
21 request for you or your investment banker who made
22 that request for you --
23 MR. SHUMAKER: Objection.
24 A. When did I transmit the request?
25 Q. Yes.

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1 MR. SHUMAKER: Object to the form.
2 Q. Let me rephrase it.
3 When did somebody on behalf of the
4 Emergency Manager advise somebody on behalf of the
5 state that the Emergency Manager and his team was
6 starting to draft the July 16 request?
7 THE WITNESS: Can I answer that if it's to
8 an attorney at the governor?
9 MR. SHUMAKER: When.
10 THE WITNESS: Oh, when.
11 MR. SHUMAKER: Yeah.
12 A. Oh, that was probably Monday. Monday, the 16th.
13 Q. You testified previously that you were concerned you
14 wouldn't be able to carry out your obligations in an
15 orderly fashion. What do you mean by that?
16 A. The lawsuits that were being filed were requesting --
17 my understanding from reading them what I was informed
18 were requesting injunctions against me with any
19 options I might have available including the Chapter 9
20 filing and were refocusing our attention on litigation
21 risk. They were also -- it wasn't just the -- what --
22 for lack of a better word what we'll call the Flowers
23 and related litigations, we were also in -- we had --
24 had defaulted on the cops' payment on June 14th and
25 had announced a settlement with Bank of America,

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1 Merrill Lynch commensurate with that day. One of the
2 insurers had begun to interfere with that process from
3 June until July. So we were getting hit on all sides
4 both on the creditors' side but also on, for lack of a
5 better word, the labor side with risk and threats and
6 lawsuits and were sued three times in June -- well,
7 sued once, one joined in the suit and sued again I
8 think on the 16th and also the Syncora of threats for
9 which we had to file litigation where I was counseled
10 that given the chaos in a sense that was erupting --
11 MR. SHUMAKER: Hold on right there.
12 THE WITNESS: Okay.
13 MR. SHUMAKER: What you were counseled, I
14 want to make sure you're not going into an area that's
15 protected by the privilege.
16 THE WITNESS: Okay.
17 Q. You can give me your understanding. You can't tell me
18 what --
19 A. As I said before, my understanding was I was at risk
20 of losing the ability to try to pursue a restructuring
21 in an orderly fashion.
22 Q. Wasn't the Syncora issue settled sometime in prior to
23 the Chapter 9 filing, though?
24 A. No.
25 Q. The risk that you felt from the Webster/Flowers I

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1 think what you referred to as three litigations --
2 A. Uh-huh.
3 Q. -- when did you communicate that risk to the governor
4 or the state or when did somebody communicate that
5 risk on behalf of the Emergency Manager to the
6 governor or the state?
7 MR. SHUMAKER: Objection, foundation, form.
8 A. Probably the preceding week of the 16th or maybe even
9 a week before that. Let me --
10 Q. So when you say the preceding week, just looking at a
11 calendar for a minute, what was the date there?
12 A. Can I look at the calendar on my checkbook without it
13 being classified as an exhibit?
14 Q. No, I won't ask you.
15 A. I just want to make sure I'm not in trouble. Okay. I
16 don't want you to see my checkbook. It would make you
17 cry.
18 MR. SHUMAKER: July 8th was a Monday.
19 THE WITNESS: Yeah, I'm --
20 Q. So was it --
21 A. It was probably the week of July.
22 Q. July 8th? I know I can't see either.
23 A. I -- yeah, it was probably that week, July 8th week.
24 Q. Okay, so --
25 A. It may have been -- the reason I'm hesitating, as I

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said before, I think my family and I were out that preceding Friday, Saturday and Sunday and we actually ran into the governor's family coming onto the island I believe that Sunday so I don't think we had that meeting that week so it may have actually been the following week.

Q. Meaning sometime during the week of July 15th?

A. No, or the end of --

Q. So it was during --

A. -- the week of the 8th. The 8th. But I did not have a meeting with the governor that week.

Q. Well --

A. Now that I look at the calendar.

Q. Okay.

A. Okay.

Q. So just to clarify, it appears more likely than not that you did not have a meeting between you and the governor the week of July 8th but your understanding is that during the week of July 8th, probably the latter part of that week, somebody on behalf of the Emergency Manager let the governor or the state know that you were drafting or starting to draft the July 16th request and that you had concerns about the Flower s/Webster litigations?

A. Yeah, and here again, I don't know if so much concerns

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-- it wasn't like we were focused on Flowers/Webster, we were saying in the universe of the world that litigation, whatever name, and the Syncora struggle, were creating a situation that was untenable and threatening what we had wanted to do.

Q. Lamont Satchel.

A. Yes.

Q. He's your -- what's his title?

A. He is the, I believe, labor negotiator for the City.

Q. And what's his scope of authority?

A. His scope of authority initially as labor negotiator was to oversee, monitor and lead labor relationships with the City and its labor partners.

Q. And to whom -- and who is his direct report?

A. At this point Lamont's direct report -- well, it is -- the org chart is being revised, but his direct report would have been to the chief operating officer.

Q. And who was that?

A. At that time it would have been Gary Brown.

Q. And who is it today?

A. It still goes through Gary Brown, but I am intimately involved with the process.

Q. And do you know whether or not during the month of June prior and up through -- starting with June 1 through July 18th --

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A. Yes, July 18th.

Q. -- did Lamont Satchel have any meetings with the labor organizations?

A. Do I know? I know that during this time the CBAs, some of the City's Collective Bargaining Agreements were expiring and I believe that Lamont did have meetings during that time not just related with that but with other issues as well.

Q. During your prior testimony -- and I apologize for skipping around, but I don't want to duplicate what's already been done.

A. That's okay.

Q. You spoke about Jones Day doing a presentation or interview to the state back in January, the end of February.

A. Yeah, the documents I was shown this morning would make it January.

Q. And with whom did Jones Day meet at that time, who physically was in the room?

A. Treasurer Dillon, then CFO Jack Martin, Rich Baird, Kriss Andrews, Ken Buckfire and one of his colleagues.

Q. Any other outside consultants besides Miller Buckfire?

A. Well, Rich Baird is on contract to the state, but I don't -- I think -- I don't recall if Ernst & Young was there. There was a member of the financial

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advisory board.

Q. Do you recall who that was?

A. As soon as you said that, it went out of my head. Very, very sharp, as -- Ken -- Ken Whipple was there. I'm just going through the room. Andy, Ken Whipple, Jack Martin, Kriss Andrews, Rich Baird. That's all that I recall off the top of my head and Miller Buckfire and one of his colleagues.

Q. And who was there from Jones Day?

A. Aaron Agenbroad -- they were all partners. Aaron Agenbroad, Bruce Bennett, Heather Lennox, myself, Corinne Ball, Steve Brogan, and I think that was -- I think that was our team.

Q. What was Aaron's last name again?

A. Agenbroad, A-G-E-N-B-R-O-A-D.

Q. What department is he in?

A. Aaron Agenbroad is a partner in charge of the San Francisco office. He is in the labor.

Q. He's in the labor group?

A. Uh-huh.

Q. Corinne, all the rest of the attorneys on the team were bankruptcy?

A. No. Bruce Bennett is in the bankruptcy group. Corinne Ball was in the bankruptcy group. Heather Lennox is in the structured finance and bankruptcy.

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1 Steve Brogan is managing partner for the firm.
2 Q. But he was intimately involved in Chrysler; correct?
3 A. Steve Brogan?
4 Q. Yes.
5 A. Steve Brogan oversaw Chrysler representation generally
6 but he wasn't day-to-day counsel. Actually I think
7 you were. And I'm trying to think who else was there
8 if anybody. There was a pitch book, but that's who I
9 recall.
10 Q. Turning back to Orr 6 for a minute.
11 MR. SHUMAKER: What is that, counsel?
12 Which one?
13 A. Is that the letter or the --
14 Q. It's the summary of partnership, Governor of Michigan,
15 Mayor of Detroit, Emergency Manager.
16 A. Okay.
17 MR. SHUMAKER: Thank you.
18 Q. I'm on the page that ends 464.
19 MR. SHUMAKER: 464? I'm sorry, I'm not --
20 MS. LEVINE: The Bates stamp number 464.
21 A. 464.
22 MR. SHUMAKER: Orr 4 or 7 are you looking
23 at?
24 MS. LEVINE: Oh, sorry.
25 THE WITNESS: Orr 7?

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1 MS. LEVINE: Yes, I guess so.
2 THE WITNESS: Yes.
3 Q. Who drafted this document? It says draft date
4 2/21/2013.
5 MR. SHUMAKER: Objection, foundation.
6 A. Yeah, I don't know who drafted this document. I think
7 the email chain shows this was a document that was
8 forwarded to me and I think there's -- in an email
9 this morning I asked for it to be sent to me in a Word
10 format. I don't know who drafted it.
11 Q. And did you comment on this document?
12 A. Yes, I did.
13 Q. Was it ever reduced to a final form?
14 A. I don't recall seeing a final form, but there's
15 nothing signed, but this may be the final form, if
16 there is such a thing.
17 Q. Paragraph 7 reads --
18 A. Yes.
19 Q. -- labor, retiree and benefit initiatives will be
20 pursued jointly by the mayor and the manager to the
21 extent permitted by law.
22 A. Yes.
23 Q. What's your understanding of what that means?
24 A. That was under -- the extent permitted by law was put
25 in there, I believe, by me. As you see in paragraph

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1 6, there's the to the extent permitted by law is a
2 different typeset. And my understanding there was --
3 that this was I think in the document of emails it
4 talks about it being an aspirational agreement but not
5 requirement and I just wanted to reserve the right of
6 the manager to exercise his duties as permitted by law
7 as he saw fit.
8 Q. What were the -- what was your understanding of what
9 the labor, retiree and benefit initiatives were to be?
10 A. Well, there were some initiatives that were ongoing
11 and at this time there were the reductions, there was
12 an Act 312 award that had come up for DPOA I believe
13 and there were ongoing issues regarding the Act 312s
14 for the other police divisions, but I know there were
15 -- I know there were other initiatives going on, but
16 this document at this time was not intended to be a
17 detailed recitation of what those initiatives were.
18 It was generally, as I understood it, to be a -- based
19 off the consent agreement.
20 Q. Were these to be cost cutting initiatives?
21 A. It wasn't -- here again, this was aspirational. It
22 wasn't clear at this time as to what those initiatives
23 were going to be.
24 Q. Were these initiatives going to include cost cutting
25 initiatives?

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1 A. They might have included cost cutting initiatives,
2 yes.
3 Q. Was it your understanding or intent in your world as
4 Emergency Manager or at the time EFM?
5 A. At this time?
6 Q. Yes.
7 A. No. This was handed to me, I had -- as I said I think
8 in the prior email chain, I was doing my due diligence
9 at this time. I had not made any decision regarding
10 cost cutting initiatives.
11 Q. On -- we had some discussion earlier with regard to
12 some of your thinking just prior to the filing, that
13 first and second or second and third week of July.
14 A. Right.
15 Q. And you raised as one of the concerns, and I
16 understand that there is Syncora and a lot of other
17 things going on, but you raised as one of concerns
18 that if certain orders were entered in connection with
19 the Webster/Flowers litigation, that you would lose
20 the ability to do some of the things that you wanted
21 to do as the Emergency Manager.
22 A. Yes.
23 Q. What were you afraid you were going to lose the
24 ability to do?
25 MR. SHUMAKER: Object to the form. I

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1 object to the summary.
2 A. Let me say this. It wasn't just limited to labor
3 issues. I mean, we were trying to --
4 Q. No, no, I understand that, but with regard to the
5 labor issues.
6 A. Oh, labor issues?
7 Q. Yeah.
8 A. We wanted to -- and they would include cost cutting
9 measures perhaps, pensions and benefits, but also
10 streamlining job efficiencies, moving into the CETs.
11 If you're talking about just labor --
12 Q. Narrowly and specifically, what were you afraid you
13 were not going to be able to do if the orders that
14 were being sought were entered or enforced from the
15 Webster and Flowers litigation?
16 A. Yeah, everything. We were concerned that the orders
17 had the possibility of delaying the overall
18 operational financial restructuring that we were
19 pursuing because they're all interrelated and if we
20 had the same cash spend, for instance, on some issues
21 that we did on others, then even the savings we were
22 trying to get in Syncora and others we might not be
23 able to service, so we were concerned about
24 everything. It wasn't just one specific issue.
25 MS. LEVINE: Can I have a short break?

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1 THE WITNESS: Sure.
2 MR. SHUMAKER: Sure.
3 THE VIDEOGRAPHER: Going off the record at
4 4:12 p.m.
5 (A brief recess was taken.)
6 THE VIDEOGRAPHER: We're back on the record
7 at 4:23 p.m.
8 BY MS. LEVINE:
9 Q. Mr. Orr, was one of the concerns with regard to the
10 Flowers and Webster litigation that 436 would be found
11 unconstitutional by the state court?
12 MR. SHUMAKER: Object to the form.
13 A. Not -- not particularly. Frankly, it wasn't more of a
14 concern that ultimately the statute be found
15 unconstitutional, no. It was more of a concern of
16 just being caught up in the uncertainty of litigation
17 and appeals.
18 Q. Then let me put a finer point on it. Were you
19 concerned that if in fact 436 were found
20 unconstitutional at the state court level, the lower
21 level court --
22 A. Uh-huh.
23 Q. -- that there would be the delay in the time to run
24 through the appeal process on that issue?
25 A. Yes, that was one of the concerns.

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1 Q. Your counsel has asserted a joint defense?
2 A. Yes.
3 MR. SHUMAKER: Common interest.
4 Q. Common interest. Just want to clarify to make sure I
5 understand. We're obviously reserving our rights, but
6 I want to understand whether you're claiming common
7 interest with regard to discussions relating to the
8 entire Chapter 9 filing or whether you are claiming
9 common interest just with regard to the state court
10 litigation?
11 MR. SHUMAKER: Well, it would be to both.
12 I mean, the common interest agreement captures what
13 Mr. Orr's been doing since he became Emergency Manager
14 where there was a common interest between the state
15 and the Emergency Manager's office. So both of those
16 would fall within to the extent that counsel was
17 involved in the communications.
18 MS. LEVINE: Okay.
19 MR. SHUMAKER: If that helps.
20 MS. LEVINE: Mr. Orr was not a defendant in
21 the Flowers and Webster litigation so I just want to
22 understand what the basis is for claiming joint
23 defense or a common interest agreement between July 3
24 and I think it was July 17 or 18 when the retirement
25 system named Mr. Orr as a party.

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1 MR. SHUMAKER: Well, the common interest is
2 there's a common interest between the state and the
3 Emergency Manager's office to a whole number of things
4 regarding the requests and the provision of legal
5 advice. So if you're talking about any possible
6 communications between Mr. Orr and the governor's
7 office where counsel was present about any of the
8 subjects you name, whether it be the Flowers or the
9 Webster or the Chapter 9 filing, we will assert the
10 privilege. I -- your -- the fact that Mr. Orr was not
11 a defendant in the first two actions doesn't change
12 the assertion of the privilege that we're making.
13 MS. LEVINE: Okay, slightly different
14 topic.
15 Q. Are you aware of a coalition among certain of the
16 City's unions put together in order to try and deal
17 with some of the restructuring issues with regard to
18 labor that you've been focused on?
19 A. A coalition? Can you please explain? Informal
20 coalition or the retiree committee or --
21 Q. Not the retire committee. A coalition of unions with
22 regard to trying to deal with some of the labor issues
23 that you --
24 A. Under the AFSCME umbrella?
25 Q. No, no, no.

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1 A. Or separate union? I'm trying to -- I'm trying to
2 understand.
3 Q. Well, I think your answer indicates to me that perhaps
4 the answer is no.
5 A. Yeah. Okay.
6 MS. LEVINE: I have no further questions.
7 MR. SHUMAKER: Thank you, counsel.
8 THE VIDEOGRAPHER: Going off the record at
9 4:27 p.m.
10 (Discussion held off the record.)
11 THE VIDEOGRAPHER: We are back on the
12 record at 4:29 p.m.
13 EXAMINATION
14 BY MR. DeCHIARA:
15 Q. Good afternoon, Mr. Orr.
16 A. Good afternoon.
17 Q. My name is Peter DeChiara. I'm an attorney with the
18 law firm of Cohen Weiss & Simon, LLP. We represent
19 the United Auto Workers in this proceeding.
20 Prior to January of 2013 were you
21 acquainted with the governor, Rick Snyder?
22 A. Personally acquainted? I knew he was governor of
23 Michigan but --
24 Q. Personally acquainted.
25 A. Remotely. We overlapped in law school.

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1 Q. Did you maintain -- since law school did you maintain
2 any friendship or other social connection?
3 A. Hadn't seen him since 1982.
4 Q. Until --
5 A. Until sometime earlier this year in March.
6 Q. Did you have any professional or other dealings with
7 him between the time you were in law school until you
8 saw him in connection with -- until after January
9 2013?
10 A. No, none that I'm aware of.
11 Q. Before you were appointed as Emergency Manager, did
12 you have occasion to speak to the governor about what
13 could or should be done about Detroit's pension
14 liabilities?
15 A. Before I was appointed?
16 Q. Yes.
17 A. No, I don't believe the governor and I talked at that
18 level of detail.
19 Q. Okay. Same question for any of the governor's senior
20 staff. Did you speak to any of the governor's senior
21 staff before you were appointed as EM regarding what
22 could or should be done about Detroit's pension
23 liabilities?
24 A. No, I don't recall having discussions of that
25 specificity.

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1 Q. What about with Andrew Dillon? Same question, same
2 time period.
3 A. Right. No, I don't think we talked at that
4 specificity.
5 Q. Same question for Mr. Baird?
6 A. No, no, not with Rich Baird.
7 Q. Before you were appointed EM did you speak with anyone
8 at Jones Day about what could or should be done about
9 Detroit's pension liabilities?
10 A. I'm trying to think back. Before my appointment? Did
11 I speak with anyone about pension liabilities?
12 Q. Anyone at Jones Day, yes.
13 A. Anyone at Jones Day? I may have, but I don't recall
14 specifically. I may have. Um, I think I probably
15 did, yes, I think I probably did.
16 Q. Do you recall who you may have spoken to?
17 A. No. It could have been -- no, I don't recall who I
18 spoke to. It could have been a number of people.
19 Q. Did you speak to Corinne Ball?
20 A. Corinne Ball, it may have been Corinne.
21 Q. Do you recall any discussions you had with her about
22 that topic?
23 A. I don't.
24 Q. What about the -- what's the name of the managing
25 partner?

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1 A. Steve Brogan?
2 Q. Did you speak to him about that topic?
3 A. No, we didn't speak at that level of specificity, no.
4 Q. Anyone else in the bankruptcy group that you worked
5 with at Jones Day about that topic?
6 A. About that specific topic?
7 Q. Right, about what could or should be done about --
8 A. Could or should be done.
9 Q. -- about Detroit's pension liabilities?
10 A. I don't recall having that level of specificity, no.
11 Q. You've testified earlier today about a -- what I'll
12 call a pitch meeting that Jones Day made to the City
13 in order to be considered as counsel for the City. Do
14 you recall that testimony?
15 A. Yes.
16 Q. Okay. Apart from that pitch meeting, prior to
17 Jones Day being retained by the City, do you know
18 whether there were any communications by Jones Day to
19 the City about what could or should be done about
20 Detroit's pension liabilities?
21 A. To the City?
22 Q. Yes.
23 A. None that I'm aware of.
24 Q. What about to the state -- I'm sorry, go ahead.
25 A. Well, I had two meetings with Mayor Bing, but I don't

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1 think we discussed pensions.
2 Q. Do you recall what you did discuss?
3 A. Just generally the state of the City, the difficulties
4 that he had encountered, they were more getting to
5 know each other meetings. There wasn't any plan being
6 worked out or any detailed discussions.
7 Q. Other than the pitch book that you testified about
8 earlier, prior to Jones Day being retained by the
9 City, do you know whether Jones Day provided or shared
10 with the City any analysis, memos, reports or any
11 documents of that sort with the City concerning the
12 issue of Detroit's pension liabilities?
13 A. Other than the pitch book?
14 Q. Yes.
15 A. None that I'm aware of.
16 Q. Do you know -- before Jones Day was retained by the
17 City, do you know whether Jones Day spoke to anyone at
18 the state including the governor and his senior staff
19 about what could or should be done about Detroit's
20 pension liabilities?
21 A. Prior to their retention?
22 Q. Yes.
23 A. I think I need to explain my answer. Between the
24 pitch which occurred I believe now on the end of
25 January until sometime in -- at some point in

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1 February, I recused myself from the retention, the
2 pitch process, so during the time that I was involved
3 for the few weeks, I don't know of anything; I
4 wouldn't know nothing after I recused myself.
5 Q. Okay, when was Jones Day retained by the City? Do you
6 know what date?
7 A. I think they were ultimately selected prior to the
8 time I got there. I remember the -- I think it was
9 the first couple of weeks it went through city
10 council, I stepped out of that process as Emergency
11 Manager, it then went to the mayor, I think or vice
12 versa, he approved and went to council, council
13 approved it, there were press reports of that time
14 frame, I believe it was approximately March -- mid
15 March.
16 Q. Okay.
17 A. Or was it -- no, no, no. They had been selected in
18 March, but I don't think city council approved it
19 until later. So I think I had been selected and
20 retained, but it had to go to the city council
21 certification and approval process for some period of
22 time after that.
23 Q. Okay. And since I had earlier asked you whether you
24 were aware of communications by Jones Day to the state
25 concerning what could or should be done about

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1 Detroit's pension liabilities --
2 A. Right.
3 Q. -- is the answer to your (sic) question you're not
4 aware of any?
5 A. Other than the pitch book?
6 Q. Yes.
7 A. I'm not aware of any.
8 Q. Okay. Are you aware of any reports or presentations
9 or memos or analysis presented by Jones Day to the
10 state concerning what could or should be done about
11 Detroit's pension liabilities that occurred before you
12 became EM?
13 A. No, I don't recall any.
14 Q. Are you aware of any that have occurred since you've
15 become EM?
16 A. Oh, I think, yes. I mean, I think there have been
17 presentations to the state about the City's pension
18 obligations, yes.
19 Q. Made by Jones Day?
20 A. Made by Jones Day and Miller Buckfire and others, yes,
21 yes.
22 Q. Okay. And what are they? Can you tell me what those
23 are?
24 A. Um --
25 MR. SHUMAKER: Objection, we're going to

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1 get into the same area that's covered by the common
2 interest agreement so if you're going to -- and ask
3 him about what he knows from a general level, but if
4 it's what was the specific content of the
5 communication, we're going to assert the privilege and
6 I'm going to instruct him not to answer. So subject
7 to that admonition you can answer.
8 Q. Okay, so without getting into the substance of any
9 documents, can you answer the question?
10 A. Yes. Without waiving any privilege, generally there
11 were discussions about -- and this may have included
12 attorneys and investment advisors as well as attorneys
13 and representatives of the state. Without discussing
14 what was said, generally the pension obligation and
15 healthcare obligation and the City's lack of funding
16 to meet them as discussed, you know, I'll just
17 reference the June 14th presentation as that type of
18 discussion.
19 Q. Were these discussions that occurred prior to the
20 issuance of the -- prior to June 14th?
21 A. Yes, I believe they may have been, yes.
22 Q. Did the state participate in the formulation of the
23 proposal that is the June 14th proposal?
24 A. When you say participate, I want to be careful. You
25 know, it generally may have been discussed at a high

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1 level but the state to the best of my knowledge didn't
2 participate in any authorship.
3 Q. Okay, I'm not talking about the drafting of the
4 document --
5 A. Yeah, yeah.
6 Q. -- but the formulation of the actual ideas or
7 proposals that are contained in the document.
8 A. No.
9 Q. Did the state have input into that?
10 A. No. The -- well, let me say it this way without
11 talking about what was said. Generally the -- some of
12 the advisors have been in the City for years if not
13 months and have been reviewing this issue so I'm
14 talking about from the time I was there and what I'm
15 aware of. Generally the process once I became
16 involved was we, meaning my immediate restructuring
17 team, reviewed the issues and prepared proposals and
18 then may have discussed them at a high level with the
19 state, but as I said, there wasn't authorship in those
20 proposals at the state level to the best of my
21 knowledge.
22 Q. Okay. Let me refer you to the June 14th proposal,
23 which is Exhibit 9 of your deposition.
24 A. Yes.
25 Q. And let me refer you in particular to page 109.

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1 A. Original 109?
2 Q. Yeah, not the stamp.
3 A. Not the Bates stamp, yes.
4 Q. Right. There's the third bullet point from the bottom
5 of the page. You can read that. It's a two line
6 bullet point, you can read it, but what I want to
7 focus on is the language that there must be
8 significant cuts in accrued benefit pension amounts
9 for both active and currently retired persons. Do you
10 see that language?
11 A. Yes.
12 Q. Okay. And did you believe that what I just read out
13 loud, that statement, to be true as of June 14th? Did
14 you believe that there had to be, the cuts that are
15 referred to there?
16 A. Yes, based upon our analysis, yes.
17 Q. And did you believe that at the time that the City
18 filed for bankruptcy?
19 A. Did I believe that at the time the City filed for
20 bankruptcy?
21 Q. At the time the City filed for bankruptcy --
22 A. Yes.
23 Q. Let me just finish the question for the clarity of the
24 record.
25 A. I'm sorry.

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1 Q. At the time the City filed for bankruptcy, was it your
2 view that there had to be significant cuts in accrued
3 vested pension amounts for both active and currently
4 retired persons?
5 A. Yes.
6 Q. And is it still -- still your view today?
7 A. Yes, based upon our analysis, yes.
8 Q. This conclusion that there must be significant cuts in
9 accrued vested pension amounts for both active and
10 currently retired persons, was that assertion or that
11 idea or that notion discussed by you with the governor
12 at any time before June 14th, 2013?
13 A. Outside of meetings with attorneys?
14 MR. SHUMAKER: Outside of meetings or calls
15 with attorneys present.
16 Q. Yeah, I'm not looking to infringe your attorney-client
17 privilege.
18 A. I know. I just don't recall all of the meetings. It
19 may have been discussed outside those meetings.
20 Q. Well, do you have a recollection?
21 A. I do not have a recollection of specific discussions.
22 Q. Just so I understand your testimony, are you saying it
23 was -- it may have been discussed but you're not sure
24 whether or not it was discussed in meetings that were
25 outside the attorney-client privilege? Is that your

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1 testimony?
2 A. Yes. It -- well, to clarify, I think it -- some
3 concept probably was discussed, but I'm not sure it
4 was discussed outside of attorney-client meetings --
5 Q. Okay.
6 A. -- attorney-client privilege. I want to be clear.
7 Q. Again, without infringing attorney-client privilege,
8 did the state, and when I say the state, I mean the
9 governor, his senior staff, Mr. Dillon, his staff,
10 ever speak to you or your team asserting that there
11 had to be significant cuts in accrued vested pension
12 amounts?
13 A. I don't recall the state ever, as you say, asserting
14 that there had to be.
15 Q. At the time you filed for bankruptcy or when the City
16 filed for bankruptcy, was it your intent absent a
17 consensual deal with the relevant stakeholders that
18 accrued vested pension amounts for both active and
19 currently retired persons would be cut?
20 A. Well, first it was our intent that we reach some sort
21 of understanding with stakeholders, that's why we
22 asked for the formation of a retiree committee,
23 because we recognize we needed to have representation
24 on those issues. Secondly, what we're asking for and
25 what we proposed in this proposal was the size of the

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1 unfunded pension obligation and to have discussions
2 about that amount. We did not want to imposes it,
3 we've said that many times, so in direct response to
4 your question, I don't know what we will do absent
5 consent.
6 Q. Okay, I'm not sure you answered my question so let me
7 ask you again.
8 A. Uh-huh.
9 Q. Putting aside -- or assuming that there is no
10 consensual deal that would occur --
11 A. Right.
12 Q. -- was it your intent at the time the City filed for
13 bankruptcy that there would be a -- nonconsensual
14 significant cuts in accrued vested pension amounts?
15 A. No.
16 Q. That was not your intent?
17 A. No.
18 Q. Did you have -- at the time of the bankruptcy filing,
19 did you have an intention as to what you wanted to
20 happen vis-a-vis the Detroit's pension liabilities
21 were you enable to achieve a consensual deal?
22 A. Did we have an intent as to what was going to happen?
23 Q. Yeah, what did you hope would happen or what did you
24 intend to happen to the pension liabilities in
25 bankruptcy if you were unable to get a deal?

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1 A. Yeah, I think you're --
2 MR. SHUMAKER: I'll object, it calls for
3 speculation, but you can --
4 A. Yeah.
5 Q. Let me -- I'm not asking you to speculate, I'm asking
6 you what your actual intent was at the time you filed
7 for bankruptcy.
8 A. Our intent was to seek a consensual deal.
9 Q. Did you have -- did you think about the possibility
10 that you might not be able to achieve a consensual
11 deal? Did that cross your mind?
12 A. Yes.
13 Q. Okay. And when that thought crossed your mind that
14 you might not be able to have a consensual deal, did
15 you then have an intent as to what you wanted to have
16 happen with the pension liabilities in bankruptcy?
17 A. No. We were going to cross that bridge when we got to
18 it.
19 Q. Okay, just so I understand your testimony, you filed
20 for bankruptcy -- the City filed for bankruptcy at
21 your request, you contemplated the possibility that
22 there would be no consensual deal --
23 A. Right.
24 Q. -- but you had no plan or intention as to what would
25 happen to the pension liabilities if there were no

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1 deal?
2 MR. SHUMAKER: Object to the form. It was
3 at the governor's request but --
4 MR. DeCHIARA: Okay, I accept that
5 modification.
6 Q. But can you answer the question?
7 A. Yes. No, because we've never made a -- well, we've
8 never made a threat that what will happen if we don't
9 reach a consensual deal. We will address that issue
10 if and when it arises.
11 Q. Yeah, just to be clear, I'm not asking you about
12 threats, I'm not suggesting there were any threats.
13 I'm just asking what was your intent, what was going
14 on in your head?
15 A. We don't have an intent in that respect.
16 Q. Mr. Orr, I would like to show you a document I'll have
17 marked as Orr Exhibit 17. I apologize, I only have
18 one copy so let me show it to your counsel first.
19 MR. DeCHIARA: Let me read what it is.
20 It's a document that's on the docket, it's a document
21 849, it's the City of Detroit, Michigan's Objections
22 and Responses to Detroit Retirement Systems' First
23 Request For Admission Directed to the City of Detroit,
24 Michigan.
25 (Marked Exhibit No. 17.)

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1 MR. SHUMAKER: Thanks.
2 Okay.
3 THE WITNESS: Okay.
4 Q. First of all, are you familiar with that document,
5 Mr. Orr?
6 MR. SHUMAKER: Take a look at the first
7 page.
8 THE WITNESS: Okay.
9 Q. And I will represent that there's a box that's circled
10 and that's my handwriting from this morning.
11 A. Okay. Okay. Yes.
12 Q. Are you familiar with this document?
13 A. Yes.
14 Q. Did you review it before it was filed by the City?
15 A. Yes, I did.
16 Q. Let me refer you to -- let me just read. I'll read it
17 over your shoulder so we can all read it together.
18 And request for admission 12 says, admit, the City
19 intends to seek or diminish -- seek to diminish or
20 impair the accrued financial benefits of the
21 participants in the retirement system through this
22 Chapter 9 case. The response is admitted. Were you
23 aware of that admission made by the City?
24 A. Yes, I reviewed these before they were filed.
25 Q. Okay. And am I reading this correctly that the City

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1 does -- or at least as of the date of this document,
2 which looks like it was entered on the docket on
3 September 13th, that the City intends to seek or
4 diminish to impair accrued pension benefits of Detroit
5 pensioners?
6 A. Yes, that's admitted.
7 Q. Okay. And so when did -- when did the City first --
8 when did that intent by the City first come into
9 existence? Was it in existence at the time of the
10 bankruptcy filing?
11 A. Well, I think we said in June 14th that we need to
12 adjust pensions, I think we said it in several
13 meetings after that so when you say intent as in the
14 legal conclusion of that document, I think we've said
15 that. I think what we've consistently said, though,
16 we want to do that consensually by a consensual plan.
17 Q. I understand that you've said that, but I'm just
18 trying to nail down, if you will, this intent that's
19 expressed, that's admitted in response to request for
20 admission 12 in Exhibit 17. I'm just trying to nail
21 down when that intent first came into existence. Did
22 it come into existence at the time of the bankruptcy,
23 sometime before the bankruptcy was filed? If you can
24 shed whatever light you can on the timing of when that
25 intent came into existence.

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1 A. Other than what I've said, we said at June 14th we
2 have to adjust the pensions, we asked for a consensual
3 plan, so I suppose you can say -- without getting
4 caught in the legal conclusion of the intent, I
5 suppose you could say that from our proposal to the
6 time of that admissions the intent as you say without
7 drawing a legal conclusion occurred.
8 Q. Okay, so that intent existed at least -- at least at
9 the time of the June 14th proposal; is that a fair
10 characterization of your testimony?
11 A. No, I said sometime between the June 14th testimony
12 till the entry of those admissions. The intent as you
13 say could have occurred upon the execution of that
14 admission.
15 Q. Okay. And is it -- and you don't know when that
16 intent came into existence?
17 A. No, I think it came -- frankly, if you're using the
18 word intent, I think it came when that admission was
19 supplied.
20 Q. So your testimony -- so your testimony is this intent
21 arose at the time that this answer was drafted or
22 submitted by the City onto the docket? That's when
23 the City developed the intent?
24 A. I don't know if it was on the docket. What I know is
25 the question says, a legal conclusion, the question

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1 asked do you intend to benefit (sic) and we admitted
2 it, and I guess in response to your question as to
3 when that intent arose, I guess it's at the point of
4 admission.
5 Q. Okay. And so you're saying prior to the City
6 preparing this document, the intent that's referred to
7 in the document did not exist?
8 A. I'm not sure we prepared that document.
9 Q. Well, it's a filing in this case --
10 A. It's a response.
11 Q. -- by the City of Detroit?
12 A. Right, but it's a response to a request for admission.
13 Q. Right.
14 A. Okay.
15 Q. But the relevant part where it says admitted.
16 A. Since you're using intent it sounds like you're using
17 as a legal conclusion. I'm saying that the -- using
18 your words, the formal intent occurred at the point of
19 admission. That's what an admission is.
20 Q. Okay. So -- let me describe my understanding, you
21 tell me if you agree with my understanding.
22 A. Uh-huh.
23 Q. So this is a request for admission that asks whether
24 -- that asks the City whether it admits that the City
25 has a certain intent and the City admitted that;

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1 correct?
2 A. Yes, yes, that's correct.
3 Q. Okay -- so okay. So as of the moment that the City
4 made that admission in this document, the City had
5 that intent?
6 A. I think -- I think that's an admission, yes.
7 Q. Right. So we're in agreement.
8 A. Okay.
9 Q. My question is the intent that's referred to, did it
10 exist at any moment before the City made the
11 admission?
12 A. In my mind, no. I mean, the time of admission is when
13 it admits to the intent.
14 Q. And so in the June 14th proposal when it says there
15 must be significant cuts in accrued vested pension
16 amounts, it was not your intent that there be such
17 cuts absent a consensual deal?
18 A. What I'm saying is your letter -- your request for
19 admissions asks when does the City intend to diminish.
20 The proposal said there must be cuts, but throughout
21 that time we said we wanted a consensual resolution.
22 By using the word intent I'm saying it just as a
23 matter of practicality the expressed intent is upon
24 that admission.
25 Q. Let me ask you about Article 9, Section 25 (sic) of

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1 the Michigan Constitution. There was a great deal of
2 colloquy earlier today about that topic. Do you
3 recall that?
4 A. Yes, I do.
5 Q. Okay. Did you have any discussions with the governor
6 or the governor's staff or Mr. Dillon or Mr. Baird at
7 any time about the meaning or import of Article 9,
8 Section 25 of the Michigan Constitution?
9 MR. SHUMAKER: Without counsel present?
10 MR. DeCHIARA: Yeah, without invading
11 attorney-client privilege.
12 Q. Oh, I'm sorry, I'm misspeaking. Section 24.
13 A. I understood, yes, okay.
14 Q. Yes.
15 A. I don't recall any of those discussions without
16 counsel present.
17 Q. Prior to your being appointed as Emergency Manager did
18 you speak to any of your colleagues at Jones Day about
19 Article 9, Section 24 of the Michigan Constitution?
20 A. Yes, I believe I did.
21 Q. And with whom did you speak --
22 A. With whom did I speak --
23 Q. -- about it?
24 A. Let me clarify. I don't know if I spoke, I think I
25 saw some research on that article.

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1 Q. Okay, and this was research that you saw while you
2 were a partner at Jones Day?
3 A. Yes.
4 Q. And it was research shown to you by your colleagues at
5 Jones -- one or more of your colleagues at Jones Day?
6 A. Yeah, I'm -- I'm not a Michigan law constitutional
7 scholar, but I think there are various research papers
8 that were circulated. I don't think anybody came in
9 and said, here, read this. I think I just saw a paper
10 that discussed it.
11 Q. Where did -- did you see it as a result of your own
12 research --
13 A. No.
14 Q. -- or did someone show it to you?
15 A. I think somebody else was doing research on it and I
16 think it was either through a distribution or --
17 sometimes distributions come through the office, you
18 don't know who, you know, they just come through
19 interoffice mail and you read the distribution and it
20 may have been a research memo that came through my
21 office, came to my office.
22 Q. Do you have in your mind a particular document?
23 A. Yes, I do.
24 Q. And was it a hard -- did it land on your desk in hard
25 copy or did it come through your email?

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1 A. No, I think it came in hard copy.
2 Q. And do you recall what it said?
3 MR. SHUMAKER: To the extent that it's not
4 a privileged memo.
5 THE WITNESS: No, it was marked
6 attorney-client privilege, attorney work product so I
7 don't think I can speak to it. That's what I recall
8 about it.
9 MR. SHUMAKER: Certainly if it was a memo
10 involving attorney-client advice, you're not going to
11 -- you're not going to testify about it. I'm going to
12 instruct you not to --
13 THE WITNESS: Right, I think it can be
14 characterized as that, yes.
15 Q. Without going into the substance of the document, was
16 it a document that was prepared for a client of
17 Jones Day? Do you know?
18 A. It may have been prepared in contemplation for a
19 client. I'm being careful because the attorney-client
20 privilege can attach prior to a formal relationship so
21 I'm just being very careful, but I think it -- I think
22 it implicates attorney-client privilege. I recall
23 seeing a memo, but I also recall up in the right-hand
24 corner that it had all of the instructions about
25 privilege and work product.

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1 Q. Apart from that document did you see any other
2 documents --
3 A. No, no.
4 Q. Okay. Do you recall any conversations you had with
5 any of your colleagues at Jones Day while you were
6 still at Jones Day about the Michigan Constitution?
7 A. No.
8 Q. Did you attend the June 14, 2013 meeting that's
9 referenced in paragraph 80 of your declaration?
10 A. Yes.
11 Q. And did you speak at that meeting?
12 A. Yes.
13 Q. Did you say anything to the effect that -- did you say
14 anything at the meeting to the effect that this
15 meeting was not a negotiation?
16 A. I don't recall if I said that. I may have, but I
17 don't recall.
18 Q. If there was testimony by others that you did say
19 that, would you be in a position to deny that you said
20 it?
21 A. No, I don't recall that I said it or not.
22 Q. What about the June 20th meeting? Did you attend
23 that?
24 A. I attended one of those meetings. It may have been
25 the June 20th.

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Q. Are you saying --
A. The following week, yes.
Q. When you say one of those meetings, are you sure you attended June 14th?
A. No, no, no, when I say one, I mean one of the subsequent. I'm sure I attended June 14th. June 10th was Monday, June 14th was Friday, my public meeting was Monday, June 14th was the all creditors meeting. There was subsequent due diligence meetings the following week and I recall attending at least one of those that week. That was the those I was referring to.
Q. I'm a little confused. Are you sure you attended June 14th?
A. Yes.
Q. Okay. So do you recall whether you attended June 20th?
A. I think I did, but I don't recall.
Q. Okay. What about July 11th?
A. I don't recall.
Q. Okay. So I already asked you about whether at the June 14th meeting you said anything to the effect of that this was not a negotiation. Let me ask you the same question for the June 20th and July 11th. Do you recall at that -- at those meetings saying anything to

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the effect of this is not a negotiation?
A. I may have. As I've said several times today, you know, bargaining negotiations is suspended for five years so I may have said that, but I don't recall.
Q. And again, if there were witnesses who testified they heard you say that at one or more of these meetings, would you be in a position to deny that?
A. I don't know if I would deny it or if I would confirm it. I mean, their recollection of what was said could be different than mine or what they heard.
Q. Did you attend a meeting on July 10th with creditors?
A. I may have.
Q. Same question for July 10th. Do you recall saying anything to the effect that that meeting was not a negotiation?
A. I think I generally, when I would go to these meetings, say we're having discussions and exchange, but I would try -- if I said this is not a negotiation, I would try to make sure that I did not waive the suspension of bargaining under 436, so I may have said that, yes.
Q. You may have said what?
A. This is not a negotiation, yeah, I may have said that.
Q. Okay. Apart from you there were others who attended those meetings on behalf of the City; correct?

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A. Yes, I believe so.
Q. Okay. And some of those individuals spoke?
A. Yes.
Q. Okay. Do you recall whether at any of those meetings that you attended whether any of the other individuals who were there on behalf of the City said words to the effect of this is not a negotiation?
A. Do I recall? No.
Q. At the June 20th meeting, is it true that the attendees, and by the attendees I mean the people who were not there on behalf of the City but the other people, that in order to be heard they needed to fill out a card and submit the card to someone who was running the meeting? Is that how things worked?
A. Where was the June 20th meeting?
Q. I don't know.
A. I -- I know at my June 10th meeting that we had speakers. I don't recall. I don't recall June 20.
Q. Let me clarify. Let's talk about the June 14th meeting, the one you're sure you attended.
A. Right.
Q. Was there a system in place at that meeting where for an attendee to be heard he or she had to write -- fill out a card and submit it?
A. Yes, I believe so.

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Q. Okay, and describe how -- how did that -- what was that process, how did that work?
A. That process was arranged by my staff. My understanding is that if people wanted to speak, they could fill out a card and a question would be asked and members who were on the DS on the panel would answer the question.
Q. Who would read out the card?
A. Initially it was the -- someone I believe on my staff or some of my consultant's staff, but toward the end of the meeting people just started asking questions outright.
Q. Did -- that same process of attendees having to fill out a card, did that occur at any of the other meetings? And by the other meetings I mean either June 20th, July 10th or July 11th?
A. I don't recall.
Q. It may have?
A. It may have, but I don't recall.
Q. Okay. Have you ever in your career as an attorney attended a negotiation session of any kind?
A. Yes.
Q. Have you ever been at a negotiation session where one side or the other has to fill out a card and have it read by someone else to be heard?

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1 A. You're using the phrase negotiation session, and I
2 want to be clear that what we were saying is make sure
3 that we did not waive any rights under 436. I have
4 been at meetings where for purposes of to engage in
5 oral discussion, yes, you've had to fill out cards to
6 be heard, yes. I have been at auctions. Yes, I have
7 been at meetings like that.
8 Q. At auctions?
9 A. Yeah, I've been at auctions, been at meetings, been at
10 negotiations, yes, many different types of meetings.
11 Q. What kind of negotiations where those where
12 participants had to fill out a card to be heard?
13 A. They could have been negotiations for finance, they
14 could have been negotiations for procedures, they
15 could have been negotiations for a number of different
16 subjects, but it's happened on more than one occasion.
17 Q. Have you ever attended a collective bargaining
18 negotiation?
19 A. Yeah, I think I have.
20 Q. Okay. Did you ever see that type of system used in a
21 collective bargaining negotiation?
22 A. I don't think I saw it at the one I attended, but
23 collective bargaining is suspended.
24 Q. Did you -- before any of these meetings -- and by
25 these meetings, I mean the June 14th, June 20th, July

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1 10th or July 11th meetings -- did you consult with the
2 governor or any other state official about how the
3 meetings would be conducted?
4 A. No, not to the best of my knowledge.
5 Q. Did you consult with anyone, the governor or anyone,
6 any state official, regarding what the purpose or
7 nature of the meetings would be?
8 A. When you say consult, you know, I've testified earlier
9 today that we had regular communications with the
10 governor's office, but my understanding was that how
11 we ran meetings was substantially left up to me and my
12 team. So no, we didn't consult in that regard on how
13 the meetings were run.
14 Q. Okay, just to clarify what I mean by consult. I mean
15 did you talk?
16 A. Not at that level of detail how we're going to run, no
17 we didn't talk, no.
18 MR. DeCHIARA: Let me mark a document,
19 which I'll mark as -- ask the court reporter to mark
20 as Exhibit 18.
21 (Marked Exhibit No. 18.)
22 Q. Have you -- have you ever seen this document before?
23 A. Yes.
24 Q. And let me just identify it for the record. It's a
25 letter from Jones Day to Larry Stewart dated June 27,

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1 2013.
2 A. I'm --
3 MR. SHUMAKER: We have a different letter I
4 think.
5 A. I have John Cunningham.
6 MR. SHUMAKER: We have John Cunningham.
7 MR. DeCHIARA: I'm sorry, let's use that
8 one.
9 THE WITNESS: Okay.
10 MR. DeCHIARA: Thank you.
11 Q. Orr Exhibit 18 will be a Jones Day letter to John
12 Cunningham dated June 27, 2013. Let me ask you, have
13 you seen this Orr Exhibit 18 before?
14 A. Yes.
15 Q. And the first sentence of the letter says, thank you
16 for participating in the June 20th, 2013 informational
17 meetings pertaining to the City of Detroit's, and then
18 it continues --
19 A. Uh-huh.
20 Q. -- and you can read the rest --
21 A. Yes.
22 Q. -- but I won't read it aloud.
23 Do you concur with the description in the
24 sentence that I read of the June 20th meeting as an
25 informational meeting?

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1 A. Yes.
2 Q. Let me refer you back to your June 14th, 2013
3 proposal.
4 A. Yes.
5 Q. And to page -- the original page 109. And the third
6 to the last bullet point which we read earlier and
7 again I'm going to focus on the bottom line of that
8 bullet point that says, "There must be significant
9 cuts in accrued vested pension amounts for both active
10 and currently retired persons."
11 At the time of the meetings that I've been
12 referring to, the June 14th, June 20th, July 10th and
13 July 11th meetings, were -- would you have been
14 willing had there been negotiations that took place to
15 compromise and accept -- accept an outcome of the
16 restructuring effort that resulted in there not being
17 cuts in accrued vested pension amounts for both active
18 and currently retired persons?
19 A. Well, that's a hypothetical question that could depend
20 upon a number of things. I don't know. I would have
21 to see the proposal. We were willing to listen to any
22 proposal or counter that came in.
23 Q. Okay, and I'm not trying to phrase it as a
24 hypothetical, I want to focus on what was in your mind
25 at the time of these meetings. So let me ask you.

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1 Did you ever consider at the time of these meetings
2 whether you would accept in some scenario that
3 resulted from negotiations that there would be an
4 outcome to the restructuring where there would not be
5 cuts to accrued vested pension amounts?
6 A. That depends upon the proposal and the circumstances
7 of that proposed outcome.
8 Q. I think we're maybe misunderstanding each other. I'm
9 not asking you what you would have done --
10 A. Uh-huh.
11 Q. -- had you gotten a certain proposal or what you would
12 have done under some circumstances that did not occur.
13 What I'm asking you is as to what your actual state of
14 mind was at the time of these meetings. In your
15 actual state of mind --
16 A. Uh-huh.
17 Q. -- did you have -- did you consider and did you think
18 about that had there been certain negotiations that
19 led down a certain path, did you in your mind consider
20 that you might accept an outcome of the restructuring
21 where there would not be cuts to accrued vested
22 pension amounts?
23 A. I was receptive as we said to anything, but that would
24 depend upon the proposal.
25 Q. Did you say at any of these meetings that you would be

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1 receptive to anything?
2 A. No, I think we did say that, yes.
3 Q. So you would have been receptive to an outcome where
4 there would be no cuts in accrued vested pension
5 amounts?
6 A. That depends upon what the proposal was. We were
7 receptive to hearing anything which we haven't heard,
8 so yes.
9 Q. And is that true today? Are you willing to consider
10 an outcome to this restructuring effort where there
11 would be no cuts to accrued vested pension amounts?
12 A. That depends upon the terms of the proposal. That's
13 -- that's -- we'll listen to -- we have said before
14 and we'll say again, we'll listen to anything, but it
15 depends upon the terms.
16 Q. Okay.
17 A. Your question's a hypothetical so I -- I don't -- it
18 depends upon what the terms are.
19 Q. Okay, well, we have a disagreement with whether my
20 question is a hypothetical, but it is what it is.
21 A. Okay.
22 Q. I can only ask you to answer it to the best of your
23 ability.
24 A. That's the best of my ability.
25 Q. Let me now ask you about what you actually said at the

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1 June 14th meeting.
2 A. Okay.
3 Q. Do you have a recollection of any words you used to
4 communicate to those in attendance that you were open
5 to consider anything, if that's a fair
6 characterization of your prior testimony? Did you use
7 words to that effect and if so what were those words?
8 A. I don't remember the exact words, but I think we
9 expressed the sentiment that this is a proposal and
10 we're open to discussions.
11 Q. Well, that's a little different. I mean, to be open
12 to discussion. I'm not asking you -- I think you
13 testified a few minutes ago that you were open to
14 anything and if I'm mischaracterizing that, correct
15 me.
16 A. Well, no, anything -- and I meant anything meaning
17 anything in terms of discussions, that's why we styled
18 this, we never called this a plan, we never called
19 this a deal, we always called it a proposal because we
20 were open for discussions, any response, meaning
21 anything, so I think they're the same thing. I'm not
22 trying to be cute in any fashion, I'm just saying we
23 were open to responses, yes.
24 Q. Did you ever say to the attendees at the meetings or
25 communicate to the attendees in writing that the City

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1 would consider an outcome to the restructuring effort
2 whereby there would be no cuts to accrued vested
3 pension amounts?
4 A. Did we ever communicate? I'm not sure that anyone on
5 my team did. To the best of my knowledge, I don't
6 recall doing that.
7 Q. Okay. Did you ever -- you or your team ever
8 communicate at the meetings or in writing to the
9 creditors that you would be open to a result of the
10 restructuring effort that would result in something
11 less than significant cuts in accrued vested pension
12 amounts?
13 A. Let me -- this line of questioning, let me respond
14 this way. I think it's fair to say that we
15 communicated that we were open to discussions and
16 suggestions and counterproposals. Depending upon what
17 the term of those discussions, suggestions and
18 counterproposals or anything were, we were willing to
19 discuss them.
20 Q. Let me turn your attention back to page 109 of the --
21 of Exhibit 9, which is the June 14th proposal for
22 creditors.
23 A. Yes.
24 Q. And I believe you were questioned about this earlier
25 so I'll keep this short, but the fifth bullet point

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1 from the bottom of the page makes reference to an
2 underfunding of $3.5 billion.
3 A. Yes.
4 Q. Do you see that?
5 A. Yes.
6 Q. And is it that assessment of -- is it that assessment
7 that that's the level of underfunding that caused you
8 to conclude two bullet points down that there had to
9 be significant cuts in accrued pension benefits?
10 MR. SHUMAKER: Object to form.
11 Q. I mean accrued pension liability.
12 MR. SHUMAKER: Object to the form.
13 A. Yes, we believe there are insufficient funds, yes.
14 Q. Okay. And the pension systems themselves believed,
15 and continue to believe, that the amount of
16 underfunding is less than 3.5 billion; correct?
17 A. Yes.
18 MR. SHUMAKER: Objection, foundation.
19 A. I believe they recognize they're underfunding but
20 there have been statements that it's less than
21 3.5 billion.
22 Q. Statements by them?
23 A. By them.
24 Q. Okay. Did you ever speak to the governor or his staff
25 or any state officials about what was the -- or what

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1 is the correct amount of underfunding?
2 A. Yes, I believe so.
3 Q. Who did you speak to about that?
4 A. Putting aside any discussions with attorneys, as we've
5 done --
6 MR. SHUMAKER: Same admonition as before.
7 THE WITNESS: Same admonition.
8 A. -- I believe I may have spoke with -- me personally
9 may have spoken with the treasurer.
10 Q. When was that?
11 A. I don't recall.
12 Q. Was it before or after June 14th?
13 A. Probably before.
14 Q. And was it a face-to-face meeting?
15 A. It may have been. It may have been.
16 Q. Where was the meeting?
17 A. I -- I -- there were so many meetings with so many
18 different parties, not just with the treasurer, but it
19 may have been here in Detroit. We sometimes meet in
20 Detroit.
21 Q. Do you recall the substance of your conversation?
22 A. I do not.
23 Q. Did he say to you that he believed the pension funds'
24 assessment of the amount of underfunding was
25 unrealistic or words to that effect?

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1 A. No, not that I recall. I think -- no.
2 Q. Did you say that to him?
3 A. I think I said something along the lines we believe
4 it's 3.5, some of the pension funds have asserted it's
5 different, we need to have a dialogue to derive a
6 number.
7 Q. So you were the one who brought up the --
8 A. Yes.
9 Q. -- topic?
10 A. Yes.
11 Q. And what caused you to believe that the pension funds
12 were underestimating the amount of liability?
13 A. As has been discussed both in the presentation and
14 many other times, we looked at a number of factors.
15 First from Gabriel Rotor, then from Milliman's initial
16 analysis of the Gabriel Rotor report, then from
17 Milliman's independent report and the unfunded actual
18 liability, the expected rate of return on assets, the
19 proposed amortization rate, how much we have to pay
20 out over time --
21 THE COURT REPORTER: I'm sorry. Start
22 again. The expected rate of assets.
23 A. The expected rate of return, the market value of
24 assets, the proposed amortization rate and other
25 factors, which led us to conclude that they were

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1 underfunded at this level to meet the anticipated
2 actuarial liabilities in out years.
3 Q. So you were advised by certain experts who were
4 consulting you --
5 A. Yes.
6 Q. -- about this matter?
7 A. Yes. As was testified to this morning, I'm not an
8 actuary. I relied on my team, yes.
9 Q. But what initially caused you to look into this issue?
10 Did someone come to you and say -- suggest that the
11 pension liability's underfunded or is this something
12 that you yourself decided to seek out an opinion from
13 experts on?
14 A. I -- I think that this issue had been discussed prior
15 to my becoming Emergency Manager in various forms with
16 financial stability agreement, perhaps even in a
17 consent agreement. When we're looking at all
18 obligations of the City, I seem to recall those
19 documents started out at $12 billion of total debt,
20 then a subsequent one having to do before I got here
21 in 2012 came up with $14 billion of debt, and then the
22 first 30 days that I was appointed one of the
23 obligations under 436 is get a true assessment of the
24 City's financial condition, we did a deeper dive and
25 that's when we derived these numbers. So that was

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1 based upon historical calculations and my obligations
2 under the statute.
3 MR. DeCHIARA: I would like to go off the
4 record just for a minute. I may be done, I just want
5 to consult with co-counsel.
6 MR. SHUMAKER: Sure.
7 THE VIDEOGRAPHER: Going off the record at
8 5:26 p.m.
9 (A brief recess was taken.)
10 THE VIDEOGRAPHER: We're back on the record
11 at 5:39 p.m.
12 REEXAMINATION
13 BY MR. ULLMAN:
14 Q. Mr. Orr?
15 A. Yes.
16 Q. Just a few more questions for you.
17 A. Sure, Mr. Ullman.
18 Q. You are the -- let me withdraw that.
19 The June 14th proposal that we've looked at
20 was put forward by you in your capacity as Emergency
21 Manager?
22 A. Yes.
23 Q. Does anyone besides you have authority to change or
24 modify the terms of the proposal?
25 A. Well, it's my proposal and under statute I have

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1 substantial discretion, but ultimately I report to the
2 governor, but as far as this, no one else in the City
3 does, no.
4 Q. No one other than you?
5 A. No one other than me.
6 Q. Now, in connection with a Chapter 9 proceeding that's
7 ongoing, in the event that you are unable to reach a
8 consensual resolution, do you intend to withdraw the
9 bankruptcy filing?
10 MR. SHUMAKER: Objection, calls for
11 speculation.
12 A. Yeah, I don't know what we'll do at that point.
13 Suffice it to say, if we can't reach a consensual
14 resolution, there are serious questions about the City
15 for a number of reasons.
16 Q. And if the creditors and objectors do not agree to the
17 terms that are set out in the June 14th proposal, do
18 you intend to put forward a plan in the Chapter 9
19 proceeding that treats pension contributions for
20 retirees differently than the way those contributions
21 are treated in the June 14th proposal?
22 MR. SHUMAKER: Same objection.
23 A. Yeah, I don't know what we intend to do. Suffice it
24 to say, I think the proposal speaks for itself and
25 we'll stand by that. We're hoping to get some

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1 movement on it.
2 Q. So as things now stand, there's no plan to put forward
3 anything else if the creditors and in particular the
4 retirees do not agree to what's set out in the June
5 14th proposal?
6 A. As it stands right now, we don't have a plan.
7 MR. ULLMAN: I have nothing further. Thank
8 you, Mr. Orr.
9 MR. SHUMAKER: Thank you, counsel.
10 THE WITNESS: Thank you.
11 THE VIDEOGRAPHER: Going off the record at
12 5:41 p.m.
13 (Discussion held off the record.)
14 THE VIDEOGRAPHER: We're back on the record
15 at 5:43 p.m.
16 EXAMINATION
17 BY MS. GREEN:
18 Q. Hi, Mr. Orr. We've met before.
19 A. Yes.
20 Q. My name is Jennifer Green, I represent the two
21 Retirement Systems for the City of Detroit.
22 A. Yes, Jennifer -- Ms. Green. Good to see you again.
23 Q. Thank you. Nice to you see you again too.
24 I have a question about Exhibit 11. I
25 don't know if you have it in front of you or not.

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1 A. Okay.
2 MR. SHUMAKER: Which one is that?
3 MS. GREEN: It's the July 18th letter from
4 the governor.
5 MR. SHUMAKER: Thank you.
6 A. Okay. It's in here. Here it is, got it. Okay.
7 Q. Do you happen to know who within the governor's office
8 drafted this letter?
9 A. No, I do not.
10 Q. Do you know if Jones Day had any input in drafting the
11 July 18th letter?
12 A. To the best of my knowledge I don't think they did.
13 Q. Do you know if they had any input or saw a preview of
14 the letter before it was delivered on the 18th?
15 A. To the best of my knowledge they did not. I know I
16 did not.
17 Q. Did you have any specific conversations with the
18 governor about this letter between July 16th and July
19 18th?
20 MR. SHUMAKER: Without counsel present?
21 MS. GREEN: With the caveat without counsel
22 present.
23 A. Without counsel present? No.
24 Q. Did you have any with counsel present?
25 A. Yes, I believe on the morning of the 18th.

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1 Q. Okay. You testified earlier that you were expecting
2 the letter on the 18th and you really didn't know what
3 to expect until you actually received the letter?
4 A. I was expecting a letter at any time. After I
5 received it, I and my staff, Mr. Nowling, Ms. Penn,
6 would spend the 17th and the morning of the 18th for
7 that matter wondering if the letter was going to be
8 forthcoming. I didn't know when I was going to
9 receive the letter.
10 Q. And did you know what the contents of the letter would
11 be with respect to any contingencies?
12 A. No.
13 Q. Were contingencies anything that were discussed during
14 the meeting with the governor between the 16th and the
15 18th?
16 MR. SHUMAKER: Again, only without counsel
17 present. If there were any such discussions.
18 A. No, there were none, not without counsel.
19 Q. Without disclosing the substance of what the
20 attorney-client privilege communications would be, can
21 you at least confirm whether contingencies in general
22 were discussed with the governor prior to this letter
23 being delivered to you on the 18th?
24 A. No, they were not.
25 Q. I notice that the 18th letter says that it was

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1 delivered via hand and electronic delivery.
2 A. Yes.
3 Q. What time did you get the letter on the 18th?
4 A. I don't know, but I think it was around lunchtime.
5 Q. Did you receive it via email or did you receive it via
6 hand-delivery?
7 A. I don't recall depending upon which office. I think
8 someone came in and handed it to me. I think someone
9 on my staff gave it to me.
10 Q. Do you recall receiving it via email?
11 A. I think I probably did receive it, I just think
12 somebody got it before I got into my emails and
13 brought it into me.
14 Q. Do you know if the email that this letter was attached
15 to has been produced to date?
16 A. I do not.
17 Q. Would you be willing to produce the email that
18 attached this letter as part of this?
19 MR. SHUMAKER: Certainly willing to look
20 into it, sure. And it may well very --
21 MS. GREEN: Have already been.
22 MR. SHUMAKER: -- been produced.
23 Q. Earlier we were discussing the common interest
24 agreement between the City and the state. Do you have
25 an actual written common interest agreement?

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1 A. That's handled by my counsel. I -- I believe we do.
2 Q. Do you know if you reviewed the common interest
3 agreement?
4 A. I don't recall if I reviewed it.
5 Q. Were you the one that would have executed it on behalf
6 of the City?
7 A. I might have been.
8 Q. Do you know if you've produced the common interest
9 agreement as part of this litigation?
10 A. I don't know.
11 Q. Would you produce the common interest agreement?
12 MR. SHUMAKER: Look into that one too.
13 MS. GREEN: Thank you.
14 Q. We earlier were discussing some email correspondence
15 from January of 2013 and you had commented in an email
16 -- you characterized PA 436 as a "clear end-around the
17 prior initiative that was rejected by the voters in
18 November."
19 A. Yes.
20 Q. What did you mean when you said that it was a "clear
21 end-around?"
22 A. I had read that in one of the articles and as I said
23 during that discussion, that was my cursory review of
24 the statute and I had read that somewhere. That was
25 the conclusion during that day of going back and forth

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1 based upon what I had read at that time.
2 Q. So someone else had concluded that it was a clear
3 end-around and you were agreeing with that
4 characterization?
5 A. I was -- I was parroting in a sense what I had heard
6 and I was expressing the belief that I felt that
7 that's what was said, so yes, at that time that's what
8 I was saying.
9 Q. Who else had said that it was a clear end-around?
10 A. I forget which article that was in. It could have
11 been a Free Press article or News article. I was
12 reading or it could have been a WDIV or Fox 2
13 commentary. I was -- I was trying to find out what
14 was going on because of -- this subject came up of me
15 possibly being a candidate for the Emergency Manager.
16 Q. Are you now trying to say that you did not agree with
17 that characterization?
18 A. No, at that time --
19 MR. SHUMAKER: Object to the form. Go
20 ahead.
21 A. What I'm saying is at that time that was my
22 characterization.
23 Q. Have you similarly expressed any reservations about
24 PA 436 also being a clear end-around of Article 9,
25 Section 24 of the Michigan Constitution?

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1 A. No, at that time I hadn't even -- I hadn't even
2 thought about the Michigan constitutional questions at
3 that time.
4 Q. Have you since expressed any similar reservations?
5 A. No, I have not.
6 Q. Earlier you were handed Exhibit 17 I believe it was,
7 which was a copy of the City's request for admissions.
8 A. Yes.
9 Q. I'm sorry, the City's responses to the Retirement
10 Systems' request for admissions.
11 A. Yes.
12 Q. Do you have a copy in front of you?
13 MR. SHUMAKER: He has the only copy right
14 now.
15 MS. GREEN: I have a few extras because
16 they were --
17 THE COURT REPORTER: He took it back. He
18 took the original back.
19 MR. DeCHIARA: Oh, I have it? I have it.
20 MS. GREEN: He's got it. We're fine.
21 MR. SHUMAKER: Was it marked?
22 MS. GREEN: It was marked.
23 MR. SHUMAKER: It was marked. You need it
24 for the record.
25 THE WITNESS: Okay.

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1 MR. SHUMAKER: Peter, you want to take this
2 one?
3 MR. DeCHIARA: Thanks.
4 Q. A few moments ago you stated, and I don't want to
5 mischaracterize your testimony, I believe you said if
6 you can't reach a consensual deal, there are "serious
7 questions about the City for a number of reasons."
8 A. Yes.
9 Q. What did you mean when you said that?
10 A. Oh, I meant what do we do? We have a lot of liability
11 on pension and OPEB, we simply don't have the money,
12 we can't go to the capital markets and borrow that
13 magnitude of money, we'd have to try to figure out
14 what to do next. That's all I meant.
15 Q. Okay. I would like to direct your attention to
16 request for admission number five, it's on page 10 of
17 Exhibit 17. The request to admit asked the City to
18 admit that the restructuring proposal proposes to
19 impair or diminish accrued financial benefits of the
20 participants of the Retirement Systems and the City
21 stated it admits that the restructuring proposal
22 contemplates a reduction in accrued financial benefits
23 to participants of the Retirement Systems but seeks
24 agreement and acceptance by plan beneficiaries. The
25 City's intention are to gain consensus with its

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1 creditors and propose a confirmable plan.
2 Did I read that correctly?
3 A. Yes.
4 Q. And similarly with respect to number 6, the request
5 was for the City to admit that the bankruptcy
6 recommendation proposes among other things to diminish
7 or impair accrued financial benefits of the
8 participants in the Retirement Systems. And the
9 response is the same; correct?
10 A. Yes.
11 Q. Number 12 asks the City to admit that you intend to
12 seek to diminish or impair the accrued financial
13 benefits of the participants in the Retirement Systems
14 through the Chapter 9 case?
15 A. Yes.
16 Q. And you see that distinction between the three
17 questions?
18 A. Yes.
19 Q. Your response to number 5 and number 6 both state that
20 the City seeks a consensual agreement; correct?
21 A. Yes.
22 Q. Your response to number 12, which is whether you would
23 seek to diminish or impair through the Chapter 9 case,
24 does not have the caveat regarding a consensual deal
25 being reached; correct?

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1 A. Yes.
2 Q. Why is there that difference? Is it because the City
3 intends to use the cramdown provisions of the
4 bankruptcy code to force a nonconsensual deal?
5 MR. SHUMAKER: Object to the form.
6 A. Without getting into discussions with counsel, I think
7 I can -- I think I can safely say without any waiver
8 that the City intends to preserve all of its rights in
9 answer number 12.
10 Q. A few moments ago when asked about what the City's
11 plan was if a consensual agreement could not be
12 reached, I believe your response was the City
13 currently has no plan if a consensual agreement is not
14 reached; correct?
15 A. That is correct, yes.
16 Q. Sitting here today is it your testimony the City has
17 no backup plan if a consensual deal is not reached?
18 MR. SHUMAKER: Object to the form.
19 A. Sitting here today it's my testimony that we have no
20 plan other -- first we have no plan, but we have no
21 plan or no effort other than to try to reach a
22 consensual resolution.
23 Q. If you don't get that consensual resolution, would you
24 resort to the cramdown provisions that are contained
25 within the bankruptcy code?

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1 A. I don't know. We'll have to -- as I've said before,
2 we'll have to cross that bridge when we get to it.
3 Q. So the City has no present intent to resort to any
4 cramdown provisions?
5 A. We haven't formulated a plan based upon consensus or
6 not yet.
7 Q. Maybe you haven't formulated a plan but have you
8 discussed the option?
9 A. Oh, we've discussed a lot of options. That's why I
10 say we want to reserve all rights.
11 Q. Let's get into the discussions. When was your first
12 discussion regarding using the cramdown provisions if
13 a nonconsensual agreement was not reached?
14 MR. SHUMAKER: Objection. I want to
15 caution the witness about getting into any
16 attorney-client communications. Subject to not
17 revealing anything along those lines, you can answer.
18 A. Without getting into any communications, I'm not sure
19 there was a specific discussion about the cramdown
20 provision.
21 Q. A moment ago I thought you said, and I'm quoting from
22 right in front of me, we discussed a lot of options,
23 that's why I say we want to reserve all rights and you
24 had mentioned that there was an analysis about
25 cramdown provision. So there either was or there was

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1 not.
2 A. I'm not -- what I'm trying to -- my testimony is I'm
3 not sure that we specifically discussed if we can't
4 get a consensual resolution, we go to cramdown. There
5 were other options that were discussed --
6 Q. Okay.
7 A. -- including that. I don't want to give you a binary
8 response.
9 Q. So I have two follow-up questions then.
10 A. Uh-huh.
11 Q. Number one, when was the cramdown issue discussed?
12 A. I don't recall a -- we -- without discussing what was
13 said with counsel, I don't recall --
14 MR. SHUMAKER: The question is when.
15 THE WITNESS: When?
16 A. We haven't -- I don't want to be unclear. There
17 hasn't been a specific cramdown discussion, but
18 cramdown is one of the options has been mentioned. We
19 have not sought to make a determination of if and when
20 we would pursue that alternative.
21 Q. Well, I don't suppose you're willing to offer any sort
22 of assurance today that the City would not resort to
23 the cramdown provisions if a consensual deal was not
24 struck?
25 A. I just said we want to preserve all options. I can't

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1 do that.
2 Q. And is it also true that you cannot remember the first
3 time that that option was discussed?
4 A. Ah --
5 Q. Let's put it this way. Was it prior to the filing on
6 July 18th or is it something you have discussed after
7 the filing?
8 A. I mean, the reason I'm hesitant is I'm a bankruptcy
9 practitioner, I'm certainly aware of nonconsensual
10 creditors being subject to cramdown, I'm just not
11 recalling a specific discussion. I'm not sure we had
12 to have a discussion.
13 Q. Okay.
14 A. Okay, I mean.
15 Q. What other options were discussed? You said you
16 discussed multiple options?
17 A. Well, without getting into negotiations, options
18 regarding which if any classes you could get, which
19 participants, other alternatives, anything short of
20 consensual, what else you might be able to offer,
21 whether you would listen to different factors that go
22 into the payout, whether the beneficiaries would come
23 with a different proposal. A number of things were
24 discussed.
25 Q. Who did you discuss those options with?

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1 A. Our counsel and investment bankers.
2 Q. Have you ever discussed -- so internally you discussed
3 those options?
4 A. Yes, yes, yes, yes.
5 Q. Have you discussed those options with the Retirement
6 Systems?
7 A. Have I personally discussed those with the Retirement
8 Systems? I don't recall. I don't think so.
9 Q. Have you discussed those options with any of the
10 actual individuals within the Retirement Systems?
11 A. I may have.
12 Q. And who would that be?
13 A. I don't remember. There are so -- I've had over -- I
14 think at this point I've had over 200 meetings, some
15 of those including individual members of the various
16 groups and that may have come up.
17 Q. So you've said several times throughout today and in
18 your responses to our discovery that the City's intent
19 and the City's hope, I think you used the word hope,
20 would be to get a consensual agreement.
21 A. Yes.
22 Q. And I think I recall you saying that your reading of
23 Article 9, Section 24 is that it would permit
24 consensual contractual negotiations?
25 A. I believe that's a fair characterization.

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1 Q. If that cannot be achieved, would you agree that
2 Article 9, 24, Section 24, would prohibit any other
3 impairment or diminution of the pension benefits?
4 A. No.
5 MR. SHUMAKER: Objection, calls for
6 speculation and for a legal conclusion.
7 Q. And why would you disagree with that?
8 A. For all the reasons we discussed earlier today and in
9 addition I think it calls for a legal conclusion as
10 far as what the import of 436 versus that provision
11 is.
12 Q. Let's talk a little bit about the Chapter 9 process
13 itself.
14 A. Yes.
15 Q. You seek authorization from the governor, step one?
16 A. Yes.
17 Q. Step two, the governor gives his authorization?
18 A. Yes.
19 Q. And then the City, you acting on behalf of the City,
20 are responsible for filing the Chapter 9 case itself;
21 correct?
22 A. Yes.
23 Q. And after you file the case, you and your attorneys
24 are responsible for the day-to-day activities in
25 carrying out that Chapter 9 case; correct?

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1 A. Yes.
2 Q. And in a Chapter 9 case only the municipality itself
3 can propose a plan of adjustment; correct?
4 A. Correct.
5 Q. So ultimately it will be the City that proposes a plan
6 of adjustment?
7 A. I believe so.
8 Q. And ultimately it will be the City that places in
9 front of the Court a method to deal with its pension
10 debt?
11 A. I believe so.
12 Q. And it is only the Court -- after the City has first
13 proposed the plan, it is the Court that can confirm
14 that plan?
15 A. Yes.
16 Q. But all the steps leading up to that confirmation are
17 acts taken by the City; correct?
18 A. I believe that's the Chapter 9 scheme.
19 Q. You mentioned earlier that in the June time frame
20 there were certain pieces of litigation that were all
21 coming to a head; correct? I'm referring to the
22 Syncora litigation and the Michigan state court
23 litigation.
24 A. Yeah, but I think we were talking about July when the
25 state court litigation began.

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1 Q. That's true. The state court litigation was not until
2 July, you mentioned in your testimony that you were
3 throughout the month of June there were concerns about
4 "losing control."
5 A. June through -- I think the testimony was at various
6 time frames, June 14th through July 3rd and June 1
7 through July 18th, and I was saying those time frames
8 there are a number of different issues. In the June
9 time frame I seem to remember, as in the prior
10 deposition you attended, we reached an agreement in
11 principal, then things started to go off the rails
12 with Syncora the following Monday on June 17th so
13 that's what my discussion was.
14 Q. And so consistent with that you said you agreed there
15 were concerns that throughout June things were
16 beginning to spin out of control and I think you used
17 the words losing control?
18 A. Yes, in June we were dealing with a number of
19 different issues, but we were trying to manage them as
20 best we could and then for the better part of
21 June/July we started being hit with a number of pieces
22 of litigation that just kept coming over the transom
23 and it appeared that we were starting to lose the
24 initiative.
25 Q. Okay. You mentioned earlier when you were

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1 characterizing the losing control phase of what was
2 going on --
3 A. Uh-huh.
4 Q. -- you said that someone counseled you that it was
5 irresponsible to be delaying the bankruptcy filing?
6 MR. SHUMAKER: Object to the form.
7 A. Uh-huh.
8 Q. Who was it that accused you of being irresponsible for
9 holding off on the bankruptcy filing?
10 A. Well, I wouldn't characterize it as accusation.
11 Q. Who counseled you that it was irresponsible?
12 A. It was --
13 MR. SHUMAKER: To the extent that it was
14 counsel, I don't want you to get into the
15 communication.
16 A. Okay, it was a privileged communication.
17 Q. So an attorney at Jones Day?
18 A. No, not necessarily. It -- various discussions with a
19 number of my team members including attorneys,
20 investment bankers and consultants.
21 Q. So during that time frame what was the event that
22 finally pushed you to actually start preparing the
23 documents to file the bankruptcy petition?
24 A. I don't know if there was an event that pushed me, but
25 I think there was a general consensus that if things

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1 continued with a number of different lawsuits going on
2 simultaneously, our own litigation against Syncora,
3 that things were spiralling out of control.
4 Q. And I'm assume that during that time frame it was you
5 that directed Jones Day to begin preparing the actual
6 documents that would eventually be filed in the
7 bankruptcy court; correct?
8 A. Yes.
9 Q. Do you know when you told them to go ahead and start
10 preparing the paperwork?
11 MR. SHUMAKER: Objection, asked and
12 answered, but you can answer again.
13 A. I'm not sure the exact date, but it was probably
14 sometime in that July time frame. Yeah.
15 Q. And I'm sure we don't just throw documents like that
16 together. Do you know how long they worked on the
17 documents before they were filed?
18 MR. SHUMAKER: Object to the form.
19 A. No, but I suspect it was at least several weeks.
20 Q. Do you recall when the first draft of the petition or
21 the accompanying documents was provided to you for
22 your review?
23 A. No. But I suspect it may have been -- I don't recall.
24 Q. Do you recall reviewing multiple drafts, for instance?
25 A. Oh, I think I saw several drafts, yeah.

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1 Q. If the governor had included a contingency on his July
2 18th letter --
3 A. Uh-huh.
4 Q. -- would you have had to rework the petition and the
5 corresponding papers?
6 MR. SHUMAKER: Objection, calls for
7 speculation.
8 A. That -- that depends upon what the contingency was.
9 Q. If there was, for example, some sort of contingency
10 regarding the pensions, did you have a separate
11 version of the documents --
12 A. Oh.
13 Q. -- in case there have a contingency placed by the
14 governor?
15 A. I don't -- I don't recall if it would have required a
16 separate version or if it would have required any
17 editing if any at that point.
18 Q. Well, you testified that you got his -- the governor's
19 approval letter somewhere around lunchtime.
20 A. Right.
21 Q. The petition was filed just a few hours later.
22 A. Right.
23 Q. So I'm assuming that the papers were ready to go
24 because it was just a few hours of turnaround time;
25 correct?

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1 MR. SHUMAKER: Objection to form.
2 A. Well, that's your assumption, but the reality is you
3 can commence a bankruptcy as you know by filing a
4 petition without other documents. So if the
5 contingency you're talking about, depending upon what
6 it is, there may have been other things we would have
7 had to factor too and edit, I just don't know.
8 Q. You were asked earlier about an email from
9 Corinne Ball --
10 A. Yes.
11 Q. -- where she mentioned the Bloomberg Foundation?
12 A. Yes.
13 Q. Did the Bloomberg Foundation ever end up providing any
14 funds with regard to either your salary or the
15 Emergency Manager -- the Emergency Manager --
16 A. Effort.
17 Q. -- project, if you will?
18 A. No, in fact --
19 MR. SHUMAKER: Object to form.
20 A. -- in fact, I think the memo that followed on that
21 memo said no, I don't want to do that.
22 Q. Do you know if any other private party has provided
23 funding in addition to your salary which has already
24 been made public? Do you know if there were any other
25 private parties that provided funding in addition to

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1 that?
2 A. Not to me.
3 (Marked Exhibit No. 19.)
4 Q. I would like to give you Exhibit Number 19. This is
5 the City's interrogatory responses --
6 A. Yes.
7 Q. -- to the Retirement Systems' discovery requests.
8 A. Yes.
9 Q. After page 12 there's a verification by you.
10 A. Yes.
11 Q. Is that your signature?
12 A. Yes, should be.
13 Q. On page 10.
14 A. Yes.
15 Q. On page 10 there's an interrogatory regarding private
16 funds as defined in Section 93(F) of PA 436.
17 A. Right.
18 MR. SHUMAKER: You're referring to number
19 6, counsel?
20 MS. GREEN: Yes.
21 Q. At this time are you aware of any private funds as
22 defined in PA 436 that have been used to supplement
23 your salary or compensation?
24 A. Subject to the answer, there are no private funds.
25 All I get is the compensation that's provided to me

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1 pursuant to my contract and in fact I have not been
2 seeking any benefits under that contract such as
3 commuting expense, healthcare, malpractice insurance,
4 directors and officers insurance. In fact, I've been
5 subsidizing my efforts out of my own pocket.
6 MS. GREEN: If that situation changes and
7 private funds are provided, I would request a standing
8 request for supplementation to be made aware if that
9 happens.
10 MR. SHUMAKER: I'm sure --
11 MS. GREEN: I'm directing that to your
12 counsel. You don't have to personally let me know.
13 MR. SHUMAKER: We'll look into that if that
14 would happen.
15 MS. GREEN: I appreciate that.
16 THE WITNESS: I have not asked and there is
17 no intent or expectation in that regard.
18 Q. The -- I have one last question.
19 We talked about the draft of the petition
20 being prepared by Jones Day. There were media reports
21 that the City was planning to file on Friday, July
22 19th. Do you recall seeing those?
23 A. Yes.
24 Q. What was it that made the City -- that prompted the
25 City to file them instead on July 18th at 4:06 p.m.?

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1 A. Counselor, just because they're media reports doesn't
2 mean that that was accurate.
3 Q. Was there ever a plan to file them on the 19th?
4 Setting aside what the media reported, was there a
5 plan to file them on the 19th?
6 A. No, my plan was to have the permission, the authority,
7 to file them and make that call at some point after I
8 transmitted my letter of July 16.
9 Q. Were any of your conversations on the 18th or the 17th
10 relating to the timing of the petition?
11 A. Outside of communications with counsel?
12 MR. SHUMAKER: I'm going to object to the
13 form just -- I'm not following your question,
14 counselor.
15 Q. Were any of the conversations that you had on the 17th
16 or the 18th with, for instance, the governor, we've
17 talked about these conversations, were any of those
18 conversations relating to the timing of the filing
19 itself?
20 MR. SHUMAKER: Again, to the extent that
21 you're going to go into the content of the
22 conversations where counsel was present between
23 Mr. Orr and the governor, I'm going to instruct him
24 not to answer.
25 Q. Were there any conversations that you had without

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1 counsel present?
2 A. No.
3 Q. And are you not willing to answer even what topics --
4 in broad categories of topics that were discussed?
5 MR. SHUMAKER: Again, to the extent that
6 they reveal what the communications are, I'm going to
7 instruct him not to answer.
8 Q. Do you know if anyone else from your team had
9 conversations, outside of conversations with counsel,
10 relating to the timing of the filing?
11 A. There may have been conversations. I'm not aware of
12 any specific ones.
13 MS. GREEN: I don't have any further
14 questions. Do you have follow-up?
15 MR. SHUMAKER: Thank you, counsel.
16 THE VIDEOGRAPHER: This concludes the
17 deposition and we're going off the record at 6:12 p.m.
18 (Deposition adjourned at 6:12 p.m.)
19 * * *
20
21
22
23
24
25

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1 State of Michigan)
2 County of Genesee)
3 Certificate of Notary Public
4 I certify that this transcript is a complete, true and
5 correct record of the testimony of the witness held in this
6 case.
7 I also certify that prior to taking this deposition,
8 the witness was duly sworn or affirmed to tell the truth.
9 I further certify that I am not a relative or an
10 employee of or an attorney for a party; and that I am not
11 financially interested, directly or indirectly, in the
12 matter.
13 WITNESS my hand this 19th day of September,
14 2013.
15
16
17
18 Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267
19 Certified Realtime Reporter
20 Registered Merit Reporter
21 Certified LiveNote Reporter
22 Certified Shorthand Reporter
23 Notary Public, Genesee, Michigan
24 Acting in Oakland County, Michigan
25 My Commission Expires: 9-19-18

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DEPOSITION ERRATA SHEET

Our Assignment No. 471048/NYC 337176
Case Caption: In re City of Detroit, Michigan

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.
Signed on the _____ day of _____, 20__.

_____
KEVYN ORR

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DEPOSITION ERRATA SHEET

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KEVYN ORR

Page 307

DEPOSITION ERRATA SHEET

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KEVYN ORR

EXHIBIT C

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

----------X
:
In re : Chapter 9
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
Debtor. : Hon. Steven W. Rhodes
----------X

The videotaped deposition of GAURAV MALHOTRA, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before JULIANA F. ZAJICEK, CSR No. 84-2604, a Certified Shorthand Reporter of said State of Illinois, at the offices of Jones Day, Suite 3500, 77 West Wacker Drive, Chicago, Illinois, on September 20, 2013, at 9:30 a.m.

Page 2

APPEARANCES:

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Page 3

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MR. RYAN C. PLECHA,
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appeared telephonically on behalf of the
Detroit Retired Police and Fire Fighters
Association, Detroit Retired City
Employees Association, Don Taylor,
individually and as president of the
RDPFFA, and Shirley Lightsey, individually
and as president of the DRCEA;

Page 4

APPEARANCES: (Continued)

STROBL & SHARP, P.C.,
(300 East Long Lake Road, Suite 200,
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Retired Detroit Police Members
Association.

REPORTED BY: JULIANA F. ZAJICEK, C.S.R.
CERTIFICATE NO. 84-2604.

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1 MS. BRUNO: Do you want to swear in the witness.
2 (WHEREUPON, the witness was duly
3 sworn.)
4 MS. BRUNO: Good morning, Mr. Malhotra. My name
5 is Leah Bruno. I am at the Dentons firm representing
6 the Committee. And we are here to take your
7 deposition today.
8 Before we go into the preliminaries, I'm
9 going to ask that everyone in the room and on the
10 phone just identify themselves for the record.
11 We'll start to my left.
12 MR. STEELE: Jason Steele from Lowenstein
13 Sandler. I represent AFSCME.
14 MR. DiPOMPEO: Christopher DiPompeo from Jones
15 Day. We represent the Debtor, the City of Detroit,
16 and the witness.
17 MR. STEWART: Jeff Stewart, Jones Day, the
18 Debtor and the witness.
19 THE WITNESS: Gaurav Malhotra. Ernst & Young.
20 MS. BRUNO: That's everybody in the room. So if
21 the people on the phone want to give it a try.
22 MR. FLICK: This is Wayne Flick from Latham &
23 Watkins, unfortunately stuck in Los Angeles due to
24 flight problems.

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1 (WHEREUPON, there was a short
2 interruption.)
3 MS. BRUNO: Why don't we pick up where we left
4 off.
5 MR. FLICK: This is Wayne Flick from Latham &
6 Watkins on behalf of Ernst & Young.
7 MR. DeCHIARA: Peter DeChiara from Cohen, Weiss
8 & Simon, LLC on behalf of the International Union,
9 UAW.
10 MR. STEVENSON: John Stevenson from Clark Hill
11 on behalf of the Police and Fire Retirement System of
12 the City of Detroit and the General Retirement System
13 of the City of Detroit.
14 MR. PLECHA: Ryan Plecha from Lippitt O'Keefe
15 representing the Retiree Association parties.
16 MS. TAUNT: Meredith Taunt from Strobl & Sharp
17 representing the Retired Detroit Police Members
18 Association.
19 MS. BRUNO: Is that everyone on the phone?
20 MS. KAUFMAN: This is Dana Kaufman from Weil
21 Gotshal & Manges representing Financial Guaranty
22 Insurance Company.
23 MS. BRUNO: Okay. If that's everyone, we'll
24 move forward, finally, here.

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1 GAURAV MALHOTRA,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 EXAMINATION
5 BY MS. BRUNO:
6 Q. Mr. Malhotra, I understand that you were
7 deposed recently, so I know you've been through the
8 drill, but we'll just set a couple of the ground rules
9 here.
10 If I ask you any questions that you don't
11 understand, please ask me. I'm not trying to trick
12 you. I want us to understand one another. So if you
13 need me to clarify any of my questions, I'm happy to
14 do so.
15 When responding to any questions that I
16 ask you, please wait for me to finish the question and
17 respond with a verbal answer so the court reporter can
18 get your answer and we can have an accurate
19 transcript.
20 Do those sound okay to you?
21 A. Yes.
22 Q. Okay. What did you do to prepare for your
23 deposition today?
24 A. I had a call with the team here at -- from

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1 Jones Day and Latham & Watkins a couple of days ago
2 for about an hour and a half.
3 Q. Was anyone from the City, a non-lawyer on
4 the call?
5 A. No.
6 Q. Let me backtrack.
7 Anyone not at Jones Day or Latham &
8 Watkins on the call?
9 A. From EY, I think we had somebody attending
10 from our general counsel's office, Marg Hosbach, yes.
11 Q. I'm sorry. Who was that?
12 A. Marg Hosbach is her name.
13 Q. Thank you.
14 Anyone else?
15 A. No.
16 Q. And how long was that call?
17 A. About an hour and a half.
18 Q. What did you discuss during that
19 conversation?
20 MR. STEWART: Objection; instruct him not to
21 answer.
22 MR. FLICK: Join.
23 BY MS. BRUNO:
24 Q. What day did you have that call?

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1 A. We had it on Wednesday of this week.
2 Q. Did you review anything in preparation for
3 today?
4 A. For today?
5 Q. Yes.
6 A. I looked at my declaration and I think
7 that's generally about it, in terms of reviewing
8 information for today.
9 Q. Did you review your prior deposition?
10 A. No.
11 Q. Have you seen your prior deposition?
12 A. I think I received it, but I haven't gone
13 through it.
14 Q. Have you reviewed any of the other
15 depositions taken in this matter?
16 A. In this matter?
17 Q. In this bankruptcy.
18 A. I have received them. I haven't gone
19 through them.
20 Q. Have you discussed the testimony given
21 with anyone -- excuse me. Let me rephrase that.
22 Have you discussed the contents of those
23 depositions with anyone?
24 MR. STEWART: You can answer yes or no.

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1 BY THE WITNESS:
2 A. No.
3 BY MS. BRUNO:
4 Q. I've read your prior deposition, so I'm
5 going to endeavor not to tread the same ground that
6 you've already covered. There may be some overlap due
7 to necessity, but I am going to do my best not to ask
8 you the same series of questions and cover the same
9 territory as previously discussed of you. So, if you
10 give me a little leeway, I will do my best not to
11 waste your time today. Okay.
12 I understand that you -- that was your
13 first deposition two weeks ago, is that correct?
14 A. That is correct.
15 Q. And have you ever provided sworn testimony
16 in any setting outside of a deposition?
17 A. No.
18 Q. Your deposition on September 9th was the
19 first time you've provided any type of sworn testimony
20 in a bankruptcy proceeding?
21 A. Yes.
22 Q. Are there instances where you have
23 submitted written reports in other bankruptcies?
24 MR. STEWART: Can you define so he is clear what

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1 you mean by "report"?
2 BY MS. BRUNO:
3 Q. A written declaration or report on behalf
4 of your corporation that you are working for.
5 A. I think so. I don't recall off the top of
6 my head, but I have other bankruptcy cases that are
7 ongoing where I have submitted written reports or --
8 yeah, specific information that is pertinent to the
9 case or -- or Ernst & Young's engagement in connection
10 with a case. So, I don't know if that's what you are
11 referring to with specific questions on sworn
12 testimony, but I have provided specific information in
13 other Chapter 11 cases that I'm involved in.
14 Q. Focusing on Chapter 9 bankruptcies, can
15 you tell me what Chapter 9 bankruptcies you have
16 provided such information in?
17 A. None.
18 Q. Is this the first Chapter 9 bankruptcy
19 you've done work on?
20 A. Yes.
21 Q. Before your work for the City of Detroit
22 in this matter, do you have experience with working
23 with other governmental clients?
24 A. I do.

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1 Q. Approximately how many?
2 A. I would say the most relevant one is
3 Detroit public schools.
4 Q. Are there others besides Detroit Public
5 Schools?
6 A. I am involved in other situations that are
7 in the public sector currently.
8 Q. Can you tell me what those are?
9 A. No. Those are confidential.
10 Q. You have not been disclosed publicly in
11 any of those matters?
12 A. That is correct.
13 Q. Outside of the City of Detroit matter, are
14 there -- and the ones that you are working on
15 currently, are there any other governmental clients
16 you have done work for?
17 A. Personally, no. I think those are the
18 ones that -- that I can recall.
19 Q. Focusing on the Detroit Public Schools,
20 what type of work did you personally do on that
21 matter?
22 A. I think the -- our engagement letter and
23 the contents thereof are what we did at Detroit Public
24 Schools. The overall specific scope is I would

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1 believe generally confidential. However, I can give
2 you a broad understanding that it was generally
3 related to liquidity forecasting and looking at
4 different assumptions with respect to cost saving
5 measures, and I think that's all I will say on that.
6 Q. Is that engagement still ongoing?
7 A. I'd rather not answer that.
8 Q. When did that engagement begin?
9 A. It was in 2011, is my recollection. It
10 could have been earlier, but that's my general
11 recollection.
12 Q. Mr. Malhotra, I'm going to direct you to
13 your declaration, which was previously marked as
14 Exhibit 1 in your prior deposition.
15 Do you have a copy of it or would you like
16 me to provide it to you?
17 A. I would like you to provide it to me,
18 please.
19 (WHEREUPON, the document was tendered
20 to the witness.)
21 BY MS. BRUNO:
22 Q. Directing your attention to Paragraph 6,
23 Mr. Malhotra, you are describing some of your
24 experience in Paragraph 6. And the second sentence

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1 states, "In addition, in the public sector, I was
2 involved in the recent restructuring efforts of
3 Detroit Public Schools," as you previously testified,
4 that's correct, correct?
5 A. Yes.
6 Q. Is there any other experience outside of
7 Detroit Public Schools that you can publicly disclose?
8 A. In the government sector?
9 Q. In the public sector.
10 A. In the public sector, I would not want to
11 disclose any of the other engagements.
12 Q. And those are all engagements that are
13 currently ongoing?
14 A. Up to a certain extent, yes, there is work
15 that's pending or about to get initiated or in certain
16 cases, certain aspects have been completed, but in
17 general, yes.
18 Q. Paragraph 7 of your declaration states
19 that you were engaged by the City in May of 2011,
20 correct?
21 A. That's what it states, yes.
22 Q. Is that an accurate statement?
23 A. Yes.
24 Q. How was that engagement undertaken?

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1 MR. STEWART: Objection.
2 BY MS. BRUNO:
3 Q. My -- what I'm trying to get to, was there
4 an RFP or how were you contacted about that engagement
5 initially?
6 A. It was based on the work we did at Detroit
7 Public Schools is the way that we had discussions with
8 the Mayor's office, with the State Treasurer's office
9 and thereby our engagement or our work got initiated
10 with respect to liquidity forecasting.
11 Q. I just need some clarification on your
12 answer.
13 When you say that you had discussions with
14 the Mayor's office and the State Treasurer's office,
15 were those discussions related to Detroit Public
16 Schools or are these new discussions that were
17 initiated with respect to the City of Detroit
18 bankruptcy?
19 A. The latter.
20 Q. The latter?
21 A. I'm sorry. Nothing related to the
22 bankruptcy. It was related to the City of Detroit.
23 Just to clarify, it wasn't related to the City of
24 Detroit bankruptcy.

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1 Q. Correct.
2 And what was the nature of those
3 discussions? Can you give me so more information?
4 A. Sure. It was generally to see how -- how
5 EY could help with looking at the City's liquidity
6 position and helping forecast what the liquidity
7 position could be over a short period of time.
8 Q. Approximately when were those discussions?
9 When did those discussions take place?
10 A. I think it was right around this
11 particular timeframe, around the May of 2011, is my
12 recollection.
13 Q. Who were those discussions -- who did
14 those discussions involve? Did they -- from the
15 Ernst & Young side, did they involve you?
16 A. Yes.
17 Q. Or someone else?
18 A. Me.
19 Q. You solely or you in addition to other
20 people?
21 A. It was generally myself.
22 Q. On the side of the City, who was involved
23 in those initial discussions?
24 A. Now we are going back some time, but I

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1 would think it would have been the former Chief of
2 Staff Kirk Lewis, it would have been the former Chief
3 Operating Officer Chris Brown. I think those are the
4 folks at least I remember. It could have been the
5 Mayor, but I don't recall at this juncture.
6 Q. And can you give me some more detail on
7 what you understood your engagement would include in
8 those initial discussions?
9 A. Sure. It was just to get an understanding
10 of what the City's cash flow position was and what the
11 short-term outlook for the City's liquidity
12 projections could look like.
13 Q. Was there any discussion about the
14 prospect of the City filing Chapter 9 bankruptcy in
15 those initial discussions?
16 A. No.
17 Q. Prior to entering into the engagement, was
18 there any formal presentation or pitch provided by
19 Ernst & Young?
20 A. I do not recall.
21 Q. If there was one, would you have been part
22 of it?
23 A. Yes.
24 Q. Mr. Malhotra, I'm going to hand you what

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1 we're going to mark as Exhibit 8.
2 MR. TEELE: I'm sorry. What number?
3 MS. BRUNO: 8.
4 (WHEREUPON, a certain document was
5 marked Malhotra Deposition
6 Exhibit No. 8, for identification, as
7 of 09/20/13.)
8 BY MS. BRUNO:
9 Q. And you can take your time to look at this
10 document. I'm going to ask you some questions about
11 it. Let me know when you are ready to proceed with
12 some questions.
13 A. Sure. I'm ready.
14 Q. Mr. Malhotra, I'll represent to you that
15 I've handed you what is titled Amendment No. 7 to
16 Statement of Work.
17 Can you tell me what this document is?
18 A. This is our most recent engagement letter
19 with the City.
20 Q. And reviewing the introductory paragraph,
21 it is clear that there was an original agreement,
22 correct?
23 A. That is correct.
24 Q. And that this is Amendment No. 7 to that

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1 original agreement, correct?
2 A. That is correct.
3 Q. In your prior deposition, there was a
4 request made for the production of the original
5 engagement letter.
6 Do you recall that?
7 A. Possibly. I don't recall specifically
8 because there were a lot of requests, but this -- I
9 assume this is the engagement letter you are referring
10 to, but if there is more, probably --
11 MR. STEWART: It was memorialized in a letter
12 you responded to.
13 THE WITNESS: Okay.
14 BY MS. BRUNO:
15 Q. Mr. Malhotra, I'll represent to you this
16 is the only document that we've been able to locate
17 with respect to the Ernst & Young engagement, so I'm
18 going to have to use this to kind of backtrack because
19 I don't have a copy of the original engagement letter.
20 A. Sure.
21 Q. And we'll request that an additional
22 effort be made to produce that to your counsel.
23 MR. STEWART: If you could, just do that in a
24 letter after we are done, so otherwise it gets

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1 confusing to try and go back to the transcript.
2 MS. BRUNO: We will do that.
3 BY MS. BRUNO:
4 Q. Can you tell me, Mr. Malhotra, in the
5 original SOW or original agreement, was there similar
6 to what's in this a bullet point listing of the items
7 that would be included in the original statement of
8 work?
9 A. Yes.
10 Q. Who drafted the specific items that would
11 be involved in the original statement of work?
12 A. It would have been myself along with the
13 rest of the team.
14 Q. When you say "the rest of the team," who
15 are you referring to?
16 A. I would say the rest of the EY team that
17 would have gone through all of our quality review team
18 that looks at any scope of work with respect to what
19 we are putting out in general would be the folks from
20 our EY standpoint.
21 Q. How is that process, and what I'm
22 referring to is the identify -- let me start over.
23 How does that process work, and I'm
24 talking about the identification of the specific

Page 21

1 elements of the statement of work, what was the
2 process used in this matter?
3 MR. STEWART: Objection.
4 BY THE WITNESS:
5 A. In -- well, maybe if I can give you
6 specifics, so in terms of how this statement of work
7 is put together, which in general is the process that
8 we go through for any statement of work, is that we
9 highlight what work the client may require and what
10 work we may be -- what we will be willing to do.
11 Generally the statement of work is sometimes then, of
12 course, all reviewed by other members of the team in
13 terms of the deal team. It is reviewed by our general
14 counsel's office, unless they are -- unless the
15 amendments are fairly basic in nature are generally
16 just extending some of the prior work, but it's
17 reviewed by our quality review folks. And then the
18 engagement letter is submitted to the client for --
19 for what they need to sign on, not necessarily are all
20 aspects of the scope of work defined with any sort of
21 a specific deliverable. So sometimes there are
22 components of a statement of work that are not
23 undertaken and sometimes they are -- and most of the
24 times they are, but, so, I don't know if that answers

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1 your question or not.
2 Q. That's part of it. And I was interested
3 in that, so that's helpful.
4 But where I'm trying to get to, is there a
5 negotiation process with, for example, in this case
6 the City where you provide the original statement of
7 work and they come back to you and say, we want this
8 or we don't want that? Did that process take place in
9 this engagement?
10 A. I'll tell you at least with respect to
11 this particular statement of work, there was feedback
12 that we received in the context of fees, but not
13 necessarily in the context of the scope of work.
14 Q. And I'm seeking a clarification here.
15 Are you talking about Amendment No. 7 or
16 are you talking about the original statement of work
17 or the original agreement?
18 A. I was talking about Amendment No. 7.
19 Q. Okay.
20 A. But in general, going back, I don't recall
21 of specific discussions or back and forth in terms of
22 the contents of the scope of work. I have not gone
23 through the seven amendments going back for this
24 process, but I'm sure there would be certain aspects

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1 of that statement of work, of the different statements
2 of work that would have been completed in its entirety
3 and there would be certain that wouldn't have been
4 kicked off at all, depending on these are long-term
5 engagements and the needs of the client change over a
6 course of time.
7 Q. If you look to the first sentence of the
8 Amendment No. 7, Statement of Work, halfway through it
9 states -- I want to make sure I give you the right
10 dates here before -- well, I have a couple of
11 questions.
12 So, in this case, Amendment No. 7 is dated
13 July 17th, is that correct?
14 A. That's correct.
15 Q. But it's effective as of June 1st?
16 A. That is correct.
17 Q. Which is approximately six weeks prior,
18 correct?
19 A. Yes.
20 Q. What is the reason for that lapse of time?
21 Why is it essentially backdated or effective as of a
22 prior date?
23 A. Because our work that is involved in the
24 statement of work started right around the June 1st

Page 24

1 timeframe. And -- but, however, between the process
2 of getting the actual engagement letter signed, it
3 took roughly that six weeks process. But in general,
4 the work that's contained in Amendment No. 7 started
5 by around that June 1st timeframe.
6 Q. What was the cause for the six-week time
7 delay?
8 A. It likely was between us getting the
9 letter together and the City having a view in terms of
10 what the fees associated with this work would be and
11 us coming back with a revised proposal on lower fees.
12 And so I think it was -- it was that timeframe between
13 the back and forth of the discussions that took place
14 to get the engagement letter signed.
15 Q. There is a fee schedule amended -- or
16 attached to this amendment, is that correct?
17 A. Yes.
18 Q. And it's at page -- what is marked page 8
19 of 8 in this document.
20 Are these the fees that you were
21 discussing with the City?
22 A. Yeah, these were -- these were the fees
23 that we were discussing with the City, yes.
24 Q. And then based on the information in this

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1 Amendment No. 7, I understand these are 65 percent
2 Ernst & Young's normal rates, is that correct?
3 A. These are 65 percent of the standard
4 rates, yes.
5 Q. Of the standard rates?
6 A. Of the standard rates with respect to, you
7 know, different people and the different sub service
8 lines working on this engagement.
9 Q. And I know that you are a principal,
10 Mr. Malhotra, so is your rate at the top end of this
11 chart here?
12 A. Yes.
13 Q. Is your rate $805 an hour?
14 A. I believe the rate that is being charged
15 to the City is going to be $800 an hour for my time.
16 And, however, it is subject to an additional holdback
17 amount that is clarified in the fee arrangement as
18 proposed here depending on how long this case goes.
19 Q. Is this rate schedule a reduction from the
20 rates that Ernst & Young was charging the City prior
21 to this amendment?
22 A. Can you reask that question, please?
23 Q. Is this rate schedule provided in the
24 Amendment No. 7, is this a reduction in the rates that

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1 Ernst & Young was charging the City prior to the
2 Amendment No. 7?
3 A. Through the seven amendments, Ernst &
4 Young has gone through a variety of discounts and rate
5 structures that the City has been provided, in
6 addition to hourly rates, in addition to fixed fee
7 rates. So it's a variety of overall rate structures
8 that have been used to provide the City discounts in
9 the context of the work that EY has done.
10 Q. Who on behalf of Ernst & Young negotiates
11 those rates?
12 A. Negotiates those rates with whom?
13 Q. I assume the City. Is there someone else?
14 A. No. I meant if your question was
15 internally or in terms of what rates are being
16 discussed or externally?
17 If the answer is internally, our rates are
18 standard rates. With the client, it was generally a
19 discussion that I had with respect to what our fees
20 were after discussing them with our team internally.
21 Q. And who at the client have you had those
22 discussions with?
23 A. It has been a variety given the fact that
24 we've been assisting the City for a while. It has

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1 been a variety of folks. It included the Chief
2 Operating Officer Chris Brown; it included the
3 Emergency Manager, currently Kevyn Orr, with respect
4 to some of those discussions in general, in fact. So
5 it -- it has been generally the City, but I would say
6 in terms of Amendment No. 7, the -- we also got some
7 feedback from the State with respect to our scope of
8 work in the context of our fees.
9 Q. What feedback did you get from the State
10 on Amendment No. 7?
11 A. It was to lower the fees.
12 Q. And who at the State did you have that
13 contact with?
14 A. Rich Baird.
15 Q. Amendment No. 7 is signed by Kevyn Orr,
16 correct?
17 A. Yes.
18 Q. And this is your signature on the -- on
19 page 7, correct?
20 A. Yes.
21 Q. Who signed the original statement of work,
22 do you recall?
23 A. I do not. It would have either been
24 myself or Dave Williams who is our restructuring team

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1 leader. It could have been either one of us, but I
2 don't recall.
3 Q. On behalf of the City, who signed?
4 A. I do not remember.
5 Q. Did there -- when you entered into the
6 original engagement, who was your direct report at the
7 City?
8 A. It was the Chief of Staff Kirk Lewis, and
9 the Chief Operating Officer -- the former Chief
10 Operating Officer Chris Brown.
11 Q. Did there come a time where that direct
12 reporting person changed?
13 A. Kirk Lewis has since moved on and so has
14 Chris Brown. So the answer is yes.
15 Q. When did it change in terms of who you
16 reported to?
17 A. It would have changed when they moved on
18 from the City.
19 Q. And when they moved on from the City, who
20 became the people that you reported directly to?
21 A. Generally it was Chris Andrews, the
22 Program Management Director, and the -- who was the
23 former Program Management Director and the former
24 Chief Financial Officer Jack Martin.

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1 Q. How often would you directly communicate
2 with any of the people you directly reported to, the
3 four individuals you just named?
4 A. It was on a weekly basis in general,
5 sometimes more often, sometimes less.
6 Q. And let me ask: Are you still directly
7 reporting to Chris Andrews and Jack Martin or someone
8 else?
9 A. Chris Andrews and Jack Martin have moved
10 on from the City. So, now it's generally Kevyn Orr
11 along with updates given to Gary Brown who is the
12 Chief Operating Officer and Jim Bonsall, the Chief
13 Financial Officer, and Kevyn Orr, of course, in terms
14 of the team that we are dealing with.
15 Q. And how frequently do you directly
16 communicate with those individuals?
17 A. Generally weekly, sometimes more,
18 sometimes less. It depends on a particular week.
19 Q. If I can direct your attention back to the
20 first paragraph of Amendment No. 7, it states that the
21 original contract is dated October 28th, 2011, but was
22 effective as of May 16th, 2011.
23 What was taking place during that
24 five-month time period with respect to the original

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1 statement of work?
2 A. I don't recall specifically. However, our
3 work started right around May 16th of 2011. But
4 between the process of getting an engagement letter in
5 place that was acceptable to the City and in
6 conjunction with the template that Ernst & Young uses
7 with respect to an engagement letter, there was a lot
8 of communication between, I would say, the legal team
9 at the City and EY and the attorneys that we had
10 working on this particular engagement letter to just
11 make sure that both the City and Ernst & Young were
12 comfortable with the construct of the letter given the
13 fact that EY did not have a previous engagement letter
14 in place with the City of Detroit.
15 Q. We discussed -- earlier in your deposition
16 we discussed the process of drafting and exchanging
17 the specific deliverables identified in Amendment
18 No. 7.
19 Do you recall that testimony?
20 A. Can you repeat that question again,
21 please?
22 Q. You and I just previously discussed the
23 back and forth between Ernst & Young and the City with
24 respect to the specific deliverables identified in

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1 Amendment No. 7 here.
2 Do you recall taking me through that
3 process?
4 A. I think if you go back to the testimony, I
5 just want to make sure that I understand your specific
6 questions in terms of the back and forth. I did
7 mention to you that there was discussions with respect
8 to the fees, but I do not recall a lot of the specific
9 back and forth on specific deliverables in
10 Amendment 7.
11 Q. Okay. I'm not trying to trick you.
12 A. I'm just saying what I recall.
13 Q. And so what I guess is the real question
14 I'm getting to was: In the original statement of
15 work, is there a similar listing as contained on
16 Amendment 7 deliverables or anticipated deliverables
17 that E&Y would provide to the City?
18 A. I believe they should be, yes.
19 Q. And do you recall whether there was a
20 negotiation or process of exchanging the documents for
21 purposes of discussing the deliverables between
22 Ernst & Young and the City, with respect to the
23 original SOW?
24 A. In terms of exchanging documents

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1 between -- discussions within EY or discussions with
2 EY and the City?
3 Q. Discussions between EY and the City.
4 A. I don't remember specifically in terms of
5 we had discussions back and forth around specific
6 deliverables. I think there was a general
7 understanding in terms of the work that EY would do,
8 which would be around construct of the -- the
9 liquidity forecasting and any other cost saving
10 assumptions, trying to quantify those. And I don't --
11 I don't believe there was a lot of back and forth with
12 respect to scope of work that EY was going to assist
13 with.
14 Q. And, of course, there are six amendments
15 prior to the one that we're looking at now.
16 Does each of those amendments have a
17 similar listing of deliverables?
18 A. They generally -- every amendment would
19 generally have either an extension of a scope of work
20 that's being provided or if anything new is --
21 potentially needs to get added, it would have, yes.
22 Q. In this case does each of the prior
23 amendments, to the best of your recollection, have a
24 similar listing of deliverables or anticipated

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1 deliverables by Ernst & Young?
2 A. Just to make sure, when you say "similar
3 deliverables," whether those deliverables or the
4 statement of work was exactly the content of what's in
5 Amendment No. 7, the answer is no. If your question
6 is with respect to whether generally some specificity
7 around what EY would be doing, the answer is yes.
8 Q. Okay. Thank you. That is what I meant.
9 What was the reason why Ernst & Young
10 provided these six prior amendments?
11 A. It's generally to provide the same or
12 similar type of work that we started off doing with
13 liquidity forecasting, assisting in the quantification
14 of certain cost concessions that the City was having
15 discussions with -- with its union leadership, looking
16 at alternatives in terms of how liquidity could be
17 boosted, and that those were generally -- and just
18 looking at overall restructuring alternatives
19 specifically for the City in terms of how to address
20 the dire financial position that the City was faced
21 with.
22 Q. Let me ask the question a different way.
23 How does it come about, and we'll talk
24 specifically about this engagement, how does it come

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1 about that Ernst & Young, or if it's the City, tell me
2 that, how does it come about that a decision is made
3 that an amendment needs to be made to the original
4 SOW?
5 A. It was generally when the timeframe
6 associated with an amendment was expiring or the fees
7 associated with an amendment were not -- were not
8 being able to cover the scope of work and if there
9 were any additions that were being made to the scope
10 of work. I would say those were the three -- or would
11 have been, in my recollection, one of the three
12 reasons why a statement of work would be extended
13 through an amendment.
14 Q. With your experience on this engagement,
15 is it -- has it been Ernst & Young stating an
16 amendment is necessary or is it -- has it been the
17 City?
18 A. My general recollection is that it's EY
19 that has been -- that has said that either, you know,
20 the timeframe on the engagement letter has expired,
21 and which has generally been, I would say, the -- the
22 norm, or the aspect with respect to the fees need to
23 change in the context of the scope of work. But I
24 would say it is generally EY.

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1 Q. If I can direct your attention to page 5
2 of the Amendment 7 SOW. And you'll see a section
3 entitled Timetable. And it states that you expect
4 that this -- and this is the additional summer 2013
5 services that are identified in this SOW, is that your
6 understanding?
7 A. Yes.
8 Q. That it will extend until December 31st,
9 2014, is that correct?
10 A. Yes.
11 Q. Do you anticipate an Amendment No. 8 being
12 necessary?
13 A. That's a hypothetical question. It
14 depends on what the City -- where the City is in terms
15 of its overall restructuring and, you know, how EY can
16 continue to add value and assist the City.
17 Q. Turning to page 6 -- I'm sorry. I'm
18 sorry. Page 4 is what I wanted to send you to.
19 The last sentence on the bottom of page 4
20 states, "For the avoidance of doubt, the Services do
21 not" -- and Services with a capital S -- "do not
22 include EY serving as an expert witness in connection
23 with your Chapter 9 proceedings or otherwise."
24 Do you see that?

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1 A. Yes.
2 Q. And that is referring to -- the Services
3 in that sentence are referring to the services
4 identified above it and in this Amendment No. 7,
5 correct?
6 A. Yes.
7 Q. Are you currently providing work to --
8 scratch that. Let me strike that.
9 Is your deposition here today considered
10 part of the services included in Amendment No. 7?
11 A. I'm here, so my -- my assumption unless,
12 you know, Wayne Flick from Latham tells me otherwise,
13 that would be my general understanding, it would be in
14 connection with the work that we are doing on the
15 statement -- the Amendment No. 7.
16 Q. Are there any services being provided by
17 Ernst & Young to the City right now that you are aware
18 of that fall outside of the services identified in
19 Amendment No. 7?
20 A. I do not know of any other specific
21 increment -- additional statements of work that have
22 been executed. There are other opportunities that EY
23 is providing some services to the City. However, it's
24 not -- that work is just in an evaluative mode versus

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1 I believe I do not know of a specific letter or an
2 amendment that has been signed yet.
3 Q. I want to understand your answer a little
4 better.
5 This additional work that you state is in
6 an evaluative mode, is that work that E&Y is providing
7 in connection to the bankruptcy?
8 A. Well, I can tell you what the work is. It
9 is not necessarily in connection with the bankruptcy.
10 The work is to look at the revenues that are
11 attributable to the City from the Detroit-Windsor
12 Tunnel and our team I believe is starting to look at
13 that. I do not know if we have a specific signed
14 letter yet, but our team is starting to look at that
15 just to make sure the City is -- whether the City is
16 getting its proportionate share of the revenues that
17 come from the Detroit-Windsor Tunnel. That's the one
18 that sort of, you know, is top of mind.
19 From an evaluative perspective, the City
20 is -- and EY is looking at other ways that they can
21 continue to assist the City.
22 Q. And would you consider that work that E&Y
23 is undertaking with respect to the Detroit-Windsor
24 Tunnel, would you consider that work to be something,

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1 a separate line of work than what you are doing on
2 behalf of the City with respect to Amendment No. 7?
3 A. I think it would generally be in line with
4 the work that we would be doing. However, what we
5 always want to provide clarity and specificity around
6 the work stream. So it would generally be in line
7 with the services in Amendment No. 7. However, we
8 would always clarify and specify that these would be
9 the specific items we would be undertaking because
10 they are not necessarily clearly articulated in the
11 scope of work.
12 Q. Approximately how much money has the City
13 paid Ernst & Young to this date in connection with
14 this engagement?
15 MR. STEWART: Are you referring to the entire
16 engagement or No. 7?
17 BY MS. BRUNO:
18 Q. The entire engagement.
19 A. I do not know the exact number right now,
20 but it is somewhere in the neighborhood of 6-1/2 to $7
21 million.
22 Q. Returning back to that last sentence on
23 page 4 of 8, do you consider what you are doing today
24 as providing expert testimony?

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1 MR. STEWART: Objection; asking for a legal
2 conclusion.
3 BY MS. BRUNO:
4 Q. You can answer.
5 A. No.
6 Q. Are you aware of any individual at Ernst &
7 Young who would be serving as an expert to the City?
8 MR. STEWART: Objection; same objection.
9 Do you mean an expert as defined by the
10 Federal Rules?
11 MS. BRUNO: I mean an expert as defined in
12 Amendment No. 7.
13 MR. STEWART: So why don't you ask him what that
14 means in Amendment No. 7.
15 BY THE WITNESS:
16 A. Could you ask your question again, please?
17 BY MS. BRUNO:
18 Q. Sure. That question is actually better.
19 What does Ernst & Young mean when they
20 state, "For avoidance of doubt, the Services do not
21 include Ernst & Young serving as an expert in
22 connection with the Chapter 9 proceedings"?
23 A. I think the -- what it says is that EY is
24 basically providing its services in connection with

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1 the facts that EY has and our professionals have and
2 our team has in terms of providing services for
3 Chapter 9. And so it's -- we are sort of assisting
4 this overall situation in the context of the overall
5 facts as have been provided to us and that information
6 that has been provided to us, which is what we have
7 used to prepare the analysis.
8 MS. BRUNO: I'm about to go to a new area. Do
9 you want to take a quick break?
10 MR. STEWART: Let's keep going unless others
11 need a break.
12 MS. BRUNO: All right. Is that all right with
13 you, Mr. Malhotra?
14 THE WITNESS: Sure.
15 BY MS. BRUNO:
16 Q. Okay. Why don't we turn back to your
17 declaration, which is Exhibit 1.
18 And I'll direct your attention to what is
19 provided at Paragraph 10 of the declaration, which is
20 on page 4. And this paragraph discusses the cash flow
21 forecasts.
22 Who developed the actual forecast at
23 Ernst & Young?
24 A. It was a team of EY professionals in

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1 collaboration with the team at the City and other
2 advisers that the City has retained in the preparation
3 of these cash flow forecasts.
4 Q. Were you personally involved in that work?
5 A. Yes.
6 Q. And who was personally -- who are the
7 individuals that you worked with at the City on that
8 work?
9 A. The City or EY?
10 Q. At the City.
11 A. At the City, it would have been the former
12 Chief Financial Officer Jack Martin, it would have
13 been the former Program Management Director Chris
14 Andrews, it would have been one of the controllers, I
15 think Rick Drumb, it would have been other members
16 from specific departments that the EY team
17 collaborated with in order to prepare those cash flow
18 forecasts and also used assumptions from what was the
19 information being provided by the other advisers the
20 City had hired.
21 Q. What are the underlying demographic
22 assumptions for the City in the revenue forecasting?
23 MR. STEWART: Objection.
24 BY THE WITNESS:

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1 A. You have to repeat that question or
2 rephrase it in terms of the demographic assumptions.
3 BY MS. BRUNO:
4 Q. In terms of the population of the City.
5 A. The general assumptions are that there is
6 a slight population decline in the context of the
7 revenue assumptions, but I think you have to look at
8 the demographics in a greater amount of detail which
9 has been provided on the City's data site with respect
10 to the assumptions around growth of revenues from
11 residents versus non-residents in terms of the makeup
12 of the order of revenue profile.
13 Q. I guess I'll ask for a clarification.
14 What is the assumption going forward on
15 behalf -- what is the assumption that Ernst & Young
16 has used going forward in these forecasts with respect
17 to population?
18 A. I think it's -- it's a general decline.
19 Q. And what is that assumption based on?
20 A. Based on all of the trends that are very
21 evident over the last few years and looking at that
22 trend and at least adjusting as to what that decline
23 would be here in the near future and then, you know,
24 over the course of the ten years does that decline

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1 continue to go at the current rate or not. So I think
2 you have to look at these assumptions over a longer
3 timeframe and I think you have to look at it from the
4 standpoint of what's applicable here in the next -- in
5 the short term versus what's applicable in the long
6 term.
7 Q. Did Ernst & Young develop any scenarios
8 with a more optimistic demographic assumption?
9 A. In terms of having?
10 Q. Population increasing.
11 A. I do not recall of the team having a
12 scenario in which in the short term population is
13 increasing. And I would think that if you look at it
14 over a longer timeframe, you know, maybe there are
15 assumptions where the population decline slows, but I
16 don't recall of a scenario where in the short term
17 population is increasing.
18 Q. In the context of your answer here, what
19 do you mean by short term?
20 A. In the next three or four or five years.
21 Q. Did you do any kind of ten-year
22 forecasting that assumed that the population decline
23 would either slow down or even there could be actual
24 growth in population?

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1 A. I think that generally is what's
2 reflective in the forecasts with respect to that there
3 is a -- a reduction in the pace of the decline over
4 the -- in the outer years. I think that is currently
5 reflective in the forecast.
6 Q. But there are no scenarios that would
7 include an actual rise in the population, is that
8 correct?
9 A. I don't recall.
10 Q. You would agree that if the population
11 does grow, it would affect the results of any
12 forecasts, correct?
13 A. If you change the assumptions, the numbers
14 will change, yes.
15 Q. And, in fact, it could dramatically affect
16 it, correct?
17 MR. STEWART: Objection.
18 BY THE WITNESS:
19 A. I don't know about that.
20 BY MS. BRUNO:
21 Q. Returning to your declaration in
22 Paragraph 10, it states that, "The work conducted by
23 Ernst & Young developing the cash flow forecasts as
24 well as the ten-year projection" -- "projections,"

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1 excuse me, "were limited to the City's general fund,"
2 is that correct?
3 A. That is correct.
4 Q. In other words, the projections assume
5 that there are no other funds available to the City
6 beyond the general fund, is that correct?
7 A. It -- it assumes that the general fund
8 will not have additional funds from other funds, yeah,
9 that's generally correct.
10 Q. What about the City having available --
11 other available funds outside of the general fund?
12 A. The City has multiple funds outside the
13 general fund. The main one is the water and sewer,
14 which we did not perform a ten-year projection on the
15 water and sewer funds. My understanding is that those
16 funds are not necessarily available to the general
17 fund.
18 Q. To the general fund that may be correct,
19 but it would be available to the City, would it not?
20 MR. STEWART: Objection.
21 BY THE WITNESS:
22 A. It would be available to the City for the
23 purposes those funds were raised for, which is
24 generally maintenance and capital improvements on the

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1 water and sewer side.
2 BY MS. BRUNO:
3 Q. Let's backtrack a little bit. I think
4 we've gone in a different direction than I'm trying to
5 focus on.
6 My question to you is: The forecasts that
7 you provided in this declaration are limited solely to
8 the general fund, is that correct?
9 A. They are generally limited to the general
10 fund, other than if they were other enterprise funds
11 the City was subsidizing, like the Department of
12 Transportation, those would have been included in the
13 general fund as it is a -- a fund that the City
14 subsidizes and has historically subsidized.
15 Q. So you would agree, though, that subject
16 to your exception there that the assumptions and
17 forecasts provided in this declaration do not take
18 into account other funds available to the City?
19 MR. STEWART: Objection.
20 BY THE WITNESS:
21 A. You have to rephrase your question.
22 BY MS. BRUNO:
23 Q. The forecasts and cash flows, the
24 projections, the information that is discussed in your

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1 declaration here are solely limited with the caveat
2 that you provided to the general fund, is that
3 correct?
4 MR. STEWART: Objection.
5 BY THE WITNESS:
6 A. The cash flow forecasts and the ten-year
7 projections with respect to the receipts and
8 disbursements and the revenues and expenses are
9 generally reflective of the general fund and the
10 Department of Transportation. That's the way I would
11 characterize it.
12 BY MS. BRUNO:
13 Q. You would agree that the City does have
14 access to other funds, correct?
15 MR. STEWART: Objection.
16 BY THE WITNESS:
17 A. I don't understand when you say the City
18 has access to.
19 BY MS. BRUNO:
20 Q. There is other enterprise funds available
21 to the City, correct?
22 MR. STEWART: Objection.
23 BY THE WITNESS:
24 A. Available to the City for what?

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1 BY MS. BRUNO:
2 Q. Well, if you are talking about the cash
3 available to the City, certainly there is other
4 sources of cash available to the City outside of the
5 general fund, you would agree with that?
6 MR. STEWART: Objection.
7 BY THE WITNESS:
8 A. No. It depends on what purpose you are
9 asking the question, the context of.
10 BY MS. BRUNO:
11 Q. You would agree with me that the general
12 fund is not the only source of available cash to the
13 city, would you not?
14 MR. STEWART: Objection.
15 BY THE WITNESS:
16 A. The general fund -- the cash that is
17 available to the general fund is generally the only
18 cash that is available to the City for its core
19 operations that are not related to any other
20 enterprise funds. So, my answer would be, that the
21 cash flows that are reflective in here and are
22 generally available for the general fund is the City's
23 operating cash in general.
24 BY MS. BRUNO:

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1 Q. How do you have that understanding?
2 A. That is my general understanding. So,
3 my -- my understanding is that the monies that are
4 available or are attributable to the bank accounts of
5 the enterprise funds have specific reasons for what
6 that cash can be spent. So we have made the
7 assumption that that cash is not available for the
8 general fund. But I would think that would be a
9 further legal determination. It is our understanding
10 that that cash is not available to fund the operations
11 of the general fund.
12 Q. And how did you obtain that understanding?
13 That's what I'm trying to get to.
14 A. I don't recall. That's our general
15 understanding that there are revenue bonds that have
16 been issued at the Water and Sewer Department, and
17 those revenue bonds are associated with specific
18 maintenance and capital improvements for the Water and
19 Sewer Department, and that those funds are generally
20 not available to fund the operations of the general
21 fund.
22 Q. Do you recall having a conversation with
23 anyone at the City to that effect?
24 A. Yes. I'm -- I think all of the

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1 discussions from the very front end of our engagement
2 would have been in the context that, you know, whether
3 any other cash is available, so the answer would be
4 yes.
5 Q. Who at the City do you recall having that
6 conversation with?
7 A. I don't recall of a specific conversation,
8 but I'm sure that the discussions would have been with
9 Chris Brown and with Kirk Lewis and any of the other
10 folks that we have reported to during the City, but I
11 do not recall of a specific conversation in terms of
12 the funds available to the Water and Sewer Department.
13 Q. If I turn your attention to Exhibit 8,
14 which is the Amendment 7 to the SOW, on page 2 there
15 are a number of specific references to work and
16 analysis of the City's general fund. And it's in many
17 places defined General Fund with a capital G and a
18 capital F.
19 Do you see what I'm referring to?
20 A. Yes. I'm trying to find the capital G and
21 the capital F, but I generally -- I'm on page 2, that
22 the context is for the general fund.
23 Q. Sure. Just if you look at the second bold
24 bullet point, "Preparation of 10-Year tax revenue

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1 estimates for the General Fund."
2 A. Okay.
3 Q. That's one example that I can see.
4 Are there similar -- my question is -- I'm
5 trying to get to the original SOW. I'm using the
6 Amendment 7 to discuss the original SOW.
7 Did the original SOW limit the work to the
8 general fund in the same way that Amendment No. 7
9 does?
10 A. I don't recall specifically. But I can
11 say that earlier on in our engagement, I would say in
12 the 2011 timeframe, we were looking at the cash flows
13 of the water and sewer fund and the other enterprise
14 funds as well. But that process stopped, I would say,
15 in the first four or five or six months of the
16 engagement because there was sort of water and sewer
17 funds were tracking their cash on their own, and so
18 were some of the other enterprise funds, that our
19 focus really was on the general fund.
20 But just for clarity, the work that would
21 have been done in the front end was to look at the
22 funds that water and sewer had and the receipts and
23 disbursements associated with that versus any
24 transfers that were coming back to the general fund.

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1 So they were looking at those forecasts in isolation.
2 But that work sort of stopped I think right around in
3 the first four or five months of the engagement.
4 Q. And why did that work stop?
5 A. It was because the focus continued to be
6 on the general fund and these were self-sustaining
7 funds with respect to at least the Water and Sewer
8 Department. And so they were monitoring their -- and
9 dealing with their cash activity, although connected
10 to the City, but we weren't helping forecast receipts
11 and disbursements because they were not impacting the
12 general fund.
13 Q. You previously testified in your prior
14 deposition that Ernst & Young was not asked to look at
15 possible disposition of City assets, is that correct?
16 A. That's correct.
17 Q. Why -- did you have a discussion with the
18 City regarding whether that would be valuable work for
19 Ernst & Young to provide?
20 MR. STEWART: Objection.
21 BY THE WITNESS:
22 A. I -- I'm not sure I follow the question.
23 BY MS. BRUNO:
24 Q. How did it come about that Ernst & Young

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1 didn't evaluate the value of disposition of some of
2 the City assets?
3 A. It was not a part of our scope of work.
4 Q. You would agree that there could be cash
5 value to the disposition of some of those assets,
6 would you not?
7 MR. STEWART: Objection.
8 BY THE WITNESS:
9 A. I think that's a better question to ask
10 for the City's investment banker.
11 BY MS. BRUNO:
12 Q. Well, I'm not talking about the specific
13 numbers here, but you know what some of the assets
14 available to the City are, correct?
15 A. In general, yes.
16 Q. And you understand that some of those
17 assets could be valuable or quite valuable, correct?
18 MR. STEWART: Objection.
19 BY THE WITNESS:
20 A. It depends on what assets you are talking
21 about.
22 BY MS. BRUNO:
23 Q. Why don't we look at Exhibit No. 4 -- oh,
24 I'm sorry. I'll hand it to you. Exhibit No. 4 from

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1 your prior deposition, I'll hand it to you. It was
2 the Proposal For Creditors --
3 A. Okay.
4 Q. -- dated June 14.
5 And I believe the assets are identified on
6 90. And it is 90 of the computer generated numbers on
7 the bottom.
8 And on pages 90 through 96, the
9 presentation discussed various assets that the City
10 could derive some cash benefit from, correct?
11 MR. STEWART: Objection.
12 BY THE WITNESS:
13 A. Yes.
14 BY MS. BRUNO:
15 Q. And, well, I don't want to quarrel or even
16 discuss with you what the actual specific value of any
17 one of those assets are, but you would agree that the
18 implementation of any of these proposals would improve
19 the City's cash position, would it not?
20 MR. STEWART: Objection.
21 BY THE WITNESS:
22 A. Here is what I would say. The current
23 ten-year projections right now do not include any
24 incremental proceeds that could be available to the

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1 City from asset sales. And that's where I -- because
2 that's what's very clearly laid out in the proposal.
3 If there are proceeds available that are
4 available to the City, those numbers would change.
5 But I can at least highlight and articulate what the
6 assumptions are with respect to the ten-year forecast
7 that the City has put out.
8 BY MS. BRUNO:
9 Q. And so your assumptions include that none
10 of these assets will be disposed of in any way, is
11 that correct?
12 A. That's generally correct.
13 Q. Sticking with Exhibit No. 4 before you, if
14 you'd turn to page 80 of the document. I'm sorry. I
15 should say 87 of the computer generated numbers.
16 And this is a portion of the presentation
17 that discusses increasing the tax collection. You
18 look like you are on a different page than I am here.
19 A. 87.
20 Q. You've got it?
21 A. Yes.
22 Q. You would agree that increasing the tax
23 collection rates and improving the collection of past
24 due taxes could materially improve the City's

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1 financial position, could it not?
2 MR. STEWART: Objection.
3 BY THE WITNESS:
4 A. Yeah, I can't answer that because I do not
5 know the magnitude of what you are referring to in
6 terms of your question and what the definition of
7 material is.
8 BY MS. BRUNO:
9 Q. Well, the presentation here, the June 14th
10 presentation discussed at the fourth bullet down
11 identifies approximately $250 million of unpaid or
12 outstanding tax debts. If those debts would be --
13 could be addressed and collected, that would be a
14 material improvement in the cash position, would it
15 not?
16 MR. STEWART: Objection.
17 BY THE WITNESS:
18 A. This amount that has been identified by a
19 third party, Compuware, for $250 million, I do not
20 know what portion of it has been included specifically
21 in the work with respect to collection efforts that
22 Conway MacKenzie has done, but my assumption is it
23 wouldn't have been to the magnitude of $250 million.
24 So, if $250 million were collected, it

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would improve the overall profile is my assumption.
BY MS. BRUNO:
Q. I have heard estimates that a more accurate estimate of outstanding tax debt is significantly higher than $250 million.
Are you familiar with these higher estimates that are being discussed?
MR. STEWART: Objection.
BY MS. BRUNO:
Q. Have been discussed?
MR. STEWART: Objection.
BY THE WITNESS:
A. No.
BY MS. BRUNO:
Q. You have not heard that the outstanding tax debt available to the City could be as much as $700 million?
A. I have not heard that, that I recall.
Q. To be clear, your forecasts don't account for the collection, any type of truly significant to this degree of outstanding debt, is that correct?
MR. STEWART: Objection.
BY THE WITNESS:
A. That's correct.

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MS. BRUNO: Why don't we take a quick break. I don't -- I only need about ten minutes for a break.
(WHEREUPON, a recess was had from 10:57 to 11:08 a.m.)
BY MS. BRUNO:
Q. Mr. Malhotra, when we were talking about funds available to the enterprise, I believe you discussed the water and sewer funds.
Are you aware of other funds available to the enterprise?
A. Other funds that are available to enterprise funds?
Q. Enterprise funds available to the City. I'm sorry.
MR. STEWART: Objection, by the way, to the phrase "available to the city."
BY THE WITNESS:
A. I do not believe that there are, that I know of, other enterprise funds' funds that are available to the City.
BY MS. BRUNO:
Q. Returning to your declaration, I'll direct your attention to Paragraph 14.
In that paragraph you discuss that E&Y's

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forecasts and analysis was based upon the comprehensive annual finance report of the City, the C-A-F-R, CAFR.
Do you see where you discuss that in this paragraph?
MR. STEWART: Objection.
BY THE WITNESS:
A. It was one of the documents that -- that we used in terms of helping pull together the forecast.
BY MS. BRUNO:
Q. Was -- it was the primary document, correct, primary document, wasn't it?
MR. STEWART: Objection.
BY THE WITNESS:
A. No.
BY MS. BRUNO:
Q. What would you consider to be the primary document then?
A. There was not one single primary document. It was a compilation of all of the different sources of data that we got that included the CAFR, that included the raw files that we got from the City, that included some of the information we saw in terms of

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bank activity, in terms of looking at, you know, a lot of the information together, but I can't recall that there was one primary document that we relied upon.
Q. The 2012 CAFR is relied upon and identified over 30 times in your declaration.
Does that seem like a reasonable estimate to you in terms of how many times it's cited in your declaration?
MR. STEWART: Objection.
BY THE WITNESS:
A. It's cited in the context of the outstanding debt balances that the City has, and so I think it's a reasonable assumption with respect to the outstanding indebtedness of the City, which is where the CAFR has been referenced as a document.
BY MS. BRUNO:
Q. And thus you would agree then that Ernst & Young relied upon this information in creating its assumptions and forecasts, correct?
A. It was one of the documents that we refer to, yes.
Q. But you did not audit that information, did you?
A. That is correct.

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1 Q. And what kind of stress testing or
2 analysis did you undertake with respect to that
3 information to ensure that it was accurate?
4 MR. STEWART: By that information, you mean CAFR
5 or something else?
6 MS. BRUNO: I mean CAFR. Thank you.
7 BY THE WITNESS:
8 A. The CAFR is the City's audited financial
9 statement. We did not run separate stress tests on
10 the -- or the information that was applicable from the
11 CAFR, but like I said, it was one of the documents
12 that we used in terms of coming up and assisting the
13 City come up with the forecast.
14 BY MS. BRUNO:
15 Q. You are aware, though, that it is well
16 documented that the City's financial recordkeeping was
17 both inadequate and contained numerous deficiencies,
18 correct?
19 MR. STEWART: Objection.
20 BY THE WITNESS:
21 A. The information that we were generally
22 looking at was for the context of cash in which the
23 CAFR was not a primary source. With respect to
24 looking at the debt balances that the City had, we did

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1 look at the CAFR. I am not aware of specific
2 deficiencies in the context of the debt balances the
3 City was reporting in the CAFR, but I have not audited
4 any of that data.
5 BY MS. BRUNO:
6 Q. You are aware that the Financial Review
7 Team that undertook work for the City found many
8 deficiencies with the recordkeeping of the financials
9 of the City, are you not?
10 MR. STEWART: Objection.
11 BY THE WITNESS:
12 A. I don't recall specifically, but generally
13 the -- the quality of information from the systems
14 that have been available, you know, has -- has to be,
15 you know, reviewed in order to make sure that we are
16 using reasonable assumptions.
17 BY MS. BRUNO:
18 Q. And what review was undertaken by Ernst &
19 Young to ensure that this was reliable information to
20 generate assumptions from?
21 A. When you say "this," is it --
22 Q. CAFR, in this instance.
23 A. From the CAFR, it's the -- the information
24 that has been reported with respect to the outstanding

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1 indebtedness of the City. We did not go back and do
2 original debt documents to try and ascertain whether
3 the documentation of the CAFR was accurate or not.
4 Q. I'm going to hand you what was previously
5 marked as Exhibit 3 at your deposition. Hold on.
6 I'll give you a moment to look at this,
7 Mr. Malhotra, but this is the February 19th memorandum
8 generated by the Detroit Financial Review Team.
9 Have you seen this document before,
10 Mr. Malhotra?
11 A. Yes, I have.
12 Q. And if I can direct your attention to --
13 the number is going to be hard to follow, but it's
14 marked 2 at the bottom of the page, but it's -- it is
15 an attachment to the actual memoranda. So the top of
16 the page says "Finding 2012-02." Let me know when --
17 A. I'm there.
18 Q. You are there, okay.
19 And the "Finding 2012-02" relates to
20 reconciliations, transaction processing, account
21 analysis and document retention. Is that what you
22 read there?
23 A. Yes.
24 Q. I'm going to read from the last sentence

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1 of the first paragraph, and the findings of the
2 Detroit Financial Review Team were that, "During the
3 audit, we noted deficiencies in the areas of
4 transaction processing, account analysis, data
5 integrity, reconciliation performance, and document
6 retention."
7 Do you see where it says that?
8 A. Yes.
9 Q. Did you understand that that was the state
10 of the financial recordkeeping of the City when you
11 undertook your work for the City?
12 MR. STEWART: Objection.
13 BY THE WITNESS:
14 A. I can't recall.
15 BY MS. BRUNO:
16 Q. Another finding, and I'm going to the next
17 immediate paragraph, is: "The City's process to
18 identify accrued expenses is not adequate. Our audit
19 procedures identified expenditures related to fiscal
20 year 2012 that were not appropriately recorded as
21 expenditures in fiscal year 2012."
22 Do you see that?
23 A. I see it, yes.
24 Q. Would you agree with me that there are

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1 noted issues and problems with the recordkeeping of
2 the City?
3 MR. STEWART: Objection; the document speaks for
4 itself. There is no evidence he wrote it.
5 BY THE WITNESS:
6 A. That's what the statement says. So, I'm
7 not sure I fully understand what your question is.
8 BY MS. BRUNO:
9 Q. Did Ernst & Young do anything to ensure
10 that the information that they evaluated and relied
11 upon was accurate information to draw assumptions
12 from?
13 A. Who is "they"?
14 Q. Ernst & Young. The question -- let me
15 rephrase the question. That might help.
16 Did Ernst & Young do anything to ensure
17 that the information that Ernst & Young evaluated and
18 relied upon as received from the City was accurate
19 information that you could draw assumptions from?
20 A. EY did -- our team based on the data that
21 was received did go through the information to make
22 sure that the assumptions we were using were
23 reasonable.
24 Q. And what would be the process that Ernst &

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1 Young would go through to make sure that information
2 used was reasonable?
3 A. Well, it would generally have been that if
4 we were receiving some information, we would try and
5 review what other documentation may or may not be
6 available to support any trends from a historical
7 perspective and whether the information was
8 consistent, and if it was not consistent, if there
9 were any major outliers, speak to the team at the City
10 to try and understand what changes may be happening.
11 So, I'm comfortable that what we undertook
12 as an analysis of the information that was presented
13 by the City after asking questions that we were using
14 reasonable assumptions.
15 Q. This process that you just outlined, can
16 you recall any specific instances where Ernst & Young
17 determined that the financial information received
18 from the City contained either an outlier or an error?
19 A. This was generally a collaborative
20 process. So, there was exchange of information
21 between the City and the EY team on a regular basis.
22 And so I can't recall something off the top of my
23 head, but my point is that this was generally an
24 iterative and a collaborative process of exchanging

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1 information and assumptions back and forth.
2 Q. Just to be clear, are you aware of any
3 instance or any specific circumstance of -- at all
4 where Ernst & Young went back to the City and said, I
5 think there is a problem with the information you
6 provided?
7 A. I am sure there were several conversations
8 in which we were challenging and asking questions with
9 respect to the data that we were receiving, but I
10 don't recall of any one specific instance off the top
11 of my head that stands out versus not.
12 Q. Can you give me one example of any
13 instance where Ernst & Young challenged the
14 information received and went back to any department
15 in the City where the information came from to verify
16 or better understand a problem with the information
17 received?
18 MR. STEWART: Objection to form.
19 BY THE WITNESS:
20 A. There were instances when we were
21 receiving reports on cash collections that were not
22 appropriately categorized and which -- and which we
23 went back and, you know, further evaluated as to, you
24 know, what the -- where those cash receipts really

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1 actually belonged in terms of income taxes or property
2 taxes. They were -- that's one example.
3 There were questions with respect to the
4 amount of accounts payable outstanding that the City
5 was reporting and, you know, if there were more
6 invoices than that were actually entered into the
7 system or not. So, there have been a variety of
8 back-and-forth conversations on different topics which
9 is part of what we actually are helping at the City
10 with is to try and get our arms around reasonable
11 assumptions around the data that is available.
12 BY MS. BRUNO:
13 Q. Why don't we turn back to Exhibit 4, which
14 is the June 14 proposal. And I'll direct your
15 attention to what is page 68 of 135 in the electronic
16 numbering. And this relates -- the questions that I'm
17 going to ask you relate to the restructuring and
18 reinvesting initiatives.
19 Why is the City spending $1.25 billion on
20 these initiatives?
21 A. I think it's in general to improve the
22 quality of safety as well as blight removal in the
23 City. The specifics of that as to how that number was
24 brought about is something that should be discussed

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1 with the Conway MacKenzie team as they were looking at
2 the reinvestment portion to the City.
3 Q. Did Ernst & Young have any role in
4 determining the amount the City would spend on these
5 reinvestment initiatives?
6 A. In aggregate, no.
7 Q. How about in specific to any one
8 initiative?
9 A. Not -- not in the context of the $1.25
10 billion.
11 Just for clarity, there were assumptions
12 that were involved in the base case with respect to
13 what initiatives or certain initiatives the City had
14 already started. And so that part was clarified with
15 respect to what assumptions were already included in
16 the base case versus not, that would have been
17 included in the reinvestment costs into the City.
18 Q. I guess I'm not sure that we communicated
19 on that.
20 Did E&Y have any role in determining the
21 amount of money that would go into any particular
22 investment -- initiative or investment --
23 reinvestment? Excuse me.
24 MR. STEWART: Objection.

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1 BY THE WITNESS:
2 A. In the context of the $1.25 billion, I
3 don't recall of a specific initiative where EY
4 articulated a certain dollar amount that needed to be
5 invested for a specific initiative.
6 BY MS. BRUNO:
7 Q. Were there specific initiatives that E&Y
8 took a more significant role in providing guidance or
9 advice for?
10 MR. STEWART: Objection.
11 BY THE WITNESS:
12 A. Not as a part of the $1.25 billion that's
13 been highlighted here. I do not recall -- there were
14 conversations so that all of the team members
15 understood the assumptions with respect to what was
16 already included in the base case, but I do not recall
17 of any specific guidance in which EY played a greater
18 role in one line item versus the other in the context
19 of that 1.25 billion. That's my recollection.
20 Q. What is the -- what is the impact of these
21 initiatives on revenue collection?
22 A. With respect to the revenue collection,
23 there are two components. One is the overall increase
24 that may come about from the overall improvement in

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1 the services that are provided as -- and
2 correspondingly the revenues that are associated with
3 increased fees or fines or some collection rates that
4 may be attributable to specific investments. There is
5 another source of potential upside, which EY was
6 involved in, with respect to making certain
7 assumptions on if there is a cleaner and safer City,
8 should the overall recovery in terms of the tax
9 collections the City will have are potentially better
10 than in a scenario where there is no investment in
11 either public safety or blight removal.
12 Q. And what was Ernst & Young's involvement
13 in that second assumption?
14 A. Like I said, EY helped formulate the
15 assumptions with respect to how that there could be a
16 scenario where the revenues could increase based on
17 making some of these investments because the
18 likelihood of having a cleaner and safer City, that
19 will likely rebound faster than a City that is not.
20 Those assumptions are reflected in the current
21 ten-year proposal.
22 Q. How are they reflected in the ten-year
23 proposal?
24 A. If you look at page -- if you look at

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1 page -- I'm trying to find the page.
2 On page 105 of 135 -- or actually, 104 of
3 135, under the "reinvestment expenditures and
4 adjustments," under the line item that says "increased
5 tax revenues," that amounted to over a ten-year period
6 roughly $334.5 million. That was the assumption that
7 overall can the growth rate assumptions that are
8 incorporated in the baseline, can they be made -- will
9 they likely get better in the scenario that you have a
10 restructured city with better operations and a cleaner
11 and safer city.
12 Q. And that is why the increased tax revenues
13 are increasing over the course of that ten-year
14 period, is that correct?
15 A. That is correct, that's generally the
16 trend.
17 Q. State revenue sharing is a source of
18 revenue for the City, correct?
19 A. Yes.
20 Q. Do you know why it declined from $250
21 million in 2008 to $173 million in 2012?
22 A. I believe that was what Detroit's share of
23 the reduction was as the State reduced state revenue
24 sharing --

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1 (WHEREUPON, there was a short
2 interruption.)
3 MR. STEWART: Why don't we repeat the question
4 and partial answer.
5 MS. BRUNO: Sure.
6 BY MS. BRUNO:
7 Q. Do you know why that amount declined from
8 $250 million in 2008 to $173 million in 2012?
9 A. That was a part of the overall reduction
10 for Detroit's part as the State reduced state revenue
11 sharing for a significant number of cities and
12 municipalities and schooling districts. That was what
13 Detroit's relevant share of the decline was.
14 Q. Do you know how Detroit's relevant share
15 was determined?
16 A. No.
17 Q. Do you know whether it was determined by a
18 specific decision or a formula?
19 A. No.
20 Q. Wouldn't the City be in a better position
21 today if it continued to receive the same level of
22 contribution it received years ago?
23 MR. STEWART: Objection.
24 BY THE WITNESS:

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1 A. If you change the assumptions in terms of
2 the revenues and assuming that there are no changes in
3 any of the expenses, I would say the answer would be
4 yes.
5 BY MS. BRUNO:
6 Q. What are you aware of with respect to
7 actions taken by the City to support -- to pursue
8 support from the State of Michigan, including pension
9 contribution -- contributions and other support?
10 A. I'm sorry. I don't understand your
11 question.
12 Q. What are you aware of with respect to
13 actions taken by the City to pursue support from the
14 State of Michigan regarding pension contributions and
15 other support?
16 MR. STEWART: Objection.
17 BY THE WITNESS:
18 A. Can you rephrase that question, please?
19 BY MS. BRUNO:
20 Q. Sure. Maybe we're not communicating here.
21 Are you aware of actions taken by the City
22 to pursue support from the State of Michigan,
23 including pension contributions and other support?
24 Are you aware of actions taken by the City to pursue

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1 that type of support?
2 A. When you say "including pension
3 contributions," what is your question, is the City --
4 I mean, asking the State for support for what?
5 Q. To make contributions to the pension, to
6 any other financial support additional that they would
7 provide to the City?
8 A. Just let me make sure I understand.
9 Is your question, has the City asked the
10 State to fund the City's pension contributions?
11 Q. Any actions taken by the City to seek
12 support from the State.
13 A. All right. So that was -- I just --
14 MR. STEWART: I think -- I think it is her job
15 to ask you questions. You don't need to ask questions
16 of yourself. Why don't you just have her ask you a
17 new question that you can understand.
18 So, ask a new question.
19 BY MS. BRUNO:
20 Q. Are you aware of actions taken by the City
21 to seek support from the State?
22 A. Yes.
23 Q. And what are you aware of, what actions
24 are you aware that the City has taken?

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1 A. That is a part of the financial stability
2 agreement in which I believe Annex E was where the
3 City and the State would collaborate to move on
4 certain initiatives.
5 Q. What role have you had in those
6 conversations or that relationship?
7 MR. STEWART: Objection.
8 BY THE WITNESS:
9 A. Not much, if any, that I recall.
10 BY MS. BRUNO:
11 Q. I'm going to return your attention back to
12 Amendment No. 7. And, again, this amendment is dated
13 July 17, 2013, correct?
14 A. Yes.
15 Q. And the Chapter 9 filing was made by the
16 City on July 18, is that correct?
17 A. Yes.
18 Q. When did Ernst & Young determine that
19 Amendment No. 17 would be necessary?
20 MR. STEWART: Do you mean Amendment No. 7?
21 MS. BRUNO: Amendment No. 7, yeah.
22 BY THE WITNESS:
23 A. I would say it would be in this May, June
24 timeframe. I don't remember of a specific date in the

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1 context of, you know, when Amendment No. 7 was
2 initiated.
3 BY MS. BRUNO:
4 Q. And Amendment No. 7 clearly contemplates
5 the filing of a Chapter 9 bankruptcy, does it not?
6 MR. STEWART: Objection.
7 BY THE WITNESS:
8 A. It contemplates a contingency plan.
9 BY MS. BRUNO:
10 Q. Specifically including a filing for
11 Chapter 9?
12 A. That is right, as one of the scenarios,
13 yes.
14 Q. And when this agreement was signed,
15 Ernst & Young understood that a Chapter 9 filing was
16 going to be made, did it not?
17 A. No.
18 Q. When did Ernst & Young understand that the
19 Chapter 9 filing was going to be made?
20 A. We do not -- I do not recall of a specific
21 date when we knew that this would be a date when the
22 City would have to file for Chapter 9. When we
23 prepared the amendment in the June timeframe, which is
24 when we were talking about, we did try to ascertain if

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1 one of the contingency scenarios would be a Chapter 9.
2 So that scope was included.
3 Q. When did Ernst & Young become aware that
4 the City was going to file for Chapter 9 bankruptcy?
5 A. I do not recall of a specific date.
6 Q. Your declaration is dated July 18th,
7 correct?
8 A. That's when it was signed, yes.
9 Q. And how long did you spend drafting this
10 declaration?
11 A. I don't recall. It could have been
12 probably a week or two is -- I don't recall
13 specifically.
14 Q. You discussed that Chapter 9 was
15 considered -- filing of the Chapter 9 was considered a
16 contingency or one of the alternatives, correct?
17 A. That is correct.
18 Q. At this time, and by that I mean the June,
19 July timeframe or perhaps if it helps to say the -- I
20 want to use the term that you use -- additional summer
21 of 2013 services, what were the other alternatives
22 Ernst & Young analyzed?
23 A. It was essentially in the construct of the
24 June 14th proposal is if a restructuring was possible

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1 out of court, but so I think the key aspect was to at
2 least frame what the financial information was and
3 articulate that to -- to all of the stakeholders up to
4 the best information we had available.
5 Q. Outside of the June 14th proposal and the
6 information contained therein, were there other
7 alternatives that Ernst & Young considered?
8 A. Through the work that EY had done for the
9 City, it was -- and all of the concessions that have
10 been made by various stakeholders at the City
11 including first and foremost the City's active
12 employee base, the Ernst & Young was constantly
13 assisting the City in evaluating what restructuring
14 efforts from a cost reduction standpoint, what sort of
15 savings could be quantified. However, some
16 rationalization or restructuring of the City's legacy
17 liabilities started to become more and more apparent
18 given the declining revenues and combined with the
19 significant amount of concessions the City's active
20 employee base had already endured over the last couple
21 of years.
22 So we looked at different sorts of cost
23 reduction efforts, but a lot of those cost reduction
24 efforts had already and were undertaken over the

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1 course of the last few months.
2 Q. Any other alternatives?
3 A. Those are the ones that come to mind in
4 terms of looking at this proposal, other cost
5 reduction efforts that generally come to mind.
6 Q. We discussed at length of forecasting for
7 the general fund as discussed in your declaration.
8 Did Ernst & Young conduct or analyze any
9 additional forecasting for any of the other enterprise
10 funds --
11 MR. STEWART: Objection.
12 BY MS. BRUNO:
13 Q. -- for the city?
14 A. Not other than that timeframe, the
15 short-term timeframe I already talked about earlier,
16 but we did not make any other assumptions with respect
17 to enterprise fund forecasting other than what I
18 articulated earlier.
19 Q. Do you anticipate providing any additional
20 supporting information or declaration to the City in
21 support of its statement of qualifications?
22 A. Not -- I do not anticipate that as of yet.
23 MS. BRUNO: I think that's all of the questions
24 that I have for this witness at this time.

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1 MR. TEELE: I have a few questions.
2 EXAMINATION
3 BY MR. TEELE:
4 Q. Mr. Malhotra, I am Jason Steele from the
5 Lowenstein Sandler firm. We represent AFSCME in this
6 case.
7 I'm going to do my best not to cover any
8 of the ground that Ms. Bruno covered this morning. So
9 bear with me for a moment. It might be a little bit
10 shaky.
11 First, did you review personally any of
12 the pleadings that were filed by any of the parties in
13 the bankruptcy case objecting to the City's
14 eligibility to file Chapter 9 bankruptcy?
15 A. Not specifically. I may have glanced
16 through a couple, but not any that I recall off the
17 top of my head.
18 Q. And you have reviewed the June 14th
19 creditor proposal, Exhibit 4, is that right?
20 A. Yes.
21 Q. And, in fact, you actually had some input
22 into the creation of this proposal, is that right?
23 A. That's correct.
24 Q. But ultimately the proposal was prepared

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1 by whom, the Emergency Manager?
2 A. It was a proposal that was made by the
3 City to its different creditors.
4 Q. And the Emergency Manager is the one who
5 was the proponent of the proposal, is that right?
6 A. I would say it was the City in terms of
7 making the proposal to the creditors.
8 Q. So, EY is retained by the City of Detroit,
9 is that correct?
10 A. That's correct.
11 Q. And that was the original retention and
12 that's the way it stands today, right?
13 A. Yes.
14 Q. And you report to -- ultimately to the
15 Emergency Manager currently, is that right?
16 A. That is correct.
17 Q. And the Emergency Manager acts for the
18 City of Detroit in place of the City's Mayor and
19 Council or other elected representatives, is that
20 right?
21 MR. STEWART: Objection.
22 BY THE WITNESS:
23 A. I can't answer that.
24 BY MR. TEELE:

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1 Q. Is that your understanding?
2 A. My understanding is that our client is the
3 City of Detroit and we are reporting ultimately to
4 Kevyn Orr currently.
5 Q. And who -- if you know, who appointed
6 Mr. Orr to his position?
7 A. I can't answer that.
8 Q. So you don't know?
9 A. Yeah, it is either -- my assumption is
10 it's -- whether it's the Emergency Loan Board or the
11 Governor, that that would be my understanding.
12 Q. Would it be your understanding that the
13 Emergency Manager is appointed by the State of
14 Michigan as opposed to elected by the people in
15 Detroit, is that correct?
16 MR. STEWART: Objection.
17 BY MR. TEELE:
18 Q. Do you know?
19 A. I can't answer that.
20 Q. Do you currently or does E&Y currently
21 report to the Mayor of Detroit?
22 A. In terms of the daily activities, our main
23 interaction has been with Kevyn Orr and his team in
24 the construct of the Proposal For Creditors.

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1 Q. And do you report currently to the City
2 Council of Detroit?
3 A. Our work is in the connection with the
4 Proposal For Creditors is generally reported to Kevyn
5 Orr and his team.
6 Q. Do you meet regularly, you personally or
7 any members of your team meet regularly with either
8 the Mayor of Detroit or the City Council of Detroit?
9 A. Not generally at the current time.
10 Q. When was the last time that you had a
11 meeting with the Mayor?
12 A. Actually, probably just a -- maybe three
13 weeks ago or somewhere around that timeframe.
14 Q. Do you meet with anybody representing the
15 governor of the State of Michigan?
16 A. At times we've had meetings with the State
17 Treasurer, but I don't recall the last one.
18 Q. Have you had any meetings with any state
19 representative, state official, such as the Treasurer,
20 since the Chapter 9 petition was filed by the City?
21 A. Yeah, I think so.
22 Q. And who did you meet with at that time?
23 A. I think we met with Andy Dillon.
24 Q. I'm sorry. Who is --

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1 A. Andy is the State Treasurer.
2 Q. Anybody else?
3 A. Probably Tom Saxton at some point in time.
4 Q. And who is Mr. Saxton?
5 A. I believe he is the Deputy State
6 Treasurer, I think.
7 Q. Did you meet with any state representative
8 prior to the filing of the Chapter 9 petition
9 specifically to discuss whether the Chapter 9 petition
10 should be filed?
11 A. Not to discuss the specific Chapter 9
12 filing.
13 Q. Was your opinion -- when I say your, I'm
14 referring to you as well as your E&Y team.
15 Was your opinion about the filing of the
16 Chapter 9 petition solicited by anybody prior to
17 filing?
18 A. Not specifically in connection with
19 whether the City has to file or does not have to file.
20 I don't remember of a specific conversation whether
21 that was put forth or not.
22 Q. Was it -- did you have a conversation
23 previous -- prior to the filing with respect to
24 whether E&Y believes it would be advisable or

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1 inadvisable for the City to file Chapter 9?
2 A. No. EY specifically, our team analyzed
3 that given all of the concessions, the active work
4 force and the cost reduction efforts that had been
5 taking place in addition to some of the efforts with
6 respect to reducing the active work force as well as
7 wage reductions and combined with the declining
8 revenues, that a rationalization or a restructuring of
9 the long-term liabilities of the City may be required.
10 But EY did not specifically have an input whether
11 Chapter 9 was or was not the only alternative.
12 Q. Going back in time just a little bit, in
13 2011 and 2012, an agreement in principle, it is called
14 a tentative agreement, was reached between the City of
15 Detroit and the unions representing its active
16 employees, is that correct?
17 A. Yes, that is my understanding.
18 Q. And E&Y was involved in the negotiations
19 leading to that tentative agreement, is that right?
20 A. E&Y was involved in assisting quantify
21 some of the savings in conjunction and collaboration
22 with the City as the City negotiated with the -- its
23 unions.
24 Q. And based on your involvement, are you

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1 generally familiar with the terms of the tentative
2 agreement?
3 A. This was a while ago, so I'm not -- I have
4 not gone back and refreshed specific terms of the
5 tentative agreement.
6 Q. At the time you were familiar with it?
7 Were you?
8 A. I was generally familiar with it at the
9 time, yeah.
10 Q. And to the best of your recollection,
11 recognizing it was a while ago, the terms of the
12 tentative agreement included changes in employment
13 terms and benefits for active employees as well as
14 retirees, is that correct?
15 A. I don't remember specifically on the
16 construct of the retirees. I do remember that there
17 were changes to the overall compensation and benefits
18 provided to the active employees.
19 Q. But you don't recall specifically whether
20 it dealt at all with retirees?
21 A. Not that I can recall.
22 Q. Do you recall modeling for the City's
23 benefit any impact of these negotiated changes on
24 retiree costs to the City?

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1 A. Not that I recall with respect to
2 retirees.
3 Q. In approximately late 2012, approximately
4 October of 2012, the Mayor and City Council were
5 working on revenue enhancement measures, is that
6 right? Do you recall that?
7 A. I don't remember of a specific timeframe,
8 but there is always actions that are being undertaken
9 to ascertain and figure out ways to improve the City's
10 revenue position.
11 Q. Once the Detroit Financial Review Team
12 submitted its report to the Governor, and I'm
13 referring to Exhibit 3 from your previous deposition,
14 I think it was handed to you before?
15 MR. STEWART: What is that?
16 MR. TEELE: 3.
17 MR. STEWART: Oh, got it.
18 BY MR. TEELE:
19 Q. When this report was issued to the
20 Governor, do you recall whether the Mayor and City
21 Council publicly responded to the findings?
22 A. I do not recall of the specific response
23 on the findings to the Financial Review Team.
24 (WHEREUPON, a certain document was

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1 marked Malhotra Deposition
2 Exhibit No. 9, for identification, as
3 of 09/20/13.)
4 MR. STEWART: So what's the question?
5 MR. TEELE: Does he have the document now? I'm
6 sorry.
7 MR. STEWART: Yes.
8 BY MR. TEELE:
9 Q. Mr. Malhotra, I guess first of all, have
10 you seen this document before?
11 A. I'm sure I have it somewhere. I don't
12 remember reading it with too much detail, but I have
13 it in front of me now.
14 Q. Okay. If you look down at the bottom of
15 page 1 under 1.a, it indicates that, "The
16 Administration, Council President Pugh, Council
17 President Pro-Tem Brown, Councilmember Cockrel, Fiscal
18 staff, Ernst & Young consultants, along with Miller
19 Canfield met over December holiday break to come up
20 with a cash plan with countermeasures to get the City
21 through June 30, 2013."
22 Do you see that?
23 A. Yes, I do.
24 Q. First of all, June 30, 2013, is that the

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1 end of the fiscal year for the City?
2 A. That's correct.
3 Q. Is that why June 30 is the magic date
4 there?
5 MR. STEWART: Objection.
6 BY THE WITNESS:
7 A. It is -- it is the end of the fiscal year
8 for the City. I'll leave it at that.
9 BY MR. TEELE:
10 Q. Were you part of the Ernst & Young
11 consultants referenced here who met over the
12 December holiday break to come up with a plan?
13 A. Yes.
14 Q. And then if you continue reading in that
15 same bullet point on page 2, it says, "The conclusion
16 of the group was that full savings from City
17 Employment Terms, any new contract adjustments and
18 other cash savings measures would materialize in FY
19 2014 to absorb one time reversals without the use of
20 remaining $50 million in the escrow account."
21 Do you recall whether that is an accurate
22 representation of what the conclusion of the group
23 was?
24 A. I don't recall at this juncture, but I can

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1 tell you that during that particular timeframe the
2 City alongside us was evaluating other significant
3 scenarios as to how further costs could be reduced or
4 cash deferrals could be made in order to assist the
5 City from running out of cash during this timeframe.
6 I do not recall specifically of the conclusion.
7 Q. Okay. And in -- is it true that the City
8 of Detroit would not have run out of cash to fund its
9 operations in fiscal year 2013?
10 MR. STEWART: Objection.
11 BY THE WITNESS:
12 A. Based on what assumptions?
13 BY MR. TEELE:
14 Q. Based on whatever measures the City had
15 been taking to reduce costs or defer expenses.
16 A. It, again, depends. I would have to go
17 back and look at that, the cash flows from that
18 timeframe for fiscal year 2013. But what my
19 recollection is that there were various scenarios that
20 we were looking at, that the City was evaluating,
21 which were predominantly related to cash deferrals or
22 some significant further changes to the compensation
23 of the active employees.
24 Q. Would you agree that the City did not face

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1 the exhaustion of its cash before the end of calendar
2 year 2013?
3 A. Can you reask that question, please?
4 Q. Do you agree from the perspective of today
5 or, more specifically, from the perspective of the day
6 that the Chapter 9 petition was filed, do you agree
7 that the City did not face exhaustion of its cash
8 until before the end of 2013 calendar year?
9 MR. STEWART: Objection.
10 BY THE WITNESS:
11 A. I would have to go back and look.
12 What I can tell you is in terms of
13 exhaustion in cash accounts on a particular day, the
14 City's general fund is a billion dollar enterprise in
15 which there is daily cash activity. That being said,
16 the amount of cash that the City has which has been
17 publicly reported has pooled cash in there, i.e., cash
18 belonging to other funds potentially and including the
19 deferral of potentially in excess of $100 million
20 worth of pension payments already and pooling cash
21 from other funds.
22 So, at any particular point in time on
23 that date the overall cash position of the City could
24 have been negative if the City had actually disbursed

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1 and the accounts that were either commingled or
2 pooled. But I do not know of that specific time at
3 this juncture.
4 BY MR. TEELE:
5 Q. I'm trying to figure out, would you agree
6 with the statement that the City would not exhaust its
7 cash before the end of calendar year 2013?
8 MR. STEWART: Objection.
9 BY THE WITNESS:
10 A. I don't agree with that because it's based
11 on assumptions and how you look at those assumptions.
12 BY MR. TEELE:
13 Q. If the City took that position, if the
14 City took the position that it would not run out of
15 cash before the end of calendar year 2013, in a
16 pleading filed with the bankruptcy court, would you
17 disagree with that?
18 A. I'm sorry. Are you asking calendar year
19 2013 or fiscal year 2013?
20 Q. I'm asking calendar year 2013.
21 A. That's a hypothetical question. All I can
22 give you in answer is in terms of the assumptions that
23 the City was using with respect to what cash will or
24 will not be available over the course of the next few

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1 months in terms of the assumptions that were being
2 used. If that means significant deferrals and
3 continuing to increase the indebtedness, there are
4 various assumptions that can be used. So I do not
5 know of the specific assumptions you are referring to.
6 Q. Now, you know that the City filed a brief,
7 a legal pleading in the bankruptcy court arguing that
8 the City is eligible to file Chapter 9 under the
9 Bankruptcy Code; are you aware of that?
10 A. Yes.
11 Q. Did you review that brief before it was
12 filed with the bankruptcy court?
13 A. Not extensively, that I recall.
14 MR. STEWART: Jason, if you don't have enough
15 copies, I will have to insist that I have one. I
16 can't have my witness being examined with a document
17 that I can't look at.
18 MR. TEELE: You can have mine when I'm done.
19 MS. BRUNO: Okay.
20 MR. TEELE: No problem.
21 (WHEREUPON, a certain document was
22 marked Malhotra Deposition
23 Exhibit No. 10, for identification,
24 as of 09/20/13.)

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1 BY MR. TEELE:
2 Q. Have you seen the document that's in front
3 of you that's been marked as Exhibit 10?
4 A. No.
5 Q. You've never seen this.
6 MS. BRUNO: Jason, can you identify for the
7 record the Bates number on Exhibit 10.
8 MR. TEELE: Yes. It is DTM100117210 through
9 7215.
10 MS. BRUNO: Thank you.
11 BY MR. TEELE:
12 Q. I'm sorry. Mr. Malhotra, did you say you
13 have never seen this document before?
14 A. That's what I said, no.
15 Q. If you've never seen it, then I'm not
16 going to waste your time asking you questions about
17 it.
18 (WHEREUPON, a certain document was
19 marked Malhotra Deposition
20 Exhibit No. 11, for identification,
21 as of 09/20/13.)
22 BY MR. TEELE:
23 Q. Before we go very far, can you just tell
24 me if you have ever seen this document before?

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1 A. I generally recall seeing this.
2 Q. Okay. This document does not have Bates
3 numbers, but it is identified as City of Detroit
4 Restructuring Plan, Mayor's Implementation Progress
5 Report, dated March 2013.
6 Were you -- was Ernst & Young involved in
7 preparing this report?
8 A. This format generally looks like what we
9 were using, but I do not know -- remember specifically
10 what parts of this report we may or may not have
11 assisted in.
12 Q. And if you look at page 5 of the report,
13 that slide deals with the topic Financial Stability.
14 Do you see that?
15 A. Uh-huh.
16 Q. And it says that the City has a plan "to
17 address the City's $150 million annual structural
18 deficit."
19 Do you see that at the top of that page?
20 A. Yes.
21 Q. At the time this was prepared, did E&Y
22 have a view, an opinion as to whether the $150 million
23 of revenue and cost savings that are identified on
24 this slide were sufficient to get the City through

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1 fiscal year 2013?
2 A. So you are stretching back to fiscal year
3 2013.
4 Q. Well, to be fair, the next question will
5 be what about calendar year 2013. If you want to
6 address it all at once, go ahead.
7 A. I don't know about the calendar year 2013.
8 In terms of view with respect to running out of cash,
9 I don't remember whether this would or would not have
10 been enough, but from a fiscal year 2013 standpoint,
11 depending on the assumptions that you use. That being
12 said, that, you know, these revenue enhancement
13 initiatives and some of these cost savings may, you
14 know, have -- some of these have been already
15 incorporated, i.e., these achieved cost savings of
16 $150 million says it's achieved, so my assumption is
17 they would have already been incorporated in whatever
18 assumptions we had.
19 Q. I'm going to jump ahead a little bit.
20 Are you aware whether the Emergency
21 Manager met with stakeholders regarding the Proposal
22 For Creditors, which is Exhibit 4?
23 A. Yes, there was -- the Emergency Manager
24 was present at the June 14 proposal in which the

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1 majority of creditors, if not all -- a significant
2 number of creditors were present.
3 Q. And were you present for that meeting?
4 A. Yes, I was.
5 Q. Where was that meeting?
6 A. That was at the Westin Hotel by the
7 airport.
8 Q. In Detroit?
9 A. That is correct.
10 Q. Were there other meetings that you are
11 aware of between the Emergency Manager and individual
12 stakeholders regarding the Proposal For Creditors?
13 A. You would have to ask the Emergency
14 Manager that. I do not know of his specific calendar.
15 Q. No. I'm asking if you are aware of any
16 meetings?
17 A. I'm not aware of whether he did or did not
18 have meetings. I do not maintain his calendar.
19 Q. And you were not present at any
20 meetings -- any such meetings, correct?
21 A. Any what such meetings?
22 Q. Between the Emergency Manager or his
23 representatives and individual stakeholders regarding
24 the Proposal For Creditors outside of the June 14th

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1 meeting at the Westin Hotel?
2 A. So, when you say individual stakeholders,
3 can you explain what you are referring to?
4 Q. Let's take a step back.
5 So the June 14th meeting at the Westin
6 Hotel, that was with many creditors, right?
7 A. That's right.
8 Q. Was it open to the public, anybody who
9 wanted to come and listen to come or was it more
10 discrete than that?
11 A. I don't recall specifically how the
12 logistics of it were handled. I do not think it was
13 open to all of the general public, but I'm not sure.
14 I do not believe it was.
15 Q. But there were different -- there were
16 several different creditors in -- in attendance, as
17 far as you know, correct?
18 A. That is correct, yes.
19 Q. So there would have been financial
20 creditors like bondholders present, do you know?
21 A. That's my assumption, yes.
22 Q. And were employee representatives, such as
23 unions, like AFSCME, my client, do you know if those
24 kinds of creditors were also present?

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1 A. I think they were.
2 Q. So, after that meeting, are you aware --
3 did you attend any meetings with the Emergency Manager
4 and any individual creditor group regarding this
5 Proposal For Creditors?
6 A. We've had meetings subsequent to the June
7 14th proposal. I do not recall if the Emergency
8 Manager was present in person or not, but along with
9 the other advisers that have been helping the City,
10 there have been meetings with other stakeholders to
11 discuss things like healthcare plans, both on the
12 active and retiree side, but if -- I do not recall if
13 there was a specific meeting where Kevyn was or was
14 not involved.
15 Q. Okay. And do you recall who you met with
16 in terms of the stakeholder group?
17 A. I think in general at the meetings for
18 the -- on the healthcare side were with some of the
19 union representatives and that there were similar
20 meetings on the retiree side. However, at that point
21 in time, there was not an official retiree committee
22 that was appointed, at least as of June 20th from what
23 I recall.
24 Q. Do you remember approximately when the

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1 last of those meetings occurred?
2 A. When the last of which meetings
3 specifically?
4 Q. The meetings with the Emergency Manager's
5 representatives or consultants, such as EY, and
6 individual stakeholder groups?
7 A. There was a meeting a week or ten days ago
8 with the Official Committee of the Retirees and their
9 respective advisers along with Kevyn Orr and his
10 advisers.
11 Q. And was that meeting specifically to
12 discuss the Proposal For Creditors or was that a
13 meeting generally to discuss, you know, what's
14 happening in the bankruptcy case?
15 A. I think that that's -- when you asked --
16 your question was when was the last meeting, that's
17 what I thought you said.
18 Q. The question was when was the last such
19 meeting, such meeting being the meeting where the
20 Proposal For Creditors was discussed with individual
21 stakeholders?
22 MR. STEWART: I think that reveals the defect in
23 the form because the client couldn't follow the
24 question. Why don't you start over again so we don't

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1 have this ambiguity in the record.
2 BY MR. TEELE:
3 Q. Hopefully that clarifies it.
4 Do you understand the question now?
5 A. I think I would like you to ask the
6 question again, please.
7 Q. So, on June 14th there was a meeting
8 between the emergency manager and his representatives
9 and various stakeholders in the City's bankruptcy
10 case -- or potential bankruptcy case regarding the
11 Proposal For Creditors, correct?
12 A. Yes.
13 Q. And I think you testified that subsequent
14 to June 14th, you're aware of meetings between
15 representatives of the Emergency Manager and
16 individual creditors regarding the Proposal For
17 Creditors. Did I --
18 A. That is correct.
19 Q. And I'm asking you, when was -- to the
20 best of your knowledge, when was the last meeting --
21 when did the last meeting take place at which either
22 the Emergency Manager or his representatives were
23 present along with individual creditors of Detroit for
24 the specific purpose of discussing the Proposal For

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1 Creditors?
2 MR. STEWART: Can I have the question reread,
3 please.
4 (WHEREUPON, the record was read
5 by the reporter as requested, as
6 follows:
7 "Q. And I'm asking you, when
8 was -- to the best of your knowledge,
9 when was the last meeting -- when did
10 the last meeting take place at which
11 either the Emergency Manager or his
12 representatives were present along
13 with individual creditors of Detroit
14 for the specific purpose of
15 discussing the Proposal For
16 Creditors?")
17 BY MR. TEELE:
18 Q. That's a horrible question. Let's ask it
19 this way.
20 To your knowledge, when was the last
21 meeting with stakeholders before the Chapter 9 filing?
22 A. There were a series of meetings that were
23 happening between the June 14th timeframe and when the
24 Chapter 9 filing took place. I do not know if -- and

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1 I was not present in every single meeting. So I do
2 not know of the last specific date. But there were a
3 series of meetings between the June 14 proposal and
4 the filing date with not only, as you said, the banks
5 as one of the stakeholders, but also discussions with
6 union members or, you know, potentially some retirees.
7 Q. Do you know whether the June 14th proposal
8 for creditors has been revised at all?
9 A. Not -- not -- not to my knowledge
10 specifically that it has been revised from an overall
11 structure standpoint. I mean, are you -- do you have
12 a specific question on that June 14th proposal?
13 Q. I just want to know if any changes have
14 been made based on any meetings with stakeholders,
15 that you are aware of?
16 A. I do not -- I do not know -- I need to
17 just give some thought through all of the back and
18 forth where the City was soliciting input and from its
19 different stakeholders, you know, what the revisions,
20 if any, have been. But I'm just trying to recall if I
21 know of any specific changes that have already been
22 incorporated based on either recommendations of
23 proposals, if any, that were made by some of the
24 different stakeholders.

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1 Q. Going back a little bit, with respect to
2 the ten-year projections, do you recall who instructed
3 EY to begin compiling or preparing the ten-year
4 projections?
5 A. I think it was generally the former CFO
6 and the former program management director.
7 Q. And they did that prior to or after the
8 appointment of the Emergency Manager?
9 A. I have to recall. We started with a
10 five-year projection that we would start figuring out
11 whether we do a five-year or a ten-year and then we
12 transitioned from five-year to ten-year. I don't
13 recall specifically at what timeframe.
14 Q. And then why did you transition from
15 five-year to ten-year?
16 A. Just from the nature of looking at the
17 City's liabilities, having a longer term view was more
18 relevant versus having a shorter term view.
19 Q. Generally speaking, the longer you project
20 financial performance of an entity, government entity
21 or even a private entity, does your confidence in the
22 results shown in the projections decrease with the
23 longer period? In other words -- I'm sorry.
24 Did you understand that question?

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1 A. I did.
2 Q. Okay.
3 A. As long as you are making reasonable
4 assumptions for a five-year or a ten-year timeframe,
5 the comfort along certain assumptions in the short
6 term when they are based on recent trends is always
7 higher than projections that are in the long term.
8 That being said, it also depends on the reasonableness
9 of the assumptions in terms of the comfort level.
10 Q. And is it true that EY did not compile the
11 data that is included in the buildup to the ten-year
12 projections?
13 A. We did not audit the data. When you say
14 compile the data, if you can rephrase your question.
15 Q. You took data from other sources, for
16 example, from the CAFR, the Comprehensive Annual
17 Financial Report, right?
18 A. That was one source.
19 Q. Right. That's one source. And there are
20 other sources.
21 And you took data that was compiled by
22 other consultants retained by the City, for example,
23 by Milliman, is that right?
24 A. For certain assumptions.

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1 Q. And you used information that you were
2 able to obtain directly from the City's -- directly
3 from the City, the different agencies and departments
4 of the City in your ten-year projections, right?
5 A. Not necessarily. The City does not have
6 any ten-year projections currently. The data that we
7 used was based on ascertaining what historical
8 information was available and then using those --
9 using that data alongside some of the assumptions that
10 we got from the other advisers, helping pull together
11 ten-year assumptions. I do not know of any ten-year
12 assumptions the City had historically that we would
13 have used as a starting point.
14 Q. But you didn't create the historical -- in
15 other words, you didn't -- again, you didn't create
16 the historical data yourself from -- from original
17 sources, did you? You took -- did you?
18 A. When you -- you've got to rephrase that
19 question.
20 Q. You took the historical data directly from
21 the City?
22 A. The City's historical data, we took the
23 data that the City gave us and then made sure that
24 what data was reasonable, how we would actually look

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1 at the assumptions and that historical data. So we
2 had to look at the data, look at what the assumptions
3 were with respect to how that data was classified, how
4 that data was categorized to make sure that we could
5 actually use that data. So there wasn't just a raw
6 data dump in which we could use that data in its
7 original form without having to analyze it further.
8 Q. All right. See, that's where my confusion
9 is, because I thought that you had testified earlier
10 that you didn't really audit data?
11 A. That's right.
12 Q. And you didn't go back to --
13 MR. STEWART: You have to wait for a question.
14 He is not asking you a question.
15 BY MR. TEELE:
16 Q. And you didn't, for example -- and I think
17 you gave this example, you didn't go back to the
18 original bond offering documents to make sure that the
19 amounts stated in the data that you were using was
20 correct, right?
21 MR. STEWART: Well, wait a minute. What's the
22 question? That was a speech essentially. Just ask a
23 question.
24 BY MR. TEELE:

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Q. I'm going to move on. It's a point of confusion in my head, but I'll move on.
MR. STEWART: I think the transcript will clear it up. I think it was covered.
MR. TEELE: I don't have anything further. Thank you.
MR. STEWART: Does anyone else have questions?
MS. BRUNO: Why don't we take a short break so I can communicate with everyone on the phone.
MR. STEWART: Okay.
MS. BRUNO: And then we can come back to you.
MR. STEWART: Okay.
(WHEREUPON, a recess was had from 12:22 to 12:30 p.m.)
MS. BRUNO: We are back on.
Counsel on the phone, we are back on the record. And I believe when we went off the record, we were going through the people on the phone on a roll call to see if anyone has any questions for Mr. Malhotra.
MR. PLECHA: Ryan Plecha from the Association Parties, we do not have any questions.
MR. STEVENSON: This is John Stevenson from Clark Hill. I do not have any questions.

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MS. TAUNT: Meredith Taunt on behalf of the Retired Detroit Police Members Association. We do not have any questions.
MS. BRUNO: Anyone else on the phone?
MS. KAUFMAN: This is Dana Kaufman for Financial Guaranty Insurance Company. We do not have any questions.
MR. STEWART: This is Jeff Stewart, I have just a few questions of Mr. Malhotra, from Jones Day. I represent the witness and also the City, just a few questions.

EXAMINATION

BY MR. STEWART:
Q. Mr. Malhotra, you were asked in your deposition about a document called the Comprehensive Annual Financial Report of the City of Detroit.
Do you remember being asked about that?
A. Yes.
Q. That's sometimes called a CAFR, C-A-F-R?
A. Yes.
Q. Did E&Y audit the CAFR?
A. No.
Q. Or audit the accounts that led to the creation of the CAFR?

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A. No.
Q. Was the CAFR audited?
A. Yes.
Q. Audited by who?
A. KPMG.
Q. And tell us who or what is KPMG?
A. KPMG is the City's auditor and it is another Big 4 accounting firm.
Q. Is it one of the international accounting firms that is known in the United States and elsewhere?
A. Yes.
Q. Comparable to E&Y in terms of what it does?
A. Generally, yes.
MR. STEWART: Okay. That's all I have. Thank you.
MR. TEELE: I have no questions.
MR. STEWART: So is the record closed?
MS. BRUNO: It is at this time.
MR. STEWART: Okay.
(Time Noted: 12:32 p.m.)
FURTHER DEPONENT SAITH NOT.

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REPORTER'S CERTIFICATE

I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604, a Certified Shorthand Reporter, do hereby certify:
That previous to the commencement of the examination of the witness herein, the witness was duly sworn to testify the whole truth concerning the matters herein;
That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction and constitutes a true record of the testimony given and the proceedings had;
That the said deposition was taken before me at the time and place specified;
That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.
IN WITNESS WHEREOF, I do hereunto set my hand on this 21st day of September, 2013.

Juliana F. Zajicek
JULIANA F. ZAJICEK, Certified Reporter

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No. 9	Letter dated February 22, 2013, To: Councilmembers; From: Irvin Corley, Jr., Director Fiscal Analysis Division and David D. Whitaker, Director Research & Analysis Division; Re: Comments on the Report of the Detroit Financial Review Team; DTM100097150 - 154.....	89
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DEPOSITION ERRATA SHEET

Assignment No. 472371

Case Caption: In Re: City of Detroit, Michigan

DECLARATION UNDER PENALTY OF PERJURY

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 111, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

GAURAV MALHOTRA

SUBSCRIBED AND SWORN TO
before me this day
of , A.D. 200 .

Notary Public

DEPOSITION ERRATA SHEET

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GAURAV MALHOTRA

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GAURAV MALHOTRA

EXHIBIT D

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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re — Chapter 9
CITY OF DETROIT, MICHIGAN, — Case No. 13-53846
Debtor. — Hon. Steven W. Rhodes
_____/

DEPONENT: CHARLES M. MOORE
DATE: Wednesday, September 18, 2013
TIME: 10:02 a.m.
LOCATION: MILLER CANFIELD PADDOCK & STONE PLC
150 West Jefferson, Suite 2500
Detroit, Michigan
REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267

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APPEARANCES:

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Page 3

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Detroit, Michigan
Wednesday, September 18, 2013
* * *

CHARLES M. MOORE

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

MR. RUEGGER: Good morning, everyone. My name is Arthur Ruegger from the Dentons firm, we represent the Retirees Committee. I guess I'll be the first one to ask the questions today, but there should be others later on.

Good morning, Mr. Moore.

THE WITNESS: Good morning.

MR. RUEGGER: A couple of preliminaries. But I guess even before that, let's do a roll call. We'll go around the table first and then ask for people on the phone to identify themselves. Why don't we start with you, Sharon.

MS. LEVINE: Sharon Levine, Lowenstein Sandler, for AFSCME.

MR. CIANTRA: I'm Thomas Ciantra, I'm with Cohen Weiss and Simon, LLP, for the UAW.

MR. MAST: Drew Mast, Clark Hill, for the

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1 Retirement Systems.
2 MR. ESSAD: Ernest Essad, Williams,
3 Williams, on behalf of FGIC.
4 MR. GREEN: Jonathan Green, Miller
5 Canfield, Paddock and Stone, for the City.
6 MR. MILLER: Evan Miller, Jones Day, for
7 the City.
8 THE WITNESS: Charles Moore,
9 Conway MacKenzie, the deponent.
10 MR. RUEGGER: Okay, that takes care of
11 people at the table. On the phone, please?
12 MR. MILLER: Ladies and gentlemen on the
13 phone, please identify yourselves.
14 MR. FORDE: Bianca Forde, Winston & Strawn,
15 on behalf of Assured Guaranty Municipal Corp.
16 MR. HAMMOND: Ed Hammond, Clark Hill, for
17 the Retirement Systems.
18 MS. COX: Meredith Cox, Strobl & Sharp, on
19 behalf of the Retired Detroit Police Members
20 Association.
21 MR. MORRIS: Thomas Morris of Silverman &
22 Morris on behalf of the retired Detroit cities
23 employees association and the -- I'm sorry, let me
24 restate that. The Detroit Retired City Employees
25 Association and the Retired Detroit Police and

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1 Firefighters Association.
2 MR. RUEGGER: Okay, that's probably
3 everyone then.
4 EXAMINATION
5 BY MR. RUEGGER:
6 Q. As I said, good morning, Mr. Moore.
7 A. Good morning.
8 Q. I want to cover a couple of preliminary customs so
9 that everybody understands. A number of us are going
10 to ask you questions today. I'm going to ask that you
11 allow each of us to complete the questions before you
12 answer. The court reporter will have trouble taking
13 two people at the same time. Similarly, if people
14 have objections, I would ask that they allow the
15 question to be completed before they interpose the
16 objection.
17 Mr. Moore, if you don't understand a
18 question that any of us asks, please say so and we
19 will try to rephrase it. If you don't mention that
20 you don't understand it, we'll assume that you do
21 understand the question. Is that fair enough?
22 A. It is, yes.
23 Q. And there may be other customs. The only other one I
24 want to mention is that I ask that you respond
25 audibly, because the court reporter can't record the

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1 nodding or the shaking of the head --
2 A. Yes.
3 Q. -- do you understand that one? I would like to
4 start --
5 MR. MILLER: Well, excuse me, Mr. Ruegger.
6 This is Evan Miller and I would like to make an
7 introductory note on the record. Mr. Moore is being
8 made available today for this deposition in compliance
9 with the bankruptcy court's September 12th order
10 respecting discovery and in compliance with subpoenas
11 that were issued by both Council 25 of AFSCME and the
12 UAW. Mr. Moore is also being made available today by
13 the City as the City's representative in part in
14 connection with a 30(b)(6) deposition notice that
15 AFSCME has issued to the City and in connection with
16 certain but not all of the topics that AFSCME in that
17 notice identified. In connection with the deposition
18 today all objections are reserved except as to form.
19 MR. RUEGGER: I'm going to ask the court
20 reporter to mark as Moore Exhibit 1 a copy of
21 Mr. Moore's declaration dated July 18th, 2013. I have
22 four copies for people. People probably have copies,
23 but to the extent they don't, there are some here.
24 (Marked Exhibit No. 1.)
25 Q. Mr. Moore, is that your declaration that's been marked

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1 as Moore Exhibit 1?
2 A. Yes, it appears to be.
3 Q. Are you presently employed, Mr. Moore?
4 A. Yes.
5 Q. By whom?
6 A. Conway MacKenzie, Inc.
7 Q. And how long have you been with Conway MacKenzie,
8 Inc.?
9 A. For 12 years.
10 Q. What was your position when you first started with
11 Conway MacKenzie?
12 A. I was a senior associate.
13 Q. And can you tell us what positions you held at
14 Conway MacKenzie between that position and the one you
15 currently hold?
16 A. I believe I held the titles of senior associate and
17 then director, managing director and eventually senior
18 managing director, which is my current title.
19 Q. When did you become a senior managing director?
20 A. I don't recall exactly, but I think it was January 1st
21 of 2008.
22 Q. Your declaration refers to your educational background
23 and I'll direct your attention to paragraph 4.
24 Declaration is accurate, I take it, that you have a
25 bachelor's of arts and a master's of business

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1 administration from Michigan State?
2 A. Yes, sir.
3 Q. When did you get your bachelor's degree?
4 A. In 1994.
5 Q. And when did you get your master's degree?
6 A. The same year. I was enrolled in a five-year program
7 which essentially granted both degrees at the same
8 time.
9 Q. Did you have any specialty or concentration with
10 regard to your bachelor of arts degree?
11 A. Yes, accounting.
12 Q. And what about your MBA?
13 A. Yes, the track was professional accounting.
14 Q. What was your first job after you received your
15 degrees in 1994?
16 A. I was employed by Deloitte and Touche.
17 Q. And what was your position at Deloitte and Touche?
18 A. I believe the title may have been associate.
19 Q. And how long were you with Deloitte and Touche?
20 A. Approximately five-and-a-half years.
21 Q. And what areas did you concentrate in at Deloitte and
22 Touche?
23 A. I spent the majority of my time in the middle market
24 consulting group doing performance improvement and
25 other consulting services for middle market companies.

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1 Q. And when you left Deloitte and Touche, what was your
2 next employer?
3 A. I became the chief financial officer for Horizon
4 Technology.
5 Q. Can you spell that? Horizon, H-O-R --
6 A. Yes, sir. H-O-R-I-Z-O-N.
7 Q. And what was the business of Horizon Technology?
8 A. Horizon had a variety of businesses. The bulk of the
9 operations were automotive supply operations. We
10 produced various metal formed parts, but it was a
11 privately owned business and it had a variety of other
12 interests as well including real estate and retail
13 along with a few other very minor businesses.
14 Q. Just so we get a sense for the size of business, what
15 were the annual revenues in general terms of Horizon
16 Technology?
17 A. Approximately $60 million per year.
18 Q. Thank you. And how long were you with Horizon
19 Technology?
20 A. Just under two years.
21 Q. So if you were with Deloitte and Touche for
22 five-and-a-half years, you left Deloitte in Touche in
23 or around 1999 or year 2000; is that correct?
24 A. Very beginning of year 2000, yes, sir.
25 Q. And you were with Horizon Technology until when?

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1 A. Until October of 2001.
2 MR. RUEGGER: Okay, did someone just join
3 the deposition?
4 MR. ARTZ: Yes, this is Michael Artz from
5 AFSCME on the phone.
6 MR. RUEGGER: Thank you, Michael.
7 MS. LEVINE: Hi, Michael.
8 MR. ARTZ: Good morning.
9 Q. So now we're October 2001. Where did you go then?
10 A. That is when I joined Conway MacKenzie.
11 Q. And have you undertaken any area of special
12 concentration at Conway MacKenzie?
13 A. There are a number of industries that I tend to focus
14 a lot of my time on as well as certain services that
15 the firm provides.
16 Q. And what are the industries that you focus on?
17 A. Automotive, gaming and hospitality, governmental,
18 construction and real estate, financial services and
19 there are a few others as well but those are the major
20 ones.
21 Q. And does that list include the services that you also
22 concentrate in at Conway MacKenzie?
23 A. The service lines that I participate in are separate
24 from industries. The service lines tend to be in the
25 area of turnaround consulting, performance

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1 improvement, restructuring, crisis management,
2 litigation support and investment banking.
3 Q. Before your work for the City of Detroit did you have
4 any experience working with governmental clients?
5 A. Yes, sir.
6 Q. Approximately how many?
7 A. Approximately five.
8 Q. Can you identify them?
9 A. Yes, sir. Detroit Public Schools, Jefferson County
10 Alabama, Wayne County Circuit Court, others are
11 slipping my mind right now -- oh, the Commonwealth of
12 Puerto Rico and I'm -- those are the ones that I can
13 recall at this point.
14 Q. And that's fine. If you remember any others in the
15 course of today's proceeding, I would ask that you
16 identify them then.
17 A. I will.
18 Q. When did you do the work with the Detroit Public
19 Schools?
20 A. In 2011.
21 Q. Is that work ongoing or is it completed?
22 A. No, sir, it's completed.
23 Q. And so how long did you do work for the Detroit Public
24 Schools?
25 A. Approximately three months.

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1 Q. And what generally did you do for the Detroit Public
2 Schools?
3 A. We worked under then Emergency Manager Robert Bobb
4 looking at operational improvements including shared
5 services as well as outsourcing of certain operations.
6 Q. What about Jefferson County Alabama, when did you do
7 the work for that county?
8 A. In 2012 into 2013.
9 Q. And how long did you work with Jefferson County
10 Alabama?
11 A. That engagement, while somewhat dormant right now, is
12 still active, so approximately a year.
13 Q. And what -- was Conway MacKenzie engaged by Jefferson
14 County Alabama?
15 A. No, we were specifically engaged by one of the
16 monoline insurers through counsel.
17 Q. And which insurer was that?
18 A. National.
19 Q. And what did -- I understand it may be ongoing to some
20 extent or perhaps suspended now, but what work has
21 Conway MacKenzie done for or in the Jefferson County
22 Alabama case?
23 A. We assisted National and counsel to National in the
24 evaluation of plans put together by the county and
25 negotiations related to the plan of adjustment.

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1 Q. Let's turn to Wayne County Circuit Court.
2 A. Yes, sir.
3 Q. What state is Wayne County is?
4 A. The State of Michigan.
5 Q. And when did you do work with Wayne County Circuit
6 Court?
7 A. I believe this was in 2005 or 2006. I can't recall
8 exactly.
9 Q. And approximately how long was the work for that
10 circuit court?
11 A. There were a couple of different assignments. I think
12 that the work extended over a period of perhaps six
13 months.
14 Q. And can you summarize for us what the work was --
15 A. Our work --
16 Q. -- that -- excuse me -- that your firm did?
17 A. Yes, our work revolved mainly around budget issues
18 that the court was having and providing analyses that
19 were used in negotiations between the court and Wayne
20 County.
21 Q. Was your firm's client the Wayne County Circuit Court?
22 A. Yes, sir. Just as -- Mr. Ruegger, just as a
23 clarification, Wayne County Circuit Court is also
24 known as 3rd Judicial Circuit Court of Michigan.
25 Q. Thank you.

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1 Were any of these entities we've talked
2 about so far that you've done work with in the
3 governmental areas, the Detroit Public Schools,
4 Jefferson County Alabama, and Wayne County Circuit
5 Court, were any of them either in bankruptcy or
6 reorganization or rehabilitation?
7 A. Yes, sir, Jefferson County was in Chapter 9 and
8 Detroit Public Schools were operating under an
9 Emergency Manager. And just to clarify there was a
10 time when while I was involved with Detroit Public
11 Schools that Mr. Robert Bobb was the Emergency
12 Financial Manager and there was a time where he was
13 the Emergency Manager.
14 Q. When you were working with Mr. Bobb for the Detroit
15 Public Schools, he was Emergency Manager or was he
16 also the Emergency Financial Manager or both?
17 A. When Conway MacKenzie was first engaged, Public Act 72
18 was in effect in Michigan and he was acting as the
19 Emergency Financial Manager. During the course of our
20 engagement, Public Act 4 came into existence and he
21 became the Emergency Manager.
22 Q. Thank you.
23 I believe the fourth governmental matter
24 you identified was Puerto Rico?
25 A. Yes, sir.

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1 Q. Who was Conway MacKenzie's client in the Puerto Rico
2 matter?
3 A. The Government Development Bank of Puerto Rico.
4 Q. Is that a publicly -- a public bank or a private bank?
5 A. It's a public bank.
6 Q. Under the control directly or indirectly of the
7 Commonwealth of Puerto Rico?
8 A. Yes, sir, it's a government agency.
9 Q. And when did you do the work for the Government
10 Development Bank?
11 A. I believe that was 2010.
12 Q. And for how long approximately?
13 A. Approximately three to four months.
14 Q. And what did you and your firm do for the Government
15 Development Bank?
16 A. Conway MacKenzie was engaged specifically related to
17 the employee retirement system for the Commonwealth of
18 Puerto Rico.
19 Q. Can you be somewhat more specific then about the
20 employment retirement system and work you did related
21 to that?
22 A. We were asked to conduct an investigation and an
23 analysis of factors that influenced the unfunded
24 position of the employee retirement system.
25 Q. Did you complete your work in that regard?

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1 A. Yes, sir.
2 Q. And just so I'm clear, I apologize, it was the
3 employment retirement system of the Government
4 Development Bank that you did this work for?
5 A. The Government Development Bank was the engaging
6 entity. The pension system for which our work related
7 was the employee retirement system.
8 Q. For what entity or group?
9 A. For the Commonwealth of Puerto Rico.
10 Q. Thank you.
11 A. It was a public pension plan. Mr. Ruegger, I'll just
12 clarify as well that my firm did work -- other work
13 related to the Commonwealth of Puerto Rico for a
14 different client prior to the assignment where we
15 worked for the government.
16 Q. All right. Can you identify what that other client
17 was?
18 A. Yes. We were engaged by both AFSCME and UAW.
19 Q. And what were you engaged to do for those unions?
20 A. Assist in analysis related to a plan that the governor
21 had prepared and analysis of the upcoming budget.
22 Q. Do you remember approximately when that work was done?
23 A. I believe that may have been in 2009.
24 Q. And how long did you work in the engagement for those
25 two unions?

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1 A. Approximately two months, if I recall correctly.
2 Q. It's set out in your declaration that -- and I believe
3 it's paragraph 6 --
4 (Discussion held off the record.)
5 Q. -- that you're a Certified Public Accountant. That's
6 accurate; correct?
7 A. Yes, sir.
8 Q. And you are also a certified turnaround professional?
9 A. Yes, sir.
10 Q. Do you have any other formal certificates?
11 A. I am also, as is listed here, certified in financial
12 forensics.
13 Q. Any others that you recall?
14 A. No, sir.
15 Q. Other than -- any other formal training that you've
16 had or certifications?
17 A. Can you define formal training?
18 Q. Sure. We'll try to break it down. How about any
19 other classroom training or work at an educational
20 institution?
21 A. Through the course of my certifications as well as
22 professional organizations to which I belong I
23 regularly attend educational sessions every year.
24 Q. So seminars, conferences, those kind of things you
25 attend on a regular basis?

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1 A. Yes, sir.
2 Q. Anything other than seminars and conferences and what
3 you've mentioned already?
4 A. Over the course of my career I've also spent time with
5 a few other certifications related to operational
6 items; as an example, I don't believe it's called this
7 anymore, but formerly the American Production
8 Inventory Control Society, APICS, A-P-I-C-S. And I
9 have been certified in certain operational information
10 system applications used by businesses.
11 Q. Can you identify any of the operational information
12 system applications that you just mentioned?
13 A. Yes, I have multiple certifications from QAD is the
14 name of the company related to its software enterprise
15 resource planning application known as MFG Pro.
16 Q. Any others you can recall right now?
17 A. No, I think that's it.
18 Q. We're going to come back to the declaration in a
19 second, but have you ever testified under oath before,
20 Mr. Moore?
21 A. Yes, sir.
22 Q. Approximately how many times?
23 A. If you count testifying in the same matter multiple
24 times as each individual instance, it would be perhaps
25 15 -- 10 to 15 I think would be a fair number.

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1 Q. And of the 10 to 15 how many were in court?
2 A. I've testified in court perhaps five to eight times.
3 Q. Any instances where you testified in an arbitration
4 proceeding?
5 A. Not that I can recall.
6 Q. And approximately how many of those instances were
7 deposition testimony?
8 A. I have been deposed approximately five times.
9 Q. Other than the court and the deposition instances,
10 have you testified under oath in any other context?
11 A. Not that I can recall.
12 Q. I'm going to ask you to identify for us the cases that
13 you've testified -- in which you've testified, so
14 let's start with the instances in court. When was the
15 first time you testified in court?
16 A. The matter would have been DCT, Inc., and I believe I
17 testified in 2002.
18 Q. Were you a fact or an expert witness?
19 A. I was a fact witness.
20 Q. And what issues did you testify to?
21 A. This goes back 11 years so I'm stretching my memory
22 here.
23 Q. Just do the best you can, sir.
24 A. But this was an involuntary bankruptcy filing where
25 Conway MacKenzie was engaged on behalf of the debtor

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and I believe that I was testifying to certain events leading up to the involuntary bankruptcy filing.
Q. Was there -- was the filing contested by creditors or any other group?
A. It was an involuntary bankruptcy filing.
Q. So -- very well.
How many times did you testify in the DCT case?
A. Once.
Q. Did you testify in that case in deposition at all?
A. No, sir.
Q. Just the one instance of court testimony?
A. Yes.
Q. When was the next time you testified in court?
A. I believe that was 2003.
Q. Can you tell us the name of the case?
A. The name of the case was Wohlert Corporation.
Q. Can you spell that, please?
A. W-O-H-L-E-R-T.
Q. And were you a fact or expert witness?
A. I was a fact witness.
Q. And who was your -- were you -- who was Conway MacKenzie's client in that case?
A. Conway MacKenzie was engaged by Wohlert Corporation. Wohlert Corporation had filed Chapter 11.

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Q. And what court did Wohlert file for Chapter 11?
A. The Western District of Michigan.
Q. And what issues did you address in your testimony?
A. I testified multiple times for different issues in the case. There was a motion to convert the case to Chapter 7 that was filed, I testified related to postpetition financing, I testified related to a sale transaction, I believe.
Q. In each instance there was a separate incident of testimony in court?
A. Yes, sir.
Q. Any other cases where you testified in court other than the two you've mentioned?
A. Yes, sir. The next matter was Hastings Manufacturing and that was a Chapter 11 in the Western District of Michigan.
Q. And who was Conway MacKenzie's client there?
A. Hastings Manufacturing.
Q. And what issues did you address in your testimony?
A. I believe that I testified -- I'm just skipping my mind on the specific testimony, but I think I testified related to a sale transaction that was occurring and this would have been in perhaps 2005 -- 2005 or 2006.
Q. So you testified in support of a proposed sale

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transaction?
A. Yes, sir.
Q. Any other court cases you testified -- where you testified in court other than the three you've mentioned?
A. Yes, sir. Greektown Casino and Hotel.
Q. And who was Conway MacKenzie's client in that case?
A. Greektown Casino.
Q. And what issues did you address in your testimony?
A. I testified multiple times during that Chapter 11 case related to postpetition financing, plans of reorganization, disclosure statements, and a variety of other issues. There were many instances of testimony in that case.
Q. So when you say -- you said multiple or many, can you give me an approximate number of times you testified in court in that case?
A. Perhaps five or six.
Q. Thank you.
Other than the four cases we've identified so far, have you testified in court in any other instance?
A. Not that I can recall right now.
Q. Fair enough.
I believe you said you testified in

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deposition approximately five times?
A. Yes, sir.
Q. Were any of those depositions in the four court cases that you've identified so far?
A. Yes, sir.
Q. In which of the cases that you identified so far have you also testified in a deposition?
A. Greektown Casino.
Q. And approximately how many times were you deposed in Greektown Casino?
A. At least two.
Q. Related to the same issues that you had mentioned earlier that you testified to in court?
A. Yes, sir.
Q. Other than the depositions in the Greektown Casino case can you give us the names and subject matters of any -- of other cases where you were -- testified in a deposition?
A. Yes, sir. Synergy Data, which was a Chapter 11 case in the district of Delaware, and I don't believe, Mr. Ruegger, that I testified in court in that instance; however, I was deposed. I can't recall exactly if I testified in court in that one or not.
Q. Do you remember what issues you addressed when you testified in the Synergy Data case?

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1 A. The issue related to a matter that was being litigated
2 between a creditor of Synergy Data and the estate. I
3 was the chief operating -- or chief restructuring
4 officer for the estate and then I became the
5 liquidating trustee.
6 Q. And what was the issue that was being litigated?
7 A. It was a dispute over amounts owed.
8 Q. Okay. Any other cases that you recall where you
9 testified in a deposition?
10 A. Yes, there was a case, this would have been in 2012,
11 it was General Motors Corporation versus Weber
12 Automotive, W-E-B-E-R.
13 Q. Who was Conway MacKenzie's client in that matter?
14 A. Counsel for General Motors.
15 Q. And what was the subject matter of your testimony?
16 A. This was a commercial dispute.
17 Q. Can you give us just a general description of what the
18 dispute related to?
19 A. Related to contractual terms, potential breach or
20 alleged breach of contract between the two parties.
21 Q. Was your testimony as an expert in the GM versus Weber
22 Automotive or as a fact witness?
23 A. As an expert.
24 Q. And do you recall what your -- what areas of expert
25 testimony you gave -- withdrawn.

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1 What were you -- what subjects were you an
2 expert on in that case?
3 A. I was an expert related to the automotive industry and
4 supplier relations.
5 Q. Back to the subject of what deposition testimony
6 you've given. Other than the cases you've identified
7 so far, have you testified in a deposition in any
8 other case?
9 A. Not that I can recall. I think that takes us to about
10 five or so, which is what I thought I had done before
11 in depositions.
12 Q. Thank you.
13 You mentioned that you testified as an
14 expert in the GM versus Weber Automotive matter and
15 have you testified as an expert in any other matter?
16 A. I testified as an expert in the Greektown case.
17 Q. And on what subjects were you proffered as an expert
18 in the Greektown Casino case?
19 A. Plan confirmation.
20 Q. Did you have a position or a title with the Greektown
21 Casino case?
22 A. I believe the title was either restructuring advisor
23 or chief restructuring advisor. I was specifically
24 named as this individual.
25 Q. And did -- was a plan of reorganization confirmed for

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1 the Greektown Casino debtor?
2 A. Yes, sir.
3 Q. And was that in the Delaware bankruptcy court or some
4 other court?
5 A. That was Eastern District of Michigan.
6 Q. Thank you.
7 And do you recall the year or years where
8 the Greektown Casino bankruptcy was pending?
9 A. 2008 through 2010.
10 Q. Am I correct then that -- withdrawn.
11 Other than the GM V. Weber Automotive and
12 the Greektown Casino cases, have you testified as an
13 expert in any other cases?
14 A. Not that I can recall.
15 Q. Have you submitted an expert report in any other
16 cases?
17 A. Yes, sir.
18 Q. How many other cases?
19 A. Off the top of my head, approximately perhaps two.
20 Q. And are these instances where you signed the expert
21 report as the head of the Conway MacKenzie team?
22 A. Yes, sir.
23 Q. In which two matters did you submit those expert
24 reports?
25 A. One matter would be MuniVest.

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1 Q. And can you tell us what that matter is or was?
2 A. That was an alleged Ponzi scheme and I worked on
3 behalf of the trustee that was appointed in that case.
4 Q. And where was that case pending?
5 A. That was Eastern District of Michigan.
6 Q. And I take it the subject of your testimony -- or the
7 subject of your report was whether in fact there was a
8 Ponzi scheme?
9 A. Yes, sir.
10 Q. Did you conclude that there was a Ponzi scheme?
11 A. Yes, sir.
12 Q. And you never testified, though, in that case, either
13 in deposition or in court?
14 A. Not yet.
15 Q. It's pending?
16 A. There are still open issues, many -- many matters have
17 settled, but the case is still open.
18 Q. And the second instance where you've submitted a
19 report, can you describe that case for us, please?
20 A. I don't believe that this was a signed report and I am
21 actually forgetting the official name of the case but
22 this was a -- the general name of the matter was
23 ConTech, C-O-N-T-E-C-H, and this involved preference
24 litigation.
25 Q. Who is the client in the ConTech matter?

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1 A. I believe -- I work mainly with counsel and if I
2 recall correctly, counsel was working for the trustee,
3 the Chapter 7 trustee.
4 Q. Okay. You've testified to this and I don't mean to go
5 over what you've already covered, but I'm trying to
6 now identify the cases -- the prior cases related to
7 Chapter 9 bankruptcy that you've worked with and I
8 believe you testified that the Jefferson County
9 Alabama matter was a Chapter 9 matter. Any other
10 Chapter 9 filings that you've worked in?
11 A. No, sir.
12 Q. Related to the Jefferson County Alabama work you've
13 done, can you be a little more specific about the work
14 you did in evaluating the plans on behalf of National?
15 A. Sure. Conway MacKenzie first sought to receive
16 detailed information supporting plans that had been
17 put together by the county including its proposed
18 budget. Conway MacKenzie met with the county to go
19 through various assumptions, ask about certain areas
20 that had been considered for improving the operation,
21 participated in strategy sessions with counsel related
22 to the plan of adjustment or proposed terms of the
23 plan of adjustment prior to the county actually filing
24 the plan, and those would have been the more specifics
25 as to the areas that Conway MacKenzie participated.

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1 Q. What was -- I think you said your client in that
2 matter was National?
3 A. National Public Finance -- National Public Finance
4 Guaranty, NPFG.
5 Q. And what had National Public Finance guaranteed in the
6 Jefferson County case?
7 A. The bulk of National's exposure related to a couple of
8 bond offerings from just over ten years ago. There
9 was a -- if I recall correctly, there was another
10 element where there was some exposure that National
11 had, but the two bond offerings that I was referring
12 to constituted about $100 million in exposure and this
13 other area, if I recall correctly, had about
14 $3 million of exposure.
15 Q. Thank you.
16 You mention in paragraph 5 of your
17 declaration that you have extensive experience with
18 defined benefit pension plans and other postretirement
19 employee benefits. Can you give us a little more
20 specifics on that experience?
21 A. I have in the course of my career on many engagements
22 come across issues related to defined benefit pension
23 plans as well as other postretirement employee
24 benefits and have consulted with clients related to
25 those two items.

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1 Q. Can you name some of those engagements?
2 A. Sure. I will focus on public engagements. Many of my
3 engagements are private in nature so I'm not able to
4 necessarily disclose the names, but several that I've
5 already discussed which are public I'm able to
6 indicate. With Wohlert Corporation there was a
7 pension plan and we dealt directly with the IRS and
8 the PPGC as well as unions related to that pension
9 plan.
10 Hastings Manufacturing also had a pension
11 plan.
12 The Commonwealth of Puerto Rico, obviously
13 our primary involvement with them related to the
14 employee retirement system.
15 Q. Any others come to mind --
16 A. Um --
17 Q. -- of public engagements?
18 A. Yeah, of those that I mentioned, I don't think any of
19 the others had pension or retiree healthcare, which is
20 what I'm referring to on the other postretirement
21 employee benefits. I don't think that those came into
22 play on any of the other public matters.
23 Q. So as best you recall right now it's the Wohlert,
24 Hastings Manufacturing and the Puerto Rico cases where
25 pension or other OPEB issues were part of your

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1 engagement?
2 A. Of those that I mentioned, yes.
3 MR. MILLER: In connection with the public?
4 A. Of those that I mentioned in connection with publicly
5 -- or public engagements, if you will, yes, sir.
6 Q. Okay, yeah, we're putting aside the private ones for
7 confidential reasons, I understand.
8 A. Yes, sir.
9 Q. You're not an actuary; correct?
10 A. That is correct, I am not actuary.
11 Q. Have you had any formal training in actuarial areas?
12 A. No, sir.
13 Q. You mentioned in paragraph 6 of your declaration that
14 you were appointed to serve on the Legislative
15 Commission on Government Efficiency? That's correct;
16 is it not?
17 A. Yes, sir.
18 Q. When were you appointed?
19 A. My appointment was at the end of 2007 and it was a
20 two-year commission.
21 Q. Who appointed you?
22 A. If I recall correctly, I was appointed by both the
23 speaker of the house for the State of Michigan and the
24 senate majority leader for the State of Michigan.
25 MR. RUEGGER: Let's go off the record for a

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1 second.
2 (A brief recess was taken.)
3 MR. RUEGGER: Back on the record.
4 Drew, you want to say something?
5 MR. MAST: Yes, before we continue, just
6 briefly, I would like to make a statement on behalf of
7 the Retirement Systems that as to any and all
8 questioning by others today regarding pension and
9 actuarial issues, including underfunding, calculations
10 and assumptions, Detroit -- the Retirement Systems are
11 not participating today and reserve all rights with
12 regard to those issues. That's all.
13 MR. RUEGGER: Very well.
14 BY MR. RUEGGER:
15 Q. We were talking about the commission that was
16 referenced in your declaration when we left.
17 A. Yes, sir.
18 Q. What was the subject matter of that commission as you
19 recall?
20 A. The commission was created as part of a budget
21 standoff that took place within the State of Michigan
22 prior to the start of its fiscal year 2008. The State
23 was not able to pass a balanced budget prior to the
24 start of the fiscal year on October 1st, 2007. As
25 part of the final compromise, there was the -- to be

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1 the creation of a commission called the Legislative
2 Commission on Government Efficiency which would
3 consist of nine members that would look for
4 efficiencies in the State of Michigan's operations.
5 Q. And did that commission issue a report or
6 recommendation?
7 A. Yes, sir.
8 Q. At the end of that two-year period?
9 A. Yes.
10 Q. Who was the speaker who appointed -- you mentioned the
11 speaker and the house majority leader both appointed
12 you to that commission?
13 A. Speaker of the house was Andy Dillon and the senate
14 majority leader was Mike Bishop.
15 Q. Last name, sir?
16 A. Bishop.
17 Q. Bishop?
18 A. Bishop, B-I-S-H-O-P.
19 Q. Prior to the Legislative Commission on Government
20 Efficiency, had you served on any commissions or other
21 organizations on behalf of the government?
22 A. The State government?
23 Q. Yes, sir.
24 A. Not that I can recall.
25 Q. Subsequent to your work on the Legislative Commission

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1 on Government Efficiency have you served on any State
2 commissions?
3 A. No, sir.
4 (Marked Exhibit No. 2.)
5 Q. I want to try to explore what you know about some
6 other references to various teams or panels that are
7 in the pleadings so -- because we're on the subject of
8 commissions now and I've asked the court reporter to
9 mark as Moore Exhibit 2 a copy of the Memorandum in
10 Support of Statement of Qualifications Pursuant to
11 Section 109(c) of the Bankruptcy Code, which was filed
12 July 18th, 2013.
13 MR. RUEGGER: And if anybody wants to look
14 at a copy.
15 Q. I'm not going to spend a lot of time on this, but if
16 you could, Mr. Moore, turn to page 1 of that document.
17 You can certainly review it to be familiar if you
18 want. You have that page, sir?
19 A. Yes, sir.
20 Q. You'll notice in the first line under the introduction
21 it says -- there's a reference to a State appointed
22 "financial review team." Do you know what that
23 reference is to?
24 A. Yes.
25 Q. What is the financial review team that's referenced

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1 there?
2 A. This refers to, I believe, without going through the
3 entire document, the review team that was appointed by
4 the State to conduct a review of the City of Detroit's
5 finances to determine if an emergency exists.
6 Q. Were you part of this financial review team that's
7 referenced here?
8 A. No.
9 Q. Do you know who was on that financial review team?
10 A. I seem to recall a couple of the members, but I don't
11 know all of the people that were on the review team.
12 Q. Fair enough. Can you just identify those that you do
13 remember?
14 A. Fred Headen and Darrell Burks.
15 Q. Did this State appointed financial review team issue a
16 report or recommendation in writing?
17 A. Yes, sir.
18 Q. And when was that issued?
19 A. I don't recall the exact date.
20 Q. Was it 2013?
21 A. Yes, sir.
22 Q. Mr. Orr testified in deposition two days ago and he
23 mentioned that as part of the engagement process his
24 firm at the time Jones Day appeared before what I
25 believe the reference -- his -- he called a

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1 restructuring team of advisors for the City of
2 New York?
3 MS. LEVINE: City of Detroit?
4 MR. RUEGGER: City of Detroit, excuse me,
5 thank you.
6 Q. Were you part of any team that entertained pitches
7 from law firms as the potential counsel to the City of
8 Detroit?
9 MR. MILLER: Object to form.
10 A. I participated in a day long session where
11 representatives of the City met with some law firms at
12 Metro Airport.
13 Q. Do you remember approximately when that occurred?
14 A. I believe it was the end of January of 2013.
15 Q. And who else participated with you and the
16 representatives of the City of Detroit on that day?
17 MR. MILLER: Object to form.
18 A. From the standpoint of who were the people that were
19 meeting with the law firms?
20 Q. Yeah, putting aside the various law firm people who
21 were appearing, but who on behalf of the City or in
22 coordination with the City were there and heard from
23 the law firms?
24 A. From the City there was Jack Martin and Kriss Andrews.
25 I can't recall if there was anyone else there that was

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1 an employee of the City of Detroit. And then there
2 were representatives from Miller Buckfire, Ernst &
3 Young and the State of Michigan.
4 Q. Do you remember who was there from Miller Buckfire?
5 A. Ken Buckfire, I believe Kyle Herman.
6 Q. Anyone else?
7 A. I don't recall if there was anyone else.
8 Q. Who was there from E&Y?
9 A. Gaurav Malhotra.
10 Q. Anyone else?
11 A. Not that I recall.
12 Q. And from the State?
13 A. Andy Dillon, Rich Baird, Brom Stibitz. I can't recall
14 if there was anyone else there from the State.
15 Q. At the time of the meetings at the airport, had
16 Conway MacKenzie been engaged by the City of New -- of
17 Detroit?
18 A. Yes, sir.
19 Q. Was that pursuant to an engagement letter or
20 agreement?
21 A. It was pursuant to a contract that was approved by
22 city council and then executed by the City.
23 Q. Do you happen to know -- this may be a question better
24 addressed to counsel that may not be here, but do you
25 know whether that contract is part of the data room in

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1 this case?
2 MR. MILLER: Let me answer. I don't know.
3 MR. RUEGGER: Okay.
4 MR. MILLER: And if you would like, just
5 email me and we'll confirm one way or the other.
6 MR. RUEGGER: Before we trouble you we'll
7 try to see if we can find it in the data room.
8 MR. MILLER: Okay.
9 MR. RUEGGER: But thank you.
10 Q. Had Conway MacKenzie been engaged by the City in any
11 role prior to the January contract with the City that
12 we just referenced?
13 A. Not engaged, but Conway MacKenzie did do some pro bono
14 work for the City during 2012.
15 Q. And what was the nature of that work in 2012?
16 A. We assisted with a review and assessment of five areas
17 that involved cashiering operations to identify
18 recommendations for improvement.
19 Q. And were these cashiering operations citywide or in
20 one specific geographic or operational area?
21 MR. MILLER: Object to form.
22 A. They were in specific operational areas.
23 Q. And which specific operational areas were those?
24 A. If I recall correctly, there was parking, building
25 safety engineering and environmental department. I'm

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1 blanking on the other three areas, but they were
2 specific -- or department specific.
3 Q. Has Conway MacKenzie ever been engaged by the State to
4 do work on a State matter, State of Michigan I mean?
5 A. Not that I'm aware of. Obviously I've been with the
6 firm for only 12 years, the firm's been around 26
7 years so I can't say before my time. During my time I
8 don't believe that is the case.
9 Q. So to the best of your understanding the first
10 engagement for Conway MacKenzie for either the State
11 or the city other than the pro bono work you
12 referenced was the contract that's currently in effect
13 for the City of Detroit that was signed in or around
14 January of 2013; is that correct?
15 A. Yes, sir.
16 MS. LEVINE: Good question.
17 MR. RUEGGER: Sometimes it gets a little
18 carried away.
19 Q. Were you involved in the discussions with the City
20 that predated the Conway MacKenzie engagement?
21 MR. MILLER: Object to form.
22 A. Can you be more specific about the conversations?
23 Q. I'll try, I'll try.
24 Were there discussions between
25 Conway MacKenzie and the City of Detroit

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1 representatives related to the potential engagement of
2 Conway MacKenzie prior to the actual contract being
3 executed?
4 A. Yes, sir.
5 Q. When approximately did those contacts commence?
6 A. Well, there was an RFP that went out in November -- I
7 think it was in November of 2012 that Conway MacKenzie
8 responded to and there were multiple meetings and
9 multiple correspondence with the City related to our
10 RFP response. Prior to that RFP there were
11 discussions that took place with the City regarding
12 potential ways that Conway MacKenzie could assist the
13 City.
14 Q. So there were communications prior to the RFP going
15 out?
16 A. Yes, sir.
17 Q. Who initiated those to the best of your recollection?
18 A. Probably our firm and probably me.
19 Q. And who at the City did you contact?
20 A. I spoke with Kriss Andrews.
21 Q. Did you know Mr. Andrews previously?
22 A. Yes, sir.
23 Q. How did you first meet Mr. Andrews?
24 A. In the restructuring business when he was with his
25 previous firm.

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1 Q. And what was his previous firm?
2 A. BBK.
3 Q. And do you recall what matter you first met
4 Mr. Andrews related to?
5 A. No, I don't.
6 Q. And can you tell us in summary what you said to
7 Mr. Andrews and what he said to you in that first
8 conversation?
9 A. I reached out to Kriss when his appointment as program
10 manager director was made public to offer advice and
11 to share with him some ideas about issues that he
12 would be heading into with the City.
13 Q. And what advice did you offer Mr. Andrews?
14 A. One item that I had put out to him is a segregation of
15 the operating initiatives that were contained within
16 the financial stability agreement into different
17 categories and some potential approaches to those
18 categories.
19 Q. What was the financial stability agreement that you
20 just mentioned?
21 A. The financial stability agreement is sometimes
22 referred to by people as the consent agreement that
23 was entered into between the State of Michigan and the
24 City of Detroit around the beginning of April of 2012.
25 Q. And you are familiar with that consent agreement?

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1 A. Yes, sir.
2 Q. How did you become familiar with that agreement?
3 A. That is a public document that I reviewed after it was
4 executed.
5 Q. So you just went into the public records to pull it
6 up?
7 A. Yes, sir.
8 Q. In addition to the advice you offered Mr. Andrews in
9 that first conversation -- was this on the phone?
10 A. I believe that I had phone conversations with Kriss.
11 Prior to him starting with the City I took him to
12 breakfast to share some ideas with him and then as
13 part of the cashiering work that we were doing, there
14 may have been times that I provided a comment here or
15 there while we were at the City.
16 Q. Approximately how many times did you speak with
17 Mr. Andrews before the RFP was issued?
18 A. Related to the cashiering work or in total?
19 Q. In any context.
20 A. Very hard for me to say.
21 Q. The cashiering work that Conway MacKenzie did for the
22 city spanned what time period?
23 A. Approximately September of 2012 until November of
24 2012.
25 Q. Approximately how many conversations either in person

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1 or on the phone did you have with Mr. Andrews related
2 to issues other than the cashiering work?
3 MR. MILLER: Object to form.
4 A. Maybe three or four.
5 Q. Appearing these three or four were all before the RFP
6 was issued?
7 A. Yes, sir.
8 Q. During that period of time, again prior to the RFP
9 being issued, did you have any conversations with any
10 other representatives of the City relating to
11 potential Conway MacKenzie work for the City?
12 A. One of my partners and a cofounder of the firm,
13 Van Conway, had a conversation with Mayor Bing at some
14 point prior to the financial stability agreement being
15 executed and Van Conway and I had a meeting with
16 Kirk Lewis when he was deputy mayor.
17 Q. Other than the meeting with Mr. Lewis and Mr. Conway's
18 conversation with Mayor Bing, did anyone from your
19 firm have any contacts with City representatives to
20 your knowledge related to potential Conway MacKenzie
21 work for the City before the RFP was issued?
22 A. Not that I'm aware of.
23 Q. Approximately how many Conway MacKenzie professionals
24 have worked on -- related to the contract between
25 Conway MacKenzie and the City that was executed in

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1 January?
2 A. Approximately 13.
3 Q. And are you the lead for that effort?
4 A. Yes, sir.
5 Q. Can you describe generally what Conway MacKenzie's
6 done in connection with its -- withdrawn.
7 Starting in -- withdrawn.
8 Is it correct that Conway MacKenzie's work
9 for the City started in January of 2013?
10 A. Under the contract that we previously discussed, yes,
11 sir.
12 Q. Yes. Okay. And can you describe generally what
13 Conway MacKenzie did over the first three to four
14 months of that work?
15 A. Yes, sir. Conway MacKenzie is the operational
16 restructuring advisor to the City of Detroit. The
17 first 90 days we spent going through the majority of
18 the departments of the City to identify the
19 deficiencies in those departments and to put together
20 an operational improvement plan.
21 Q. And did Conway MacKenzie prepare that operational
22 improvement plan?
23 A. Yes, sir.
24 Q. And approximately when was that plan finished?
25 A. June 14th.

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1 MR. RUEGGER: I'm going to ask the court
2 reporter to mark as Moore Exhibit 3 the City of
3 Detroit proposal for creditors dated June 14th, 2013.
4 (Marked Exhibit No. 3.)
5 Q. The first page of it is titled Exhibit C, because I
6 believe it was an exhibit to a court filing.
7 Do you recognize either the document or
8 some portion of that document, Mr. Moore?
9 A. This appears to be the document that was handed out at
10 the June 14th meeting of the creditors, June 14th of
11 2013.
12 Q. Okay. Did you have -- withdrawn.
13 Did you and/or Conway MacKenzie have any
14 role in the preparation of this document?
15 A. Yes, sir.
16 Q. Can you describe generally what that role was?
17 A. We provided assistance with various information
18 included in the body of the document and then the
19 creation of the restructuring and reinvestment
20 initiatives that are included in the ten-year
21 projection.
22 Q. So and can you be more specific? I mean, I understand
23 the ten-year projections are at page 90 from the table
24 of contents, but can you be more specific about what
25 portions of this document Conway MacKenzie had a role

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1 in preparing?
2 MR. MILLER: It's a large document. Do you
3 want him to go through it?
4 MR. RUEGGER: Well, I don't need to have
5 him go through every page or even every section, but
6 he could actually just look at the table of contents
7 and probably give me enough of a sense.
8 MR. MILLER: Why don't you spend some time
9 looking at the document?
10 A. Mr. Ruegger, if I recall correctly, Conway MacKenzie
11 provided information that was used in the first
12 section, Detroit faces strong economic headwinds. I
13 believe that we would have provided comments under the
14 key objectives for financial restructuring and
15 rehabilitation of Detroit. The restructuring and
16 reinvesting in city government. And then the ten-year
17 projections.
18 Q. Of the four topics that you just mentioned, did
19 Conway MacKenzie prepare the original draft of any of
20 those sections or were those sections prepared by some
21 other group or entity and your group -- your firm gave
22 comments to that prior form?
23 MR. MILLER: Object to form.
24 A. If I recall correctly, we provided comments to a
25 document that was already started.

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1 Q. Who started that document, if you know?
2 A. We provided comments to counsel.
3 Q. Counsel being Jones Day?
4 A. Yes, sir.
5 Q. Turning to the ten-year projections, which is page 90,
6 do you have that page, sir? I'm sorry.
7 A. Yes, sir.
8 Q. Do you know where the figures on this page came from?
9 A. I believe that these were prepared by Ernst & Young.
10 Q. And you'll see there's a reference in the
11 parenthetical there saying general fund only. How
12 many separate funds exist within the City of Detroit
13 if you know?
14 A. I don't know the exact number offhand, but the general
15 fund, as you can see, revenue wise is between a
16 billion and a billion one. Total revenue across all
17 funds for the City is about two and a half billion.
18 Q. So you've got about another billion and a half in
19 other funds in the City?
20 A. Yes.
21 Q. And you said you did not know the specific number of
22 other funds. Do you have a general understanding as
23 to the number of other funds?
24 A. If we're talking about enterprise funds, I think that
25 there are maybe five other enterprise funds.

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1 Q. And what about not enterprise funds?
2 A. Other agencies, under five.
3 Q. I've read somewhere, and I've been wrong many times,
4 but I've read somewhere that there are quite a number
5 of agencies within the City of Detroit government. Do
6 you have an understanding of how many different
7 agencies the City of Detroit currently has?
8 MR. MILLER: Object to form.
9 MR. RUEGGER: Well, okay, I'll try it
10 again.
11 Q. How many agencies within the City of Detroit
12 government to your knowledge?
13 A. I don't know the exact number.
14 Q. Is it more than 40?
15 A. That seems very high to me.
16 Q. Do you know whether each agency within the City of
17 Detroit has its own fund?
18 MR. MILLER: Object to form.
19 A. I don't believe that it does.
20 Q. On the same subject you mentioned that the general
21 fund has approximately a billion dollars in total
22 revenues --
23 A. Yes, sir.
24 Q. -- right? And your testimony will speak for itself.
25 You thought there might be another billion and a half

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1 of revenues that are outside the general fund, inside
2 within the City of Detroit. Can you -- is that fair?
3 A. Yes, sir.
4 Q. Can you describe where those other funds were?
5 A. You have --
6 MR. MILLER: Let me just object to form.
7 Go ahead.
8 A. You have the water and sewer department, Detroit
9 department of transportation, public lighting
10 department, parking. Those are the primary ones that
11 come to mind.
12 Q. Thank you.
13 You mentioned earlier that you attended a
14 meeting on around June 14th, 2013. Where was that
15 meeting?
16 A. The meeting I was referring to was -- I believe that
17 you asked when we completed our plan, I indicated June
18 14th. That is the date that there was a meeting of
19 the creditors to present this proposal and that was
20 held at Metro Airport.
21 Q. As best you recall who attended that meeting? And if
22 you don't know the individuals' names, if you could
23 identify who they represented, that would be fine.
24 A. Mr. Ruegger, there were about 200 people there so I
25 certainly don't know the names of all the people that

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1 attended.
2 Q. All right. What groups did you understand were
3 attending?
4 A. My understanding is that representatives of all the
5 unions were invited, representatives of other
6 creditors, monoline insurers, I believe the pension
7 funds, possibly retiree associations. I'm not sure if
8 there were any other groups.
9 Q. And there were representatives of the City there too?
10 A. Yes, sir.
11 Q. Who attended on behalf of the City either as their
12 advisors or as employees of the City?
13 A. Mr. Orr was there, the Emergency Manager. Jack
14 Martin, the CFO. The City's restructuring advisors
15 including counsel, so that would be representatives of
16 Jones Day, Conway MacKenzie, Miller Buckfire, Ernst &
17 Young. I'm not sure if anyone else was there on
18 behalf of the City.
19 Q. Did you speak at the meeting?
20 A. Yes, sir.
21 Q. What subjects did you address in your comments?
22 A. I can't recall offhand which pages I covered.
23 Q. Do you recall generally what your responsibility was
24 at that meeting?
25 A. I think generally I was to cover some of the issues

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1 that exist today and then the foundation of the
2 restructuring initiatives.
3 Q. Prior to the meeting on June 14th had you attended any
4 meetings with creditors or unions of the City?
5 A. In the course of our work we, we being
6 Conway MacKenzie, would have met with employees of
7 departments that are part of unions.
8 Q. So as part of your investigation, you were talking to
9 people who happened to be union members but working
10 for the City?
11 A. Yes, sir.
12 Q. Fair enough. Did you meet with any representatives of
13 unions in that capacity during the period from January
14 till June 14th?
15 A. Can you be clearer when you say in that capacity?
16 Q. Yes, you pointed out a distinction that's fair, that
17 you met with union members but really as City
18 employees, not in their union status. I'm now asking
19 whether you met with the unions, for example, people
20 who were there representing the union?
21 A. Yes, sir.
22 Q. In how many instances?
23 MR. MILLER: This is still during the time
24 period you had previously said?
25 MR. RUEGGER: Yeah, January to June.

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1 A. That would be hard for me to estimate. I myself
2 participated in meeting, members of my team
3 participated in a lot of meetings that I was not in,
4 so I don't know what that number would be.
5 Q. Do you recall what the purpose of those meetings was
6 or purposes of those meetings?
7 A. The meetings that I attended it was to understand from
8 the union standpoint some of the primary issues that
9 existed from an operational standpoint that they
10 wanted to see addressed.
11 Q. Did you meet with any representatives of any retiree
12 associations during that same period?
13 A. Not that I can recall.
14 Q. Subsequent to the June 14th meeting did you or others
15 at Conway MacKenzie to your knowledge meet with
16 representatives of unions for any purpose?
17 A. Yes, sir.
18 Q. Do you recall approximately how many times?
19 A. Again, it's very hard for me to estimate the total
20 number of meetings that would have taken place by the
21 entire team.
22 Q. And am I correct the subject matter of those meetings
23 would have been the proposals and other information
24 that's basically contained in what's been marked as --
25 I believe it's Moore Exhibit 3?

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1 MR. MILLER: Object to form.
2 A. Yes, sir.
3 Q. Did you meet with any representatives of any retirees
4 associations or groups after the time of June 14th?
5 A. Yes, sir.
6 Q. Do you recall approximately how many times?
7 A. Well, beginning on June 20th there were meetings with
8 two different meetings held on June 20th that involved
9 retiree associations.
10 Q. And you attended those meetings?
11 A. Yes, sir.
12 Q. Other than those two meetings do you recall any other
13 meetings with retiree associations in the period after
14 June 14th?
15 A. Yes, there was -- there were meetings on July 10th
16 that I participated in where retiree associations were
17 represented.
18 Q. Any others?
19 A. I don't recall specifically. We -- from a due
20 diligence standpoint the number of meetings that took
21 place in the time period that you're referencing post
22 June 14th were substantial.
23 Q. When you say from a due diligence standpoint, was that
24 due diligence being undertaken by the retiree groups
25 or by Conway MacKenzie or by some other group?

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1 A. These are due diligence sessions being undertaken by
2 creditor constituents where we would meet, discuss in
3 more detail the plan and hopefully share ideas as to
4 what people were thinking about the plan.
5 Q. I want to switch subjects now and turn to your
6 declaration again, which is Moore Exhibit 1.
7 If you could turn, sir, to paragraph 11,
8 which is on page 5. And you'll see the first sentence
9 in paragraph 11 reads, the combined reported UAAL for
10 the systems, however, is premised upon a host of
11 valuation assumptions and methods that in the City's
12 view serve to substantially understate the systems'
13 unfunded liabilities.
14 Do you see that sentence, sir?
15 A. I do.
16 Q. Can you identify what valuation assumptions and
17 methods you refer to in that sentence?
18 A. If you continue on in that paragraph, I mention the
19 assumed rate of return on the plan assets.
20 Q. That's one, yes, sir.
21 A. Yes.
22 Q. Any others?
23 A. Another is referred to in the next paragraph,
24 paragraph 12, which discusses the process of asset
25 smoothing and specifically over a seven-year period.

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1 Q. Any others?
2 A. Those are the only two that I've referenced here in
3 the declaration. In the course of determining the
4 UAAL or just the underfunded position of the pension,
5 there are a wide variety of assumptions and looking at
6 every one of those assumptions separately one could
7 make a determination as to whether that is
8 conservative, realistic or aggressive and there are
9 certainly, like I say, a number of other assumptions
10 that I did not get into in this document that
11 certainly could come into play with that sentence at
12 the beginning of paragraph 11.
13 Q. And it's those assumptions and methods that I would
14 like to discuss now. So other than the ones that you
15 address in the declaration, do you recall now any
16 other assumptions that you believe serve to
17 substantially understate the systems' unfunded
18 liabilities?
19 A. The underfunded calculations take into account
20 contributions that were supposed to have been made by
21 the City that were not actually made.
22 Q. And is that the subject that you address in paragraph
23 20 of your declaration?
24 A. Yes.
25 Q. Any others that come to mind?

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A. The rate of payouts is another area where the actuaries make assumptions as to what benefits will be paid in what periods and to the extent that those are underestimated, that can impact the funded position as well. Tying into previous assumptions that I had indicated.
Q. So is it -- is it your position that the City views the actuarial payout assumptions as understating unfunded liabilities?
MR. MILLER: Object to form. Go ahead.
A. As an example, Mr. Ruegger, the actuarial valuation assumes certain payouts. The actual payouts in the most recent completed year of plan assets were substantially higher than what was anticipated prior to that valuation being done and so at a minimum that would indicate that there were more assets that were paid out than what was assumed by the actuary.
Q. Other than the assumptions and methods you've identified, are there any other assumptions and methods that to your understanding the City views as understating the systems' unfunded liabilities?
A. The City and most importantly its actuary has not completed its analysis on the unfunded position. The City is trying to undertake a process to actually develop a more concrete valuation model on its own so

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it's been relying on the valuation model of the pension systems' actuary. As such we have focused on a few items here, but until the City completes its analysis and completes its own actuarial valuation, neither the City nor its actuary nor I would be able to say what all the assumptions are that could be used to either overstate or understate the funded position.
Q. Very well.
Let's turn to one of the assumptions that you address in your declaration and specifically in paragraph 11 you talk about the projected net rate of return. The 7.0 percent or 7.25 percent figure, do you see that in paragraph 11?
A. Yes, sir.
Q. Those were not figures that were recommended by a particular actuary; were they?
A. The 7 percent is actually higher than the rate that Milliman, the City's actuary, had originally put forward, which in its view would result -- the rate at which there was a fifty-fifty chance of achieving that rate.
MR. RUEGGER: All right. I'm going to move to strike, because with all respect that was not responsive to my question, Mr. Moore.
Q. I understand Milliman has prepared a variety of

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letters and reports and we'll take those up with the Milliman folks, but I'm trying now to focus on the 7.0 figure. That was a figure selected by the City for illustrative purposes; correct?
MR. MILLER: Object to form.
A. Yes.
Q. And that was not the specific figure or a specific figure recommended by Milliman or any other actuary; correct?
A. I can't speak to any other actuary, but going back to the previous question, yes, 7 percent was used for illustrative purposes.
Q. The -- and the Milliman analysis that's been undertaken so far, to your understanding, that hasn't been the product of work on the actual data for the systems; has it?
MR. MILLER: Object to form.
MR. RUEGGER: Okay, that was a poor question, I'll try again. Actually withdrawn.
Q. Related to the projected net return, in paragraph 15 of your declaration, I believe it's 15, you have a -- we'll get to it.
Let's talk now about the concept of smoothing that you reference in paragraph 12. In your understanding smoothing is a common calculation used

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by actuaries related to pension projections; correct?
A. I would clarify your question from the standpoint of typically pension boards will decide on the policies and then actuaries will perform calculations based on the policies that a board will decide to use.
Q. But smoothing is a common practice for actuaries; is it not?
MR. MILLER: Object to form.
A. Based on my experience, yes, there is a number of plans that I've looked at that involve a smoothing.
Q. And would you agree that smoothing is a method to manage the effect of investment volatility on contributions and to provide a more consistent measure of plan funding over time?
MR. MILLER: Object to form.
A. Generally speaking, yes. What's important to note is that smoothing is a concept, and I agree with the purpose of that concept. The number of years over which a pension system may smooth can differ significantly.
Q. Based on the -- well, withdrawn.
To your knowledge is smoothing generally consistent with the actuarial standards of practice?
MR. MILLER: Object to form.
A. Well, I can tell you, Mr. Ruegger, later this year new

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1 GASB standards go into effect, GASB 67 and 68, that
2 actually for financial reporting purposes will not
3 allow smoothing.
4 Q. Okay, so then go back to my question, which related to
5 actuary standards or practice. Is not smoothing
6 consistent and endorsed by actuarial standards of
7 practice?
8 MR. MILLER: Object to form.
9 A. As we established earlier, I'm not an actuary so I
10 can't comment on that. I am a CPA so I can comment on
11 financial reporting standards.
12 Q. Do you -- there's some reference here.
13 You'll see in paragraph 14, the first
14 sentence references the City's estimated underfunding
15 of approximately $3.5 billion. Do you see that
16 reference?
17 A. Yes, sir.
18 Q. Do you know whether that calculation was based on the
19 assumption the systems would continue or that they
20 would be frozen?
21 MR. MILLER: Object to form.
22 A. My understanding is that this is based on the
23 assumption that the plans would continue.
24 Q. And if the plans were to continue, would, in your
25 view, it be more appropriate to use actuarial values

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1 for assets and liabilities or market figures for
2 assets and liabilities?
3 MR. MILLER: Object to form.
4 A. It depends on for what purpose the calculation is
5 being made.
6 Q. Okay. And can you explain that answer?
7 A. If you are referring to for financial reporting
8 purposes, I can comment on the basis that is included
9 in GASB Statements 67 and 68 that are coming out. As
10 to whether it is appropriate from an actuarial
11 standpoint, again, because I'm not an actuary, I can't
12 comment on that.
13 Q. When you refer to the City in these -- starting in
14 paragraph 11, who at the City are you referring to?
15 MR. MILLER: Object to form.
16 Q. Or I'll try it again.
17 Who working within or for the City do you
18 include when you make a reference such as in the
19 beginning of paragraph 11 related to the City's view?
20 MR. MILLER: Object to form.
21 A. My primary contact at this point within the City is
22 Mr. Kevyn Orr.
23 Q. So when you reference the City's view or the City's
24 position in your declaration in Moore Exhibit 1, you
25 mean Mr. Orr?

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1 MR. MILLER: Object to form.
2 A. Based on the discussions that would have taken place
3 with Mr. Orr, yes, he is in agreement with these
4 statements.
5 Q. In paragraph 15 of your declaration you address the
6 systems' use of 29- and 30-year amortization periods
7 for funding the underfunding. Do you see that
8 discussion, sir?
9 A. Yes, sir.
10 MR. MILLER: Let me object to form in
11 connection with the prior question.
12 MR. RUEGGER: That's fine.
13 Q. Do you have any understanding whether amortization
14 periods of 29 and 30 years are commonly used for
15 governmental pension plans?
16 A. Commonly used I think is difficult to say, because
17 there are obviously probably thousands of pension
18 plans in the United States, so not having the data to
19 understand how often that's used, I am aware of other
20 plans, other governmental plans, that use 29- or
21 30-year amortizations.
22 Q. Do you have any understanding whether the amortization
23 periods used for the PFRS and the GRS are matters that
24 were voted on by the Detroit city council?
25 A. I don't know how the board comes to decide on its

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1 policies.
2 Q. And the board you're talking about here is the board
3 that -- of the systems, the respective systems --
4 withdrawn.
5 And when you say the board, do you mean the
6 board of the GRS, the General Retirement System, or
7 the -- and/or the PFRS?
8 A. Yes, sir.
9 Q. So the policy -- withdrawn.
10 So the amortization period in your view is
11 approved by the board of the respective systems;
12 correct?
13 A. That's my understanding.
14 Q. And if I'm understanding your testimony, you don't --
15 you do not have an understanding of whether the city
16 council also weighs in on that amortization period;
17 correct?
18 A. Correct, I do not have visibility if there are other
19 individuals that influence the boards' decisions as to
20 policies.
21 MR. RUEGGER: All right. It's noon so I
22 would like to go off the record and discuss the
23 process for a second.
24 (Discussion held off the record.)
25 MR. RUEGGER: Back on the record. Off the

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1 record we just discussed how counsel is trying to
2 allocate various time, shared time with Mr. Moore and
3 with Mr. Moore's consent, we're going to let
4 Ms. Levine ask questions now. I am not done, but
5 we're hopeful after Ms. Levine and Mr. Ciantra and
6 whoever else wants to ask questions that we can get
7 back to my questions and not take too much time from
8 Mr. Moore and Evan.
9 MR. MILLER: And that's acceptable to us
10 and the deponent.
11 EXAMINATION
12 BY MS. LEVINE:
13 Q. Good afternoon. Sharon Levine, Lowenstein Sandler,
14 for AFSCME. Thank you for appearing today.
15 A. Thank you.
16 Q. In preparation for today's deposition did you speak to
17 anyone at the -- about the City's Chapter 9 case or
18 your declaration?
19 A. Yes.
20 Q. And with whom did you speak?
21 A. I spoke with Mr. Miller.
22 Q. Anybody else?
23 A. No.
24 Q. Did you speak with Mr. Orr?
25 A. No.

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1 Q. Did you speak with any city or State employees?
2 A. No.
3 Q. And when did you speak with Mr. Miller?
4 A. On Monday and I also spoke with him yesterday.
5 Q. When you spoke on Monday, what did you discuss?
6 MR. MILLER: Objection. And Sharon, let's
7 see how we can parse this in a way that doesn't reveal
8 confidential attorney-client communications. How
9 about if the question is rephrased so that Mr. Moore
10 generally addresses the topics that were discussed.
11 MS. LEVINE: We can get to that, but first
12 instance is -- let's go -- let's try this first.
13 Q. By whom were you retained?
14 A. City of Detroit. And I assume when you say you,
15 you're referring to Conway MacKenzie?
16 Q. Conway MacKenzie. By whom is Conway MacKenzie
17 retained?
18 A. The City of Detroit in this matter.
19 (Marked Exhibit No. 4.)
20 Q. I'm going to show you what's been marked Moore 4 for
21 identification. Do you recognize that email?
22 MR. MILLER: Is this your only copy?
23 MS. LEVINE: Apologize. Well, I don't have
24 a lot, but a couple.
25 Q. Have you seen it?

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1 MR. MILLER: What is -- I don't believe
2 there was a question pending.
3 Q. No, there wasn't, I'm just asking. Have you seen this
4 email before today?
5 A. I am on this email so it certainly appears that I
6 would have seen it.
7 Q. But judging by the nature of your answer, you don't
8 have an independent recollection; correct?
9 A. Correct.
10 Q. Mr. Baird is copied in the -- Mr. Baird is referenced
11 in the email change; correct?
12 A. Mr. Baird?
13 Q. Yeah, Mr. Baird.
14 A. At the bottom I see that there is a --
15 Q. You realize on the transcript it's going to be tomato
16 tomato?
17 A. Oh, I see, it's on the back as well. So yes, I do see
18 that.
19 Q. Okay, Mr. Baird is in the governor's office; correct?
20 A. That's my understanding, yes.
21 Q. Did you discuss your retention in this matter with
22 anyone in the governor's office?
23 MR. MILLER: Object to form.
24 A. At which time, Ms. Levine?
25 Q. In or about May of 2012.

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1 A. Our interest in being retained in the case, yes.
2 (Marked Exhibit No. 5.)
3 Q. I'm going to show you what's been marked Moore 5 for
4 identification. Do you recognize this email?
5 MR. MILLER: There's more than one email.
6 Q. Do you recognize -- well, actually it's one email with
7 forwards. Do you recognize the email chain on Moore
8 5?
9 A. Yes, ma'am.
10 Q. Were you continuing to discuss the possibility of
11 Conway MacKenzie's retention by the City with
12 Mr. Baird?
13 MR. MILLER: Object to form.
14 A. Exhibit 4 and Exhibit 5 appear to be the same thing,
15 at least from the standpoint of the original email
16 exchange.
17 Q. Okay, so you were having conversations with Mr. Baird
18 in or about May of 2012 with regard to your engagement
19 -- with regard to you, meaning Conway MacKenzie's
20 engagement by the City?
21 MR. MILLER: Object to form.
22 A. Yes. As I had stated earlier, and it appears these
23 emails all were on May 21st, that we were discussing
24 our interest in having a role with the City of
25 Detroit.

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Q. Were there conversations that involved you, anybody from the -- somebody from the State and somebody from the City in or about that same time frame with regard to Conway MacKenzie's engagement by the City?
MR. MILLER: Object to form.
A. You're referring to at the same time?
Q. Yes.
A. Not that I can recall.
Q. Were you having separate conversations with Mayor Bing or anybody else on behalf of the City with regard to your engagement in or about the May/June time frame 2012?
MR. MILLER: Object to form.
A. In around May I don't think so. As I had indicated in previous questioning, my partner, Van Conway, had spoken to Mr. Bing -- or Mayor Bing, but that would have been before the financial stability agreement and my next interaction with the City would have been after Kriss Andrews was identified as the program management director, which wasn't until, if I recall correctly, June of 2012.
(Marked Exhibit No. 6.)
Q. I'm going to show you what's been marked Moore 6 for identification. Mr. Ciantra made a fair request. The document number is DTMI00078512.

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Do you recognize this email?
A. No, I don't.
Q. Okay. There's a discussion in this email of two or three firms providing financial restructuring services to the City. In or about December of 2012 was Conway MacKenzie being considered for a role with the City?
MR. MILLER: Well -- are you finished with your question? I'm sorry.
MS. LEVINE: There was -- that was the end of the question.
MR. MILLER: Object to form.
A. Ms. Levine, if you can just give me a minute to review the email.
Ms. Levine, can you repeat your question?
Q. Let me do it a different way.
There's a -- were you being considered for the role of restructuring advisor to the City?
A. In December of 2012?
Q. Yes.
A. That's my understanding, yes.
Q. Were you also being considered for the role of operational advisor?
A. If I recall correctly, the RFP that went out was just for restructuring advisory services. There was not a

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specification for operational at that point.
Q. What's the reference in the second sentence then? Conway MacKenzie prefers a role as restructuring advisor but will consider a role as operating advisor if asked.
MR. MILLER: I'm sorry, in connection with --
MS. LEVINE: Page 3 of Moore --
MR. RUEGGER: Six?
MS. LEVINE: Six.
A. The --
MR. MILLER: Wait. Can you repeat the question?
(Record read back as requested.)
A. As I mentioned, Ms. Levine, the RFP that went out in November was just for restructuring advisor and there was a scope of services associated with that. At some point subsequent to that we were approached about having a specific role on the operational side, which as Mr. Andrews apparently wrote here we indicated that we would consider that role.
Q. What were the scope of services to be provided by the restructuring advisor to the City according to the RFP you just referenced?
A. I don't recall offhand.

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Q. Generally what are the scope of services or what's your understanding of the scope of services a firm like Conway MacKenzie would perform as a restructuring advisor?
MR. MILLER: Object to form.
A. Rather than speculate on what was in that RFP --
Q. No, I changed the question. What's your understanding of what a firm like yours, what would be the scope of services you would perform as a restructuring advisor?
A. You're asking me in general if a company or a governmental entity is asking for restructuring advisory services, what --
Q. Conway MacKenzie prefers a role as restructuring advisor. I'm asking you what's your understanding of the services a firm like Conway MacKenzie would perform in the role of restructuring advisor?
A. Ms. Levine, you're asking a question that is somewhat vague and so I'm just trying to clarify. My -- and what I want to understand is are you asking about the services --
Q. Let me ask it a different --
A. -- the services --
MR. MILLER: No, let him finish.
A. Are you asking about the services that we would provide in this situation or in any situation?

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1 Q. Let me ask it a different way.
2 Are the services provided by a
3 restructuring -- is it your understanding that the
4 services that are provided by a restructuring advisor
5 are broader in scope and greater than the services
6 that would be provided as an operational advisor?
7 A. I don't know if I have an opinion on that. Those are
8 two different terms. These are not defined terms.
9 Q. Why -- what's your understanding of why
10 Conway MacKenzie would prefer the role of
11 restructuring advisor over the role of operational
12 advisor?
13 MR. MILLER: Object to form.
14 A. As it was presented to us in this specific situation,
15 the operational role was slightly more narrow in scope
16 than what was contained in the overall restructuring
17 advisor RFP. The City ended up selecting multiple
18 firms and parsing out the different responsibilities.
19 Q. So but at this point in time it was your understanding
20 that the restructuring advisor role was basically a
21 bigger, more broad role than the role that the City
22 was then contemplating for the operational advisor?
23 A. The services that were listed in the RFP --
24 Q. It's a yes or no question.
25 MS. LEVINE: Can you read back my question,

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1 please?
2 (Record read back as requested.)
3 A. Ms. Levine, the reason why I can't answer it as a yes
4 or no is because you're referring to a specific role
5 and what I'm trying to clarify is that in the RFP
6 there was a scope of services, restructuring services,
7 that were being asked for. The operational advisor
8 was to address a specific part of those scope of
9 services.
10 Q. We'll try again.
11 Conway MacKenzie prefers a role as
12 restructuring advisor but will consider a role as
13 operating advisor if asked. What's your understanding
14 of why Conway MacKenzie prefers the role of
15 restructuring advisor over the role of operational
16 advisor?
17 A. It was our understanding when the RFP went out that
18 the City would be selecting one firm to provide those
19 services. As time went on, the City considered and
20 eventually did assign those responsibilities to
21 multiple firms.
22 Q. So the restructuring advisory role at that time it was
23 your understanding was going to be a bigger role?
24 A. The restructuring advisor role is not a defined role.
25 The scope of services that was in the RFP was greater

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1 than what our scope ended up being as operational
2 advisor.
3 MS. LEVINE: Let me try it a different way.
4 Q. Was it your understanding back -- at the point in time
5 that Conway MacKenzie was indicating it preferred a
6 role as restructuring advisor but would consider a
7 role as operational advisor, was it your understanding
8 that the restructuring advisor role if given to just
9 one firm would have been a more lucrative engagement?
10 A. How do you define lucrative?
11 Q. Would your firm have earned more fees as restructuring
12 advisor as originally -- as you understood it -- as
13 you understood -- let me start again.
14 Would your firm have earned more fees in
15 the role of restructuring advisor as you understood it
16 in December of 2012 than as you've understood the role
17 of operational advisor at that time?
18 A. That's unclear to me.
19 Q. When you say the role of restructuring advisor was a
20 bigger role or was a -- had you indicated the role of
21 restructuring advisor was a broader role and a role
22 that was then split up among other firms and you were
23 interested in the role when you thought it was going
24 to be just one firm, did you believe that that role
25 was going to be requiring more services than the role

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1 of operational advisor?
2 MR. MILLER: Object to form.
3 A. Ms. Levine, you keep using the word role and I keep
4 going back to there was not a restructuring advisor
5 role. There was an RFP that went out in November
6 which contained a number of potential services and the
7 role, the operational advisor role that we ended up
8 getting engaged for, was a subset of the services.
9 There was no guaranty though that the firm -- that the
10 City was going to engage one firm for all those
11 services. Those services were potential services.
12 Q. I'll try again. Conway MacKenzie prefers a role as
13 restructuring advisor but will consider a role as
14 operational advisor. What's your understanding of
15 what that sentence means?
16 MR. MILLER: Object to form.
17 A. If you have two options, on the one hand it is a
18 broader scope of services versus a more narrow scope
19 of services, then our understanding, if there was
20 going to be one firm with that, there would be a
21 broader scope of services than if it was parsed out
22 into individual firms.
23 Q. Okay.
24 MS. LEVINE: Hungry?
25 THE WITNESS: Not yet.

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(Marked Exhibit No. 7.)
Q. I'm going to show you what's been marked as Moore 7. This is an email dated December 19th, 2012 between you and Van Conway. Do you see that?
A. Yes, ma'am.
Q. There's an email chain, which has another email attached. Is that correct?
A. Yes.
Q. Is this -- who is -- who's Van Conway?
A. Van Conway is a partner of mine and cofounder of the firm, Conway MacKenzie.
Q. And who -- and what did you enclose in this email?
A. The email from Van to me?
Q. No, what did you enclose in -- sorry, it attaches an email from you to Kriss Andrews; correct?
A. Yes.
Q. What did you enclose in the email?
A. Well, it says, here attached is a draft Exhibit A containing the proposed scope of services for Conway MacKenzie as part of its contract with the City of Detroit, so I'm assuming that I attached a draft Exhibit A.
Q. Do you recall what the scope of services you were proposing as an attachment to this email?
A. I don't.

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Q. Did you understand what you meant by the word scope in that email?
MR. MILLER: Object to form.
A. Can you please clarify your question?
Q. Well, were you responding to the RFP in the email or is there a separate understanding of what you meant by scope of services?
A. The RFP response that was submitted by our firm was back in November and so this is a specific scope of services related to our potential contract.
(Marked Exhibit No. 8.)
Q. I'm going to show you what's been marked Moore 8 for identification.
MR. MILLER: Do you have another copy?
MS. LEVINE: Yes, it's right here. Sorry.
MR. MILLER: Thank you.
Q. DTMI00079527.
Do you recognize that email?
A. Looks like an email from me to Kriss Andrews.
Q. And what's enclosed and does it reference an enclosure?
A. It references a draft Exhibit A containing the proposed scope of services for Conway MacKenzie.
Q. Okay, do you recall what the scope of services were that you included in that draft Exhibit A?

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A. No, I don't.
Q. Was it for restructuring advisors?
A. I don't recall.
(Marked Exhibit No. 9.)
Q. I'm going to show you what's been marked Moore 9 for identification. DTMI00079526.
Do you recognize this email?
A. No, I don't.
Q. Okay, it appears to be an email from Kriss Andrews to Mr. Baird attaching a scope of work from Conway MacKenzie, also dated December 2012?
A. I -- I understand that, yes.
Q. Is that -- does that refresh your recollection as to whether or not you saw the email?
A. No, Ms. Levine, I'm not on this email. I don't recall receiving this email.
Q. Okay. The email references the need to get a contract on the council agenda for the 8th. Is that for January 8th?
A. I would assume so, since that is when council actually took up our contract.
Q. Did you have any conversations with Mr. Baird with regard to getting retained and in connection with -- in regard to getting retained in or about this time frame?

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MR. MILLER: Object to form.
A. I believe I did, yes.
Q. And did you also have conversations with Kriss Andrews?
A. Yes.
Q. Did you ever conversations with anybody else on behalf of the State in or about this time frame with regard to your engagement?
A. Yes.
Q. And did you have other conversations with anybody else on behalf of the City with regard to your engagement?
A. I don't believe so. I think just Kriss Andrews.
Q. And prior to the time of the -- let me put it this way. Is the agenda for the 8th, is that a city council meeting?
A. Well, it says council agenda for the 8th and city council took up our proposed contract on January 8th so I'm assuming that that's what he's referring to, but again, I did not write this email.
Q. Did you negotiate the proposed terms of your engagement with anybody at the State level?
A. Could you be more specific on terms of the contract?
Q. No, I didn't -- that wasn't the question. Did you negotiate your proposed terms of engagement with anybody at the State level --

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1 MR. MILLER: Object --
2 Q. -- in or about December 2012?
3 A. If you can just be clear on when you say negotiate,
4 what are you referring to?
5 Q. Did you have any discussions with -- okay, we're -- I
6 forgot, negotiate's a big word in this case. Strike
7 that, I'll rephrase it.
8 Did you have any discussions with anybody
9 at the State with regard to the terms of your
10 engagement in or about December of 2012?
11 A. I seem to recall, yes.
12 Q. With whom did you have those discussions?
13 A. Rich Baird and probably Andy Dillon.
14 Q. Anybody else?
15 A. Not that I can recall.
16 Q. Did you have discussions with anybody at the City
17 level with regard to the terms of your engagement in
18 or about December of 2012?
19 MR. MILLER: Object to form.
20 A. As I indicated before, Kriss Andrews.
21 Q. Anybody else?
22 A. Not that I can recall.
23 MR. MILLER: Object to form.
24 Q. Were any of these discussions either with
25 representatives of the State or representatives of the

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1 City in person?
2 A. I believe so, yes.
3 Q. Who was present in the in person meetings?
4 MR. MILLER: Object to form.
5 MR. CIANTRA: Can you specify, Mr. Miller,
6 what your formal objection is to that question so we
7 can obviate any dispute in the future?
8 MR. MILLER: Yes, it doesn't parse as to
9 whether the in person meetings are with
10 representatives of the State or representatives of the
11 City.
12 MR. CIANTRA: Thank you.
13 Q. Did you have any meetings with either representatives
14 of the State or the City in or about December of 2012
15 with regard to the terms of your -- or the scope of
16 your engagement by the City?
17 A. In person?
18 Q. Yes.
19 A. Yes.
20 Q. How many meetings took place?
21 A. I don't recall.
22 Q. Were there any meetings that took place just with
23 representatives of the State?
24 A. Yes.
25 Q. Do you recall how many of those meetings took place?

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1 A. Perhaps two.
2 Q. Who was present?
3 A. At one meeting I met with Rich Baird and Darrell Burks
4 was present in his capacity as a member of the
5 financial advisory board and then in another meeting
6 that would have been with Andy Dillon.
7 Q. Was anybody else present at the meeting you were at
8 with Andy Dillon?
9 A. I recall Andy's assistant was in the room and I think
10 Tom Saxton was on the phone.
11 Q. Who's Tom Saxton?
12 A. Tom, as I understand it, works in Andy's area, the
13 treasury department for the State of Michigan.
14 Q. Were there any meetings in or about this same time
15 frame with just representatives of the City?
16 A. Yes.
17 Q. And how many of those meetings took place?
18 A. I don't recall.
19 Q. More than five?
20 A. Face-to-face meetings, I don't think so.
21 Q. How many -- were there more than five meetings
22 telephone and face-to-face?
23 A. Very possibly. This was -- the RFP -- our response to
24 the RFP went out early in November and this is
25 obviously mid to later December so that's a lot of

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1 time to have discussions.
2 Q. Were there any discussions that took place between you
3 in which both the State and City representatives
4 participated?
5 A. The initial meetings that all of the firms -- or at
6 least the firms that the State and the City invited in
7 as a result of the responses to the RFPs were both the
8 City and the State. There was at least one follow-up
9 interview with representatives of both the City and
10 the State, there may have been two follow-up
11 interviews, I can't recall.
12 Q. Were there any telephone conferences where
13 representatives of both the City and the State
14 participated in or about December of 2012?
15 A. I don't recall if there were telephone calls where
16 both the City and the State were on.
17 (Marked Exhibit No. 10.)
18 Q. I'm going to show you what's been marked Moore 11.
19 Document DTMI00079528.
20 MR. MILLER: There's no Moore 10 that's
21 been introduced.
22 MS. LEVINE: I'm sorry, this is Moore 10
23 and this one, I don't know, I must have gotten ahead
24 of myself.
25 Q. Okay, Exhibit A, scope of services, do you see that

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1 document?
2 A. Yes, ma'am.
3 Q. Is this --
4 MR. MILLER: Wait one moment because of the
5 confusion generated by the identification of this
6 document, let's specifically identify it as
7 DTMI00079528 through 530.
8 Q. Do you see that document in front of you? It's
9 Exhibit A, scope of services?
10 A. Yes, ma'am.
11 Q. Does this -- is this the Exhibit A that was attached
12 to the emails we were just discussing?
13 A. I have no idea.
14 MR. MILLER: Wait.
15 Q. Okay. Do you recall providing this document to the
16 State and the City in or about December of 2012?
17 A. I don't recall.
18 Q. I want to show you the first paragraph where it says,
19 the terms of this contract shall begin on January 9,
20 2013 and shall terminate on December 31, 2013.
21 Did you respond to an RFP for the City to
22 provide services during that time frame?
23 A. Yes, ma'am.
24 Q. Did you provide -- did you provide -- respond to an
25 RFP to provide services as the chief restructuring

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1 officer for the City of Detroit?
2 MR. MILLER: Object to form.
3 Q. During that time frame?
4 A. Chief restructuring officer?
5 Q. Sorry, chief restructuring advisor.
6 A. I don't recall if the RFP asked specifically for that.
7 Q. Well, the document that we're looking at says, the
8 services to be performed, the contractor will serve as
9 chief restructuring advisor to the City of Detroit.
10 In its capacity as CRA, contractor will be the lead
11 restructuring agent for the City of Detroit and will
12 coordinate activities of the various City of Detroit
13 advisors.
14 Does that refresh your recollection?
15 A. Ms. Levine, this is a document that could have been
16 drafted by Conway MacKenzie, it could have been
17 drafted by the City of Detroit, I'm not sure. What
18 does appear to me, though, is based on what you just
19 read this is not the scope of services that wound up
20 in the final contract.
21 (Marked Exhibit No. 11.)
22 Q. I'm going to show you what's been marked Moore 11.
23 Document number DTMI00078909. Do you recognize this
24 document?
25 A. This appears to be the final contract that was entered

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1 into between Conway MacKenzie and the City of Detroit.
2 Q. Did you participate in the negotiation of this final
3 contract?
4 A. Yes.
5 Q. Did you review this final contract before it was
6 executed?
7 A. Yes.
8 Q. Did you sign-off on the terms of this contract before
9 it was executed?
10 A. Yes.
11 Q. On the page marked DTMI00078925, it appears to be a
12 January 7, 2013 letter, which is part of -- is it your
13 understanding that this letter is part of the
14 contract?
15 MR. MILLER: Object to form.
16 A. Ms. Levine, I would just point out that that appears
17 to me to be a bit of a legal question as to whether
18 this is part of a contract and I don't know if I'm
19 able to answer that question.
20 Q. Okay. Is it your understanding that the City is
21 responsible for half of your fees and the State is
22 responsible for half of your fees?
23 A. That is my understanding, yes.
24 Q. How did you -- how did that agreement come into being
25 if you're -- and well, let me do it a different way.

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1 Are you engaged by the City?
2 A. Yes, ma'am.
3 Q. How did it come to pass that the State pays for half
4 of your fees?
5 A. I don't know if I actually can respond to that. When
6 the City decided to issue an RFP for restructuring
7 services, it had been indicated, at least I read
8 through public reports, that the State was going to
9 pay for half of that.
10 Q. Is it your understanding that the City is your client?
11 A. Yes, ma'am.
12 MR. MILLER: Wait, object to form.
13 MS. LEVINE: What's the objection to the
14 form?
15 MR. MILLER: Among other things it calls
16 for a legal conclusion.
17 MS. LEVINE: I'm asking him his
18 understanding.
19 Q. Is it your understanding that the City is your client?
20 MR. MILLER: Go ahead.
21 A. Yes.
22 Q. Who did you -- upon you -- upon becoming engaged
23 initially, to whom did you report on behalf of the
24 City?
25 A. I reported primarily to Kriss Andrews. I interacted

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with Jack Martin a fair amount, but Kriss Andrews was my primary point of contact.
Q. Did you also report immediately upon being engaged to anybody at the State?
A. Can you refer to or define what you mean by report to?
Q. Did you have conversations with people at the State after being engaged by the City without the City on the phone?
MR. MILLER: Object to form.
MS. LEVINE: What's the objection?
MR. MILLER: It doesn't indicate whether the conversations are in connection with the contract or what the conversations are in connection with.
Q. Immediately after becoming engaged by the City -- you were engaged in or about January what?
A. 9th, I believe.
Q. Okay. From the period of January 9th through July 18th, did there come -- did you have any conversations with anybody at the City at which the State -- sorry, with anybody at the State at which the City was not on the phone with regard to the Detroit situation? Anything with regard to the Detroit situation?
A. I'm sure that I did.
Q. Did there come a point in time where you had conversations with people at the State at which the

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City was not on the phone with regard to filing Detroit's Chapter 9 petition?
A. Not that I --
MR. MILLER: Let me just pay attention to this question. Go ahead. No objection.
A. Could you now repeat the question?
MS. LEVINE: Can you repeat the question?
(Record read back as requested.)
A. Not that I can recall.
Q. Did you have any -- did you attend any meetings with representatives of the State at which the City wasn't present with regard to Detroit's filing its Chapter 9 petition?
A. No, ma'am.
Q. Okay. So now going back. We discussed earlier and got sidetracked with regard to the conversation you had with Mr. Miller with regard to preparing for today's deposition. Are you -- according to this contract you're engaged by the City; correct?
A. Yes, ma'am.
Q. Is that engagement contract with the City or is that engagement contract with Jones Day?
A. It's with the City.
Q. What did you discuss with Mr. Miller to prepare for today's deposition at the two meetings you previously

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identified yesterday and the day before?
MR. MILLER: Objection, and I'm going to instruct the witness not to respond.
MS. LEVINE: Lunchtime.
(Luncheon recess between 12:55 p.m. and 1:30 p.m.)
MS. LEVINE: Mr. Moore, before we go onto another topic I just want to clarify. Your counsel directed you not to answer just prior to the lunch break. Are you asserting the attorney-client privilege?
MR. MILLER: Yes, Mr. Moore has consented to having Jones Day represent him in connection with this deposition and if I recall, you, AFSCME, have consented to have the City put Mr. Moore forward as a representative of the City in connection with the 30(b)(6) deposition. So yes, we represent Mr. Moore in connection with this deposition and I am instructing him not to answer the question on the grounds of attorney-client privilege.
MS. LEVINE: And just to clarify so you're not representing Conway MacKenzie, you're representing Mr. Moore in his capacity as the 30(b)(6) witness for the City --
MR. MILLER: In --

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MS. LEVINE: -- on behalf of the City?
MR. MILLER: In his capacity as a 30(b)(6) witness and in his capacity as a subpoenaed person in connection with the independent subpoena, he has agreed to have us represent him.
MS. LEVINE: What do you mean by to have us represent him? Is that Jones Day representing him individually, representing Conway MacKenzie?
MR. MILLER: We're not representing Conway MacKenzie. That's not -- well, let me take a break and speak to my client about that.
MS. LEVINE: Okay.
(A brief recess was taken.)
MR. MILLER: Back on the record. Let me clarify for the record that Jones Day does not represent Conway MacKenzie, we are representing Mr. Moore as a witness in this deposition.
BY MS. LEVINE:
Q. Moving on. You testified previously I believe that you testified twice as an expert -- in two cases as an expert witness. One with regard to GM and one with regard to the casino downtown, the Greektown Casino; is that correct?
A. Yes, ma'am.

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Q. Have you testified in court as an expert witness other than in connection with those two cases?
MR. MILLER: Object to form. Asked and answered.
MS. LEVINE: I'm not -- I wanted to streamline and not go over again what he went through.
A. I don't believe so.
Q. Okay. What was the court where GM was pending?
A. I believe that was a Federal District Court, Eastern District of Michigan.
Q. Okay. And where -- and were you qualified by the judge? Were you found to be an expert? In other words, was there a specific finding that you qualified as an expert?
A. I don't know.
Q. Do you -- okay. What were you offered to testify about?
A. The automotive industry and supplier relations.
Q. But you don't recall whether or not the judge specifically found you to be an expert in those two areas?
A. I don't know.
MR. MILLER: Well, object to form.
A. From the standpoint of I certainly was not involved in every hearing that would have gone on. I don't

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know --
Q. No, no. Sometimes when an expert takes the stand, first you do voir dire and then he starts to testify and in between asking about your background and CV and starting the substantive testimony the judge will say I qualify you as an expert or no I don't qualify you as an expert. What I'm trying to understand is in those two cases did the judge qualify you as an expert and if so in what categories?
A. Yes, I understand that process exactly. As I indicated before, the GM case settled before I had to testify.
Q. Okay.
A. So I was deposed in that case.
Q. Okay, so you were deposed but you didn't have to take the stand in court?
A. Yes, ma'am.
Q. Okay, good.
In regard to Greektown did you have to take the stand in the courthouse?
A. Yes, ma'am.
Q. And did the judge in that case qualify you as an expert?
A. Yes, ma'am.
Q. And this what area did the judge qualify you as an

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expert?
A. As it relates to the restructuring -- bankruptcy restructuring of Greektown.
Q. And the -- were you qualified as an expert in relation to pensions?
A. Pensions were not an issue with Greektown.
Q. Were you qualified as an expert with regard to actuarial findings?
A. Actuarial findings were not an issue in Greektown.
Q. So for both of those questions then the answer is no?
A. Correct.
Q. Did you have any role in the hiring of Kevyn Orr as the Emergency Manager or the Emergency Financial Manager for the City of Detroit?
A. No, ma'am.
Q. Did Conway MacKenzie have any role in the hiring of Kevyn Orr in either of those two capacities?
A. No, ma'am.
Q. Did you have any role in the financial review team?
A. No, ma'am.
Q. Did Conway MacKenzie have any role in the financial review team?
A. No.
Q. From -- when was the first time you had a conversation with anybody with the City with regard to Detroit

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filing for Chapter 9 protection?
A. Can you just clarify that just the -- whether that was a possibility or --
Q. I want to know the first time the word Chapter 9 came up in discussions with regard to the City of Detroit. Possibility, options, alternatives, any context.
MR. MILLER: But the conversation is with somebody in the City?
MS. LEVINE: Yes.
A. I don't recall specifically.
Q. Do you recall if it was before the end of 2012?
A. I don't recall.
Q. When was the first time you had a conversation with anybody from the State or on behalf of the State with regard to the potential for Detroit filing for Chapter 9 bankruptcy protection?
A. I don't recall.
Q. Did those conversations come up during the interview process with the State and Conway MacKenzie?
MR. MILLER: Object to form.
A. I don't recall.
Q. So when you interviewed with the State for your role with the City, you don't recall having discussions with regard to Chapter 9 as an alternative?
MR. MILLER: Object to form.

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A. To go back to how I had answered before, there were at least two if not three interview sessions and those were jointly held with City and State representatives. I can't recall at this point whether Chapter 9 was discussed during those meetings or not.
Q. What's the first conversation you recall having with anybody from the City or the State with regard to the possibility of Detroit filing for Chapter 9 protection?
A. I don't recall what the -- I guess around the time that the creditor plan was being discussed, certainly the potential for a Chapter 9 filing had been discussed and that was communicated publicly by Mr. Orr, so I certainly recall that, but nothing really before that.
Q. And when you use the word creditor plan, are you referring to the June 14 creditor proposal?
A. Yes, ma'am.
Q. Between June 14 and January 17, that's the -- sorry, June 14 and July 17, that's the time period we're talking about, did you have any conversations with anybody at the State with regard to Detroit filing for Chapter 9 protection?
A. I don't believe I did.
Q. Between June 14 and July 17, did you have any

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conversations with anybody at the City with regard to Detroit filing for Chapter 9 protection?
A. Yes.
Q. During that time period did you have any conversations with representatives of the City at which the State were present -- at which representatives of the State were present with regard to Detroit filing for Chapter 9 bankruptcy protection?
A. I don't recall.
Q. Between June 14 and July 17, what was the first conversation that you had with anybody from the City with regard to filing for Chapter 9 bankruptcy protection on July 19?
MR. MILLER: Mr. Moore, in connection with that question be careful to consider not revealing attorney-client communications to the extent that those conversations may have included attorneys.
MS. LEVINE: Wait, let's clarify that for a second. How is it that if he's present there's an attorney-client privilege if he did not sign an engagement letter with Jones Day but signed it directly with the City and the State?
MR. MILLER: He's the -- he and Conway MacKenzie are the City's professional advisors and Jones Day is taking the position that the

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attorney-client privilege attaches to meetings in which Jones Day attorneys were providing advice to the City at which Conway MacKenzie personnel were present. And I will instruct him not to answer.
MS. LEVINE: Can you read back my question?
(Record read back as requested.)
MS. LEVINE: Actually let me rephrase that so we can parse the attorney-client privilege assertion.
Q. The first thing I'm going to ask you is when the conversations took place, then I'm going to ask you who participated in the conversations, and then I'm going to ask you what was discussed; okay? So we'll -- we can get two of the three and perhaps three out of the three.
MR. MILLER: Unlikely.
Q. So with regard to this line of questioning, between July -- June 14 and July -- what was the filing date? The 18th or 19th?
MR. RUEGGER: The 18th.
Q. And July 18th, when was the first conversation you had with representatives -- when was the first conversation you had with representatives of the City with regard to Detroit's Chapter 9 bankruptcy filing?
A. I can only recall one conversation during that time

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period.
Q. And what was the date?
A. I don't know the date.
Q. Was it in June or was it in July?
A. I honestly don't know.
Q. Do you recall who participated -- wait, who participated in that conversation?
A. The conversation which I'm recalling was with Sonya Mays.
Q. What's her title?
A. She is -- I believe her title is strategic advisor to Kevyn Orr.
Q. And what was -- were there lawyers present during that conversation?
A. No.
Q. What did you and she discuss?
A. She had asked me what I thought the potential was that the City was going to have to file.
Q. And what was your answer?
A. I think I said I don't know and I gave a few reasons why the City may not have to and a few reasons why the City may have to.
Q. During the period of June 14 through July 17, was Conway MacKenzie at all involved in preparing the filings for the July 18th Chapter 9 filing?

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A. Can you define filings?
Q. Pleadings that were filed on the docket in connection with the Chapter 9 filing including, for example, your declaration.
A. Only one and that is my declaration.
Q. And what was the -- what was the date of the first meeting you had -- actually let me say this differently.
What was the date of the first discussion you had with regard to preparing that declaration?
A. I don't recall.
Q. Was it in June?
A. I don't believe so.
Q. Was it in July?
A. I would assume so, yes.
Q. Was it before the actual filing occurred?
A. Yes.
Q. Was it a week before the actual filing occurred?
A. It may have been, I don't recall.
Q. Was it more than ten days before the actual filing occurred?
A. It may have been.
Q. Was it before or after the July 4th weekend?
MR. MILLER: If you recall.
A. I don't recall.

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MS. LEVINE: Let's not coach the witness.
Q. Did you receive -- after having the initial conversation -- was that initial conversation with Jones Day?
A. Yes, ma'am.
Q. Did you receive a draft of your declaration to review?
MR. MILLER: You can answer that question.
A. At some point I received a draft, but I recall having an initial conversation first with an attorney from Jones Day laying out a number of the key issues relating to pensions.
Q. When was that conversation?
A. I don't recall.
Q. Who participated in it?
A. An attorney from Jones Day.
Q. Do you recall the name of the attorney?
A. I actually don't at this point.
Q. Was anybody else on the phone with you from Conway?
A. No, ma'am.
Q. Was anybody else on the phone with you from the City?
A. No.
Q. Was anybody else on the phone with you?
A. Just the attorney from Jones Day.
Q. Did that conversation take place after the July 4th weekend?

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A. I don't recall.
Q. How long before you had this initial conversation were you provided with a first draft of your declaration?
A. I don't recall how long.
Q. Was it more than a week?
A. I don't recall.
Q. Was it more than two weeks?
A. I don't recall.
Q. Did you read -- did you have your declaration -- did you review your declaration over the July 4th weekend?
A. I don't recall.
Q. Did you have the declaration as of the July 4th weekend?
A. I don't recall.
MR. MILLER: Wait. Objection. Object to form. Asked and answered.
Q. When did you sign your declaration?
A. I can't recall if it was July 17th or 18th.
Q. And how many drafts did it go through before you actually signed it?
A. I don't recall that.
Q. More than one?
A. Yes.
Q. More than three?
A. Could have been.

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Q. More than five?
A. I don't know.
Q. No or you don't know?
A. I don't know.
Q. More than ten?
MR. MILLER: Objection, asked and answered.
MS. LEVINE: No, it's not. It's absolutely not and when he -- and it's almost, to be honest, inconceivable that he has no recollection of whether it took a day, two days or a month to prepare the declaration or when he first learned of the bankruptcy filing.
MR. MILLER: That mischaracterizes his testimony. We can go over his testimony, if you would like.
MS. LEVINE: We will after we finish it.
Can you read back my question, please?
(Record read back as requested.)
THE WITNESS: Could you go back? More than ten what?
(Record read back as requested.)
A. I don't think it would be more than ten.
Q. Prior to the time that Detroit filed for Chapter 9 protection, did you become aware of the Flowers litigation?

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1 A. Could you be more specific on Flowers litigation?
2 Q. Have you heard the term the Flowers litigation before?
3 A. Ms. Levine, I come across so much on a day-to-day
4 basis. I need something more to spur my memory to
5 know whether I've heard of it or not.
6 Q. Does the name Webster litigation mean anything to you?
7 A. Again, if you could please provide a little bit more
8 detail, I can tell you if I've heard of it or not.
9 Q. What's your understanding of the reason why Detroit
10 determined to file for Chapter 9 protection on July 18
11 as opposed to some other day?
12 A. I don't have an under --
13 MR. MILLER: Object to form.
14 A. I don't have an understanding. I was not involved in
15 that decision.
16 Q. So after you -- so when you first learned that you
17 were going to do a declaration, was it your
18 understanding that Detroit had already made the
19 decision to file in July?
20 A. No.
21 Q. When you first started working on your declaration,
22 was it in anticipation of a specific filing date?
23 A. No. Just add too I've had a number of clients where I
24 have prepared something -- a pleading for a potential
25 bankruptcy filing that has never happened.

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1 Q. Were you aware of any litigation pending just prior to
2 the Chapter 9 filing with regard to the question of
3 authorization for the City to actually file a Chapter
4 9 petition?
5 MR. MILLER: Object to form.
6 A. I am generally aware --
7 MS. LEVINE: Wait, what's the form
8 objection?
9 MR. MILLER: Vague and ambiguous with
10 respect to the question of authorization for the City
11 to actually file a Chapter 9 petition and foundation.
12 Q. Prior to the time of the bankruptcy filing were you
13 aware that there was litigation pending challenging
14 the authorization for the City to file for Chapter 9
15 protection?
16 A. I am generally aware of litigation filed in a state
17 court where I believe that that was one of the
18 elements of the litigation.
19 Q. When did you first become aware of that state court
20 litigation?
21 A. Sometime within the week before the actual filing
22 perhaps.
23 Q. Did you -- had you prepared your declaration before or
24 after you became aware of that state court litigation?
25 A. Because I can't recall specifically when I started

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1 working on my declaration, I don't know.
2 Q. Did you begin preparing your declaration at or about
3 the same time you became aware of the state court
4 litigation?
5 A. I don't know.
6 Q. Was it months before you became aware of the state
7 court litigation?
8 MR. MILLER: Object to form.
9 A. Ms. Levine, I think I've already answered that I don't
10 believe that there was anything done preparation wise
11 on my declaration in the month of June.
12 Q. Okay.
13 Were you involved in any restructuring
14 initiatives in or about February of 2013 with regard
15 to the removal of blighted homes in the City of
16 Detroit?
17 A. Was I specifically involved or was Conway MacKenzie
18 involved?
19 Q. Well, starting with you and then we're going to ask
20 about Conway MacKenzie.
21 A. Blight has been an area of focus that our firm has had
22 and I have been involved in some of those activities.
23 Q. Were you point on the issue with regard to the
24 blighted homes?
25 A. Generally speaking there was another individual on the

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1 team that I delegated some items to.
2 Q. And with -- and on the other side of that, who was the
3 point person for the State on that issue?
4 MR. MILLER: Objection to form, foundation.
5 Q. Did you contact -- were you in contact with the State
6 with regard to this issue?
7 A. There have been numerous people at the State with whom
8 blight has been discussed.
9 Q. Do you recall who was the point person for that
10 initiative?
11 A. From the State?
12 Q. Yes.
13 A. I don't know if the State actually has a point person
14 for blight. There is the Michigan -- Michigan State
15 Housing Development Agency or Authority, MSHDA, that
16 is involved with some of these activities. Treasury
17 department has had some involvement. The department
18 that Moore Corrigan heads up, which I can't recall the
19 name of it right now, has been involved.
20 (Marked Exhibit No. 12.)
21 Q. I'm going to show you what's been marked Moore 12 for
22 identification. It's an email chain but the second
23 email has three CCs with Michigan email addresses and
24 I was just wondering if you recognize those names and
25 could identify those people. Document number

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1 DTMI00103661.
2 A. Ms. Levine, you're referring to these three names?
3 Q. Right.
4 A. And the question is do I recognize the names?
5 Q. Yes. I'm going to ask you to identify who they are.
6 A. I recognize one for sure and two other people I'm
7 generally aware of, but I don't know their specific
8 roles.
9 Q. Right, who's the first one? Just so the record's
10 clear can you tell us the name of the first person
11 that you do recognize and what their title is?
12 A. The email address is --
13 Q. No, no, no, I'm asking you the person's name.
14 A. There's not a name on here, Ms. Levine.
15 Q. No, I'm asking you if you recognize the name.
16 MR. MILLER: From the email address.
17 Q. Does the email address trigger a name? I want to find
18 out who the person is, then I'm going to ask you what
19 their involvement was with regard to the blighted
20 homes.
21 A. Just so we're clear for the record, Ms. Levine, you've
22 given me an email address that is only the address and
23 not the name and I'm going to speculate as to who that
24 relates to.
25 MR. MILLER: Don't speculate.

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1 Q. Don't speculate.
2 MR. MILLER: Don't speculate. If you know
3 the name, identify the name.
4 Q. It's not a trick question. If the answer is I have no
5 clue who this person is -- for example, if it says
6 rbaird, there's a pretty good idea we know who it is.
7 I don't recognize those names, I'm asking you to help
8 me out. If the answer is I don't know who they are,
9 then you don't know who they are.
10 A. muchmored is probably Dennis Muchmore.
11 Q. And what's his title?
12 A. I think his title is chief of staff for the governor.
13 Q. And was he involved in this project with regard to
14 blighted homes?
15 A. I've never had any conversations with Dennis.
16 MR. MILLER: Object to form.
17 Q. Okay, what's the next one?
18 A. Allison Scott.
19 Q. Yes. And have you had conversations with her?
20 A. No.
21 Q. Okay. Do you know her title?
22 A. No, I don't.
23 Q. What's the last name?
24 A. Harvey Hollins.
25 Q. Have you had conversations with him?

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1 A. No.
2 Q. Do you know his title?
3 A. No, I don't know his title.
4 Q. Okay, thank you.
5 (Marked Exhibit No. 13.)
6 Q. I'm going to show you what's been marked Moore 13. Do
7 you recognize this document?
8 A. This appears to be a document that was used in the
9 presentation to the financial advisory board in March
10 of 2013.
11 Q. Did you prepare this document?
12 A. I assisted in preparing some of it.
13 Q. Did you prepare the summary of Conway MacKenzie
14 engagement next steps that appears on page 14?
15 A. I would have reviewed this.
16 Q. What is your understanding of the meaning under the
17 very last bullet point of legal limitations?
18 MR. MILLER: Wait a moment. You're moving
19 too fast for me. We're on page 12, summary of
20 Conway MacKenzie.
21 MS. LEVINE: No, we're on page 14.
22 MR. MILLER: Sorry, that's why I asked.
23 And the pending question? Can you read it back?
24 (Record read back as requested.)
25 A. That was referring to constraints that were faced

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1 related to some of the HR related items that we were
2 looking at and specifically the inability to move out
3 individuals that we felt should be removed from
4 whichever department they were working in.
5 Q. Did this relate to unionized employees?
6 A. Yes.
7 Q. So was there a concern -- never mind.
8 Did this legal limitations relate to
9 constraints with regard to privatization?
10 MR. MILLER: Object to form.
11 A. Not that I recall.
12 (Marked Exhibit No. 14.)
13 Q. Do you recognize this document?
14 A. This appears to be our assessment of the restructuring
15 -- proposed restructuring of city council department.
16 Q. Who asked you to prepare this?
17 A. First the City obviously engaged us to conduct a
18 review and identify recommendations for departments.
19 This was specifically put together because the
20 financial advisory board at the March meeting asked us
21 to bring in a couple of departments in April and
22 present on restructuring activities there.
23 Q. Did you prepare more than one of these reports?
24 A. This report that you handed me appears to be the
25 longer version for the financial advisory board

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1 meeting I believe that this was summarized.
2 Q. Prior to this report, which makes reference to
3 restructuring pensions and OPEB, had you previously
4 considered or made recommendations with regard to
5 restructuring pensions and OPEB?
6 MR. MILLER: Object to form.
7 A. Where are you referring to that this makes reference
8 to restructuring pension and OPEB?
9 Q. Well, let me ask the question a different way.
10 Does this report suggest restructuring
11 pension and OPEB?
12 A. Not that I recall.
13 Q. Okay. Did you discuss with the city council
14 restructuring recommendations that included pension
15 and OPEB?
16 MR. MILLER: Object to form.
17 Q. Prior to the Chapter 9 filing did you discuss with the
18 city council restructuring recommendations that
19 included pension and OPEB?
20 A. No.
21 Q. When was the first -- did you ever discuss with the
22 city council recommendations for pensions and OPEB?
23 A. No.
24 (Marked Exhibit No. 15.)
25 Q. I'm going to show you what's been marked Moore 15.

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1 MR. MILLER: Yes.
2 MS. LEVINE: Sorry, I gave you my copy too.
3 Q. Do you recall seeing that document before today?
4 A. Yes.
5 Q. What is it?
6 A. This appears to be the presentation document for the
7 financial advisory board meeting on April 8th.
8 Q. Okay, would you turn to page 12, please? I'm reading
9 from the bottom of the page CM -- which I'm assuming
10 is an abbreviation for Conway MacKenzie; is that
11 correct?
12 A. Yes, ma'am.
13 Q. -- is also working on various work streams that span
14 across the City or multiple departments including
15 pension and OPEB restructuring.
16 Do you see where I'm reading?
17 A. Yes, ma'am.
18 Q. Does that refresh your recollection with regard to
19 whether or not you were working on pension and OPEB
20 restructuring?
21 A. I don't believe you asked me that before.
22 Q. Were you during this time period working on pension
23 and OPEB restructuring?
24 A. Yes.
25 Q. When did you first raise with the City pension and

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1 OPEB restructuring?
2 MR. MILLER: Object to form.
3 A. When I came -- when I was first engaged, the City had
4 already started a process related to healthcare for
5 both active and retired employees at various cost
6 reduction efforts and the pension topics I believe
7 began maybe in the beginning of March or thereabouts.
8 Q. In connection with the work that you did with regard
9 to pension and OPEB, did you review the City's history
10 with regard to negotiations with the unions with
11 regard to the OPEB issues?
12 A. When you say history, are you referring to recent
13 history or what period of time?
14 Q. Prior to your engagement, what was the last time that
15 the City entered into concessionary agreements with
16 its unions or concessionary negotiation with its
17 unions just prior?
18 MR. MILLER: Objection to form, foundation.
19 A. Just to clarify, Ms. Levine, I am not the primary
20 point person on OPEB. I certainly have participated
21 in meetings where OPEB has been discussed. My
22 understanding is that the most recent time related to
23 changes in healthcare would have been the
24 implementation of the City Employment Terms during
25 2012.

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1 Q. Are you familiar with those employment terms?
2 A. Generally.
3 Q. Okay. Were there OPEB concessions made as part of
4 those terms?
5 A. I don't recall if the changes to the actives were
6 pushed through to retired employees or not.
7 Q. Did your role with regard to the pensions increase
8 over -- at any point in time in April?
9 A. I don't know about during the month of April. It may
10 have been in April, but essentially as pension issues
11 certainly became a focal point, there was the
12 establishment of a task force and I was asked by
13 Kriss Andrews to lead that task force.
14 Q. Did Milliman participate in that task force?
15 A. Yes, ma'am.
16 Q. Who else participated in that task force?
17 A. Attorneys from Jones Day and Miller Canfield.
18 Q. And what exactly was the role of the pension task
19 force?
20 A. I believe it states in my declaration, but essentially
21 we were to look at causes of the underfunding,
22 evaluate the underfunding amount and options that may
23 exist as it relates to the defined benefit pension
24 plans.
25 Q. Was there -- was any -- was anybody on behalf of the

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1 City who was not a consultant participating in the
2 task force?
3 A. Initially I reported to Kriss Andrews and then upon
4 Kriss' departure I now report to Sonya Mays as the
5 point person for pension related issues.
6 Q. Does anybody who's not a consultant participate on
7 behalf of -- actually let me take that back.
8 Does anybody participate on behalf of the
9 State?
10 A. No, ma'am.
11 Q. Has the task force reported to the State?
12 A. I have been in meetings where people from the City and
13 the State have been present where questions have been
14 asked about pensions where I have provided answers.
15 Q. Since April 18th forward how many meetings have you
16 participated as a member of the pension task force
17 where representatives of the State were present?
18 MR. MILLER: Object to form.
19 MS. LEVINE: What?
20 MR. MILLER: It assumes that --
21 MS. LEVINE: Actually never mind.
22 Q. Go ahead, you can answer.
23 A. Just to clarify, the task force itself did not meet
24 with the State. The State was involved in meetings
25 with the City where pension topics would be asked and

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1 I would provide answers to pension related topics, but
2 the task force to the best of my knowledge never met
3 specifically with the State.
4 Q. Well, did the task force have a goal? In other words,
5 did it have a deliverable it was supposed to provide
6 to the City?
7 A. The first item that we were looking at was done in
8 conjunction with the projections and restructuring
9 plan and that was to identify what the potential
10 unfunded amount of the pension plans may be and what
11 the future contribution requirements to both plans may
12 be.
13 Q. In connection with your work with the task force, did
14 you or anybody else on the task force meet with union
15 representatives?
16 A. In the course of my involvement with the City I've had
17 a lot of meetings with union people where pension
18 topics have come up.
19 MS. LEVINE: Can you read back my question,
20 please?
21 (Record read back as requested.)
22 Q. So can you answer that narrow question, please?
23 MR. MILLER: Objection, asked and answered.
24 MS. LEVINE: No, he --
25 Q. Can you answer that narrow question?

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1 A. I thought I did, but can you please read it back?
2 Q. I'll do it a different way.
3 You testified you had various meetings at
4 which unions were present and you discussed pensions.
5 Were every single one of those meetings related to
6 your work on the as being force?
7 A. No.
8 Q. How many meetings did you have with union
9 representatives in connection with the task force?
10 A. I spoke to individuals, union members, related to the
11 pensions maybe five to seven times.
12 Q. And when did those meetings take place?
13 A. Between April and July 18th, which is the time period
14 that you were referring to.
15 Q. And those five to seven meetings, who was on the other
16 side of those meetings?
17 A. Most of my interaction was with members of the Police
18 and Fire Retirement System board.
19 Q. And who on the Police and Fire Retirement System board
20 did you speak to?
21 A. George Orzech and Mark Diaz.
22 Q. And what did you talk about with George Orzech and
23 Mark Diaz?
24 A. The conversations would have been anywhere from this
25 is what I'm doing with the pension task force, this is

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1 what we're seeing, and then answering questions that
2 they had as a result of the June 14th creditor plan.
3 Q. Okay, when you talked to them about this is what you
4 were doing, what did you tell them you were doing?
5 A. I indicated that we were performing some analyses
6 related to the pensions to try to get our arms around
7 the funded position and most importantly the future
8 contribution requirements.
9 Q. And when you say we, who are you referring to?
10 A. The task force.
11 Q. That included Milliman?
12 A. Yes, ma'am.
13 Q. And when you said what you were finding, what did you
14 tell them you were finding?
15 A. Well, I expressed quite a bit of shock as to some of
16 the practices that had taken place and questioning how
17 these things could have happened along with the nature
18 of some of the indictments of the trustees that had
19 happened.
20 Q. What time frame are you talking about?
21 A. For what?
22 Q. For the shock that you were -- for the conduct that
23 you found shocking.
24 A. Well, I began my activities on the pension in March, I
25 started to get shocked in March and --

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Q. No, no, I'm asking when did the -- you know, was the conduct happening in March and April?
A. Not that I saw.
Q. Okay, when -- so the conduct was historical. Did you give them any information with regard to current findings with regard to the status of the pensions?
MR. MILLER: Object to form.
A. We discussed after the June 14th meeting the information presented in that June 14th creditor plan.
Q. How many times did you discuss it with them?
A. A handful. I would say five perhaps, maybe under.
Q. And how long did those discussions take place?
A. Typically fairly brief conversations. Fifteen minutes.
Q. They had questions and you gave them just answers?
A. Generally speaking, yes.
Q. And what did you discuss in those conversations post June 14?
A. I think I've already answered, but essentially they would ask questions about the calculations, what the City was looking to do, is the City open to this type of idea? And generally speaking my answer was always, we're open to looking at anything.
Q. What specific ideas did they offer to you to look at?
A. One was a hybrid plan. Two was whether the pension

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would not be frozen -- this is again referring to the Police and Fire, that the pension would not be frozen. I think that those were a few of the ideas that I recall.
Q. Did you have any conversations with anybody from AFSCME during that same time period?
A. Not that I recall. Outside of the meetings that I referred to earlier.
Q. So the June 14th and June 20th, the July 10th and the July 11th meeting?
A. Yes, although I was not at the July 11th meeting.
Q. Did you make any effort to reach out to anybody from AFSCME prior to finalizing the June 14 proposal?
A. This actually goes back a little bit, but during 2012 when you discussed obviously previous efforts or activities that my firm had made to try to offer our assistance to the City, we had reached out to AFSCME at that time because we had previously done work with AFSCME and unfortunately I left a few messages but AFSCME never called back.
Q. I'll try again.
In connection with the June 14 proposal did you reach out to anybody from AFSCME with regard to input into that proposal?
A. In the role specifically related to AFSCME, no, but

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certainly as employees through the development of the restructuring plans by departments.
Q. So did you talk to anybody -- did you talk to Steve Kreisberg, for example, with regard to the preparation of the June 14 proposal?
A. No, ma'am.
Q. Following the presentation on June 14 did you talk to anybody from AFSCME with regard to the content of the proposal?
A. Outside of those meetings, no, the meetings that we referred to earlier, June 14th, June 20th, July 10th.
Q. Did you reach out to anybody from AFSCME to get feedback from them with regard to that proposal?
A. No, ma'am.
MS. LEVINE: I think I'm done. I have no further questions. Thank you.
MR. RUEGGER: Take a five-minute break.
MR. MILLER: Let's take a five-minute break.
(A brief recess was taken.)
MR. MILLER: Back on the record.
EXAMINATION
BY MR. CIANTRA:
Q. Good afternoon, Mr. Moore. I'm Thomas Ciantra, I'm with Cohen Weiss and Simon, I'm counsel to the UAW.

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A. Good afternoon.
Q. Let me go back just a little bit in terms of your background. You had indicated that back in or around 2007, 2008 you were named to a commission to look at governmental operations here in the State of Michigan?
A. Yes, sir.
Q. And as I understand it, that appointment was made by the then speaker of the Michigan house of representatives, Mr. Dillon, and the majority leader of the Michigan senate; is that correct?
A. Yes, sir, Mike Bishop.
Q. Okay. Had you known Mr. Dillon before that appointment?
A. No.
Q. Or Mr. Bishop?
A. No.
Q. And at that time had you actually done any work in terms of restructuring of governmental operations?
A. Yes, sir, I had been involved in my engagement with the Wayne County Circuit Court.
Q. Okay. And the Wayne County Circuit Court and you had mentioned that you had done some work for the Detroit Public School System?
A. Yes.
Q. Those are your -- that's your governmental

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1 restructuring responsibility?
2 A. No, I've had additional engagements that I mentioned
3 earlier as well.
4 Q. The Development Bank in Puerto Rico?
5 A. Yes, and then work on behalf of AFSCME and the UAW
6 related to Puerto Rico.
7 Q. To Puerto Rico, okay.
8 A. And Jefferson County Alabama.
9 Q. Right. There had been a number of -- or several
10 Michigan municipalities that have had either a
11 Financial Manager or an Emergency Manager appointed in
12 the past several years; is that correct?
13 A. I believe the number is somewhere between five and
14 seven.
15 Q. Okay, is Flint who's one of them?
16 A. Yes, sir.
17 Q. Benton Harbor?
18 A. Yes, sir.
19 Q. Has the county -- has your firm been involved in any
20 of those cases?
21 A. No.
22 Q. And you haven't?
23 A. Correct.
24 Q. Now, you indicated -- do you have your declaration
25 handy? I think it's been marked as Exhibit 1.

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1 A. Yes.
2 Q. And in paragraph 5 you mention your work analyzing the
3 City of Detroit's pension liabilities and you've
4 testified with respect to the task force that you were
5 a part of that looked at that?
6 A. Paragraph 5 --
7 Q. I'm sorry, paragraph 8. If you'll excuse me, I got up
8 at 4 o'clock this morning to get here so I'm going to
9 be a little slower than Ms. Levine. Okay.
10 A. Could you restate the question?
11 Q. Sure. Who tasked you to be involved in looking at the
12 City's pension liabilities?
13 A. Kriss Andrews.
14 Q. And that was you said in March or so of 2013?
15 A. I think that's right, yes.
16 Q. Now, there were a series of -- well, let me ask.
17 Was the Milliman firm working for the City
18 of Detroit at that time?
19 A. Yes, sir.
20 Q. Okay. Do you know when they were retained?
21 A. I don't.
22 Q. But they were in place at the time you were given this
23 assignment by Mr. Andrews?
24 A. Yes.
25 Q. There are a series of letters from the Milliman firm

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1 that are addressed to Mr. Miller, your counsel here
2 today. The first one that I have is from April 18th,
3 2013 and you're copied on those letters. Are you
4 familiar with them?
5 A. Generally, yes. There are, as you say, a number of
6 them. I would have to remember what specifically was
7 discussed in that one.
8 Q. Okay. There were -- as a general matter, they seem to
9 involve analyses of particular scenarios that were put
10 to them?
11 A. Yes, sir.
12 Q. Okay. Who -- were those scenarios developed by the
13 task force that you were part of?
14 A. Yes.
15 Q. And who would have had -- who would have been the
16 decider as it were with respect to what the Milliman
17 firm was tasked to do?
18 A. The task force would lay out scenarios and I would
19 communicate with Kriss Andrews updates as to what the
20 task force was looking to do and then as Mr. Andrews
21 transitioned out, the tasks given to Milliman were
22 covered with Mr. Orr and Sonya Mays.
23 Q. Okay. Let me start by --
24 MR. CIANTRA: I don't know, what's the next
25 number we're up to?

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1 MR. MILLER: Sixteen.
2 (Marked Exhibit No. 16.)
3 Q. Here's what I marked as 16.
4 Now, why don't you take a moment or two,
5 however long you wish, Mr. Moore, to look over that
6 letter, number 16, Moore Exhibit 16.
7 A. Yes, sir.
8 Q. Okay. I gather from the first paragraph that your
9 task force asked the Milliman firm to determine the
10 adjusted funded status under PA 436, Section 12(1)(M)
11 for the two pension systems reflecting the value of
12 the pension operating certificates?
13 A. Just to be --
14 MR. MILLER: I'll object to form.
15 MR. CIANTRA: What's the basis of the
16 objection?
17 MR. MILLER: No foundation.
18 Q. Well, did you ask -- did your task force ask the
19 Milliman firm to determine the adjusted funded status
20 under PA 436, Section 12(1)(M), for the two Retirement
21 Systems reflecting the value of the pension obligation
22 certificates?
23 A. The only clarification I was going to provide in my
24 answer is yes, we asked Milliman to calculate the
25 funded status pursuant to 12(1)(M) of PA 436. That

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1 does include an adjustment for pension obligation
2 bonds or pension obligation certificates which they
3 did in their calculation, but it was simply a request
4 to calculate the funded status under 12(1)(M).
5 Q. Okay, and why was that done?
6 A. At this point the City was operating under an
7 Emergency Manager pursuant to PA 436.
8 Q. Right.
9 A. And it was important that we had that piece of
10 information.
11 Q. Why was that important?
12 A. That is one item that the Emergency Manager has to
13 look at while operating as the Emergency Manager and
14 so that's obviously you need to calculate that in
15 order to carry out his duties.
16 Q. And there's a particular threshold in that provision
17 of the statute, Section 12(1)(M), with respect to the
18 funded status of a plan that is involved in the
19 Emergency Manager's responsibilities?
20 A. I believe you're referring to the 80 percent
21 threshold?
22 Q. Yes.
23 A. Yes, sir.
24 Q. And if the funding of the plan is below the 80 percent
25 threshold, the Emergency Manager is at liberty to

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1 remove the trustees of the plan?
2 A. I don't recall the exact --
3 MR. MILLER: Well, object to form. It
4 calls for a legal conclusion.
5 Q. I'm just asking your understanding of it. I
6 understand you're not a lawyer, not an actuary, just
7 your understanding. You were working on the task
8 force, you asked these folks to look into this. What
9 was your understanding of what the Emergency Manager
10 could do if the funding threshold was below 80
11 percent?
12 A. I can't recall the exact language, whether the
13 Emergency Manager can act or if the Emergency Manager
14 can submit a petition or a request to the State
15 treasurer, but yes, if a pension plan falls below that
16 80 percent funded threshold, that allows that item to
17 occur.
18 Q. Okay. And I gather from Moore 16 that with respect at
19 least to the General Retirement System, the conclusion
20 of the Milliman firm as of April 19th was that its
21 funded status was 61.49 percent?
22 A. Yes, sir.
23 Q. Is it correct that the Emergency Manager has not taken
24 any steps pursuant to Section 12(1)(M) of the statute
25 to have the trustees of that Retirement System

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1 replaced?
2 A. That is my understanding.
3 Q. Were you involved in discussions as to whether that
4 should be pursued or not?
5 A. We have identified publicly one of the objectives that
6 the task force has is to ensure good governance for
7 both pension systems going forward and so one element
8 of that could be looked at. As it relates to
9 governance is a change in the composition of the Board
10 of Trustees, no decisions have been made in that
11 regard, but that certainly is something that has been
12 talked about as one possible element of governance.
13 Q. And that was -- so that was something that was -- was
14 on the radar screen of your task force at least back
15 in April?
16 A. Yes, sir.
17 MR. CIANTRA: Let me mark this as number
18 17.
19 (Marked Exhibit No. 17.)
20 Q. This is another of a series of letters. This one is
21 dated June 9th. It's also addressed to Mr. Miller.
22 And you are -- you can check on, I guess, the fifth
23 page of the document you appear to be copied on that.
24 A. Yes, sir.
25 Q. And am I correct that this letter reflects a further

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1 analysis by Milliman of the issue we were just
2 discussing with respect to the April 18th letter?
3 A. Yes, 12(1)(M) calls for the calculation based on the
4 last published actuarial valuation report, so between
5 April 18th and June 9th the actuarial valuation report
6 for the Police and Fire Retirement System was
7 finalized for the fiscal year-ending June 30th, 2012.
8 Q. So there we see on the first page that the funded
9 status for that plan has, at least as reflected in
10 that final valuation report, is also under 80 percent;
11 correct?
12 A. Yes, sir.
13 Q. Can you explain to me what the Milliman folks did with
14 respect to the outstanding value of the pension
15 obligation certificates when conducting this analysis?
16 MR. MILLER: Object to form. It calls for
17 speculation.
18 Q. Well, what did you understand that they were asked to
19 do with respect to the outstanding value of the
20 pension obligation certificates with respect to this
21 analysis?
22 A. My understanding was that pursuant to 12(1)(M) that
23 the funding calculation would take into account the
24 outstanding balances of any pension obligation
25 certificates as of the measurement date.

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1 Q. And that outstanding balance would be subtracted from
2 the asset balance in the pension plan?
3 A. There are a couple of ways that you could do it, but
4 yes, if you subtract that from the assets.
5 Q. So it would be netted out in someway?
6 A. Yes, sir.
7 Q. I understand there are probably different ways that
8 one could do it and you would have to allocate them as
9 between the two plans, but the idea would be you would
10 look at the funded status by netting out the
11 outstanding balance of those pension obligation
12 certificates?
13 A. Yes, sir.
14 Q. And so when you do that, you -- I gather that you get
15 to the valuation -- the funded percentage that's shown
16 on the first page of the letter as opposed to the
17 funded percentages that are shown on the second page
18 of the letter for the two plans?
19 A. Yes, sir.
20 Q. And did the task force take a position as to whether
21 netting out the pension obligation certificates in the
22 manner that the Milliman firm did here was the
23 appropriate measure under the statute?
24 MR. MILLER: Object to form.
25 A. The task force looked at this and as I seem to recall

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1 concluded that Milliman had performed the calculation
2 consistent with how 12(1)(M) is defined.
3 Q. Okay. So the percentages there on the first page are
4 from your task force perspective the operative numbers
5 under that provision of the statute?
6 A. Yes, sir.
7 Q. Now, you testified this morning with respect to
8 several issues that you identified as contributing to
9 the -- several actuarial assumptions that contribute
10 to the underfunding of the two pension systems here in
11 Detroit?
12 A. I would just clarify that those are two different
13 things. There are activities that have happened in
14 the past --
15 Q. Right.
16 A. -- which in my view have contributed to the unfunded
17 position of the plans and then there are actuarial
18 assumptions that when you vary those will impact the
19 underfunding calculation.
20 Q. Okay. And you identified with respect to the
21 actuarial assumptions the assumed rate of return on
22 investments, the smoothing technique that the
23 actuaries had adopted with respect to amortizing
24 experiencing gains and losses and the amortization
25 period that they adopted, the 30-year period, at least

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1 with the GRS; correct?
2 A. As it relates to the funded position, the first two
3 you mentioned, yes, were modified in our calculation
4 that I call out in the declaration.
5 Q. Okay. Is it the position -- has the task force looked
6 at the question of whether any of those assumptions
7 are inconsistent with actuarial standards of practice?
8 A. Yes, the task force has had discussions about the
9 range of options available for actuarial assumptions.
10 Q. Okay. Have you formed -- has the task force formed an
11 opinion that any of the assumptions that you identify
12 are inconsistent with actuarial standards of practice?
13 A. I'm not sure that I can answer that. That I think
14 calls for us to take one step further.
15 Q. Well, you participated in the task force meetings;
16 right?
17 A. Yes.
18 Q. So I'm just asking you a question of fact whether the
19 task force has taken or adopted a view that any of the
20 actuarial assumptions that you identified in your
21 prior testimony are contrary to actuarial standards of
22 practice?
23 MR. MILLER: I'll object to form.
24 Q. You can answer the question.
25 A. Could you define what you mean by contrary to

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1 actuarial standards?
2 Q. Well, there are actuarial -- you're familiar with
3 actuarial standards of practice?
4 A. Generally, yes.
5 Q. So there are professional standards that actuaries
6 operate under, you're aware of that; right?
7 A. Yes, sir.
8 Q. And there are particular standards that govern, for
9 example, earnings assumptions. You're familiar with
10 those?
11 A. Yes, sir.
12 Q. And you're familiar with actuarial -- an actuarial
13 standard that deals with the smoothing issue, dealing
14 with volatility and market returns?
15 A. Yes, sir.
16 Q. So my question is has the task force taken a view as
17 to whether any of the assumptions that you identified
18 in your testimony are contrary to actuarial standards
19 of practice?
20 MR. MILLER: Object to form.
21 A. I would say that the task force has come to the same
22 view that's contained in my declaration, which is that
23 the assumptions used, there -- it would be more
24 appropriate to use different assumptions, but I don't
25 think that we've ever said that -- or come to the

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1 conclusion as a task force that the actuarial
2 valuations don't comply with actuarial standards.
3 Q. Right. I mean, your declaration does not take the
4 position that any of the assumptions that you identify
5 in it are in fact inconsistent with actuarial
6 standards of practice; isn't that right?
7 A. That's correct.
8 Q. Have you asked for -- has your task force asked for
9 any -- have you asked the Milliman firm for an opinion
10 as to whether the actuarial standards that you discuss
11 in your declaration and were the subject of your
12 testimony earlier, have you asked them whether -- for
13 an opinion as to whether those assumptions are
14 consistent or inconsistent with actuarial standards of
15 practice?
16 A. We have discussed that, yes, and they have opined, if
17 I recall correctly, that they are -- there is not a --
18 they don't breach, if you will, or go against
19 actuarial standards.
20 Q. Okay. And was that opinion rendered in writing or was
21 that an oral discussion?
22 A. That would have been an oral discussion.
23 (Marked Exhibit No. 18.)
24 Q. And I'm back to the series of letters where I'm
25 handing what I've marked as Moore Exhibit 18. This is

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1 another letter from Milliman to Mr. Miller, copied to
2 you. This one's dated July 26.
3 So just so that make sure I have the time
4 sequence right. This is -- this is after the
5 presentation to creditors; correct?
6 A. Yes, sir.
7 Q. Like a week or two? That was the 14th?
8 A. This is July 26.
9 MR. MILLER: This is July.
10 Q. Right.
11 A. The initial meeting with the creditors, the one that
12 we're referring to as the June 14th meeting.
13 Q. Right. So this is six weeks or so later?
14 A. Yes, sir.
15 Q. Okay. Why don't you tell me what was the discussion
16 that led up to tasking the Milliman firm with what is
17 discussed in Moore Exhibit 18?
18 A. This analysis related to a scenario that we asked
19 Milliman to evaluate, which is what is the impact on
20 plan assets based on certain contribution assumptions.
21 Q. Okay. And in the context of freezing the plan?
22 A. In the context of freezing the plan, that's correct.
23 Q. At the risk of offending benefits lawyers that may be
24 present here, freezing the plan I understand to mean
25 that as of the date that the plan is frozen, no

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1 further benefits accrue going forward?
2 A. That's correct.
3 Q. Okay. So that was the assumption that's being made
4 here. And then you wanted to ask them essentially
5 when is the General Retirement System going to run out
6 of money if we make certain further other assumptions
7 with respect to the amount of its investment return,
8 etc., as specified on page 1 of the letter?
9 A. Yes, sir.
10 Q. Where did the -- I notice the third bullet point there
11 on page 1, annual city contributions of 13.6 million.
12 Do you see that?
13 A. Yes, sir.
14 Q. Where did that number come from?
15 A. That was a calculation based on one scenario taking
16 into account an allocation of funds available based on
17 percentage of claims.
18 Q. Okay, so why don't you spell that out for me? How did
19 you get -- how did you get to 13.6 million? What was
20 the claim assumption?
21 A. I don't recall what the exact amount was for the claim
22 assumption.
23 Q. So would I be correct that the 13.6 million reflects a
24 distribution on the underfunding claim to the pension
25 fund?

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1 A. Yes, sir.
2 Q. So if we were to take the -- I guess the present value
3 of that $13.6 million stream of payments through the
4 2022, 2023 fiscal year, we'd come up with the
5 distribution on the underfunding claim?
6 MR. MILLER: Before you answer that, let me
7 just review this question for a moment.
8 No objection.
9 A. Not necessarily. This is a certain amount of cash
10 that would go towards that underfunded claim. There
11 certainly could be other assets that could also go
12 towards that claim.
13 Q. Okay, but I guess when you -- when you were doing this
14 analysis, were you assuming that the 13 -- that
15 $13.6 million stream of payments represented all of
16 the consideration that would go towards the
17 underfunding claim or some of it?
18 A. I don't think we made an assumption either way.
19 Q. So how did you come up with the 13.6 as opposed to
20 14.6 or 12.6? Just help me out if you can.
21 MR. MILLER: Object to form. Asked and
22 answered.
23 A. As I indicated before, the -- this scenario looked at
24 cash available over a certain period of time and then
25 allocating that cash based on a relative percentage of

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1 total claims, but that does not mean what the total
2 treatment of the claim would receive.
3 Q. Okay. So there could be a debt component to it as
4 opposed to just a cash component?
5 A. There could be a variety of items. As was indicated
6 in our creditor plan, we laid out a $2 billion note of
7 which the various unsecured creditors would receive a
8 portion.
9 Q. So is the $13.6 million payment stream some portion of
10 the proceeds of that note?
11 A. No, that's just -- that was just relating to cash that
12 we had projected over the next ten years in the
13 creditor plan.
14 Q. Okay. And so where would I find that cash projection?
15 A. That's in the creditor plan.
16 Q. Okay.
17 A. The June 14th creditor plan, in the cash projection,
18 it shows the amount of cash available or extra cash,
19 if you will, that the City has over the next ten
20 years.
21 Q. Okay, why don't you take a look at Moore Exhibit 3 and
22 help me work it through. The ten-year projections,
23 page 90, is that where I would find the number?
24 A. I think you're going to want to go a few pages back.
25 Q. Okay.

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1 A. If you go to page 98.
2 Q. Okay.
3 A. In about the middle of the page, the last row of the
4 first area that's boxed where it says funds available
5 for unsecured claims --
6 Q. Yep.
7 A. -- with opportunities. Over the ten-year period that
8 shows 803.3 million. That is anticipated cash from
9 operations of the City that could go towards unsecured
10 claims.
11 Q. And from that 803 you in this scenario, Moore 18, you
12 allocated 13.6 million of that over one, two -- looks
13 like eight years?
14 A. There would actually be ten years.
15 Q. Ten years, okay. So you allocated 136 million of the
16 803?
17 A. Yes, sir.
18 Q. And that -- how did you come to the particular
19 percentage of the recovery for the pension
20 underfunding plan, the relationship between 803 and
21 136?
22 A. There are -- I think for this particular scenario, and
23 again, there are a lot of scenarios that get looked at
24 all the time, but for this scenario it contemplated
25 from the $803 million cash that would be used to

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1 service retiree healthcare, cash to service the
2 interest on the $2 billion note, and then the
3 remaining cash was allocated amongst claims and that's
4 -- I don't recall the exact calculation, but that's
5 how 13.6 per year or 136 million total towards GRS was
6 determined.
7 Q. So is it just a pro rata distribution based on the
8 size of the claims, the anticipated claim pool?
9 A. Essentially, yes, after taking into account those
10 first two items that I mentioned.
11 Q. Okay, so you drop those off the top and then the rest
12 of it you're allocating pro rata?
13 A. Yes, sir.
14 Q. Going back to Exhibit 18, whose idea was it to
15 contemplate a freeze of the pension plan?
16 A. The --
17 MR. MILLER: Wait. Object to form.
18 A. The City has actually -- had undertaken efforts in
19 this regard prior to or around the time of my initial
20 engagement passing ordinances or an ordinance that
21 temporarily froze service credits, so this is
22 something that the City has actually looked at even
23 prior to the formation of the pension task force.
24 (Marked Exhibit No. 19.)
25 Q. Here's what I've marked as Moore 19 is another in this

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1 series of letters. This is -- this one's dated August
2 2nd to Mr. Miller. It has you copied there on the
3 fifth page and in this letter there was a scenario of
4 contemplating a onetime $895 million City contribution
5 into these plans?
6 A. Yes, sir.
7 Q. Tell me what the thinking was behind that scenario,
8 announcing that scenario.
9 A. GRS hasn't published its final actuarial valuation
10 report as of June 30th, 2012, but there is a draft of
11 that.
12 Q. Right.
13 A. And that shows an under -- a UAAL as of June 30th of
14 2012 of approximately $830 million. So this was
15 rolled forward by one year.
16 Q. Got it.
17 A. So from June 30th, 2012 to June 30th of 2013, using
18 the 7.9 percent assumed rate of return such that if
19 either $830 million had been contributed at June 30 of
20 2012 or $895 million was contributed June 30th of
21 2013, in order to bring the plan up to 100 percent
22 funded on an actuarial basis, what would the potential
23 impact on plan assets be over a future time period.
24 Q. So why was that -- why was that done? I assume -- let
25 me ask. I assume we haven't found $895 million in the

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1 City of Detroit to put into that pension fund as of
2 July of next year; correct? July of this year;
3 correct?
4 MR. MILLER: Object to form. Go ahead.
5 A. Obviously there are a number of potential sources of
6 cash that are still uncertain.
7 Q. Okay.
8 A. But to answer your question about why this was done --
9 Q. Yeah.
10 A. -- there were a number of comments that were made
11 indicating that the plan is only $830 million
12 underfunded or some people refer to the June 30th of
13 2011 number and our point on this was to indicate that
14 even if the plan was topped off from an actuarial
15 standpoint, meaning that it was funded at 100 percent,
16 if you roll forward using certain assumptions, what
17 potentially happens to plan assets.
18 Q. I see. But one of the assumptions is there's going to
19 be no further contributions into the plan after that
20 lump sum; correct?
21 A. Yes. And what that is getting at is there's no future
22 accrual of benefits. So you fully fund it based on
23 the benefits that have been accrued --
24 Q. Okay.
25 A. -- which if that was the case, if it was fully funded

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1 from an actuarial standpoint and no new benefits
2 accrued and you experience a 7.9 percent assumed rate
3 of return -- or actual rate of return, what would
4 happen to the plan assets.
5 Q. Let me ask you if you have Moore Exhibit 3 there, I
6 want to ask you a few questions with regard to that.
7 Let me direct you to page 95 of that
8 presentation. Hang on for a second. I'm sorry, I was
9 in the wrong place. Page 109. Looking at the heading
10 there, claims for unfunded pension liabilities.
11 A. Yes, sir.
12 Q. Were you involved at all in the drafting of that part
13 of this presentation?
14 A. I don't think I wrote that, but I was aware of this
15 language.
16 Q. Okay. How about the specifically the language of the
17 third bullet point? Because the amounts realized on
18 the underfunding claims would be substantially less
19 than the underfunding amount, there must be
20 significant cuts in accrued vested pension amounts for
21 both active and currently retired persons. Were you
22 involved in formulating that?
23 A. Yes, sir.
24 Q. And has the City -- I noticed in this presentation
25 there's no quantification of what -- of the cuts that

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1 would be -- that in the City's view must occur;
2 correct?
3 A. Correct.
4 Q. Has there been a specification of those level of cuts
5 that the City contends must occur?
6 MR. MILLER: Object to form.
7 Q. I mean, have you put a dollar amount on it?
8 A. No, and our analysis of this continues. Right now we
9 still don't know what assets could be available to put
10 towards the pensions. We still have not had the type
11 of dialogue that we would like to have related to the
12 calculation of the unfunded amount, so because of
13 those two uncertainties among others we don't know
14 what cuts, if any, there may need to be.
15 Q. Well, doesn't it say there must be significant cuts?
16 Am I -- are you saying that there's some -- that the
17 City's position may be that there are no cuts that are
18 necessary in accrued vested pension amounts?
19 MR. MILLER: Object to form.
20 A. We don't know. That's where we want to continue to
21 engage in discussions and negotiations with the
22 parties, but depending on what the unfunded amount is
23 and what assets may be available for those claims, it
24 certainly is possible.
25 Q. So maybe that should have been worded there may be

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1 significant cuts rather than must?
2 MR. MILLER: Object to form. It asks for
3 speculation.
4 MR. CIANTRA: I don't think it asks for
5 speculation at all.
6 MR. MILLER: It asks for speculation, but
7 you can go ahead and speculate.
8 A. Possibly.
9 Q. But in any event, there's been no specific
10 quantification of any level of cuts to accrued vested
11 pension amounts that the City has formulated in this
12 restructuring process to date; isn't that correct?
13 A. Correct.
14 Q. And I would assume from that that you have not
15 provided the unions or any of the retiree groups with
16 any -- any quantification of cuts that the City would
17 like to see made?
18 A. No, we have met with parties regarding the pension
19 multiple times and we've laid out a process that we
20 propose to follow; however, that process really has
21 not been started unfortunately.
22 Q. Are you aware of provisions of the Michigan State
23 Constitution that affect the ability of the State or
24 its municipalities to alter accrued pension benefits?
25 A. Generally, yes.

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1 Q. How did you become aware of those provisions?
2 A. I have been aware of that provision or provisions for
3 multiple years. I don't recall how I originally
4 became aware of them, but I've been aware of them for
5 quite sometime.
6 Q. So you were aware of those provisions at least
7 generally when you undertook the assignment for the
8 City in this case?
9 A. Yes, sir.
10 Q. Have there been discussions of those provisions of the
11 State Constitution in the various discussions among
12 members of your pension task force?
13 A. Can you clarify?
14 Q. You indicated earlier that you were part of a pension
15 task force that's been considering pension issues
16 since I guess the spring of this year and my question
17 is during the discussions, the meetings of that task
18 force, have you -- has that provision of the Michigan
19 State Constitution been a subject of discussion?
20 A. Yes.
21 Q. In what context?
22 A. The existence of it.
23 Q. And how did it -- who brought that up?
24 A. I don't recall.
25 Q. What was discussed about it?

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1 A. The acknowledgment of the existence of it to make sure
2 that everyone on the task force was aware of it and we
3 also discussed an Attorney General opinion regarding
4 that provision back from the late 1970s, I believe,
5 and whether that provision constitutes -- you know,
6 how far those protections go.
7 Q. And who brought up that subject?
8 A. I don't recall who would have brought it up.
9 Q. Were those discussions before the City made its
10 Chapter 9 filing?
11 A. Yes.
12 Q. And were there discussions that you were party to with
13 respect to the Chapter 9 filings that involved the
14 question of the -- those provisions of the Michigan
15 State Constitution?
16 MR. MILLER: Object to form.
17 A. I believe that that would have come up, yes.
18 Q. It came up in discussions you were party to?
19 A. Yes.
20 Q. With whom?
21 A. When there were discussions about the potential for a
22 Chapter 9 filing, a variety of topics were discussed
23 and I seem to recall that element coming up.
24 Q. When were those discussions, Mr. Moore?
25 A. In the June/July time period.

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1 Q. And was there more than one such discussion or did it
2 just come up on one occasion?
3 A. It probably came up more than -- I seem to recall more
4 than one occasion where a discussion about whether the
5 City would have to file for Chapter 9 took place and
6 the pension element was discussed.
7 Q. And what was the -- was there consensus that was
8 developed with respect to that issue?
9 MR. MILLER: I'm going to object and ask
10 the witness before he answers that question whether in
11 connection with any discussion that might have led to
12 a consensus that discussion included lawyers and
13 counsel --
14 MR. CIANTRA: I'm not asking him --
15 MR. MILLER: -- and counsel that was
16 provided by those lawyers.
17 MR. CIANTRA: I'm not asking about
18 discussions with counsel, I'm asking him whether this
19 task force that was looking at the pension issues
20 reached a consensus as to the question of the effect
21 of this provision of the Michigan State Constitution
22 on a Chapter 9 filing.
23 MR. MILLER: But the task force included
24 counsel. He's testified to that.
25 MR. CIANTRA: Well, I'm not interested in

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1 the discussions, I'm interested was there a consensus
2 reached on this issue, not necessarily what your
3 counsel might have advised or said or any of that.
4 MR. MILLER: But -- but to the extent that
5 the -- a consensus was reached and that consensus was
6 based on legal advice, that consensus would be in my
7 judgment privileged. So that's why I asked him
8 whether in connection with discussions and discussions
9 that may have reached a consensus as to the question
10 of the effect of the provision of the State
11 Constitution on Chapter 9 filing, whether that
12 consensus was reached based on advice of counsel.
13 MR. CIANTRA: I'm not asking him that.
14 MR. MILLER: And if so, then I instruct
15 you, Mr. Moore, not to expound.
16 MR. CIANTRA: So let me ask the question
17 again. Let's make the record straight.
18 Q. Did the task force that you were a part of reach a
19 consensus on the question of what the effect of the
20 provision of the Michigan State Constitution that
21 protects accrued pension benefits would have on a
22 Chapter 9 filing?
23 A. No.
24 Q. There was no consensus?
25 A. No.

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1 Q. There were different views that were expressed?
2 A. There wasn't -- there wasn't a consensus that we tried
3 to come up with. As I indicated before, the existence
4 of the provision was acknowledged and it was
5 discussed, but the pension task force did not come to
6 an opinion as it relates to anything regarding that
7 provision in the Michigan Constitution.
8 Q. Was it something that you were concerned about?
9 A. Can you clarify in terms of concern?
10 Q. You were aware of this provision; right? You were
11 aware at least from the actuarial reports that the
12 plans were underfunded; correct?
13 A. Yes.
14 Q. And you were aware that in the proposal to creditors
15 that we just looked at the Emergency Manager states
16 that there must be significant cuts in accrued vested
17 pension amounts for both active and currently retired
18 persons. So my question is were you concerned about
19 that in light of your understanding of the Michigan
20 State Constitution?
21 A. To the extent that retirees would face some sort of
22 cut, certainly as a human being I would be concerned
23 about that.
24 Q. I'm not asking as a human being, I'm asking in light
25 of your understanding of the State's Constitution.

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1 MR. MILLER: Objection to form. Calls for
2 a legal conclusion.
3 Q. You can answer the question.
4 A. I'm not sure that I understand the question. You
5 asked if I was concerned and I sought clarification
6 for that and I'm not sure I understand what additional
7 you're asking about concern.
8 Q. Were you concerned that the -- let me ask
9 specifically.
10 Were you concerned that the position that
11 the Emergency Manager took with respect to accrued
12 pension benefits was inconsistent with your
13 understanding of what the State Constitution requires?
14 A. That to me is a legal opinion that I'm not equipped to
15 make.
16 Q. Did you have any discussions with anyone in the State
17 government with respect to this issue that -- the
18 interplay between the Michigan State Constitution
19 provisions and the Chapter 9 filing by the City?
20 A. Not that I can recall.
21 Q. So there may have been such discussions?
22 A. There may have been.
23 Q. And if there had been such discussions, who from the
24 State would likely have been involved in it?
25 A. My interactions have been essentially exclusively with

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1 the treasury department for the State of Michigan, so
2 if there were discussions, it would have been with the
3 treasury department.
4 Q. So that would have been Mr. Dillon or one of his
5 subordinates?
6 A. Yes.
7 Q. With --
8 MR. MILLER: Tom, excuse me, are you going
9 to shortly wrap up? Because otherwise, I need a
10 five-minute break.
11 MR. CIANTRA: Take your five-minute break.
12 I won't be that long, Evan, afterwards.
13 MR. MILLER: Yes, that's fine. Thanks.
14 (A brief recess was taken.)
15 MR. MILLER: Back on the record?
16 MR. CIANTRA: Yeah, whenever you're ready.
17 Sharon?
18 MS. LEVINE: No, I'm good. I'm just
19 stretching.
20 MR. CIANTRA: You're just stretching.
21 Okay, back on the record.
22 BY MR. CIANTRA:
23 Q. In connection with your work on the pension task
24 force, Mr. Moore, did you inquire as to the level of
25 benefits that pensioners were receiving from the two

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1 pension plans?
2 A. Just to clarify, are you referring to those in pay
3 status?
4 Q. Yeah, in pay status, right.
5 A. Yes, sir.
6 Q. And am I correct that with respect to the General
7 Retirement System the average annual benefit is a
8 little less than $20,000 a year?
9 A. We never calculated the average across all people on
10 pay status. We looked at it in different increments
11 in terms of the number of people at various ages
12 receiving certain monthly amounts.
13 Q. Okay. What's the -- do you recall what's the median?
14 A. We never calculated the median.
15 Q. Okay, how about the mean?
16 A. We never calculated the mean.
17 Q. Did you do that with respect to the Police and Fire
18 plan?
19 A. Yes, sir.
20 Q. Okay, what was the average that was received under
21 that plan?
22 A. We did not calculate the average, similar -- we pulled
23 similar data to -- for both plans.
24 Q. You don't recall a presentation by Mr. Orr where
25 certain representations were made as to what the

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1 average pension benefit was under these two systems?
2 A. Not offhand.
3 Q. Let me ask. With respect to -- my understanding is at
4 least with respect to the police officers and firemen
5 in the City that they are not covered by the Social
6 Security system?
7 A. Participants in the Police and Fire Retirement System
8 do not participate in Social Security, that's correct.
9 Q. To this day; correct?
10 A. Yes, sir.
11 Q. So for their earnings, a police officer in the City of
12 Detroit would -- for their earnings from the City of
13 Detroit would have no Social Security; correct?
14 A. They don't pay in and then they don't receive,
15 correct.
16 Q. Okay. And is that the case for certain of the
17 retirees in the General Retirement System as well?
18 A. I don't believe so. The reason for two different
19 pension systems is specifically because one system is
20 for those that participate in Social Security and one
21 system is for those that do not.
22 Q. Okay, so your understanding is that none of the
23 participants in the General Retirement System are not
24 eligible for Social Security?
25 A. That could -- there could be people in GRS that don't

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1 participate in the Social Security based on their age
2 or when they worked for the City, that's a
3 possibility, I don't know for sure.
4 Q. Okay, so there may be some of the retirees who are
5 covered by that plan who have -- whose earnings were
6 not subject to Social Security?
7 A. It's possible.
8 Q. But you don't know?
9 A. I don't know for sure.
10 Q. And is that something that someone was tasked to find
11 out?
12 A. Not that I recall.
13 Q. Would you agree that that might be a relevant
14 consideration in evaluating what to do with that --
15 with those accrued -- the accrued pension benefits of
16 folks in that system?
17 A. It may be relevant, yes, depending on what gets looked
18 at.
19 MR. CIANTRA: I have no further questions.
20 Thank you.
21 MR. MILLER: Can we go off the record?
22 (Discussion held off the record.)
23 MR. MILLER: Back on the record.
24 MR. RUEGGER: Yes, this won't take too
25 long.

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1 BY MR. RUEGGER (continued):
2 Q. Do you have your declaration in front of you,
3 Mr. Moore?
4 A. Yes, sir.
5 Q. If you could open it up to page 10 where you start a
6 discussion of past practices?
7 A. Yes.
8 Q. I'd first like to talk about the annuity savings plan,
9 which you discuss in paragraph 18. Do you know what
10 years the annuity savings plan was in active mode or
11 being pursued?
12 A. Based on our investigation it appears that it has been
13 available since at least 1973 and we have reviewed
14 certain documentation that would suggest that some
15 form of annuity savings plan has been in existence all
16 the way back perhaps into the 1930s.
17 Q. I take it -- well, withdrawn.
18 Do you know whether the annuity savings
19 plan in any form is continuing at present?
20 A. Yes, it is.
21 Q. Is it continuing in the format described in your
22 declaration in paragraph 18?
23 A. Could you be more specific in terms of -- there are --
24 is a number or there's a lot of information in
25 paragraph 18.

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1 Q. Sure. You'll see the third sentence where you say,
2 under the terms of the GRS plan, active city employees
3 may elect to invest 3, 5 or 7 percent of their
4 paychecks into an annuity savings plan.
5 Does that aspect of the annuity savings
6 plan continue to this day?
7 A. Yes.
8 Q. And is that available to all GRS covered active
9 employees?
10 A. I believe so.
11 Q. And the next part of that sentence says that the
12 investment earns interest based on a rate of return
13 established at the discretion of the GRS Board of
14 Trustees.
15 Is that still accurate?
16 A. Yes; however, there was an ordinance passed in 2011
17 that provides parameters within which the board may
18 specify the interest.
19 Q. Do you know what interest rate is current -- has
20 currently been specified by the board?
21 A. As I understand it, it's 7.9 percent.
22 Q. And is it true -- okay, turning to the next page,
23 we're still on paragraph 18, you state in the sentence
24 that begins but in many years. Do you see that
25 sentence?

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A. Yes.
Q. The GRS trustees chose to credit these annuity savings plan employee accounts with rates of return that were far greater than the actual GRS rate of return earned on the investments.
So I take it from your prior testimony that that is still an accurate aspect of the annuity savings plan; correct?
MR. MILLER: Object to form.
A. The ordinance passed in 2011 that I just referred to addresses this issue.
Q. And what does it provide generally? I know you don't have it in front of you but to your memory.
A. Yes, generally it provides that the interest rate credited to the annuity savings fund accounts cannot exceed the assumed rate of return on the plan assets.
Q. Only active employees were allowed to participate in this plan; correct?
A. Yes, sir. From the standpoint of making new contributions, when an employee retires, the employee has the choice of taking a lump sum of their annuity savings fund account or having it paid in an annuity, so there could be retired employees that are still getting payments from the annuity savings fund but they would not be contributing to it.

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Q. In the last sentence of paragraph 18 you say that hundreds of millions of dollars of plan assets intended to support the City's traditional defined benefit pension arrangements were converted by GRS trustees to provide a windfall to the annuity savings accounts of active employees outside of a defined benefit pension plan.
Has Conway MacKenzie or any other firm to your knowledge quantified the dollar amount of plan assets that were converted to the annuity savings accounts?
A. Yes.
Q. And what is that amount, if you remember?
A. One analysis that I've looked at was performed by Joe Esuschanko, E-S-U-S-C-H-A-N-K-O.
Q. Okay.
A. And he analyzed the impact from both the annuity savings fund as well as 13th checks between 1985 and 2008 and he quantified that to be, based on the principal amount as well as the lost interest earnings on those funds, to be approximately $1.9 billion.
Q. Okay. I want to make sure I understand what you -- that last answer. That would be both the annuity savings plan and the 13th check program that you reference in paragraph 19?

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A. Yes. Amounts that were used to credit interest on the annuity savings fund accounts and pay 13th checks.
Q. The 1.9 billion does not include any principal or the 3 or the 5 or the 7 percent of the paycheck that was invested; correct?
A. That's correct.
Q. But the interest being calculated there, is that all interest or just the amount of interest in excess of the interest earned under the plan?
A. In excess. The interest in excess of what was earned by plan assets.
Q. And of the 1.9 billion, did Mr. Esuschanko break it down between the 13th check and the annuity savings plan?
A. Yes.
Q. How much of the 1.9 was attributable to the annuity savings plan?
A. I don't recall that breakdown.
Q. Do you know what documents or records might contain that breakdown?
A. Yes, there was a memo that was prepared by the city council fiscal analysis division in around November of 2011 in support of the ordinance that I just previously mentioned that has attached to it Mr. Esuschanko's report.

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Q. Thank you. And do you recall whether Mr. Esuschanko's report breaks down the amounts on each year or was it an accumulation of 2005 through 2008?
A. It shows by year.
Q. Turning to the 13th check subject, which is in paragraph 19 of your declaration, do you have an understanding as to what years the 19th check program was pursued?
A. Just to clarify, you had indicated -- you just said 19th check, I think you're referring to the 13th check.
Q. I'm sorry, my apologies. Strike that again. I'll answer it again -- or I'll ask it again.
Do you recall in what years the 13th check program was utilized?
A. Mr. Esuschanko's analysis I believe has 13th check amounts in that same time period, 1985 through 2008. I have seen information that would suggest that 13th checks may have occurred before 1985 for the GRS system.
Q. And if I understand your declaration correctly, this 13th check program was used for both the GRS and the PFRS systems?
A. The 13th check, if we use that term as it relates to the Police and Fire Retirement System, is also -- or

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has also been referred to as gain sharing.
Q. So it's only referred to as gain sharing related to the PFRS system?
A. I have seen references to both 13th checks and gain sharing for PFRS. The reason why there's a distinction is payouts that happen from PFRS went to both active and retired employees whereas on the GRS side those payments just went to retired employees.
Q. Are you aware whether a portion of the 13th check program or payments pursuant to the 13th check program were made to the City itself?
A. Well, the 13th check didn't go to the City, but typically the board would approve a total amount and allocate a portion to annuity savings fund interest, another portion to 13th checks and then a third portion to be used as a credit to the City.
Q. And are you aware -- you may have already addressed this in your testimony, I apologize -- but are you aware of whether any payments among those allocated went to active employees other than the -- not in the annuity savings plan context but in the 13th check program?
A. Speaking just about GRS, if we exclude the crediting of the annuity savings fund accounts, I'm not aware of 13th checks going to active employees.

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MR. CIANTRA: I believe this has been the subject of discussion between people in your firm and my firm, but I just want to confirm with Mr. Moore what his understanding is as to the October 23rd hearing.
Q. Do you have any understanding as to whether you are expected to testify at the October 23rd hearing?
A. It has not been discussed.
Q. So I take it that if you haven't discussed whether you're going to testify, you similarly have not discussed what you might testify to; is that correct?
A. Correct.
MR. RUEGGER: I don't have any other questions.
MR. MILLER: Thank you. No questions.
(Deposition concluded at 4:06 p.m.)
* * *

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State of Michigan)
County of Genesee)

Certificate of Notary Public

I certify that this transcript is a complete, true and correct record of the testimony of the witness held in this case.

I also certify that prior to taking this deposition, the witness was duly sworn or affirmed to tell the truth.

I further certify that I am not a relative or an employee of or an attorney for a party; and that I am not financially interested, directly or indirectly, in the matter.

WITNESS my hand this 20th day of September, 2013.

Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267
Certified Realtime Reporter
Registered Merit Reporter
Certified LiveNote Reporter
Certified Shorthand Reporter
Notary Public, Genesee, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 9-19-18

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DEPOSITION ERRATA SHEET

Our Assignment No. 471793/NYC337236
Case Caption: In re City of Detroit, Michigan

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.
Signed on the _____ day of _____, 20__.
_____
CHARLES M. MOORE

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DEPOSITION ERRATA SHEET

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CHARLES M. MOORE

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CHARLES M. MOORE

EXHIBIT E

Page 308

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4 ----------X
5 IN RE) Chapter 9
6 CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
7 Debtor.) Hon. Steven W. Rhodes
8 ----------X
9
10
11 CONTINUED VIDEOTAPED DEPOSITION of
12 KEVYN D. ORR
13 Volume II
14 Washington, D.C.
15 Friday, October 4, 2013
16
17
18 Pages: 308 - 496
19 Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR,
20 CCR, CLR, RSA
21 Assignment Number: 14008
22 File Number: 105824

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1 October 4, 2013
2 11:11 a.m.
3
4
5 Continued Videotaped Deposition of KEVYN D.
6 ORR held at the law offices of:
7
8
9 Jones Day
10 51 Louisiana Avenue, Northwest
11 Washington, D.C. 20001
12
13
14
15
16 Pursuant to notice, before Cindy L. Sebo,
17 Registered Merit Reporter, Certified Shorthand
18 Reporter, Registered Professional Reporter,
19 Certified Real-Time Reporter, Certified Court
20 Reporter, Certified LiveNote Reporter, Real-Time
21 Systems Administrator, a Notary Public in and for
22 the District of Columbia.

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C O N T E N T S

EXAMINATION OF KEVYN D. ORR: PAGE:
By Ms. Levine 316
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* (Exhibits Attached to Original Transcript.)

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1 P R O C E E D I N G S
2
3 Washington, D.C.
4 Friday, October 4, 2013; 11:11 a.m.
5
6 - - -
7 KEVYN D. ORR
8 after having been previously duly sworn, was
9 examined and testified further as follows:
10 - - -
11 THE VIDEOGRAPHER: This is the
12 continuation of the deposition of Kevyn Orr on
13 Friday, October the 4th of 2013 at 11:12 a.m.
14 (Sotto voce discussion.)
15 THE VIDEOGRAPHER: Yeah. The witness
16 is still sworn.
17 MS. LEVINE: Okay.
18 - - -
19 EXAMINATION (CONTINUED) BY COUNSEL FOR AFSCME
20 - - -
21 BY MS. LEVINE:
22 Q. Mr. Orr, thank you for coming back.

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1 Again, we --
2 A. Sure --
3 Q. -- appreciate it.
4 A. -- um-hum.
5 Q. As we understand from the court
6 reporter before we started the deposition, you've
7 been previously sworn. You're continued to be
8 sworn, and we're not going to go through again,
9 unless you'd like me to repeat it, the ground
10 rules for the deposition.
11 A. No, that's fine. I understand I'm
12 still under oath.
13 Q. Good.
14 Mr. Orr, we were talking the last
15 time we met about some of the discussions that you
16 had with the Governor leading up to the filing of
17 the bankruptcy, and some of those discussions, as
18 the Court has directed, are protected by the
19 common interest agreement --
20 A. Yes.
21 Q. -- but -- but our understanding is
22 that some of them may not be.

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1 So I'm going to ask you a series of
2 questions. I'm assuming you'll take a breath and
3 let your -- let -- let your attorney tell you
4 whether or not you can answer --
5 A. Okay.
6 Q. -- and depending upon his direction,
7 we'll go to the next question.
8 A. That's fine.
9 Q. Did you consider, just prior to the
10 filing of the Chapter 9 petition, whether there
11 were political ramifications associated with
12 dealing with the pension's retiree benefits, other
13 employee issues in the course of the Chapter 9?
14 MR. SHUMAKER: Go ahead.
15 THE WITNESS: Did I consider?
16 BY MS. LEVINE:
17 Q. (No audible response.)
18 A. No.
19 Q. Was it your understanding that any of
20 the City's elected officials were concerned about
21 political considerations impacting their workforce
22 pension's retiree benefits as a result of the

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1 Chapter 9 filing?
2 A. Was it my understanding that any of
3 the City officials were concerned?
4 Q. The Mayor, anybody working with the
5 Mayor.
6 A. I'd be speculating. They might have
7 been, but I don't know for sure.
8 Q. Did you have any discussions with the
9 Mayor or any of the City officials about the
10 political ramifications of a Chapter 9 filing?
11 A. No, not really political
12 ramifications, no.
13 Q. Did you discuss with the Governor any
14 of the political ramifications surrounding a
15 Chapter 9 filing?
16 A. Outside of any attorney-client
17 communications?
18 Q. (No audible response.)
19 A. You're shaking your head, so I
20 don't --
21 Q. Well, the political -- I'm -- I'm
22 asking the question about political ramifications,

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1 so I'm intentionally not asking the question with
2 regard to any --
3 A. Okay.
4 Q. -- legal discussions.
5 A. Explain for me, if you will, what you
6 mean by "political ramifications." Just -- just
7 so I make sure I understand what --
8 Q. Well, let's put it this way --
9 A. -- what you mean.
10 Q. -- what would -- what's your
11 understanding of political ramifications?
12 A. Well, I'm -- I'm not sure. That's
13 why I'm asking you.
14 Q. Did you consider any political
15 consequences at all in connection with the
16 Chapter 9 filing?
17 A. Did I consider?
18 Q. Yes.
19 A. No.
20 Q. Do you believe that -- do you
21 understand -- did you have any discussions with
22 regard to whether or not the Governor was

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1 considering any political ramifications as a
2 result of the Chapter 9 filing?
3 A. I'm -- I'm trying to understand --
4 let me put it to you this way: The answer would
5 be no, because I believe the Governor wasn't
6 concerned about political ramifications as you
7 asked.
8 Q. Okay.
9 And what do you base that
10 understanding on?
11 Why do you believe the Governor
12 wasn't concerned about political ramifications?
13 A. Without -- and -- and let me just say
14 this throughout the deposition. It is not my
15 intent to waive or in any way impact the
16 attorney-client privilege.
17 So I'm going to try to be responsive,
18 but I don't want to bleed over into any arguments
19 later that I somehow waived the privilege.
20 My impression is in any of my
21 discussions outside of attorney-client
22 communications with the Governor, he never

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1 demonstrated any concern about political
2 ramifications as they're being used today.
3 Q. Did you understand that reductions in
4 vested pension benefits would be a necessary part
5 of any restructuring for Detroit?
6 A. I think that was certainly
7 anticipated, yes.
8 Q. Is it your understanding that the
9 Governor understood that the reduction in vested
10 pension benefits would be part of any
11 restructuring for Detroit?
12 MR. SHUMAKER: Objection: foundation.
13 MS. LEVINE: I'm asking him his
14 understanding.
15 THE WITNESS: I'm not sure what the
16 Governor understood. You'd have to ask him.
17 BY MS. LEVINE:
18 Q. Did the Governor ever communicate to
19 you that he expected that vested pension benefits
20 would be part of any restructuring for Detroit?
21 A. The Governor communicated to me that
22 he expected -- no.

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1 Q. Did you discuss the reduction in
2 vested in pension benefits with the Governor prior
3 to the filing of the Chapter 9 petition?
4 A. Not outside of any attorney-client
5 communications.
6 Q. Did you discuss the reduction of
7 vested pension benefits, without going into what
8 was discussed, prior to the filing of the
9 Chapter 9 petition with the Governor?
10 A. Without waiving the attorney-client
11 privilege, we may have.
12 Q. You -- when you say "we may have,"
13 you don't recall?
14 A. I -- I don't recall a specific
15 conversation with the Governor outside of
16 attorney-client communications talking about
17 reductions in pension benefits.
18 The Governor generally -- without
19 waiving the privilege, would generally say, you
20 make the decision that's best for the City in your
21 mind.
22 Q. Was it your understanding, prior to

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1 the bankruptcy filing, that there was an issue
2 with regard to whether or not pension benefit
3 reductions would violate Michigan's State law or
4 the State constitution?
5 A. Can you repeat the question?
6 MS. LEVINE: Can you read back the
7 question, please?
8 THE WITNESS: Yeah.
9 - - -
10 (Whereupon, the court reporter read
11 back the pertinent part of the
12 record.)
13 - - -
14 THE WITNESS: Yes.
15 BY MS. LEVINE:
16 Q. And was it -- and did the Governor
17 also have an understanding that that was an issue?
18 MR. SHUMAKER: Objection: foundation.
19 BY MS. LEVINE:
20 Q. Was it your understanding that the
21 Governor also had an understanding that that was
22 an issue?

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1 A. Without speculating as to what the
2 Governor would understand, I believe -- to the
3 extent I believe the Governor was aware that --
4 what was being reported in the press and being
5 discussed, I would say yes.
6 Q. Was it your understanding that the
7 only way to reduce pension benefits was to use
8 or -- use Chapter 9 or file for Chapter 9
9 protection?
10 A. No.
11 Q. Was it the Governor's understanding
12 that the only way to reduce pension benefits or
13 to -- was to use Chapter 9 or to file for
14 Chapter 9 bankruptcy protection?
15 MR. SHUMAKER: Objection: foundation;
16 calls for speculation.
17 THE WITNESS: Yeah. Here again, I
18 don't know what the Governor's understanding was.
19 MS. LEVINE: That's fine. I'm
20 expecting objections, but please don't coach the
21 witness. The objections --
22 MR. SHUMAKER: I'm not coaching the

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1 witness --
2 MS. LEVINE: -- the objection --
3 MR. SHUMAKER: -- I'm just stating my
4 objection.
5 MS. LEVINE: I don't want -- yeah,
6 but objection as to speculation, then, suddenly,
7 he doesn't -- he -- his answer is I'm -- I don't
8 want to speculate.
9 Objections to form are fine.
10 THE WITNESS: I -- I think I said
11 before I want to be very careful about testifying
12 to what the Governor's state of mind was. I can
13 only testify as to what I understood.
14 BY MS. LEVINE:
15 Q. And that's all I'm asking --
16 A. Okay.
17 Q. -- we're only asking for your
18 understanding --
19 A. Okay.
20 Q. -- I'm trying to use your
21 understanding to avoid legal conclusions or
22 speculation or anything else.

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1 I just want to -- I'm -- I just -- I
2 just want to understand your understanding.
3 A. Okay.
4 MR. SHUMAKER: If you phrase the
5 question that way, that will help us all out.
6 BY MS. LEVINE:
7 Q. What's your understanding of the
8 Mayor's view with regard to the reduction in
9 pension benefits?
10 A. I don't have an understanding what
11 the Mayor's view is.
12 Q. Did you discuss, prior to the
13 Chapter 9 filing, pension reductions with the
14 Mayor?
15 A. I don't believe so.
16 Q. Did you discuss, prior to the
17 Chapter 9 filing, pension reductions with anybody
18 on behalf of the City Government?
19 A. Let -- let me -- let me phrase my
20 an -- outside of any public discussions and
21 presentations I may have made at, say, for
22 instance, the June 10th creditor's meeting or the

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1 June 14th meeting for creditors, I don't recall
2 any specific discussions with anyone on behalf of
3 the City about reductions.
4 Q. You -- you testified at your last
5 deposition that, in your view, concessionary
6 bargaining changes to pensions could not occur
7 within the time frame that you had to work with.
8 And I have an extra copy here if you
9 want to see the -- the transcript, but --
10 A. Um-hum.
11 Q. -- the question is what time period
12 were you talking about?
13 A. I think I said at the June 10th
14 public meeting and, again, at the June 14th
15 proposal for creditors -- I think I was fairly
16 clear that we would need to have some agreements
17 in principle or term sheets and the like within
18 the next 30 days, and that if we were making
19 movement, we might be willing to have further
20 discussions for an additional 30 days.
21 In fact, I believe at the back of the
22 June 14th proposal, we learned -- we -- we

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1 identified an evaluation time frame. So that's
2 the time frame that I thought I was being fairly
3 clear about.
4 Q. And were either the June 14 or the
5 June 20 meetings audiotaped?
6 A. The June 10th or the June 14th
7 meeting --
8 Q. Right. Was -- were -- were either
9 the June 10th or the June 14th meeting audiotaped?
10 A. I believe the June 10th meeting was
11 audio and videotaped. I think I've seen that on
12 the Internet.
13 I don't know about the June 14th
14 meeting for creditors.
15 Q. Did -- did you videotape those
16 meetings or did the EM -- were they videotaped on
17 behalf of EM?
18 A. To be honest with you, that -- that
19 would have been done at a staff level. I don't
20 know.
21 I just know that I've seen the
22 June 10th meeting -- my June 10th presentation on

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1 various Internet sites. I don't recall seeing my
2 June 14th presentation.
3 MS. LEVINE: Can we request a copy of
4 that if -- if it exists?
5 MR. MOSS: Which one? It's --
6 MR. SHUMAKER: Both of them if you
7 have them.
8 THE WITNESS: I think they're on
9 YouTube.
10 MR. SHUMAKER: I'd ask you to put the
11 request into writing so we have that.
12 BY MS. LEVINE:
13 Q. When you gave the presentation at the
14 June 10th and the June 14th meeting, did you
15 believe that it was possible to reach consensual
16 agreements within the 30-day period that you
17 outlined?
18 MR. SHUMAKER: Can I just state an
19 objection here? Where are you're going, Counsel?
20 I'm going to be patient and allow you to -- to
21 ask -- ask questions, but let's be very clear from
22 the outset as to what Judge Rhodes ordered and

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1 what ASME requested in its -- its motion to compel
2 additional testimony from Mr. Orr.
3 The request that you made was -- to
4 the Judge was that Mr. Orr reappear for three
5 hours of deposition testimony concerning his
6 communications with State officials in the
7 presence of legal counsel since his appointment as
8 emergency manager.
9 That is what the subject of today's
10 deposition is.
11 MS. LEVINE: Right. And this is a
12 foundation question.
13 MR. SHUMAKER: Okay. I just want --
14 I -- I'm just going to caution you from the --
15 from the get-go that we're not going to meander
16 all over that -- that's what the order is and
17 that's why we're here.
18 MS. LEVINE: Can you read back the
19 question, please?
20 - - -
21 (Whereupon, the court reporter read
22 back the pertinent part of the

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1 record.)
2 - - -
3 THE WITNESS: Yes.
4 BY MS. LEVINE:
5 Q. Did you discuss that with the
6 Governor before the June 10th meeting?
7 A. Let -- as I think I said at my
8 September 16th deposition, I would have regular
9 meetings with the Governor, typically weekly.
10 There were attorneys present at all of those
11 meetings.
12 I am not -- and I'll take guidance
13 from my counsel, but this is in terms of how I
14 intend to respond today.
15 I am not trying to assert the
16 privilege for people who have legal degrees but
17 were not acting as attorneys. For instance, the
18 Governor has a JD, and the Treasurer has a JD. So
19 I'm not trying to say that the privilege attaches
20 for their capacity as Governor and Treasurer, not
21 acting as attorneys. But there are attorneys in
22 those meetings on the Governor's staff acting as

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1 attorneys.
2 Without violating the privilege
3 during those meetings, what I can say is that --
4 well, if I could have the question again.
5 Q. It's really a simple -- it -- it's
6 a -- it's a narrow question --
7 A. Right.
8 Q. -- I understand the concern, but it's
9 a narrow question.
10 A. Right.
11 Q. Did you discuss -- you -- as I
12 understand your testimony, you indicated on
13 June 10th and June 14th that you were looking at
14 a 30-day time frame.
15 A. Um-hum.
16 Q. Did you discuss that 30-day time
17 frame prior to the June 10 meeting with the
18 Governor?
19 A. I'll look for a little guidance. If
20 I had discussions, they probably were during
21 meetings where attorneys were present.
22 Without disclosing what those

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1 communications were, we typically would have
2 discussed what we would have needed to present --
3 I don't recall so much for the June 10th public
4 meeting, so the answer is no for there.
5 For the June 14th meeting, we
6 probably would have discussed at a very high level
7 the nature of the presentation. I don't recall
8 discussing with specificity the exact time frames.
9 Q. In order to meet the 30-day time
10 frame that you're discussing, were there any
11 benchmarks or criteria that you thought would have
12 to be meet -- would have to be met within that
13 30-day period in order to conclude what you needed
14 to conclude at the end of the 30-day period?
15 A. Well, I think what I said was that
16 that was an initial 30-day period, but if we were
17 moving forward and making progress, we'd be
18 willing to extend it for another 30-day period or
19 so. I think that's what I said.
20 So when you say "benchmarks," we were
21 looking for good-faith negotiations and movements
22 in the nature, I think I said on June 14th,

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1 agreements in principle, term sheets and the like.
2 So it's -- it's not as stringent as I
3 think -- I don't want to give the impression that
4 our expectation was as stringent as there had to
5 be specific benchmarks, but we wanted for people
6 to come in with good-faith, credible proposals to
7 show that we were moving forward on these issues,
8 and we would continue to negotiate on those
9 issues.
10 Q. Did you have -- following the June 10
11 and June 14 meeting, did you have any discussions
12 with the Governor with regard to the progress or
13 lack of progress being made in that regard?
14 A. Probably. Without violating the
15 privilege, we probably had discussions without
16 saying what those discussions were, because there
17 would have been -- would have been attorneys
18 present.
19 Q. When did those discussions take
20 place?
21 A. They would typically have taken
22 place, as I've said, at the weekly meetings that

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1 the Governor and I and his team and members of my
2 team would have.
3 Q. So after June 14, when was your next
4 weekly meeting?
5 A. I don't know specifically, but I'm --
6 I said it's typically weekly.
7 So I'm -- I think we probably had one
8 the next week.
9 Q. Do you recall what day the next week?
10 A. I do not.
11 Q. Do you recall if there was one
12 because it was -- do you recall if there was one
13 the following week?
14 A. I do not.
15 Q. Were there one or two meetings with
16 the Governor from the time of the June 14 meeting
17 to the time of the filing of the Webster
18 litigation on June 3?
19 A. Well, there could well have been more
20 than two. I do recall, and I think I said on
21 September 16th, I don't think we had one the 4th
22 of July -- week of the 4th of July, which was a

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1 Thursday.
2 Q. Understood. Not the question.
3 The question is, from June 14 up
4 until July 3, how many times did you meet with the
5 Governor?
6 A. No. Your question was did we have
7 one or two meetings, and my answer was I believe
8 we probably had more than two.
9 Q. And did you discuss the pension
10 and/or healthcare benefit issues that you had
11 discussed during the June 10 and June 14 meeting
12 with the Governor during those two, maybe more,
13 meetings?
14 A. Ms. Levine, let me -- let me say
15 this: We probably discussed them broadly, but
16 there were no discussions that I recall in detail
17 about what our plan would have to be in those
18 meetings, such as what level of cuts they would be
19 and the like, if any.
20 Q. Did -- did you get any proposals
21 during that two-week period in response to those
22 meetings?

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1 A. I think I said on June 16th, we've
2 had some discussions with some bargaining units.
3 I don't recall if they were between the June 14th
4 time frame -- if they were -- I think we were in
5 discussions with some bargaining units during that
6 time. So, yes, I believe we did get some
7 proposals.
8 Q. Did you report on those proposals to
9 the Governor?
10 A. I -- generally speaking, yes.
11 Q. Did you indicate to the Governor that
12 you were making progress?
13 A. I probably indicated that we were
14 making some progress, yes.
15 Q. Did you discuss with the Governor
16 whether there were additional proposals you were
17 hoping to receive?
18 A. We probably did express a wish for
19 additional proposals. We were hoping for a global
20 solution.
21 Q. Did you come up with an action plan
22 to solicit further proposals?

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1 A. I thought we began that on June 14th,
2 a proposal for creditors, where we ended it by
3 saying we're interested in responses.
4 Q. In any of the meetings that you had
5 with the Governor between June 14th and July 3rd
6 where you didn't get proposals, for -- did you
7 discuss constituents from whom you didn't get
8 proposals that you wish you would have gotten
9 proposals from?
10 A. No, I didn't --
11 MR. SHUMAKER: Objection to the form.
12 THE WITNESS: -- no, I don't recall
13 discussing at that level of specificity.
14 BY MS. LEVINE:
15 Q. The Governor authorized the Chapter 9
16 filing on July 18th.
17 Do you know who drafted the
18 Governor's authorization?
19 A. I do not.
20 Q. Do you know whether the language in
21 the Governor's authorization was discussed with
22 your attorneys at Jones Day?

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1 A. I do not.
2 Q. Did the Governor ask you to request
3 authorization to file the Chapter 9 or was it your
4 independent decision on July 16th?
5 A. It was my independent decision.
6 Q. Did you have any specific discussions
7 with the Governor concerning the conditions or
8 the -- or with respect to specific directions from
9 the Governor with regard to pension benefits?
10 MR. SHUMAKER: Object to the form.
11 THE WITNESS: No, not with the
12 Governor.
13 BY MS. LEVINE:
14 Q. Was it your understanding that the
15 Governor was seeking political cover by not taking
16 a position with respect to pension reductions, but
17 only citing to Section 943 of the Bankruptcy Code?
18 MR. SHUMAKER: Objection: form.
19 THE WITNESS: No.
20 BY MS. LEVINE:
21 Q. Did -- did you suggest the citing
22 to 943 of the Bankruptcy Code to the Governor?

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1 A. No. I had no involvement in the
2 letter -- the Governor's letter.
3 Q. Were there any discussions about
4 citing to 943 of the Bankruptcy Code outside of
5 the letter as a -- as of -- as a way to deal with
6 issues with regard to pension reductions?
7 MR. SHUMAKER: I'm just going to
8 caution the witness again. To the extent you can
9 answer the question without revealing
10 attorney-client communications, you may do so.
11 THE WITNESS: The -- there were none
12 with the Governor.
13 BY MS. LEVINE:
14 Q. Is it your understanding that the
15 language regarding conditions, specifically the
16 use of the reference to 943 of the Bankruptcy
17 Code, authorizes you to alter vested pension
18 benefits?
19 A. That seems to call for a legal
20 conclusion.
21 Let -- let me just say this
22 generally --

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1 Q. I'm just asking your understanding.
2 A. Let me -- let me just say this
3 generally.
4 I was not involved in any fashion in
5 drafting the Governor's response. My
6 understanding is that without citing to a specific
7 section of the code, because I have not analyzed
8 it, that the letter grants me authority to use any
9 resources that are available to propose a plan of
10 adjustment.
11 Q. After you got the letter, did you
12 discuss with the Governor what the meaning was in
13 the letter of the reference to Section 543 [sic]
14 of the Bankruptcy Code?
15 A. No.
16 Q. 943, I'm sorry.
17 A. Yeah, I knew -- I knew what you
18 meant.
19 No.
20 Q. Between June 14th -- or June 10th and
21 the filing on July 18th, besides legal
22 conclusions, besides pension benefits, did you

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1 discuss with the Governor certain ideas that you
2 had with regard to how to restructure or deal with
3 the financial situation in Detroit?
4 A. Yes, we likely did without divulging
5 any privileges, yes.
6 Q. I'm looking for the business
7 financial terms, not the legal terms.
8 In other words, did you --
9 A. Um-hum.
10 Q. -- discuss, for example, selling
11 assets?
12 A. No.
13 Q. Did you discuss generating additional
14 revenue with the Governor?
15 A. Here again, some of these
16 discussions, in fact, every meeting we had on a
17 regular basis would have had attorneys present, so
18 I want to be very careful.
19 For instance -- for instance, if
20 there are discussions about a millage rate and the
21 maximum legal millage amount, I would not want
22 those to bleed over into disclosing

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1 attorney-client protected communications.
2 What I can say is that at -- at a
3 high level, we discussed ways to potentially
4 generate revenue.
5 Q. Did you discuss privatization with
6 the Governor during that same time frame from
7 June 10th through the filing?
8 MR. SHUMAKER: I'll just caution the
9 witness, if you had discussions with the Governor
10 where counsel was present in connection with a
11 request for an indicia of legal advice --
12 THE WITNESS: Right.
13 MR. SHUMAKER: -- I don't want you to
14 answer to that; but if you can do so outside of
15 any such request or provision of legal advice, you
16 can answer.
17 THE WITNESS: Okay.
18 Without disclosing legal advice, we
19 may have discussed nonlegal-related issues, for
20 instance, with an outstanding solid waste RFP and
21 how that could save the City money and produced a
22 higher level of services for the City.

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1 Legal issues regarding the RFP, I --
2 I won't talk about, but, for instance, the --
3 those privatization in that sense would have been
4 discussed.
5 Privatization in a broader sense, I
6 don't recall having discussions of a philosophical
7 issue about privatization. We probably would have
8 had discussions about specific RFPs outstanding.
9 BY MS. LEVINE:
10 Q. Did you have any other specific
11 discussions with regard to RFPs or outsourcing in
12 connection with improving the financial
13 condition -- or allegedly improving the financial
14 condition of the City?
15 A. Well, improving it. Like I said,
16 I -- I do recall discussions about the solid waste
17 RFP which we were somewhat excited about, save
18 money and increase quality of services.
19 I'm trying to think of anything else
20 that could be called privatization. That's the
21 one that sticks out in my mind. I don't recall
22 anything else.

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1 Q. During the course of these
2 conversations, did you have any conversations with
3 the Governor about preserving jobs for the
4 citizens of Detroit?
5 A. Yes.
6 Q. And what were those conversations?
7 A. Well, for instance, in the solid
8 waste RFP, one of the bidders -- I -- we probably
9 discussed that one of the bidders had come in who
10 had done this before and was able to move the City
11 jobs over to private sector jobs with the same
12 employees. And so there would be no net loss of
13 jobs.
14 Q. Did you discuss how that might impact
15 vested benefits and vested pension rights?
16 A. No, we really didn't have -- no.
17 Q. You -- you approved the retention of
18 Jones Day under EM Order Number 4 and officially
19 approved Jones Day's contract on April 20 --
20 THE COURT REPORTER: I -- I'm sorry.
21 I can't hear you here.
22 MS. LEVINE: Sorry.

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1 BY MS. LEVINE:
2 Q. You approved the retention of
3 Jones Day under EM Order Number 4 and officially
4 approved Jones Day's contract on April 23, 2010;
5 is that correct?
6 A. If your represent -- representation
7 is accurate, yes. I don't independently recall
8 the dates, but that sounds correct.
9 Q. Okay. So after April 23, 2013, you
10 and Jones Day had an attorney-client relationship,
11 yes?
12 A. I think that's a legal conclusion.
13 The attorney-client relationship could attach
14 before then.
15 Q. What was your understanding of when
16 your legal attorney-client relationship with
17 Jones Day attached?
18 A. I don't know. That's what I'm saying
19 it calls for a legal conclusion.
20 My understanding of the days I
21 practiced law is that the attorney-client
22 relationship can attach prior to the actual

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1 formalization of an attorney-client relationship.
2 Q. When did you first -- all right.
3 Let me ask you this: Did Jones Day
4 represent the City in any capacity before
5 April 23, 2013?
6 A. I don't know. That's why I keep
7 saying it could be a legal conclusion.
8 I know that their contract was before
9 City -- the Mayor had selected them, and their
10 contract was below -- before City Council before
11 then.
12 Q. What was the date that the Mayor
13 selected Jones Day to represent the City?
14 A. I don't recall.
15 Q. Was it prior to February of 2013?
16 A. I -- I don't recall. I don't recall.
17 I don't think so.
18 Q. Did Jones Day represent the State of
19 Michigan in any capacity before April 2000 --
20 April 2013?
21 MR. SHUMAKER: Objection: foundation.
22 THE WITNESS: Jones Day may have --

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1 I -- I don't know. They may have represented the
2 State in other matters, but if you're talking
3 about with regard to this matter, I don't recall.
4 BY MS. LEVINE:
5 Q. What does NERD stand for?
6 MR. SHUMAKER: Object to the form.
7 BY MS. LEVINE:
8 Q. Do you know what NERD -- do you --
9 have you heard the phrase "NERD" in connection
10 with the New Energy to Reinvest Diversity Fund?
11 A. Yeah. When you said "NERD," it
12 stands for a kid who was like me when he was
13 growing up, sort of a geek.
14 But if you're talking about the
15 acronym related to something affiliated with the
16 Governor, then, yes, I've heard of that.
17 Q. All right.
18 Do you know what it is -- let me
19 ask --
20 A. I --
21 Q. -- it this way: What's your
22 understanding of what it is?

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1 A. I -- I -- only what I've read in the
2 papers. I know nothing about the NERD Fund other
3 than what I've read in the papers.
4 Q. Do you know who any of the donors are
5 to the NERD Fund?
6 A. I haven't got a clue.
7 Q. So it's not you?
8 A. It is -- I've never donated to the
9 NERD Fund, no.
10 Q. Has Jones Day?
11 A. Not that I know of.
12 Q. Has any City retained professional?
13 A. I have no idea.
14 Q. Do you know whether any of the City's
15 creditors are -- have donated to the NERD Fund?
16 A. I know nothing about the NERD Fund
17 other than what I've read in the papers. The
18 first time I heard about the NERD Fund is when I
19 read about it in the paper --
20 Q. So do --
21 A. -- I know nothing about the donors.
22 Q. Do you know whether any -- do you

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1 know whether any of the SWAP parties have donated?
2 A. No, I do not.
3 Q. If you had access to the
4 information -- if you have access to the
5 information, would you be willing to disclose the
6 donors?
7 A. I don't have access to the
8 information, and I think that's a question -- if
9 it's a fund run by someone else, that's their
10 decision. I don't have access to any information
11 related to the NERD Fund.
12 Q. Would you be willing to ask the
13 Governor to have that information disclosed?
14 A. Sitting here today, no.
15 Q. Have any of your expenses as
16 emergency manager been paid or reimbursed by the
17 NERD Fund?
18 A. Not --
19 MR. SHUMAKER: I think we're getting
20 pretty far afield here -- here, Counsel. This is
21 not really --
22 MS. LEVINE: Yeah, it is --

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1 MR. SHUMAKER: It's starting to
2 get --
3 MS. LEVINE: -- I'll be bring it
4 back.
5 MR. SHUMAKER: Okay.
6 THE WITNESS: What I read in the
7 paper is that my housing is paid for by the
8 NERD Fund. I've never seen the lease, and I've
9 never seen a payment.
10 That's the extent of what I know of
11 the NERD Fund and its involvement with me.
12 MS. LEVINE: This is Exhibit 20.
13 MR. SHUMAKER: Do you have an extra
14 copy?
15 MS. LEVINE: Yeah, one.
16 MR. SHUMAKER: Thank you.
17 - - -
18 (Whereupon, an e-mail string was
19 marked, for identification purposes,
20 as Orr Deposition Exhibit
21 Number 20.)
22 - - -

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1 MS. LEVINE: For -- for the record,
2 the -- the Bates number is JD-RD-0000334.
3 (Whereupon, the witness reviews the
4 material provided.)
5 BY MS. LEVINE:
6 Q. Mr. Orr, there are two e-mails on the
7 first page of this document.
8 A. Um-hum, yes.
9 Q. I'm going to ask you to look at the
10 second e-mail.
11 It's from --
12 A. Yes.
13 Q. -- Richard Baird to you?
14 A. Yes.
15 Q. Dated February 12, 2013, correct?
16 A. Yes.
17 Q. And it discusses -- well, let me ask
18 the question.
19 Is this e-mail discussing your
20 potential retention as the emergency manager?
21 A. Yes, it appears to do that.
22 Q. Do you recall receiving this e-mail?

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1 A. Yeah, I do. Yes, I do.
2 Q. And it discusses the base
3 compensation of $275,000 a year?
4 A. Yes, among other things.
5 Q. And contract period of -- include --
6 including a contract period not to
7 exceed 18 months?
8 A. Yes.
9 Q. Did your final contract have an
10 incentive if the job was completed sooner?
11 A. No.
12 Q. It also discusses an intent to raise
13 private funding for performance measure/outcome
14 bonus?
15 A. Yes.
16 Q. Does your final contract have a
17 performance measure/outcome bonus?
18 A. No. We never talked about it yet.
19 Q. Did you discuss the private funding
20 referenced in that e-mail?
21 A. No.
22 Q. Did you under -- do you -- did you

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1 have any understanding of what the source of that
2 private funding would be?
3 A. Not at all.
4 Q. It discusses a sublease for a
5 furnished apartment in the City?
6 A. Yes.
7 Q. And that made it to the final
8 contract?
9 A. Actually, it's not in my contract, I
10 believe.
11 Q. But you have a subleased apartment in
12 the City -- or a leased apartment in the City?
13 A. I -- I have an apartment that I stay
14 in in the City; the arrangement I -- I can't speak
15 to.
16 Q. How did you learn that there was an
17 apartment available to you?
18 A. I believe the first day, I stayed in
19 a hotel room, and the next day, someone -- and I
20 really can't tell you if it was on behalf of the
21 State or if it was someone related to the hotel --
22 when I came back from work that day, took me to --

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1 and my suitcase to the apartment.
2 Q. Is it your understanding that the
3 City's paying for that apartment?
4 A. I -- I don't know who's paying for
5 the apartment.
6 Q. And you get your expenses reimbursed?
7 A. I haven't had any of my expenses
8 reimbursed.
9 Q. Does anybody -- who pays for your
10 flying, for example, back and forth from D.C.?
11 A. I do.
12 Q. And that -- and none of those have
13 been reimbursed?
14 A. Not a dime.
15 Q. And you get a security detail?
16 A. Yes.
17 Q. 24/7?
18 A. Certainly -- well, they say 24/7, but
19 I -- they walk me to my apartment and lock me in,
20 and then I see them in the morning. So I assume
21 it's 24/7. That's -- that's my detail.
22 Q. Do you know who's paying for that

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1 security detail?
2 A. I do not, but they are Michigan State
3 Police; they're not private.
4 Q. So there was no discussion, though,
5 back in or around February of 2013 with regard to
6 the source of any funding to help subsidize the
7 cost of the emergency manager?
8 A. No. In fact, I think there's an
9 e-mail that has been produced somewhere where I
10 say back I -- you know, the -- the -- something to
11 the effect the job is the job is, and I'm not
12 expecting anything supplemental.
13 Q. No, I'm not asking you if you were
14 expecting anything supplemental. I'm asking the
15 source of the funding to pay for you --
16 A. Oh, I've --
17 Q. -- as a --
18 A. -- had -- yeah, I -- I -- I -- my
19 checks come from a -- a Michigan State Government
20 Web site. I assume that's from the State, but I
21 have no idea if -- if there's any other
22 arrangement -- my direct deposits.

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1 MS. LEVINE: I have no further
2 questions. Thank you.
3 THE WITNESS: Okay.
4 THE VIDEOGRAPHER: Go off the record?
5 Going off the record at 11:50.
6 - - -
7 (Whereupon, a discussion was held off
8 the record.)
9 - - -
10 THE VIDEOGRAPHER: Going back on the
11 record at 11:53.
12 - - -
13 EXAMINATION (CONTINUED) BY COUNSEL
14 FOR RETIREES COMMITTEE
15 - - -
16 BY MR. ULLMAN:
17 Q. Good morning, Mr. Orr.
18 A. Good morning.
19 Q. As you know, I'm Anthony Ullman
20 and -- for the Retirees Committee from Dentons,
21 and I have some additional questions for you this
22 morning.

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1 A. Good morning, Mr. Ullman.
2 Q. First of all, I'd like to put a
3 document before you which we will mark as
4 Exhibit --
5 MR. ULLMAN: Are we up to 21?
6 THE COURT REPORTER: Yes.
7 THE WITNESS: Twenty-one.
8 MR. ULLMAN: Twenty-one. I need a
9 sticker for that.
10 - - -
11 (Whereupon, Jones Day Presentation to
12 the City of Detroit; Detroit,
13 Michigan, January 29, 2013 was
14 marked, for identification purposes,
15 as Orr Deposition Exhibit
16 Number 21.)
17 - - -
18 MR. ULLMAN: Here's a copy for you.
19 I want to get rid of my extras.
20 MR. SHUMAKER: Let me state on the
21 record a couple of things. One, I'm not sure
22 technically whether the Retirees even joined

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1 ASME's motion, so I'm not even certain that it's
2 proper that Mr. Ullman be asking questions.
3 Secondly, this is -- Mr. Ullman can
4 identify it, but this document is the Jones Day
5 presentation to the City of Detroit on January
6 29th, 2013.
7 I don't see how that funnels into the
8 request that was made to Judge Rolls -- Rhodes
9 regarding three hours of deposition testimony
10 concerning Mr. Orr's communications with State
11 officials in the presence of legal counsel since
12 his appointment as emergency manager.
13 That said, this document was produced
14 after the deposition, and I'm going to let you go
15 into it. But I am going to say --
16 MR. ULLMAN: I --
17 MR. SHUMAKER: -- within reason --
18 MR. ULLMAN: -- I don't -- I don't
19 intend to dwell very long on it --
20 MR. SHUMAKER: Okay.
21 MR. ULLMAN: -- and I appreciate your
22 recognition. This was produced after the last

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1 deposition.
2 BY MR. ULLMAN:
3 Q. Okay. Mr. --
4 THE COURT REPORTER: I have to mark
5 it there first.
6 BY MR. ULLMAN:
7 Q. Okay. Mr. Orr, what we've marked as
8 Exhibit 21 is entitled, Presentation to the City
9 of Detroit; Detroit, Michigan, January 29, 2013
10 from Jones Day.
11 Can you identify this document for
12 me, Mr. Orr?
13 A. Yes.
14 Q. Okay. And what is it, please?
15 A. I believe it's a slide deck
16 presentation to the City of Detroit for a -- in
17 response to a solicitation the firm received for
18 representation regarding potential restructuring
19 work on behalf of the City dated January 29th,
20 2013 marked confidential.
21 Q. Okay. And this is in connection with
22 the presentation that you testified about last

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1 time; is that correct?
2 A. Yes, when I said the end of January.
3 It's commonly referred to as a "pitch book."
4 Q. Okay. And you -- you were part of
5 the Jones Day team, and your picture appears on
6 Page 3 of this document; is that right?
7 A. Yes, I was part of the presentation
8 team, yes.
9 Q. Okay. And did you have any role in
10 the preparation of this document?
11 A. Yes. I mean, it -- it was a
12 collaborative effort from a number of different
13 attorneys in the Jones Day law firm, but I was
14 involved in that process as well.
15 Q. Okay. And did you review the
16 document -- can we refer to this as the pitch
17 book?
18 A. Yes.
19 Q. Okay. Did you -- did you review the
20 pitch book, Exhibit 21, before it -- before the
21 presentation?
22 A. Yes.

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1 Q. Okay. And I just note -- I'm not
2 going to go into my particular specifics here, but
3 if, for example, just picking one, if you look at
4 Page 18, there's what's called Speaker Notes,
5 which -- I assume this was a PowerPoint
6 presentation, so someone would be talking --
7 speaking orally as a slide goes on the screen; is
8 that right?
9 A. Well, it was -- it -- it -- it -- it
10 could have been a PowerPoint. As I recall, we did
11 not -- there weren't PowerPoint capabilities, so
12 we intended to work off the document --
13 Q. Um-hum.
14 A. -- but the discussion, within a
15 minute or two, veered away from the document and
16 more was a dialogue, so . . .
17 Q. Okay. So what we have as Exhibit 21
18 was the -- the internal -- at least was this
19 internal version of the pitch book; in other
20 words, were there speaker notes?
21 A. Yes, were the speaker -- this --
22 the -- the speaker notes were not presented to --

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1 Q. That's --
2 A. -- the review team.
3 Q. -- that's what I wanted to clarify.
4 A. Yes.
5 Q. Okay. And when you say that you
6 reviewed the document before -- before it went out
7 in its final form to the -- to the people you were
8 pitching to at the meeting, you know, with the
9 City, you reviewed the speaker notes as well?
10 A. Mr. Ullman, to be honest, I -- I
11 reviewed -- I can't be -- this document was not
12 generated solely by me --
13 Q. I understand.
14 A. -- it was generated by a team effort.
15 I think I reviewed a number of
16 different drafts of the document. I'm not -- I --
17 I believe I reviewed the final draft of the pitch
18 book that went out. I am not sure I reviewed the
19 final draft of the draft of the speaker notes,
20 because at that time, I think I was involved in
21 the actual mediation of another matter. So I was
22 doing this in between some other matters.

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1 But generally speaking, I'm familiar
2 with this document.
3 Q. Okay. And was there -- was there
4 anything in the document that you disagreed with?
5 MR. SHUMAKER: Object to the form.
6 THE WITNESS: Without reviewing it
7 today, generally speaking, no.
8 BY MR. ULLMAN:
9 Q. Okay. And can you tell me were there
10 any particular portions of Exhibit 21 that you had
11 primary responsibility for preparing?
12 A. No. The -- the document evolved
13 through -- as you are probably familiar with the
14 pitch books for attorneys seeking legal work, the
15 document evolves as you go through it, a number of
16 conversations, e-mails with a number of different
17 sources.
18 I don't recall being -- I don't
19 recall looking at this document and saying, oh, I
20 only did Pages 23 through 23 [verbatim], for
21 instance. I may have commented and edited
22 different pages. I may have made suggestions on

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1 who should be on the team, who should be on the
2 representation team, what -- what potential legal
3 services might be necessary.
4 And, for instance, at the back, you
5 have team members, things along those lines,
6 but -- but there was no specific section that was
7 dedicated solely to me.
8 Q. Okay. I'm not asking whether it was
9 dedicated solely to you, but whether you had
10 primary responsibility for preparing.
11 A. No.
12 Q. Okay.
13 A. No.
14 Q. And I think you indicated that the
15 slides themselves were given over to the City at
16 the meeting or -- was it the City or the State?
17 I'm trying to remember, did you --
18 A. It -- it was a review team composed
19 of I think --
20 Q. Buckfire was there?
21 A. -- the -- the investment bankers were
22 there --

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1 Q. Yeah.
2 A. -- for the City who had been
3 retained, the City representatives were there and
4 the State representatives were there.
5 Q. Okay. I'll talk -- call that the --
6 the review team --
7 A. Review team --
8 Q. -- is that the term you like?
9 Okay --
10 A. -- yeah.
11 Q. -- so as I understand what you're
12 saying, the -- the -- the slides themselves were
13 present -- given over to the review team as a --
14 a -- a bound --
15 A. Yes.
16 Q. -- volume or attached in some way?
17 A. Yes, the -- the -- the slide deck as
18 the pitch book was given to the review team.
19 Q. Okay. And then, at the presentation,
20 were -- how did that work? Did you -- did people
21 sort of go through the slides orally and then --
22 and -- and make comments as they were going

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1 through the different pages in the pitch book?
2 A. No. As I recall, we handed out the
3 pitch book and began sort of going through the
4 slide, but within the first page or two, the
5 discussion exceeded the slides. And we really
6 ended up not going through the pitch book in any
7 meaningful manner --
8 Q. Okay.
9 A. -- at the presentation.
10 Q. Okay. And this -- at the time of the
11 presentation, you were indeed still part of
12 Jones Day --
13 A. Yes.
14 Q. -- and part of the pitch team?
15 A. Yes, absolutely.
16 Q. Okay.
17 Okay. I'm going to mark another
18 document, Mr. Orr, and ask if you've ever seen
19 this, which is Number 22.
20 A. Two.
21 MR. ULLMAN: Here's a copy for you,
22 two copies for you, and an extra, and an extra. I

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1 don't want to bring these back with me is all.
2 - - -
3 (Whereupon, City of Detroit —
4 Restructuring Plan, Mayor's
5 Implementation Progress Report was
6 marked, for identification purposes,
7 as Orr Deposition Exhibit
8 Number 22.)
9 - - -
10 THE WITNESS: Thank you.
11 BY MR. ULLMAN:
12 Q. Okay. What we've marked as
13 Exhibit 22, Mr. Orr, is entitled, City of Detroit
14 — Restructuring Plan, Mayor's Implementation
15 Progress Report, with the date of March 2013.
16 Have you ever seen this document
17 before?
18 A. I think I've seen it before, but I
19 think that was after I became emergency manager.
20 Q. Okay. That's fine.
21 And what I'd like to do is try to
22 just ask you about one page of this.

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1 A. Um-hum.
2 Q. If you could look at Page 6.
3 A. Um-hum.
4 Q. Okay. What we --
5 MR. SHUMAKER: Of the -- of the
6 actual document?
7 MR. ULLMAN: Of the -- yes. I'm
8 sorry, yeah.
9 And just for clarity, this document
10 bears Bates Number DTMI00129416, and Page 6 of the
11 document bears the Bates number ending in 422.
12 THE WITNESS: Um-hum.
13 BY MR. ULLMAN:
14 Q. Okay. And this page, in general, is
15 entitled, The Mayor's plan includes strategies to
16 implement changes that will significantly reduce
17 general fund long-term liabilities.
18 I'd like you to focus on Number -- or
19 Letter (b) --
20 A. Yes.
21 Q. -- you see 3(b)?
22 A. Um-hum.

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1 Q. It says, Pension unfunded
2 liabilities, and the first bullet point says,
3 Approximately 650 million of unfunded liability as
4 of fiscal year 2012, of which only 250 million
5 relates to general fund.
6 A. Yes, I see that.
7 Q. And do you have an understanding as
8 to what's being said there and what that reference
9 is?
10 MR. SHUMAKER: Objection: foundation.
11 THE WITNESS: Yeah. I was obviously
12 not responsible for drafting, developing or the
13 due diligence behind the document. The document
14 speaks for itself.
15 But what I think is being said there
16 is that the unfunded liability for the -- and I
17 assume it's speaking to both pension funds; it may
18 be one or the other --
19 BY MR. ULLMAN:
20 Q. Um-hum.
21 A. -- but the unfunded liability for
22 fiscal year 2012 is 250, and 250 million of that

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is somehow an obligation of the general fund.
Q. Okay. Did you say 250? It's -- you meant to say 650, right?
A. No, no. It's 650 total --
Q. Right.
A. -- but 250 million of that is an obligation of the general fund.
Q. You had misspoken and said 250 both times --
A. Oh, I'm sorry --
Q. -- so --
A. -- oh, no -- okay. 650 and 250, I'm sorry. I was --
Q. Okay.
A. -- thinking ahead, thinking quicker than my mouth moved.
Q. Okay. And as I -- I understand that the 650 million that's referred here -- to here by the Mayor corresponds pretty closely, if I recall, to the $644 million figure that was referred to in the June 14th proposal; is that right?
A. I would -- I -- yes, I -- I would

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think it does --
Q. Okay.
A. -- I'm -- I'm -- here again, I'm not -- I'm assuming it -- it speaks for itself and it's facially correct; but, yes, I would think that's the reference.
Q. Okay. And so can you tell me what -- what is your understanding when the Mayor says here that 250 million relates to the general fund, what the other 300 --
A. 400.
Q. -- 400 million relates to? And what's -- what is the distinction being drawn between what relates to the general fund versus what relates to something other than the general fund?
A. I'm not sure.
Q. Well, is it correct that -- that some portion -- let's just stick with the -- we can use the $644 million number --
A. Um-hum.
Q. -- because I think that's what you

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would probably say is more accurate.
That's the number that's cited in the June 14th proposal, right?
A. Yeah, they may have -- they may have rounded up here --
Q. Okay.
A. -- but we'll -- it's -- it's approximately that amount.
Q. Okay. Is it correct that for the approximately 644 million unfunded pension liability that you refer to in the June 14th proposal, that some portion of that is allocable to a payment source other than the general fund?
A. I think that's correct.
Q. Okay. And what are those -- what is -- what are the other payment sources to which the total 650 -- or I'm sorry -- 644 million is allocable other than the general fund?
A. Well, there are other sources, but it could be principally related to the Water department.
Q. Okay. And what is your understanding

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as to how much of the approximately 644 million unfunded pension liability relates to liability for personnel from the Department of Water and Sewer?
A. Approximately that difference.
Q. Okay. So it's about 450 million?
A. Approximately, yeah.
Q. Okay. And I'm trying to recall from your last testimony.
For the -- the pension monies that are due relative to personnel from the Department of Water and Sewer, are the pension payments made directly by the Department of Water Sewer to the retirement systems, or is the money paid first by the retirement -- I'm sorry -- by the Water and Sewer Department to the City, which then transmits it to the retirement system, or is there another mechanism for the payment?
MR. SHUMAKER: Objection to form.
THE WITNESS: I believe it's the -- I believe it's the latter.

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1 BY MR. ULLMAN:
2 Q. "The latter" meaning there's
3 another --
4 A. To the City --
5 Q. -- payment mechanism?
6 A. -- no, no, no, not -- the latter --
7 not the -- not the discount; "the latter" meaning
8 to the City and then to the fund.
9 Q. Okay.
10 A. I could be wrong, because may be --
11 but I believe it's -- I believe it's that process.
12 Q. Okay. I'm asking because I thought I
13 had seen some other document which said that
14 the -- maybe it's the same thing -- the City gets
15 the money or has the right to bill the -- the
16 funds or the -- the liabilities to the Department
17 -- Department of Water and Sewer, and then the
18 Department of Water and Sewer would pay the City.
19 That's your understanding?
20 A. Yeah, that -- that's -- that's what I
21 was saying; that's the approximate mechanism.
22 Q. Okay.

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1 A. I could go back and check it to be
2 sure, but I think that's the approximate mechanism
3 as I understand it.
4 Q. Okay. Now, by my math -- I make no
5 representations as to my math, but just looking at
6 the numbers, it looked -- actually, do I have a
7 calculator here? I don't think I do.
8 What percentage is 250 over 650? I
9 actually didn't do the math.
10 A. Four -- it's 40-some odd.
11 Q. It's 40-some -- yeah, we can get it
12 precisely.
13 Zero? Oh.
14 250 divided by 6 -- let's say 650 --
15 shoot, I didn't do that right. I apologize. Let
16 me try to clear this and do it again.
17 250 divided -- 6. This isn't right.
18 Okay. It looks like about
19 38 percent.
20 A. Right.
21 Q. Okay. You recall that -- that during
22 the last deposition, you indicated that you

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1 thought that the actual unfunded liability was --
2 was higher than the 644 number and could be as
3 much as 3.5 billion or something like that?
4 A. Yes.
5 Q. Okay. My question is, does the --
6 does the -- is the proportion of unfunded
7 liability allocable to the general fund versus the
8 Department of Water Sewer personnel constant if
9 you -- if you use a higher liability figure?
10 In other words --
11 A. If we went up to 3.5 --
12 Q. Yeah, yeah --
13 A. -- million, would it be --
14 Q. -- would the Department of Water and
15 Sewer still be approximately 38 percent of the
16 total unfunded liability?
17 A. I'm -- I'm not sure. I would think
18 that a rough estimate might be. But as I said, I
19 think, in September 16th, part of those
20 calculations had to do with a number of factors,
21 so I don't want to say that my testimony is as
22 exactly proportioned.

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1 Q. Okay. And is it correct that the
2 Department of Water and Sewer itself, I think you
3 indicated last time, is run as a separate entity,
4 even though it's, I think, technically part of the
5 City, but it has its own books and records?
6 A. The Department of Water and Sewer is
7 a department of the City both technically and
8 practically. Pursuant to Judge Cox's order, it
9 has certain functions, which it can run
10 semiautonomously, but it remains a department of
11 the City.
12 Q. Okay. And as -- as a separate --
13 as -- as an entity or a department of the City
14 that keeps its own books and records, the
15 Department of Water and Sewer itself shows a
16 profit for its own operations; is that right?
17 A. I'm not sure it shows a profit for
18 its own operations. I -- I'd have to look into
19 the word "profit" --
20 Q. Okay.
21 A. -- but -- but it -- it stands -- it
22 generates revenue of its own and pays its

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1 obligations as they become due.
2 Q. Okay. And is it correct the
3 Department of Water and Sewer also has the
4 ability, if it -- if it exercises it, to increase
5 its revenues by raising the rates?
6 A. I'm not sure. There are a number of
7 things that go into rate increases --
8 Q. Um-hum.
9 A. -- it -- it might well have that
10 capacity.
11 You also have to consider the impact
12 on customers, but I don't want to mislead you. It
13 does have some capacity, yes.
14 Q. Okay. Now, prior to the filing of
15 the bankruptcy petition on July 18th, did you have
16 any discussions with the Governor concerning the
17 allocation of the unfunded pension liability
18 between the general fund and the Department of
19 Water and Sewer?
20 A. No.
21 Q. Did you have any such discussions
22 with the Governor after the filing of the

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1 bankruptcy petition?
2 A. No.
3 MR. ULLMAN: Yeah. Good idea.
4 Okay. Greg, could I ask you to
5 produce the final version of the pitch book,
6 the -- the one that was actually given over to the
7 review team?
8 MR. SHUMAKER: We'll look into it.
9 I -- I believe that has been produced, but
10 we'll --
11 MR. ULLMAN: Okay.
12 MR. SHUMAKER: -- certainly check.
13 MR. ULLMAN: Okay. I appreciate it.
14 Okay. I think, at least for the
15 moment, that's all I have.
16 THE WITNESS: Okay. Thank you.
17 MR. ULLMAN: Peter?
18 I'll pass the baton.
19
20
21
22

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1 - - -
2 EXAMINATION (CONTINUED) BY COUNSEL
3 FOR UNITED AUTO WORKERS UNION
4 - - -
5 BY MR. DECHIARA:
6 Q. Good afternoon, Mr. Orr.
7 Peter DeChiara from the law firm of Cohen, Weiss
8 and Simon LLP for the United Auto Workers
9 International Union.
10 A. Good afternoon -- well, good
11 afternoon.
12 Q. Is -- is it your testimony that you
13 don't know who's paying for your housing in
14 Detroit while you serve as emergency manager?
15 A. Yes. I'd -- I've read in the papers
16 that it's the aforementioned NERD Fund, but I've
17 never seen a list -- a lease, and I've never
18 really inquired into it.
19 Q. Okay. You testified when Mr. Ullman
20 was questioning you about a meeting at which there
21 was discussion in connection with Exhibit 21,
22 which is what you refer to as "the pitch book."

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1 Do you remember that testimony?
2 A. Yes.
3 Q. Do you -- do you know whether
4 Richard Baird was present when Jones Day made its
5 presentation?
6 A. Yes, he was present.
7 Q. Do you recall whether he said
8 anything, whether statements or questions, at the
9 meeting?
10 A. Oh, I think he -- he asked some
11 questions, yes.
12 Q. What did he ask?
13 A. I don't recall with specificity;
14 generally about the firm's qualifications to do
15 the work.
16 Q. Was there discussion at the meeting
17 about accrued pension liabilities of the City of
18 Detroit?
19 A. Not that I recall.
20 Q. Was there any discussion about the
21 Michigan Constitution?
22 A. No.

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1 Q. Did you have any one-on-one or
2 less-than-the-full-room-of-people conversations
3 immediately following the pitch presentation with
4 any of the -- at -- people who were attending on
5 behalf of the City or the State?
6 A. No. The only conversations I had
7 were, as a tested to -- testified to last time,
8 telephone conversations with Mr. Baird that
9 followed up. But we had no other conversations
10 with anyone else.
11 Q. When was the next time after
12 the -- well, was the presentation that Jones Day
13 made to the City on January 29th, 2013?
14 A. I believe so.
15 Q. Okay. When would -- was the next
16 time -- when, after January 29th, 2013, did you
17 speak to Mr. Baird?
18 A. I think it was a series of e-mail
19 exchanges that we went through on September 16th,
20 which was in a day or two after -- it was the 30th
21 of January or the 1st of February. It's that
22 whole discussion chain.

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1 Q. Okay. So within a day or two of the
2 pitch book presentation by Jones Day, Mr. Baird
3 calls Jones Day to make inquiries about having you
4 serve -- having you possibly serve as emergency --
5 emergency manager, correct?
6 A. Yeah, I think it's that discussion,
7 yes.
8 Q. Okay. And did you speak to Mr. Baird
9 on that occasion? And when I say "that occasion,"
10 I'm referring to one or two days after
11 January 29th.
12 A. Yes. I think, on September 16th, we
13 discussed that he reached out to Steve Brogan --
14 MR. SHUMAKER: Just so we're clear --
15 I don't mean to interrupt -- September 16th was
16 your deposition.
17 THE WITNESS: Yes.
18 MR. SHUMAKER: I want you to make
19 sure you get your dates right in your testimony.
20 THE WITNESS: Oh, you -- oh, you
21 mean -- I'm -- let me be clear. As we discussed
22 on September 16th during my deposition, that those

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1 conversations occurred within a day or two after.
2 And -- and I haven't read my deposition or looked
3 at it, but I recall there was a call made.
4 I was asked; I said I'm not
5 interested; they asked -- I assume it was
6 Mr. Baird asked that I at least talk to them; and
7 there was that whole discussion chain that
8 occurred after that.
9 BY MR. DECHIARA:
10 Q. Is it accurate that you were
11 appointed as EFM on March 15th, 2013?
12 A. No.
13 Q. When were you appointed EFM?
14 A. I think my appointment was March 25th
15 or 26th as EFM, yes.
16 Q. You were appointed EFM before you
17 were appointed EM, correct?
18 A. Yeah. I believe the statute changed.
19 Public Act 4, I believe, had been invalidated, so
20 it was under Public Act 72, which described an
21 EFM. And then under Public Act 436, you become an
22 EM.

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1 Q. Okay. So my question was -- and
2 maybe your answer is the same, but just -- I just
3 want to be sure -- what is the date you were
4 appointed EFM?
5 A. I believe it was the 25th or the
6 26th.
7 Q. Of March --
8 A. March --
9 Q. -- 2013?
10 A. -- March 2013.
11 Q. Okay. Before you were appointed EFM,
12 did you have any written exchanges -- and by
13 "written exchanges," I mean e-mails, letters,
14 exchange of memos -- with the Governor?
15 A. No.
16 Q. Did you have any such exchanges
17 before you were appointed EFM with
18 Treasurer Dillon?
19 A. No -- well, strike that.
20 I may have had an exchange with
21 Treasurer Dillon or the Governor just a -- a
22 courtesy, you know, hear you're a candidate, hope

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1 you're interested, hope you'll consider this, but
2 nothing substantive. There may have been courtesy
3 exchanges.
4 Q. Okay. So let me -- let me go back.
5 A. Right.
6 Q. So let me ask just about the
7 Governor.
8 A. Right.
9 Q. So to the best of your
10 recollection -- well, strike that.
11 Is it your testimony that you did
12 have written exchanges with the Governor before
13 you became EFM?
14 A. I believe so.
15 Q. Okay. To the best of your ability,
16 can you tell me what those exchanges were?
17 A. As I said, they were courtesy --
18 there were no substantive discussions; they were
19 more like one line, hear you're interested, hope
20 you consider this, something along those lines.
21 Q. Okay. And were those e-mails?
22 A. There may have been e-mails.

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1 Q. Okay. Do you -- do you recall them
2 being in any form other than e-mails?
3 A. No. I'm just -- I'm trying to
4 distinguish whether they were e-mails or whether
5 they were texts.
6 And I -- I think I recall -- I think
7 I recall e-mails. There may have been a voice
8 mail. I'm not sure.
9 But it -- it was just, you know --
10 it's what I call, you know, sort of a -- a -- a
11 good -- good -- good home training. I mean, you
12 follow-up and say, hey, glad you're interested,
13 hope you consider it, something like that.
14 Q. Okay. Is it your testimony you're
15 not sure whether those exchanges with the Governor
16 before you were EFM were e-mails, voice mails or
17 texts? And when I say "texts" --
18 A. Yeah.
19 Q. -- I assume you're talking about --
20 and tell me if -- if I'm mistaken --
21 A. Right.
22 Q. -- the kind of texts you would send

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1 over a cell phone.
2 A. Yeah, that's what I'm talking
3 about --
4 Q. Okay.
5 A. -- I -- I -- there could have been a
6 voice mail, and there could have been an e-mail or
7 two, or it could have been a text. It wasn't,
8 like, every day or every week. I just seem to
9 recall that there was a text or two and a voice
10 mail or two after the meeting -- after -- or after
11 discussions with Rich.
12 Q. Okay.
13 MR. DECHIARA: The UAW would call for
14 the production of any cell phone texts that are
15 otherwise responsive to our document request.
16 MR. SHUMAKER: If you can put that
17 into an letter. We're not certain it hasn't
18 already been produced, but we'll certainly look
19 into it.
20 MR. DECHIARA: We'll be happy to put
21 it into the letter.
22

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1 BY MR. DECHIARA:
2 Q. Let me now ask you the same question
3 regarding Treasurer Dillon --
4 A. Um-hum.
5 Q. -- again, before you were appointed
6 EFM, did you have any written exchanges in the
7 form of cell phone texts, e-mails or hard copy
8 documents with Treasurer Dillon?
9 A. There may have been one.
10 Q. And what -- do you have a specific --
11 A. -- same -- it was the same, hey, you
12 know, I hope you're interested, please consider it
13 or something like that.
14 I don't recall quite as clearly
15 anything with Treasurer Dillon, but there may have
16 been one.
17 Q. Okay. But not more than one?
18 A. I don't think more than one, no.
19 Q. Okay. And what about -- same
20 question for exchanges with Mr. Baird?
21 A. I think I've seen some of those
22 exchanges during my September 16th, 2013

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1 deposition; so yes.
2 Q. And what -- what's your recollection
3 as you sit here today of what your exchange --
4 written exchanges were with Mr. Baird before you
5 were EFM?
6 A. Kevyn, heard you're not interested --
7 just generally speaking -- hope you'll reconsider;
8 the e-mail exchange that we went through today;
9 things of that -- if you're considering, this is
10 what the job would entail; gee, Rich, I'd have to
11 take myself out of the firm. I'd be willing to
12 work with anyone side by side, but, you know, I
13 don't want to leave my firm. Well, this is an
14 important undertaking. Okay, I'll consider it;
15 public service. Here, we'll propose what the job
16 entails. That's fine, whatever it is, it is.
17 That's the extent of those exchanges.
18 Q. Okay. So the description you just
19 gave of your exchanges with Mr. Baird exhausts
20 your recollection --
21 A. Yeah.
22 Q. -- let me just finish the question --

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1 A. I'm sorry.
2 Q. -- exhausts your recollection of the
3 written exchanges you had with Mr. Baird before
4 you were appointed EFM?
5 A. Yes. I think you have those
6 exchanges.
7 Certainly, I've seen several of them.
8 Q. Okay. Now, I'm going to ask you the
9 same question, but instead of just limiting the
10 question to the Governor, Mr. Dillon and
11 Mr. Baird, I'm going to expand it --
12 A. Um-hum.
13 Q. -- to include their assistants or
14 their staff or people who work for them.
15 Again, did you have any written
16 exchanges of any form with any of those people
17 before you were appointed EFM that you recall?
18 A. I don't recall specifically, but in
19 an effort to be responsive, I think there must
20 have been probably at least one or two talking
21 about the March 13th-14th press conference.
22 Q. Okay. And what -- to the best of

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1 your recollection, what -- who were those
2 exchanges with? Do you -- do you recall?
3 A. I don't recall, but probably someone
4 in the Governor's scheduling office or -- or
5 communications office. I mean, I didn't -- I
6 didn't know who those -- I didn't know who those
7 people were at the time --
8 Q. Okay.
9 A. -- okay? But there was -- it was
10 something about, you know, you need to be here on
11 this date, and we'll have the rollout, something
12 like that.
13 Q. Okay. Was there anything more
14 substantive than scheduling matters?
15 A. No. Nope.
16 Q. Okay. Now, I'm going to change the
17 question -- series of questions and ask about the
18 time period after you were appointed EFM.
19 A. Right.
20 Q. So let me begin with the Governor.
21 A. Okay.
22 Q. Did you have any written exchanges,

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1 meaning e-mails, texts or hard copy
2 correspondence, with the Governor after you were
3 appointed EFM until today?
4 A. Yes, I believe so.
5 Q. And can you tell me what those
6 were -- or what those have been?
7 A. Well, generally, the 25th and 26th
8 was glad you're on board -- they're
9 congratulatory --
10 Q. I understand. So the 26th -- 20 --
11 A. March --
12 Q. -- of what month?
13 A. -- of March --
14 Q. Okay.
15 A. -- after I was actually appointed.
16 I think they were more courtesy and
17 protocol, congratulatory e-mails.
18 After that, there weren't -- after
19 the first day or so, there weren't a lot of
20 e-mails. And sitting here today, I don't recall
21 the last time I got an e-mail or text from the
22 Governor.

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1 Q. Okay. So my question was not limited
2 to e-mails; it was not limited to the last time
3 you got a text --
4 A. Okay.
5 Q. -- the question is, other than the
6 congratulate -- congratulatory exchange in --
7 around March 26th to 27th with the Governor, do
8 you have any recollection of any other exchanges
9 in written form that you've had with the Governor?
10 A. I don't -- I don't have any
11 recollection. I would think that there probably
12 are some, but they weren't very frequent -- it's
13 not like -- the Governor and I meet more than the
14 written exchanges, so it's not like there were a
15 lot of written exchanges or I would have had -- or
16 I would expect there to be a lot.
17 Q. Okay. Well, sitting here today, can
18 you testify as to the substance of any -- let --
19 let me finish --
20 A. Yeah.
21 Q. -- please --
22 A. Um-hum.

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1 Q. -- the substance of any written
2 exchange you've had with the Governor since you
3 became EFM apart from the congratulatory exchange
4 you had with him on March 26th or 27th?
5 A. Generally, I would -- I would
6 classify -- there were no substantive exchanges
7 that I recall. They were more in the nature of an
8 attaboy.
9 If there was a -- a press conference,
10 or something along those lines, or a meeting of
11 creditors or -- or -- I'm just saying, for
12 instance, I don't recall anything with
13 specificity.
14 But there's nothing substantive and
15 there were no directive, do this, do this, do
16 this, something like that -- there was nothing
17 like that. It was more like good job yesterday,
18 nice seeing you again, things along those lines.
19 Q. And who would be -- who would be
20 saying that to whom? The Governor would be saying
21 that to you?
22 A. Yeah. The Governor would typically

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1 reach out, and I'd typically respond, thanks,
2 Governor, I enjoyed our discussion, or something
3 along those lines.
4 Q. Okay. Same question for
5 Treasurer Dillon.
6 Since you were appointed EFM through
7 the present, have you had any written exchanges,
8 whether electronic or in hard copy --
9 A. Yes.
10 Q. -- with Governor Dillon?
11 A. With Treasurer?
12 Q. I'm sorry. Strike that.
13 With Treasurer Dillon. Sorry --
14 A. Yes.
15 Q. -- I didn't mean to give him a
16 promotion.
17 A. Right.
18 Q. Can you tell me what those were?
19 A. Those were initially the attaboy
20 e-mails.
21 I think, since then, for instance,
22 with regard to contracting of restructuring

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1 professionals, I generally have to send an e-mail
2 to the Treasurer and/or his staff seeking
3 permission to retain those professionals, and
4 we've done that --
5 Q. Let me just pause you there.
6 Did one of those exchanges have to do
7 with the retention of Jone- -- the law firm of
8 Jones Day?
9 A. I believe so.
10 Q. And did you -- what was the nature of
11 that exchange?
12 A. That -- that would be a -- a
13 technical -- Treasurer Dillon, attached is the
14 contract of insert restructuring professional. It
15 has been vetted by the City Council or it's been
16 reviewed by my staff. It provides X, Y, Z. Under
17 my contract and statute, I have to seek your
18 approval. Accordingly, I'm requesting your
19 approval of the contract.
20 Q. Okay. So you sought the approval of
21 Treasurer Dillon for the City to retain Jones Day?
22 A. Yes.

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1 Q. And he approved it?
2 A. Yes.
3 Q. Okay. Okay.
4 I'm sorry. I had interrupted you --
5 A. Yeah.
6 Q. -- you -- if you could please
7 continue with giving your recollection of the
8 exchanges you've had with Treasurer Dillon.
9 A. Those are the ones that -- that stick
10 out in my mind. There -- there may have been --
11 let's see. There are the contract approval
12 process. There are the attaboys, like, good job,
13 Kevyn, that sort of thing. They're
14 nonsubstantive.
15 There may have been others. None
16 stick out in my mind and none were particularly
17 substantive. For instance, if there was a group
18 or organization that the treasury [verbatim]
19 thought could provide a service to the City, for
20 instance, benefits enrollment, he might send me an
21 e-mail along the lines of this is someone who
22 might be able to help you with your benefit

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1 outreach. You may want to talk with them.
2 Similarly, if there was someone who
3 had reached out to the State or reached out to the
4 treasury, this is someone who asked that I put you
5 in touch with them, things of that nature.
6 Those were probably more regular.
7 Q. Did you have any written exchanges
8 with the Treasurer about the City's unfunded
9 pension liability?
10 A. Well, the reason I'm -- I'm
11 hesitating -- I'm -- I think we had regular
12 reports to the -- okay. I'm obligated to submit
13 regular -- 30-day, 180-day reports, which I do,
14 and those are published in public. So I'm going
15 to --
16 Q. And who do you submit those to?
17 A. To -- to the Treasurer Dillon and, in
18 some cases, the Governor.
19 So my -- my reports that I'm required
20 to submit, you know, I -- the staff submits them,
21 but I'm going to include them in an effort to be
22 responsive in your question.

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1 I don't technically send them;
2 somebody on my staff sends them out. I sign the
3 letter, and they -- they e-mail it.
4 So I'm going to -- the public
5 technical reporting requirements are -- could be
6 qualified in your question.
7 Q. Yes.
8 So let me clarify my question --
9 A. Okay.
10 Q. -- I'm not limiting it to documents
11 that you draft yourself, but documents that are
12 prepared for you.
13 A. Okay. I'm sure there are a lot of
14 communications between my staff and the treasury
15 having to do with the reports that we have. And
16 when I say "a lot," I don't know how many, but
17 I'm -- I'm taking them out of the attaboy, good
18 luck questions and putting them in more to the
19 substantive questions.
20 I think my staff or people at my
21 direction, my contractors, may submit cash flow
22 projections and cash flows, projections over

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1 actuals, things like that, not
2 necessarily directly -- I'm trying not to be
3 technical --
4 Q. Okay.
5 A. -- not necessarily to
6 Treasurer Dillon, but to his staff as well.
7 Q. Okay. So let me --
8 A. Okay.
9 Q. -- I -- I appreciate your -- your --
10 A. Um-hum.
11 Q. -- your efforts to respond.
12 Let me --
13 A. Okay.
14 Q. -- see if I can limit my question
15 now.
16 A. Um-hum.
17 Q. So I'm not interested in
18 correspondence that's official correspondence --
19 A. Okay.
20 Q. -- that's required -- you're required
21 by your official duties to make, but so setting
22 apart, you know, officially required

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1 correspondence --
2 A. Right.
3 Q. -- so let me -- let me limit my
4 question in that regard.
5 So --
6 A. Okay.
7 Q. -- so let me go back.
8 A. Okay.
9 Q. Do you recall any exchange -- written
10 exchanges with Treasurer Dillon regarding the
11 City's unfunded -- unfunded pension liabilities?
12 A. Outside of the official
13 correspondence?
14 Q. Right.
15 A. No, I don't recall any specific
16 correspondence between me and Treasurer Dillon
17 regarding unfunded pension liabilities, no.
18 Q. Okay. Do you recall ever seeing an
19 e-mail by Treasurer Dillon in the early part of
20 July 2013 where he says he speak -- he spoke to
21 the City consultants and he didn't realize how
22 significant the unfunded pension liabilities were?

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1 Do -- do you have any recollection of
2 ever seeing an e-mail like that?
3 A. Was I copied on it?
4 Q. I -- I -- I'm just asking if you
5 have --
6 A. Do I have any recollection?
7 Q. -- any recollection of an e-mail like
8 that.
9 A. I have no recollection. If you have
10 a writing, I'd be happy to look at it, but I
11 don't.
12 Q. Okay. Other than what you've
13 testified so far in response to my questions about
14 written exchanges with Treasurer Dillon, do you
15 have any recollection of any other written
16 exchanges with Treasurer Dillon?
17 A. No. We -- we have a -- we have --
18 you know, we have reporting requirements; we try
19 to make those. We have approval requirements; we
20 try to make those.
21 If you're looking for, like,
22 exchanges between us that are besides the

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1 congratulatory protocol attaboys, specifically
2 with related to pension liabilities, I don't have
3 any recollection of those exchanges. There might
4 be, I just -- we did not have specific exchanges
5 focused just solely on pension liabilities, and I
6 don't recall any.
7 Q. Okay. So now let me ask about
8 Mr. Baird.
9 A. Yes.
10 Q. Subsequent to your being appointed to
11 EFM --
12 A. Right.
13 Q. -- through to the present, have you
14 had any written exchanges, electronic or hard
15 copy, with Mr. Baird?
16 A. Yes.
17 Q. And can you tell me what those have
18 been?
19 A. Those are generally about staffing
20 decisions; how's it going with your staff; how's
21 it's going with restructuring City operations;
22 good job; generally staffing.

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1 I don't think I've had any exchanges
2 with Mr. Baird about pension liabilities.
3 Q. Okay. Have you had any exchanges
4 with Mr. Baird about any provisions of the
5 Michigan Constitution?
6 A. No, I don't recall. No, I don't
7 think I've had any of those exchanges with
8 Mr. Baird.
9 Q. Okay. Now, let me ask you whether
10 you've had any written exchanges with any State
11 officials or staff of the Governor or the
12 Treasurer or Mr. Baird after you were EFM apart
13 from any official documents -- any correspondence
14 that was required by law that touched on, in any
15 way, the City's unfunded pension liabilities?
16 A. Outside of attorney-client
17 communications?
18 Q. Well, I'm going to ask you about any
19 of them. If you -- if you're going to assert or
20 your attorney is going to assert a privilege,
21 that's your -- your option to do so, but I'm just
22 going to ask the question.

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1 A. Okay. I'll -- I'll answer two
2 ways -- well, three ways.
3 You said with anyone else in -- in
4 Government?
5 Q. In the State Government, right.
6 A. In the State Government.
7 One I may have had -- I certainly
8 recall a call, but I don't recall -- I recall a
9 courtesy call from the Attorney General that he
10 was going to be taking a stand on the
11 constitutionality of pensions. I don't recall a
12 writing.
13 So I'm -- I'm trying to be responsive
14 and going a little broad. You didn't ask about
15 calls, but I'll give it to you.
16 I am confident there are likely
17 communications either between me and my staff and
18 the Governor's office legal team not necessarily
19 about pension obligations, but regarding a
20 potential plan. I think those are privileged.
21 Not a lot.
22 Q. Okay. So -- I'm sorry --

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1 A. Okay.
2 Q. -- anything else come to mind?
3 A. And -- and just -- just -- here
4 again, I'm -- I'm -- you know, I'll lump them in
5 in the protocol calls -- not calls, protocol memos
6 from the Judge's scheduler, can you do this
7 meeting here with the Governor, can you -- just
8 generally protocol discussions like that.
9 Q. Okay. Let me go back to the -- the
10 telephone call you had with the Attorney General.
11 A. Right.
12 Q. When was that?
13 A. I think it was either the -- I think
14 it was the day before he made his public
15 announcement. I don't recall a specific day.
16 Q. Do you know what month it was in?
17 A. I -- I -- I -- I didn't -- it -- it's
18 in the public record. I just don't recall which
19 one. It wasn't March.
20 Q. It was after the bankruptcy filing?
21 A. No. It may have been before. I just
22 don't recall the date.

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1 Q. Okay. So he made a public filing.
2 And when in time in relation to
3 the -- when he made the filing did he call you?
4 A. I'm not sure it was a filing. I'm
5 just saying there was a -- I recall there was a
6 position he was going to take publicly, and he
7 made a courtesy call to me and left a message.
8 Q. Okay. And you don't recall when he
9 took that position publicly?
10 A. No, I don't.
11 Q. Do you remember what the position
12 was?
13 A. Whatever's been reported in the
14 papers as far as his position.
15 Q. Well, I'm asking you do you -- do you
16 remember what his position was?
17 A. I -- I remember his position was that
18 he believed that the Michigan State Constitution
19 protected pensions.
20 Q. Okay. And did he call you or did you
21 call him?
22 A. No. I believe he called me and left

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1 a message.
2 Q. And did you speak to him at some
3 point?
4 A. Not at that -- I think I called him
5 back that afternoon and said thank you, and that
6 was the extent of our conversation -- or that
7 evening, and that was the extent of our
8 conversation.
9 Q. So other than you're saying thank you
10 for the message, there's no other exchange between
11 you and the Attorney General?
12 A. No. It was of the nature of thank
13 you, Attorney General, I understand that you're
14 going to be taking this position. Thank you for
15 the courtesy call.
16 Q. Okay. Did you discuss the substance
17 of his position?
18 A. No, we did not.
19 Q. Okay. Have you ever discussed the
20 substance of his position with him?
21 A. Yes.
22 Q. When did you do that?

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1 A. I think in a meeting with my attorney
2 and someone from his office.
3 Q. Okay. And when was that?
4 A. I don't recall the day. I don't -- I
5 don't recall the -- it was after March. It may
6 have been prior to or after the bankruptcy filing.
7 I don't recall.
8 Q. Okay. And who was at the meeting?
9 A. I was at the meeting;
10 Attorney General Schuette was at the meeting; an
11 attorney from his office, Matt, was there -- I
12 forget his last name -- and my attorney,
13 David Heiman, was on the phone.
14 Q. Okay. And who -- how did the meeting
15 come about? Did someone ask to have the meeting?
16 A. I think -- yes, I think the Attorney
17 General's Office contacted my office and asked to
18 schedule a meeting.
19 Q. Did the person who asked to schedule
20 the meeting explain why they -- the Attorney
21 General wanted a meeting?
22 A. No.

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1 Q. Did you have an understanding of why
2 he wanted a meeting?
3 A. I don't think so. I think -- you
4 know -- no, I don't think so until we got to the
5 meeting. It was in Lansing.
6 Q. Okay. Do you recall the meeting?
7 A. Yes.
8 Q. What was said in the meeting?
9 A. Is that privileged?
10 MR. SHUMAKER: To -- to the extent
11 that there was a common interest between what the
12 Attorney General and his counsel was relating with
13 you and Mr. Heiman, I'm going to ask you --
14 instruct you not to answer.
15 If it related to issues where there
16 was no common interest, you can testify to that.
17 MR. DECHIARA: I -- I just -- can we
18 just pause? Are we on -- is there -- are you out
19 of tape or what's --
20 THE VIDEOGRAPHER: I've got
21 five minutes on the tape.
22 MR. DECHIARA: Okay. You'll tell me

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1 when the tape runs out?
2 THE VIDEOGRAPHER: Two minutes.
3 MR. DECHIARA: Okay.
4 Why don't -- why don't we take a --
5 maybe this is a good time -- do you have to -- how
6 long does it take to change the -- change --
7 THE VIDEOGRAPHER: I can go off the
8 record now and change.
9 MR. DECHIARA: Okay.
10 MR. ULLMAN: Why don't we take a
11 break and --
12 MR. DECHIARA: Why we don't take a
13 break now? Is that --
14 THE WITNESS: Sure.
15 MR. DECHIARA: -- is that good? He
16 has to change the tape.
17 THE VIDEOGRAPHER: Going off the
18 record at 12:42. This marks the end of Tape
19 Number 1.
20 - - -
21 (Whereupon, a brief recess was taken
22 from 12:42 p.m. to 1:06 p.m.)

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1 - - -
2 THE VIDEOGRAPHER: Going back on the
3 record at 1306. This marks the beginning of
4 Tape Number 2.
5 MR. DECHAIRA: Okay.
6 BY MR. DECHAIRA:
7 Q. Mr. Orr, before we broke, I was
8 asking you about a meeting you had with the
9 Michigan Attorney General.
10 And my question was, what was said at
11 that meeting?
12 A. Yes.
13 With Attorney General Schuette, I
14 don't recall the exact date; but, generally
15 speaking, the Attorney General -- at the meeting,
16 as I said, was Mr. Heiman on the phone, the
17 Attorney General and an attorney from his office,
18 Matt, whose last name escapes me right now. And
19 generally what was said, the Attorney General
20 wanted to express why he felt duty-bound to take a
21 position that the Michigan State Constitution
22 protected vested pension obligations.

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1 I believe our side expressed to him
2 that we believed Federal law allowed those
3 obligations to be adjusted.
4 The meeting was cordial, and the
5 meeting concluded fairly quickly with everybody
6 saying their -- their goodbyes.
7 Q. Did you, at the time, have an
8 understanding about the authority of the Attorney
9 General of the State of Michigan to interpret the
10 Michigan Constitution?
11 A. My understanding is that the Attorney
12 General is the chief legal officer of the State.
13 And I presumed -- did I have an understanding of
14 his authority?
15 My -- my understanding was, as chief
16 legal officer of the State, he has the ability to
17 determine what positions he believes he should
18 take on behalf of the State, subject to a ruling
19 by a court of law.
20 Q. Okay. Would it be fair to say that
21 in your mind, the opinions of the Attorney General
22 of the State of Michigan regarding questions of

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1 Michigan State law are -- should be accorded
2 considerable weight?
3 A. No.
4 Q. Okay. And who -- who was it -- were
5 you receiving legal advice from somebody that was
6 contrary to the position that was being asserted
7 by the Attorney General?
8 A. Yes.
9 Q. And was that the Jones Day law firm
10 that was advising you?
11 A. I believe amongst others.
12 Q. Who else?
13 A. Our local counsel at, um -- I'm --
14 I'm -- I'm -- I'm -- I'm drawing a blank on the
15 firms now -- Bob Hurwitz (phonetic) -- our local
16 counsel.
17 Q. Okay. Anyone else?
18 A. Yeah, I don't -- I don't want to
19 violate any attorney-client confidences --
20 Q. No, I'm just asking you to
21 identity -- I'm not asking --
22 A. Okay.

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1 Q. -- you what was said --
2 A. Okay.
3 Q. -- I'm just asking you the identity
4 of the attorneys who were telling you that what
5 the Attorney General was telling you was not
6 correct.
7 And you've identified Jones Day.
8 You've identified your local counsel.
9 I'm just asking you, was there anyone
10 else giving you advice on that matter?
11 A. I wouldn't call it "advice." I mean,
12 I've -- you know, at various meetings and events,
13 other attorneys will come up to me as recently as
14 yesterday and said that the position that we're
15 asserting is the correct one.
16 Q. Who said that to you yesterday?
17 A. An attorney from -- I forget his law
18 firm; but, you know, at various places, different
19 people come up to me and offer their opinions as
20 to what the position should be --
21 Q. Let me --
22 A. -- I wouldn't call that "advice,"

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1 though; it's just, you know, public commentary.
2 Q. Okay. So the -- the lawyers who were
3 giving you -- giving you advice in their capacity
4 as attorneys for the City or as attorneys for the
5 emergency manager were the Jones Day law firm and
6 a local counsel?
7 A. Yes.
8 Q. Okay. Let me now refer you to the
9 June 14th, 2013 meeting with creditors.
10 Do you recall that meeting?
11 A. Yes.
12 Q. Okay. Do you recall being asked a
13 question at that meeting about Article IX,
14 Section 24 of the Michigan Constitution?
15 A. Do I recall?
16 There -- there -- I think there was a
17 question. I don't know if -- I don't think that
18 meeting was recorded. So I don't know if there's
19 something to refresh my recollection. But I don't
20 specifically recall. I think there probably was a
21 question. I just don't recall it with
22 specificity.

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1 Q. Okay. And do you recall if there
2 were any questions about Detroit's pensions?
3 A. I believe there were.
4 Q. Okay. Do you -- in -- do you recall
5 responding to any of those questions?
6 A. I don't recall specifically what I
7 said, but I believe I probably did.
8 Q. Okay. Do you recall -- go ahead.
9 I'm sorry.
10 A. No, I'll answer your question.
11 I -- I think I did recall to a
12 question about pensions, and I think I mentioned
13 that in other cases in which I've been involved,
14 that Federal preemption dealt with states'
15 rights -- states' protections. I think there was
16 that discussion, excuse me, on June 14th.
17 Q. Do you recall making a reference to
18 legislative -- legislative relief?
19 A. Yeah. Yes, I do.
20 Q. Can you tell me what you said in that
21 connection?
22 A. I think it was a pretty short offhand

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1 comment, that I said, well, it could be either
2 Federal preemption, or it might require some
3 legislative relief.
4 Q. And what did you mean by "legislative
5 relief"?
6 A. I didn't really mean anything with
7 specificity other than to say there might be an
8 opportunity to seek some sort of legislative
9 relief. I didn't really have a plan or anything
10 with specifics in mind at that time.
11 Q. Let me now refer you to the
12 bankruptcy petition --
13 A. Yes.
14 Q. -- that was filed on behalf of the
15 City.
16 Do you recall that document?
17 A. Yes.
18 MR. SHUMAKER: You're getting pretty
19 far afield here, Counsel. I hope you can tie it
20 in with the State officials.
21 BY MR. DECHAIRA:
22 Q. Did -- do you recall that that

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1 petition was originally dated July 19th and it
2 said July 19th, 2013 in print on it, and that it
3 was then changed by hand to say July 18th?
4 MR. SHUMAKER: Object to the form.
5 THE WITNESS: I -- I don't recall
6 that then. But I think we talked about this at my
7 September 16th, 2013 deposition. I think someone
8 asked me that question.
9 So I -- I -- I recall it from that
10 deposition.
11 BY MR. DECHAIRA:
12 Q. Well, do you have an independent
13 recollection --
14 A. I -- I don't --
15 Q. Let me just finish for the clarity of
16 the record.
17 Do you have an independent
18 recollection of the bankruptcy petition saying
19 July 19th in print on it and then someone changing
20 it by hand to say the 18th?
21 Do you have an independent
22 recollection of that?

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1 A. It's a little fuzzy, but I think in
2 signing it, I'm the one who changed it.
3 Q. You changed it to the 18th?
4 A. Yeah. Whatever day I signed it, I
5 think I -- I routinely will get documents that are
6 dated with different dates, and I'll change them,
7 interlineate on them the correct date.
8 Q. Okay. Let me just -- I had been
9 asking you a line of questions about written
10 communications you were having with State
11 officials.
12 A. Yes.
13 Q. Let me go back and ask you, do you
14 recall written communications with staff or
15 other -- officials other than the Governor, the
16 Treasurer or Mr. Baird, after you were appointed
17 as EFM, that touched on or concerned in any way
18 the issue of Detroit City pensions?
19 A. No, not really.
20 No.
21 Q. Prior to your being appointed as EFM,
22 did you have any oral exchanges, spoken exchanges,

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1 whether by telephone or in person, with the
2 Governor?
3 A. Yeah, I think I testified this
4 morning that he may have called me prior to my
5 actual appointment to say we hope you consider it
6 and would like you to come on board, things along
7 those lines.
8 Q. Was it -- did it -- was that just one
9 exchange you had with him?
10 A. No, I think I said there may have
11 been one or two along those lines.
12 Q. Were there any exchanges other than
13 where the exchange was limited to, you know,
14 welcome on board?
15 A. There -- there were no substantive
16 exchanges. Mostly exchanges I -- I had --
17 conversations I had with the Governor were
18 pleasantries.
19 Q. Okay.
20 Now let me ask the same question, but
21 I'm going to change the time frame from between
22 the time you were appointed EFM until the Governor

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1 authorized the bankruptcy filing.
2 So --
3 A. Um-hum.
4 Q. -- in that period, did you have any
5 spoken exchanges with the Governor?
6 A. Yes.
7 Q. And do you know how many you had?
8 A. Well, I've said we've -- we've had
9 regular meetings with the Governor. My contract
10 requires me to keep the Governor and the Treasurer
11 apprised as to what we're doing. We have those
12 meetings almost weekly. There may have been a
13 week here or there that we missed, but we have
14 regular weekly meetings.
15 Q. And those are face-to-face meetings
16 with -- with --
17 A. They're typically face-to-face.
18 Occasionally, they're by phone.
19 Q. Okay. Have you had any meetings
20 during that period -- actually, I'm not even going
21 to call them meetings.
22 Have you had any spoken exchanges

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1 with the Governor between the time you were
2 appointed as EFM until the Governor authorized the
3 bankruptcy filing where it was just you and the
4 Governor speaking with no one else present?
5 A. Yes.
6 Q. And how many times did that occur?
7 A. More than a couple. Sometimes after
8 the weekly meetings, if they're in person, the
9 Governor and I -- the Governor will take me aside
10 into his office and we'll have separate one-on-one
11 meetings.
12 Q. And do you have a specific memory of
13 any of those meetings?
14 A. Yeah, those meetings are typically
15 just an opportunity for the Governor -- they --
16 they comprise a combination of -- of
17 personal -- you know, personal inquiries: How's
18 your family doing; do you need anything; how are
19 you holding up; how's your staff; do you need any
20 help in any way fashion, things along those lines.
21 They're not -- they're not really
22 substantive follow-ups of the actual meetings that

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1 we've had just prior to those meetings.
2 Q. Have you ever, in those one-on-one
3 meetings with the Governor, spoken about the issue
4 of Detroit's unfunded pension liability?
5 A. Not that I recall, no.
6 Q. Did you ever discuss with the
7 Governor, in those one-on-one meetings, anything
8 having to do with restrictions or prohibitions in
9 the Michigan Constitution?
10 A. No.
11 Q. Did you ever speak to him about the
12 Attorney General's position on the issue of
13 pensions?
14 A. I -- I may have.
15 Q. And what was said?
16 A. The substance of those conversations,
17 the one-on-one meetings, was that, you know, I
18 understand the Attorney General believes he has to
19 take a position, obviously --
20 Q. Who is speaking when you're saying
21 that?
22 A. Oh, me. I'm -- the Governor and I

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1 are speaking, just the two of us in the room. I
2 think it was something along the lines, I
3 understand he's taken a position; we disagree with
4 it; ultimately, this will be sorted out in court.
5 Q. And that's -- that's what you said?
6 A. Yeah, pretty much what I said.
7 Q. Okay. And did the Governor respond,
8 or did he say anything?
9 A. No; the Governor responded, yeah, I
10 understand you have to take the position that you
11 have to take in your case.
12 Q. Has the Governor ever expressed to
13 you, in a one-on-one meeting, his view of the
14 Attorney General's position?
15 A. No.
16 Q. So it was just a -- when you and the
17 Governor had a meeting where the issue of the
18 Attorney General's position came up, it was just a
19 one-way communication by you saying what it is you
20 just said?
21 A. Yeah, as I said, these are not
22 substantive meetings. These are more sort of what

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1 I call the personal meetings, where the Governor
2 just takes time out of his schedule to ask me how
3 things are going; how am I holding up; how my
4 staff is; and, you know, I -- I would occasionally
5 say, yeah, you know, I met -- for instance, the
6 meeting I had with the Attorney General, met with
7 the Attorney General. He expressed his interests
8 in the position he has to take. We obviously
9 disagree with it.
10 The Governor would take no position
11 on that. He would say, okay, I understand, you
12 know, you have to do what you think is appropriate
13 on behalf of the City.
14 That was the extent of the
15 conversations.
16 Q. So am I correct that the Governor
17 never actually told you that the Attorney
18 General's position was wrong?
19 A. I -- yeah, I don't believe the
20 Governor ever opined as to the Attorney General's
21 position.
22 Q. Let me now speak beyond the -- in the

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1 same time frame between when you were appointed as
2 EFM until the Governor authorized the bankruptcy
3 filing.
4 Let me now refer to meetings you've
5 had with the Governor where there were other
6 people present.
7 A. Yes.
8 Q. Were there any discussions in any of
9 those meetings about Detroit's pension
10 liabilities?
11 A. Now, these are where attorneys are
12 present or covered by the common interest
13 privilege?
14 Q. Well, I'm just going to ask you about
15 what was said in those meetings, and if you want
16 to refuse to answer or if your attorney wants to
17 instruct you -- you to refuse to answer, that's --
18 A. Okay.
19 Q. -- a decision you have to make.
20 MR. SHUMAKER: You -- you can -- you
21 can answer that question.
22 THE WITNESS: Yeah. There were

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1 meetings. As I said before, we have, typically,
2 weekly meetings. Occasionally, we've missed a
3 week or two, but typically, weekly.
4 BY MR. DECHAIRA:
5 Q. Okay. And in any of those meetings,
6 were Detroit's pension liabilities discussed?
7 MR. SHUMAKER: You can answer that.
8 THE WITNESS: Yes.
9 BY MR. DECHAIRA:
10 Q. And what was said?
11 MR. SHUMAKER: I'm -- I'm going to
12 object here and caution the witness to the extent
13 that any of the communications called for by the
14 question ask for information relating to your
15 seeking or the provision of legal advice, I
16 instruct you not to answer. Outside of that, you
17 can.
18 THE WITNESS: Those -- I think
19 those -- those conversations are covered by the
20 attorney-client privilege and the common interest
21 privilege.
22 BY MR. DECHAIRA:

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Q. Okay. So just so the record's clear, Mr. Orr, you're declining to respond to the question, what was said in those meetings regarding Detroit's pension liabilities?

A. Yes, I -- I think, without waiving the privilege -- I want to be very careful here, because I have both the attorney-client privilege and common interest agreement and I don't want to abridge either of those; but without waiving, there were discussions and those discussions probably concerned our perception of what -- what the issues that have been talked about in the public domain concerned regarding vested pension rights.

Q. Did the Governor ever say to you whether in a one-on-one -- let me start with a one-on-one meeting.

Did the Governor ever say to you in a one-on-one meeting that it was his view that Detroit's pension liability -- strike that -- that Detroit's accrued pension liabilities had to be cut?

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Did the Governor ever say that to you?

A. No.

Q. Okay. And did he ever say that to you in any meeting where there were other people present?

MR. SHUMAKER: Again, I'm going to caution the witness to the extent that attorneys were at such meetings and there were -- you were seeking legal advice or legal advice was being given in connection with the Governor's comments, I would instruct you not to answer.

If that is not the case, you are free to answer.

THE WITNESS: I want to be responsive, but I don't want to waive the privilege.

Those discussions were always held in the presence of attorneys generally in discussion of what the rights and positions would be in the case. I can say this, I think -- can I just consult my attorney briefly?

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BY MR. DECHAIRA:

Q. Not while there's a question pending.

A. Okay.

Q. Your attorney is free to -- he's already given you guidance on the record.

A. I'm -- I'm trying to be responsive to you.

I think those discussions are covered by the attorney-client privilege.

Q. Okay. So just to be clear, you're -- you're declining to answer my question?

A. Without further guidance, I think I have to.

Q. Okay.

Let me now change the time frame to after the Governor authorized the bankruptcy filing.

Did you have any one-on-one spoken exchanges with the Governor -- or have you had?

A. Yes, I believe so.

Q. And one or more than one?

A. Maybe more than one.

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Q. And what was the context for those?

A. Here again, the same nature of the discussions. They were more general check-in: How's things going; how's staff going; how's City operations going; new chief seems to be doing very well, things along those natures.

Q. In -- in any of those one-on-one meetings you've had with the Governor since he authorized the bankruptcy filing, did the Governor -- has the Governor ever expressed the view to you that Detroit's accrued pension liabilities should be cut?

A. No.

The Governor's never expressed the view to me in any of those meetings that Detroit pension liabilities need to be cut either before or after the filing.

Q. Okay. And has he ever expressed a view to you regarding whether he agrees or doesn't agree with the position that was publicly taken by the Attorney General that you testified about earlier?

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1 A. No, I don't recall him ever doing
2 that.
3 Q. Did you ever, in any one-on-one
4 conversation with the Governor, speak about any
5 prohibitions or restrictions in the Michigan
6 Constitution?
7 A. No, I don't recall us speaking about
8 that.
9 Q. Okay. Now -- now I'm going to ask
10 you about Treasurer Dillon --
11 A. Yes.
12 Q. -- I'm going to ask you another --
13 the same line of questions -- questions about
14 spoken exchanges --
15 A. Um-hum.
16 Q. -- the time frame is now between --
17 well, let's say before you were appointed EFM.
18 Did you have any spoken exchanges
19 with -- with the Treasurer?
20 A. Yes.
21 Q. And can you tell me what those were?
22 A. Those were more in the nature of,

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1 here again, pleasantries; enjoy you considering
2 being a candidate; I had early on hoped and
3 encouraged you to do so; thank you for doing so,
4 along those lines.
5 Q. Did the -- did the Treasurer in any
6 of those spoken exchanges you had with him ever
7 express any views about the economic distress that
8 was facing the City of Detroit?
9 A. Oh, I think he -- I think we may have
10 discussed the -- yes -- yeah, I think we probably
11 discussed the fact that Detroit was under a
12 consent agreement, things of that nature, but it
13 was very high level; it wasn't with any
14 specificity.
15 Q. Well, did you ever speak to him
16 during that time frame about the burden of accrued
17 pension liabilities that was going on in the City?
18 A. Yeah -- no, not that I recall. There
19 were never any discussions in -- in that level of
20 detail.
21 Q. In the time frame after you were
22 appointed EFM, but before the State authorized the

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1 bankruptcy filing, did you have any spoken
2 exchanges with the Treasurer?
3 A. Yes.
4 Q. And what was the context for those?
5 A. Those discussions were, here again as
6 I said before, generally around retention of
7 professionals, cash flow projections, actuals over
8 projected, potential help that we could get from
9 contractors, sending out the RFP for solid waste,
10 standing up the Public Lighting Authority,
11 standing up the Detroit Land Bank Authority in
12 conjunction with MSHDA, things of those nature.
13 Q. Were these exchanges that you had in
14 the context of meetings with other people present?
15 A. Some of them were, yes.
16 Q. Were any of them one-on-one?
17 A. The Treasurer and I would -- would
18 sometimes -- we -- our meetings were -- the
19 Governor and I would try to have one-on-one
20 meetings after our Detroit team meetings. The
21 Treasurer and I would have one-on-one meetings in
22 a much more irregular ad-hoc basis, if you will.

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1 If he was in the office building, in the Cadillac
2 office building, at the same time, he might stop
3 by my office. But there was no regular --
4 regularly set meeting between me and the
5 Treasurer.
6 Q. Okay. Do you -- do you recall those
7 one-on-ones that you had with the Treasurer on
8 those occasions?
9 A. I recall some of them, yes.
10 Q. Okay. And in those, did you ever
11 speak to him about Detroit's accrued pension
12 liability?
13 A. Not specifically. We may have talked
14 about the -- what I call the "balance sheet
15 issues," the amount of debt that the City had,
16 including pension funds, OPEB and GO bond debt; we
17 may have talked about the -- here again, actuals
18 over projections, things -- financial
19 transactions, yes.
20 Q. Did he ever express the view to you
21 in those one-on-one meetings that Detroit's
22 accrued pension liabilities should be -- could be

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1 or should be reduced?
2 A. I don't recall any specific
3 conversations about what should happen with
4 Detroit pension liabilities.
5 Q. Do you remember the Treasurer talking
6 about that, whether specifically or generally or
7 in any other way, about that subject?
8 A. Not in the one-on-one meetings.
9 Q. Did he talk about that in meetings
10 where there were other people present?
11 A. Yes. The Treasurer attended the
12 Detroit team meetings that we had weekly with the
13 Governor.
14 Q. And did he, at any of those meetings,
15 express the view that -- did he -- strike that.
16 Did he, at those meetings, say
17 anything about whether Detroit's accrued pension
18 liabilities should be reduced?
19 MR. SHUMAKER: Again, I'm going to
20 caution the witness to the extent that any of
21 these communications occurred when counsel was
22 present in connection with the provision or the

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1 seeking of legal advice, I will instruct him not
2 to answer.
3 If that's not the case or there's
4 some nonlegal component to it, you can answer.
5 THE WITNESS: Okay. Let me -- let me
6 try to respond this way. Any of the Detroit team
7 meetings with the Governor would have counsel
8 present, oftentimes several layers of counsel; in
9 fact, I think there were meetings where either my
10 counsel was on the phone or counsel on behalf of
11 the Governor and his office on the phone. There
12 were no team meetings where counsel was not
13 present.
14 In any of those discussions, those
15 discussions would implicate attorney-client
16 communications because we would be seeking legal
17 advice either from my counsel or from State
18 counsel or from both. So I'm going to be very
19 careful with those discussions where the
20 Treasurer, the Governor and counsel were present.
21 So I -- I -- I can't answer about
22 those discussions.

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1 BY MR. DECHAIRA:
2 Q. Okay. Just to be clear. For -- for
3 the reasons you just expressed, you're not going
4 to answer the question?
5 A. Yes.
6 Q. Yes, you're not going to answer?
7 A. Yes, I'm not going to answer the
8 question.
9 Q. Did the Governor -- did the Treasurer
10 in any way -- let me ask you about one-on-one.
11 In any one-on-one meeting you've ever
12 had with him, did he ever express a view about
13 whether the Attorney General's position, that you
14 testified about earlier, was correct or not?
15 A. No.
16 Q. Okay. And if I asked you whether he
17 ever expressed an opinion on that topic in -- in
18 one of the Detroit team meetings, would you
19 decline to answer the question on the grounds that
20 you just declined to answer my prior question?
21 MR. SHUMAKER: I would give the
22 witness the same admonition.

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1 THE WITNESS: Yes, I would decline to
2 answer your question on the grounds it's protected
3 by the attorney-client privilege and joint --
4 and/or joint interest privilege.
5 BY MR. DECHAIRA:
6 Q. Okay. Let me now ask you about
7 Mr. Baird.
8 A. Yes.
9 Q. Prior to your being appointed EFM,
10 did you have any spoken exchanges with Mr. Baird?
11 A. Yes.
12 Q. And can you tell me what those were?
13 A. Yes, I think as I testified on
14 September 16th and, again, earlier today, and as
15 has been represented in the e-mail chains that
16 were gone over on September 16th and the ones that
17 were discussed this day, they were about my
18 potentially becoming the emergency financial
19 manager, subsequently emergency manager for the
20 City of Detroit.
21 Q. Did you have any exchanges with him
22 before you -- spoken exchanges with him before you

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1 were appointed EFM on any topic other than what
2 you just testified to?
3 A. That was generally the broad topic.
4 He -- he may have asked me about how my family
5 would hold up, how I could extricate myself from
6 my then law firm, things of that nature, but no
7 substantive discussions.
8 Q. And when you say "no substantive
9 discussions," would that also mean that you did
10 not discuss anything having to do with Detroit's
11 pension liabilities?
12 A. I -- I don't recall really ever
13 talking to Mr. Baird about Detroit's pension
14 liabilities.
15 Q. At any time?
16 A. At any time.
17 Q. Did you ever speak to Mr. Baird at
18 any time about the issue of the Michigan
19 Constitution?
20 A. I don't recall ever speaking to
21 Mr. Baird about the issue of the Michigan
22 Constitution.

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1 Q. Did Mr. Baird ever express to you a
2 view about whether or not Detroit's accrued
3 pension liabilities could or should be cut?
4 A. No.
5 Q. Did Mr. Baird ever express a view to
6 you about whether or not the position taken by the
7 Attorney General that you testified about earlier
8 was correct or incorrect?
9 A. No.
10 Q. In any one-on-one meetings that
11 you've ever had with the Governor, the Treasurer
12 or Mr. Baird, was there any discussion about when
13 Detroit should file for bankruptcy?
14 A. Well, there are three questions. Not
15 with Mr. Baird; I don't recall any with
16 Treasurer Dillon; and none with specificity with
17 the Governor.
18 Q. Do you do -- do you have any -- when
19 you say "none with specificity," do you mean your
20 recollection is not specific or what was discussed
21 was not specific?
22 A. What was discussed was not specific.

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1 Q. Okay. What was discussed, to the
2 best of your recollection, with the Governor about
3 when Detroit should file for bankruptcy?
4 A. Generally, after -- and I'll just
5 give it to you generally after the June 14th
6 meeting, on the one-on-one meetings, we discussed
7 my hope that we get some settlements in. We were
8 having discussions with some parties.
9 We discussed that, you know, time was
10 drawing -- was -- seemed to be moving quite
11 quickly, but we were hopeful, and we were -- had
12 some initial discussions. Later we discussed, I
13 think June -- I'll do it this way -- June 14th
14 through July 3rd, we continued to have discussions
15 along those lines.
16 In July, in the one-on-one meetings,
17 the one or two that we might have had, the general
18 discussion was there was this litigation, but we
19 were still hoping that we could resolve some
20 issues. And we continued to have those
21 discussions up until a day or so -- no, not until
22 a day or so -- until the week before the filing.

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1 Q. So -- so am I correct that you had
2 multiple one-on-one exchanges with the Governor
3 about the question about when the City should file
4 for bankruptcy?
5 A. We -- as I said, we may have had one
6 or two. I remember one week in there in July was
7 the 4th of July holiday week, and I don't think we
8 had a meeting there. But I -- I don't recall
9 specifically the dates of the meeting. I think we
10 may have had one or two one-on-ones.
11 Q. Okay.
12 So in those one-on -- one-on-ones,
13 those one or two one-on-ones --
14 A. Um-hum.
15 Q. -- to the best of your recollection,
16 what did you say to the Governor in connection
17 with the issue about when the petition should be
18 filed?
19 A. All I said to the Governor is we
20 continue -- I understand that we're trying to work
21 towards some resolutions; we hope people take us
22 seriously; we hope they're listening to what we're

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1 saying. I'm really not hearing any debate on the
2 level of debt. I'm hearing some people being
3 concerned about, you know, what our proposal is.
4 We hope they make a resolution. Towards the end,
5 the question was hopefully we will be able to work
6 things out.
7 Q. And did -- what did the Governor say,
8 to the best of your recollection, in those
9 one-on-ones?
10 A. Thank you for the information. You
11 know, I appreciate your trying to do -- you're
12 doing a good job; I appreciate the job you're
13 trying to do. This is going to be difficult.
14 Keep trying to work towards a resolution. You
15 know, it -- make the right decision; it's
16 ultimately your call.
17 Q. Did he ever give you any view as to
18 what he thought you should do or what the City
19 should do in connection with the timing of the
20 filing?
21 A. No.
22 Q. Did you ever have any one-on-one

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1 meetings with the Governor in which he or you
2 discussed what the political implications might be
3 of a bankruptcy filing?
4 A. It's -- the discussion we had earlier
5 this morning about political implications, and I'm
6 going to -- you know, that's -- that's a broad
7 discussion from people being angry to editorial
8 pages, things like that.
9 So there -- there may have been some
10 discussion in that regard. But I don't recall
11 anything particularly political about our
12 discussions.
13 Q. Okay. Well, I -- I -- I didn't mean
14 to ask you about whether there's anything
15 political about your discussions. But my question
16 was, in any one of your one-on-ones with the
17 Governor, was there any discussion between the two
18 of you, whether you were saying something or
19 whether he was saying something, about what might
20 be the political implications of the bankruptcy
21 filing?
22 And when I say "political

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1 implications," I mean that in a broad sense, so
2 public reaction is --
3 A. Oh.
4 Q. -- broadly -- broadly, would it --
5 would it be included within that?
6 A. Well, if you say "public reaction,"
7 yeah, we probably did have discussions about
8 potential public reaction.
9 Q. And what -- and what did you -- what
10 did you say, or what did he say about that?
11 A. Generally, you know, this -- this
12 would be -- and this is towards the end -- well,
13 you know, I don't know if -- I'm trying to recall
14 now. I don't know if we had discussions about
15 that prior to the week of the filing. Because I
16 don't think we had that many one-on-one meetings
17 in -- in between June 14th and July because of the
18 holiday.
19 So there may have been a discussion,
20 but I don't think it was in a one-on-one meeting.
21 I think it was in one of the Detroit team meetings
22 the week before the filing --

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1 Q. Okay.
2 A. -- that was the Friday.
3 Q. So at one of -- your testimony is
4 that at one of the Detroit team meetings, there
5 was -- before the filing, there was the discuss
6 -- a discussion about what might have been the
7 political implications of the filing?
8 A. The political implications as you
9 just defined it meaning public reaction.
10 Q. Well, let -- let me just be clear --
11 A. Okay.
12 Q. -- it -- it would include public
13 reaction.
14 A. Okay.
15 Well, without getting into
16 discussions, because there were attorneys at that
17 meeting, and I don't -- here again, I want to be
18 careful about the privilege. If you include the
19 definition spanning from political implications
20 meaning potential public reaction, I believe there
21 were discussions in that regard, but not in the
22 sense that political reactions should in any way

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1 impact the decision that we needed to make.
2 The discussions were always about
3 what's the best decision; are we making progress;
4 the discretion is up to me, within my authority,
5 to make a recommendation; and if I make a
6 recommendation, the Governor would take it up in
7 due course.
8 Q. What was said at -- was this said --
9 was this discussion that you just testified about
10 at one or more of the Detroit -- the Detroit team
11 meetings?
12 MR. SHUMAKER: You say "this
13 discussion," are you talking about the discussion
14 about the political --
15 MR. DECHAIRA: Yeah, right.
16 MR. SHUMAKER: -- implications?
17 MR. DECHAIRA: Correct.
18 THE WITNESS: I believe that when you
19 say "political implications," you know, I don't
20 want to give the impression that there was
21 something overt -- there was some overt concern
22 about the political implications. Our general

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1 discussions were we were going to do the right
2 thing as we saw fit --
3 BY MR. DECHAIRA:
4 Q. Okay.
5 A. -- they were not being driven by
6 political concerns. We were aware that it would
7 garner public attention, but we were still going
8 to do the right thing.
9 Q. Can you tell me who said what at
10 those meetings about that -- the issue that you're
11 talking about?
12 A. Here again, there were attorneys
13 present at that meeting giving legal advice, so
14 I'm going to see if I can answer the question
15 without implicating any of the legal advice.
16 And as I just said, the discussion
17 generally centered around we're not getting the
18 progress that we want. As I said at the June 14th
19 meeting, we're not getting the progress we need.
20 We had to make some difficult decisions. As I
21 said at the June 10th meeting, bankruptcy is
22 potentially an option, but we don't want to use

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1 it.
2 We were being involved in litigation,
3 as I said before on September 16th, and the
4 general discussion was we need to make some
5 decisions, let's make the right decision
6 irrespective of any political considerations.
7 Q. Mr. Orr, are you paid by the State of
8 Michigan?
9 A. I believe so.
10 Q. Okay. Is it -- is it correct that
11 you're a -- you're an employee -- are you an
12 employee of the State of Michigan?
13 A. No, I'm a contractor to the State of
14 Michigan.
15 Q. Okay. You're an -- you're an
16 agent -- are you an agent of the State of
17 Michigan?
18 MR. SHUMAKER: Objection --
19 THE WITNESS: I --
20 MR. SHUMAKER: -- calls for a legal
21 conclusion.
22 THE WITNESS: Yeah, that's what I was

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1 going to say.
2 BY MR. DECHAIRA:
3 Q. Okay.
4 Do you consider yourself bound by the
5 laws and the Constitution of the State of
6 Michigan?
7 A. I consider myself bound by the laws
8 in the Constitution of the United States and the
9 State of Michigan.
10 Q. And do you consider yourself bound by
11 the interpretations of the laws and Constitution
12 of the State of Michigan that are made by the
13 Michigan Attorney General?
14 A. I consider myself bound by the laws
15 of the U.S. Constitution and the State of Michigan
16 as interpreted by the Federal courts.
17 Q. But not the Attorney -- Attorney
18 General of the State of Michigan?
19 A. Not necessarily. If -- if there's a
20 law or a ruling by a Court, I would think that
21 supersedes the interpretation of an attorney
22 general.

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1 Q. Okay. In the absence of a ruling by
2 a Court, do you consider yourself as -- in your
3 capacity as an emergency manager, bound by the
4 interpretations of the Michigan Constitution made
5 by the Michigan Attorney General?
6 A. As I just said, I consider myself
7 bound by the laws of the United States and the
8 State of Michigan as interpreted ultimately by a
9 Court.
10 Q. Right.
11 But my question is, in the absence of
12 a Court ruling on a particular question, do you
13 consider yourself -- on a particular question of
14 Michigan law, do you consider yourself bound by
15 the interpretation of the Michigan Attorney
16 General?
17 A. I'll repeat my answer.
18 I understand what you're getting at.
19 But I'll repeat my answer.
20 I feel ultimately the question has to
21 resolve -- be resolved by the courts of the
22 United States. And I've said that before, and

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1 that's the position we've taken.
2 Q. Did you ever speak to the Governor in
3 a one-on-one meeting about the absence of
4 contingencies in his authorization letter?
5 A. No.
6 Q. I'd like to show you what I'll ask to
7 have marked as Exhibit 23.
8 - - -
9 (Whereupon, e-mail string was marked,
10 for identification purposes, as Orr
11 Deposition Exhibit Number 23.)
12 - - -
13 MR. DECHIARA: And for the record --
14 THE COURT REPORTER: Hold on.
15 (Sotto voce comments by counsel and
16 court reporter.)
17 MR. DECHIARA: Are we on the record?
18 BY MR. DECHAIRA:
19 Q. Mr. Orr, if you look at Exhibit 23,
20 do you see that the bottom two-thirds of the page
21 is in -- appears to be an e-mail from
22 Richard Baird to various people, dated

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1 February 7th, 2013?
2 Do you see that?
3 A. Yes.
4 Q. Okay.
5 And then you see there appears to be
6 a schedule under that?
7 A. Yes.
8 Q. Okay. Did you meet with Andy Dillon,
9 or did you go out to lunch with Andy Dillon and
10 another person on Monday, February 11th?
11 A. Yes.
12 Q. And who was the other person?
13 A. I went out to lunch, actually, with
14 three people: Andy Dillon, Brom Stibitz, and
15 Tom Saxton.
16 Q. Who are those two other people?
17 A. Two other people are employees of the
18 Treasury Department and work under Andy Dillon.
19 Q. Okay. And what was discussed at that
20 lunch?
21 A. Me potentially --
22 MR. SHUMAKER: Let me just -- they're

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1 not lawyers; is that correct?
2 THE WITNESS: I don't know if Brom
3 and Tom are.
4 BY MR. DECHAIRA:
5 Q. Well, I guess that was the question,
6 is, were they acting in -- in their capacity as
7 attorneys for the State during that lunch?
8 A. I don't know if Brom and -- and Tom
9 Saxton are attorneys.
10 MR. SHUMAKER: You can -- you can
11 answer.
12 THE WITNESS: Okay.
13 This -- my understanding what this is
14 was a schedule for me to come and discuss their
15 interests in me applying to become the emergency
16 manager for the City of Detroit.
17 BY MR. DECHAIRA:
18 Q. Right.
19 But what was -- do you have a
20 recollection of what you talked about at lunch?
21 A. Yeah, generally, what the statute
22 required, the financial stability agreement

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1 provisions, potentially when I would be able to --
2 to -- to apply; generally, sort of high-level
3 preliminary discussions about becoming the EM.
4 Q. Did you talk about pensions?
5 A. No, we didn't talk about the detail.
6 I wish I had.
7 Q. Did you -- after lunch, did you meet
8 with the Governor and Mr. Baird?
9 A. Yes.
10 Q. And who else was present at --
11 present, if anyone, at that meeting?
12 A. I -- I believe his scheduler,
13 Allison, walked me into the room, and it was just
14 me, the Governor and Rich Baird.
15 Q. And do you recall what you talked
16 about in that meeting?
17 A. Very high level. This was a -- a --
18 a meet-and-greet, as I call it; get to know you;
19 are you interested? Frankly, at this time, I was
20 still on the fence as to whether or not I would
21 apply for the job, and this -- these were
22 discussions about, well, this is what the job

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1 would entail. We're doing our due diligence.
2 There's some other candidates we're considering,
3 but we would like you to be interested, things
4 along those lines.
5 Q. Did they say who the other candidates
6 were?
7 A. No, they did not.
8 Q. Did they talk about the pitch meeting
9 that you participated in earlier?
10 A. No, not so much -- tangentially, I
11 mean, that -- that discussions were about, you
12 know, we -- we -- we saw your firm's pitch at the
13 meeting; we were impressed with your passion for
14 the City; how you had been a Michigander; the work
15 you did on other cases related to the City; you
16 know, would you -- would you at least -- and this
17 was more -- as I interpreted it, this was more
18 getting me to -- I was still taking a position I
19 don't want the job, but this was more me trying to
20 explore it a little bit and see what it would
21 entail, and them saying that it's probably -- we
22 would appreciate it if you would consider it.

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1 Q. Did they -- did Mr. Baird or the
2 Governor express any views about what they thought
3 of the substance of the ideas that were put forth
4 in the Jones Day pitch book?
5 A. No, not really. They -- they -- I
6 mean, all they ever said was it -- it was a good
7 pitch book, but there was not -- there was no
8 substantive discussion during these meetings.
9 Q. Mr. Orr, I would like to show you
10 what I'll now mark as Exhibit 24. It's a
11 document -- it's a two-page document. It says at
12 the top, Is the Emergency Manager Moving Fast
13 Enough, question mark. It's Bates stamped
14 DTMI00113909 --
15 A. Right.
16 Q. -- and -10 --
17 THE COURT REPORTER: Do you want me
18 to mark it?
19 MR. DECHAIRA: Yes, please, as
20 Exhibit 24.
21 - - -
22 (Whereupon, Excerpt from report of

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1 Emergency Manager was marked, for
2 identification purposes, as
3 Deposition Exhibit Number 24.)
4 - - -
5 THE WITNESS: Thank you.
6 THE COURT REPORTER: Um-hum.
7 BY MR. DECHAIRA:
8 Q. Can you identify what this document
9 is?
10 A. Is this a excerpt from one of my
11 reports --
12 Q. I'm --
13 A. -- you're asking me?
14 Q. I'm asking you.
15 A. Yeah, because I'd -- I'd -- I'm --
16 no. Can I identify this document is?
17 No, it speaks for itself.
18 Q. Well, let me -- I mean, have you ever
19 seen this document before?
20 A. I think I've seen this document
21 before, but I don't think this is from -- I don't
22 know if this is from my office.

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1 Q. You don't know who prepared this?
2 A. No.
3 Q. And you don't know what purpose this
4 document was used for?
5 A. No. Now, that's not saying it could
6 have been prepared from my office, but it could
7 have been done in our communications division. I
8 just -- there's so many documents that are
9 prepared in my office, I'm not -- I don't see all
10 of them.
11 Q. I don't want you to guess or
12 speculate.
13 A. Yeah; no, I don't -- I don't --
14 Q. You don't know?
15 A. -- yeah, I don't know.
16 Q. Okay.
17 I'd like to show you what I'll ask to
18 have marked as Exhibit 25, which is a set of
19 e-mail exchanges stamped JD-RD-0000354.
20 - - -
21 (Whereupon, e-mail string was marked,
22 for identification purposes, as

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1 Deposition Exhibit Number 25.)
2 - - -
3 THE COURT REPORTER: Hold on.
4 THE WITNESS: Thank you.
5 BY MR. DECHAIRA:
6 Q. Let me refer you to the bottom of the
7 first page. Do you see there's an e-mail from you
8 to the Governor?
9 A. Yes.
10 Q. Dated February 13th, 2013?
11 A. Yes.
12 Q. It refers to a meeting you had
13 with -- with the Governor.
14 Do you see that?
15 A. Yes.
16 Q. When was that meeting or was -- was
17 there a meeting?
18 A. I think this refers to the meeting
19 schedule that you showed me on -- for
20 February 11th. I think this is a follow-up to
21 that meeting.
22 Q. Okay. So this is the meeting --

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1 this -- this -- in this e-mail, you're referring
2 to the meeting you had with Mr. -- with the
3 Governor and Mr. Baird?
4 A. Yeah, I think the e-mail chain is, as
5 I said today, there may have been back-and-forth
6 pleasantries, and this is the type of stuff that
7 I -- the type of e-mails I was talking about.
8 It's the Governor saying to me, you know, nice to
9 meet you; excited about the prospect of working
10 with you; job is difficult. I mean, it speaks for
11 itself.
12 He talks about the job, the -- the --
13 the collaborative irrational acts. That's people
14 doing things that seem --
15 Q. And --
16 A. -- insurmountable.
17 Q. -- Mr. Orr, I don't mean to cut you
18 off. I just asked if this was the meeting that
19 you were referring to --
20 A. Yeah, I think -
21 Q. -- I think the answer is yes --
22 A. -- this all speaks for it itself.

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1 Yeah, this all speaks for itself.
2 Q. Let me refer -- show you a document
3 I'll ask to have marked as Exhibit 26. This is a
4 two-page document stamped at the bottom
5 JD-RD-0000334 and -35 on the second page.
6 A. I think this is -- I think this is
7 Exhibit 20.
8 Q. Oh, it may be.
9 A. I think we already talked about this.
10 Q. Okay. Well --
11 A. Yeah. Yeah, it's the same -- no, I
12 have it. It's the same thing.
13 Q. Okay. I don't have Exhibit 20.
14 Okay. Thank you for pointing that
15 out.
16 A. Yeah.
17 Q. Let me refer you to Exhibit 20.
18 A. Okay.
19 Yeah, it's the same -- yes, it's the
20 same document.
21 Q. So if you look in the e-mail that you
22 wrote to Mr. Baird at the top of Exhibit 20 --

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A. Um-hum.
Q. -- towards the bottom of the paragraph -- that block of text that's at the top of the first page, it says -- there's a sentence that says, In the interim, when you have time, I'd like to speak with you about the timing and process for the retention of the EM and legal counsel --
A. Yes.
Q. -- you wrote that?
A. Yes.
Q. And what -- what -- did you -- what did you mean when you wrote that?
A. Oh, I just meant -- what I had said I think at the February 11th meeting is that my consideration as EM -- there were a number of news reports going around about how I would not have to resign from my firm, and what I said in order to remove issues -- because trustees and bankers, as I suspect you know, don't typically resign from their law firm -- in order to remove any issues with that regard, that I'd probably have to resign

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from my law firm.
And what I was saying here is -- and what I said at the February 11th meeting was, look, I don't want my potential candidacy as EM to either help or hurt Jones Day, who originally came into this for pitching the legal work. I want it to be neutral as far as what I do.
And -- and to that regard, I think there's an e-mail that we talked about, September 16th, where I recused myself from the Jones Day selection process and I was considering, you know, how I would extricate myself from my firm.
I was involved in -- in a couple of very important matters -- in the midst of them, as a matter of fact -- and all I was saying here is let's talk about the process for both the retention of the EM and legal counsel .
And what I said February 11th was just, look, whoever -- I'll work with whoever it is, but I don't want this to hurt Jones Day in any way. I don't necessarily want it to help.

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I just want it to be neutral if I'm going to consider this, because I don't want to put my interests above the interests of my then law firm.
Q. Okay. And then in -- in the e-mail you write, I'd like to speak with you --
A. Yes.
Q. -- did you subsequently speak to Mr. Baird about this topic?
A. I don't know if I spoke to him about this topic. I was probably -- I don't recall if I spoke to him about this topic. I think I probably did speak to him subsequent to this e-mail.
Q. Let me show you what I'll mark as Exhibit 27 --
THE COURT REPORTER: Twenty-six.
MR. DECHAIRA: -- 26, thank you. Right.
What I had offered as 26 I'm not offering because, as Mr. Orr correctly pointed out, the e-mail was already in -- it had already been marked as Exhibit 20.

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- - -
(Whereupon, Contract for Emergency Financial Manager Services was marked, for identification purposes, as Deposition Exhibit Number 26.)
- - -
BY MR. DECHAIRA:
Q. And I'll identify Exhibit 26 as a multipage document, the first page is stamped DTMI00113325.
Mr. Orr, is this your employment contract?
A. No.
Q. Is -- what is this document? Do you know?
A. This document is -- this document is substantially similar to my ultimate employment contract. My employment contract, which I think is on the Web site, has the names written in.
My employment contract, the initial one, I think was executed on the 25th or 26th, and then a subsequent one was executed on the 28th.

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Q. And the subsequent one sets out what your compensation is from the City?
A. Yes, substantially, the -- my actual contract is substantially similar. You said "from the City." The subsequent one -- the com -- the compensation on Page 3.2 is the same --
Q. Okay.
A. -- but it's substantially similar to my contract. But the actual contract is different from this document (indicating).
Q. Okay. And then the last sentence on Section 3.2 says, The emergency financial manager shall not receive or accept any compensation from the City except as provided for in this contract.
My question is, do you receive any compensation from anybody or any entity for your services as emergency manager other than what's set out in Section 3.2 here or in the analogous 3.2 of what -- of your current contract?
A. Not one dime.
Q. Well, you may -- you may receive housing, a pay for your housing -- pay for your

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housing, correct?
A. Yeah; but I think you said as set out in the contract. Maybe you meant 3.2. But whatever we've discussed today, the housing, but I don't receive that. That's -- I receive the housing. I don't get four -- $4,200 or whatever the rent is; I've never seen it. I get the compensation as stated in the contract, and that's it.
Q. Right. But you -- you have -- you live in the housing, correct?
A. I live in the housing, yes.
Q. And you don't pay for it, correct?
A. I don't pay for it --
Q. Okay.
A. -- that's correct.
MR. DECHAIRA: If we -- if I can just have a minute.
MR. SHUMAKER: Sure.
(Pause.)
THE VIDEOGRAPHER: Do you want to go off the record?

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MR. DECHAIRA: Yes, please.
THE VIDEOGRAPHER: Going off the record at 1359.
- - -
(Whereupon, a discussion was held off the record.)
- - -
THE VIDEOGRAPHER: Going back on the record at 1401.
BY MR. DECHAIRA:
Q. Mr. Orr, do you know what other law firms pitched for the job of restructuring counsel for the City besides Jones Day?
A. I -- I don't know them all. I -- I know that there were approximately 20 other law firms, but I don't -- I -- I think Foley was one. I think Weil was one. I -- I don't recall them all, no.
Q. Okay. Do you know who else was considered for the EM position besides yourself?
A. I do not.
Q. Okay.

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A. There was some published reports, but I don't recall early on. That's all --
Q. Would --
A. -- I -- I don't know with specificity who it was. I just remember there were some reports.
Q. Okay. Whether -- whether from any source, whether public or otherwise, do you have any -- as you sit here today, do you remember any names of anyone who was considered as EM other than yourself?
A. The -- the only report that I remember with specificity is that Andy Williams, the -- the -- essentially the counterpart in the D.C. control board was reported had been considered, and he turned it down. He's a lot smarter than me.
Q. Anyone else?
A. Not that I remember.
(Sotto voce discussion.)
THE WITNESS: He has better judgment than me.

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BY MR. DECHAIRA:
Q. Do you know who Bill Brandt is?
A. I've -- I've heard that name before. I -- I think he was -- he's a bankruptcy trustee.
Q. Do you know whether he was considered for any -- for the EM position?
A. I do not.
Q. Do you know whether he was considered for any position as -- any professional position in connection with the restructuring of the City of Detroit?
A. I do not.
Q. Okay.
MR. DECHAIRA: Thank you for your time, Mr. Orr. I have no further questions.
THE WITNESS: Thank you.
MR. ULLMAN: I have a few follow-ups.

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- - -
EXAMINATION (CONTINUED)
BY COUNSEL FOR RETIREES COMMITTEE
- - -
BY MR. ULLMAN:
Q. Hello, Mr. Orr.
A. Hello, Mr. Ullman.
Q. I just have a few questions for you just to clarify the record, because I saw when I was looking at the transcript that as sometimes happens when lawyers do math, I got some numbers transposed.
A. Okay.
Q. So if you could turn back to Exhibit 22.
A. Okay.
Um-hum.
Okay.
Q. And if you could look at the Bates page that we were looking at before which ends in 422.
A. Yes.

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Q. Okay. And you see we had talked about the 250 million general fund relative to the 650 million total unfunded liability?
A. Yes.
Q. And we had calculated ratio approximately 38-1/2 percent?
A. Right.
Q. And I think previously, when I was asking about this, I had referred to the 38.5 percent as being the amount of the unfunded liability allocable to the Department of Water and Sewer. I think I -- I misspoke in that, because the 250 would be -- the 38.5 percent would be the amount allocable to the general fund, correct?
A. Yes, I -- I think that's accurate, yes, we were talking about the numbers, but --
Q. We had them backwards?
A. -- we had them backwards.
Q. And so if the -- if the math is right and it was about 38.5 percent, then the percentage of the unfunded liability allocable to the Department of Water and Sewer would be

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approximately 61.5 percent?
A. But, remember, I said that you have to be careful with trying to draw a straight-line comparison between the two numbers you may calculate in. But generally speaking, if we're just talking about the math, that -- that --
Q. Right --
A. -- would be the estimate.
Q. -- I'm right here just talking about the ratio on the -- the number that's referred to as the 650 -- the approximately 650 by the Mayor.
A. Yes.
Q. And then I think the next question I asked you, which I think is what you were alluding to, that if you assumed a larger liability figure, would that ratio continue to hold; and my recollection is, your answer was roughly it would, but you may have to, you know, fine-tune the math.
A. It -- it -- it might roughly hold, but you need to be careful to not draw the conclusion that is -- it's exactly comparable.
Q. Okay. I understand.

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A. Okay.
Q. Okay.
And then the other question I have for you -- this is referring to the unfunded pension liability --
A. Um-hum.
Q. -- you're also familiar with the medical benefits for retirees --
A. Yes.
Q. -- the health -- and I think that's sometimes referred to as OPEB?
A. Yes, other [sic] employee benefits.
Q. Okay. And for the OPEB is -- are -- is the -- is the situation similar that some amount of the total OPEB liability that the City faces is allocable to sources other than the general fund?
A. You -- you know, I think it is; but I'm not recalling that mechanism as well as I recall the pension mechanism, but I think it is.
Q. Okay. And would then some portion of the total OPEB unfunded liability be allocable

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also to the Department of Water and Sewer to their retirees?
A. It might well be, but I'd need to confirm that.
Q. Okay. And have you done any analysis of that question?
A. Yes --
Q. Okay.
A. -- well, our contractors have done an analysis of the question.
Q. Okay. And who specifically has done an analysis of that?
A. Oh, I think our team at -- the entire team: Conway MacKenzie, Ernst & Young, Miller Buckfire.
Q. And do you recall their general conclusions to what percentage of the total unfunded OPEB liability is allocable to the -- A, to the Department of Water of Sewer; or, B, some other fund or entity apart from the general fund?
A. I'm -- I'm not -- I don't recall if it is, and I don't recall the percentage.

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MR. ULLMAN: Okay. Could I ask for any documents relating to that to be produced, Greg?
MR. SHUMAKER: You can certainly put that in writing and look into it. I'm pretty sure that that has already been produced, but we'll certainly look into it.
MR. ULLMAN: Okay.
I don't believe I have anything else, so --
THE WITNESS: Okay.
MR. ULLMAN: -- anything further from -- no.
MR. DECHIARA: I think Jennifer Green.
MR. ULLMAN: Jennifer, are you there?
MS. GREEN: No.
MR. ULLMAN: Okay.
MS. GREEN: My turn?
MR. ULLMAN: Yeah, if you are ready -- if you have questions and you want to go.
MS. GREEN: I literally have a

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handful. Very quickly.
MR. ULLMAN: Go -- go ahead. I'm done.
Thank you very much, Mr. Orr.
THE WITNESS: Thank you very much, Mr. Ullman.
Hello, Jennifer -- hello, Ms. Green.
- - -
EXAMINATION (CONTINUED) BY COUNSEL FOR GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT AND THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF DETROIT
- - -
BY MS. GREEN:
Q. Hi, how are you?
A. Just fine.
Q. You began acting as emergency manager as of March 26th, and Jones Day was hired to represent the City after you became emergency manager, correct?
A. The relationship was formalized after I became emergency manager, yes.

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1 Q. Are you saying there was an informal
2 relationship before then?
3 A. No. As -- as I said before today,
4 the -- the question of when the attorney-client
5 privilege attaches isn't necessarily based upon
6 just a formalization of a relationship; it's based
7 upon one of confidence and reposed and -- and a
8 relationship is accepted. An exact date of that,
9 I don't know sitting here today from a legal
10 perspective.
11 Q. Can you tell me, from your view as
12 emergency manager, was the firm of Jones Day
13 acting as legal representation -- giving legal
14 representation to the City prior to your being
15 appointed EM on March 26th?
16 A. I don't -- I don't know.
17 I -- as I testified earlier today, I
18 recused myself from that process, so I don't know
19 when that relationship arose.
20 Q. Well, let me ask you this: You
21 worked at Jones Day, and you worked on the pitch
22 materials, correct?

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1 A. Yes.
2 Q. And so you were involved with the
3 process of the pitch and the PowerPoint?
4 A. Yes; but that was in early -- that
5 was in late January and early February, sometime
6 in February, and I think the e-mails have been
7 discussed in my prior deposition.
8 I -- I pulled myself out of that
9 process, it was in early February prior to the
10 meeting we discussed today. So I don't know what
11 happened after I recused myself.
12 Q. I understand that. I understand
13 that.
14 But what I'm saying is, the pitch
15 that occurred, you were not acting as legal
16 counsel when you did the pitch, right?
17 A. No, no, we were not --
18 Q. Okay.
19 A. -- we were soliciting becoming legal
20 counsel.
21 Q. Exactly.
22 So at least it was some point after

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1 the pitch, correct?
2 A. Yes.
3 Q. And similar to that, Jones Day was
4 never hired by the State of Michigan at any point
5 for any sort of representation, correct?
6 MR. SHUMAKER: Object to the form:
7 Foundation.
8 THE WITNESS: Yeah, I think I
9 testified earlier today -- I said earlier today,
10 I -- I don't know if Jones Day has ever
11 represented the State of Michigan, but -- but with
12 regard to this matter, I don't -- I don't know of
13 Jones Day representing the State of Michigan other
14 than --
15 BY MS. GREEN:
16 Q. Okay.
17 A. -- through my office.
18 Q. So in 2011 and in 2012, and prior to
19 spring of 2013, you have no knowledge of there
20 being any attorney-client relationship between
21 Jones Day and the State of Michigan, correct?
22 A. I have no knowledge.

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1 Q. Okay.
2 And, certainly, I would assume if you
3 were preparing pitch materials in a PowerPoint,
4 where you were pitching Jones Day to the State and
5 to the City, you would've, I assume, included any
6 prior representation of the City and the State,
7 correct?
8 MR. SHUMAKER: Objection: calls for
9 speculation.
10 THE WITNESS: Calls for speculation,
11 that's what I was going to say.
12 It -- you know, I -- I don't know.
13 It would be speculative on my part to say that --
14 that it may or may not included it. We -- I would
15 like to think that we -- before the retention, I
16 would like to think that any law firm would have
17 run a conflicts check.
18 I'm not sure whether or not that
19 would have been included in the pitch material.
20 BY MS. GREEN:
21 Q. Well, during the pitch, was there any
22 point where any of the Jones Day attorneys that

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you were doing the pitch with said, oh, by the way, we were -- we were once your legal counsel, State of Michigan, or we were once your legal counsel, City of Detroit?

MR. SHUMAKER: Objection to the form.

THE WITNESS: As I said earlier today, the discussion quickly went off the pitch materials in the far-ranging; so I don't recall any -- any statement in that respect.

BY MS. GREEN:

Q. Okay.

So you have no evidence that there was ever any attorney-client relationship between Jones Day and the State of Michigan; is that correct?

MR. SHUMAKER: Object to the form.

THE WITNESS: All -- all the questions I said earlier today, there -- there could have been. I'm not aware of any.

MS. GREEN: Okay. That's the only question I have.

THE WITNESS: Okay.

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MR. SHUMAKER: Thank you, Jennifer.

MR. DECHAIRA: I have one question.

- - -

EXAMINATION (CONTINUED) BY COUNSEL FOR UNITED AUTO WORKERS UNION

- - -

BY MR. DECHAIRA:

Q. Mr. Orr, do you know whether any of the liabilities of the Detroit -- Detroit's general pension fund are attributable to the pensions of employees or retirees of the Detroit public library system?

MR. SHUMAKER: Getting pretty far afield here, Counselor.

You can answer that one.

THE WITNESS: I -- I -- specifically, library employees?

I don't -- I don't know that. I know that they're attributable to GRS. Service employees are typically nonuniform. I don't know if it includes library employees. It might; it might not.

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MR. DECHAIRA: Thank you.

THE WITNESS: Um-hum.

MR. SHUMAKER: Thank you, Counsel.

THE WITNESS: Okay. Thank you.

THE VIDEOGRAPHER: Going off the record at 1412. This marks the end of Tape Number 2. This also marks the end of the deposition.

(Whereupon, at 2:12 p.m., the deposition was concluded.)

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C E R T I F I C A T E

DISTRICT OF COLUMBIA:

I, Cindy L. Sebo, a Notary Public within and for the Jurisdiction aforesaid, do hereby certify that the foregoing deposition was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Cindy L. Sebo
District of Columbia, Notary Public
My Commission Expires
April 14, 2015

Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR, CLR, RSA, Notary Public

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Gregory M. Shumaker, Esquire
Jones Day
51 Louisiana Avenue, Northwest
Washington, D.C. 20001-2113

IN RE: City of Detroit, Michigan

Dear Mr. Shumaker:

Enclosed please find your copy of the continued deposition of KEVYN D. ORR, along with the original signature page.

As agreed, you will be responsible for contacting the witness regarding reading and signing the transcript.

Within 30 days of receipt, please forward errata sheet and original signature page signed to opposing counsel.

If you would like to change this procedure or if you have any questions, please do not hesitate to call.

Thank you.

Yours,

Cindy L. Sebo, RMR, CRR, CSR, RPR, CCR, CLR, RSA
Reporter/Notary

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CAPTION

The Continued Deposition of KEVYN D. ORR taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

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CERTIFICATE

STATE OF :
COUNTY/CITY OF :

Before me, this day, personally appeared, KEVYN D. ORR, who, being duly sworn, states that the foregoing transcript of his/her Deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition.

_____
KEVYN D. ORR

SUBSCRIBED and SWORN to before me this _____day of_____, 20_____ in the jurisdiction aforesaid.

_____ _____
My Commission Expires Notary Public

*If no changes need to be made on the following two pages, place a check here ____, and return only this signed page.

DEPOSITION ERRATA SHEET

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RE: Esquire Deposition Services, L.L.C.
File No. 105824
Case Caption: In Re: City of Detroit, Michigan
Deponent: KEVYN D. ORR (Volume II)
Deposition Date: Friday, October 4, 2013

To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me.

I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

Page No._____Line No._____Change to:_____
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Page No._____Line No._____Change to:_____
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Page No._____Line No._____Change to:_____
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1 DEPOSITION OF: KEVYN D. ORR
2 Page No._____Line No._____Change to:_____
3 _____
4 Page No._____Line No._____Change to:_____
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6 Page No._____Line No._____Change to:_____
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20
21 SIGNATURE:_____DATE:_____
22 KEVYN D. ORR