

**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
	:	
	:	Expedited Consideration
	:	Requested
	:	
	-X	

MOTION *IN LIMINE* TO EXCLUDE OPINIONS OR CONCLUSIONS AS TO THE CITY OF DETROIT, MICHIGAN’S UNDERFUNDING OF PENSION LIABILITY

1. The City of Detroit, Michigan (the “City”) failed to designate any expert witnesses at the outset of this proceeding, but it may now seek to cloak expert opinion in the guise of lay testimony from Charles Moore of Conway MacKenzie, Inc., the City’s restructuring consultant. Specifically, the City maintains it has “\$3.5 billion” in unfunded pension liabilities and may seek to offer this purported fact through the “lay testimony” of Charles Moore. This testimony would constitute an improper attempt to evade evidentiary requirements set forth under FED. R. EVID. 702 and federal common law for expert testimony. It represents the precise evidentiary shortcut that Congress sought to prohibit by enacting subsection (c) of FED. R. EVID. 701.

2. The Objectors have learned through discovery that the City’s representations as to its unfunded pension liabilities are questionable and potentially misleading. Charles Moore, the witness to be proffered on pension liabilities, is an accountant who admits that he has no actuarial training and is not relying on an actuarial valuation for his estimates. In any event, none of the City’s professionals have completed an independent actuarial valuation and, instead,

rely on “rough guesses” predicated on historical data that they admit remains unverified.

Accordingly, the Official Committee of Retirees (the “Committee”) respectfully moves *in limine* to exclude any opinion or conclusion that Mr. Charles Moore or any other consultant may offer as to the quantum of the City’s asserted unfunded pension liability at the Eligibility hearing scheduled to commence on October 23, 2013 (the “Eligibility Hearing”).

I. THE CITY CANNOT SUBSTITUTE LAY TESTIMONY FROM CONSULTANTS FOR AN INDEPENDENT ACTUARIAL ANALYSIS AS IS REQUIRED TO ESTABLISH UNDERFUNDING OF PENSION LIABILITY

3. FED. R. OF EVID. 701¹ sets forth that:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness’s perception;

(b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and

(c) *not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.* FED. R. EVID. 701.

The purpose of FED. R. EVID. 701(c), as explicitly recognized by the Sixth Circuit, is “to eliminate the risk that the reliability requirements set forth in Rule 702 will be evaded through the simple expedient of proffering an expert in lay witness clothing.” *JGR, Inc. v. Thomasville Furniture Indus., Inc.*, 370 F.3d 519, 525 (6th Cir. 2004) (quoting Committee Notes to the 2000 Amendment to FED. R. EVID. 701).²

¹ The Federal Rules of Evidence are made applicable in this bankruptcy proceeding pursuant to FED. R. BANKR. P. 9017.

² The Committee Notes to the 2000 Amendment to FED. R. EVID. 701 provide, in relevant part, that:

“Rule 701 has been amended to eliminate the risk that the reliability requirements set forth in Rule 702 will be evaded through the simple expedient of proffering an expert in lay witness clothing. Under the amendment, a witness’s testimony must be scrutinized under the rules regulating expert opinion to the extent that the witness is providing testimony based on scientific, technical, or other specialized knowledge

4. The Federal Rules of Evidence impose a special “gatekeeping” obligation upon a trial judge to “ensure that any and all scientific testimony . . . is not only relevant, but reliable.” *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993)). In particular, FED. R. EVID. 702 sets forth certain reliability requirements for expert testimony that prohibits testimony as to “scientific, technical, or other specialized knowledge” unless offered by a “witness qualified as an expert by knowledge, skill, experience training, or education” and “(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods and (3) the witness has applied the principles and methods reliably to the facts of the case.” *JGR, Inc.*, 370 F.3d at 525 n.4 (citing FED. R. EVID. 702). In addition to the reliability requirements set forth in FED. R. EVID. 702, the United States Supreme Court has articulated that the following considerations also “bear on” a judge’s gatekeeping determination as to expert testimony:

- (i) whether a “theory or technique can be and has been tested;”
- (ii) “whether it has been subjected to peer review and publication;”
- (iii) whether, in respect to a particular technique, there is a high “known or potential rate of error” and whether there are “standards controlling the technique’s operation;” and
- (iv) whether the theory or technique enjoys “general acceptance” within a “relevant scientific community.”

See Kumho Tire Co., Ltd., 526 U.S. at 149-50 (citing *Daubert*, 509 U.S. at 592-94.)

5. The Federal Rules of Civil Procedure aid a trial judge’s gatekeeping determination by requiring heightened disclosure requirements for expert testimony. FED. R.

within the scope of Rule 702 . . . By channeling testimony that is actually expert testimony to Rule 702, the amendment also ensures that a party will not evade the expert witness disclosure requirements set forth in Fed.R.Civ.P. 26 and Fed.R.Crim.P. 16 by simply calling an expert witness in the guise of a layperson.”

Civ. P. 26(a)(2) requires that a party discloses expert witnesses and evidence at the outset of the case, and that such disclosure be “accompanied by a written report – prepared and signed by the witness” FED. R. CIV. P. 26(a)(2). An expert’s written report must contain, *inter alia*, “a complete statement of all opinions the witness will express and the basis and reasons for them,” “facts or data considered by the witness,” and the “witness’s qualifications.” FED. R. CIV. P. 26(a)(2)(B).³

6. The calculation of pension benefits, which includes “complicated tasks such as calculating life-expectancy, assessing amortization rates, ... discounting to present value, or calculating earnings potential in a pension portfolio,” is of a “specialized or technical nature” and therefore requires expert testimony. *See Donlin v. Philips Lighting N.A. Corp.*, 581 F.3d 73, 83-84 (3d Cir. 2009) (finding trial court abused discretion in allowing employee’s “lay” testimony as to the “pension component of her back pay damages” where calculation required forward-looking speculation for which employee lacked requisite educational background, training and experience with retirement benefits).

7. Within the Sixth Circuit, admission of such specialized or technical opinion testimony as “lay” testimony is an abuse of discretion that mandates reversal. *JGR, Inc.*, 370

³ FED. R. CIV. P. 26(a)(2)(B) sets forth that an expert report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness’s qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

F.3d at 525 n.4 (reversing trial court judgment based upon trial court's abuse of discretion in admitting accountant's "lay" testimony as to company's lost profits and lost business value where accountant was never employed by company and instead relied upon information that he received from a company officer that accountant did not independently verify).

8. The City's representations regarding the magnitude of its unfunded pension liability are not reliable in that they were based, in part, upon calculations and assumptions by persons without actuarial expertise and, in any event, were made without conducting an independent actuarial analysis. Charles Moore testified that he is a certified public accountant with no formal training in actuarial areas. Transcript of Deposition of Charles Moore, dated September 18, 2013, Case No. 13-53846 ("Moore Dep."), at 22:2-7; 65:4-11. Mr. Moore further testified that, as of his September 18, 2013 deposition, the City ***had not completed an actuarial valuation*** placing the City's unfunded pension liability at \$3.5 billion and did not have complete information to undertake such an analysis. Moore Dep. at 61:18-62:7. Glenn Bowen of Milliman, the City's actuary, clarified that the figures that the City has cited for high-end estimates of unfunded pension liability were predicated only on "rough guesses." Transcript of Deposition of Glenn Bowen, dated September 24, 2013, Case No. 13-53846 ("Bowen Dep."), at 146:8-18. By way of example, the 7.0 percent rate of return referenced in Mr. Moore's declaration submitted in support of the City's Chapter 9 Eligibility, was not an actuarial estimate, rather, it was only provided for "illustrative purposes." Moore Dep. at 62:25-63-6. Glenn Bowen further testified that, as of September 24, 2013, Milliman had not been able to replicate the data and analysis it received from the actuary for the City's General Retirement Systems. Bowen Dep. at 205:7-206:11.

9. Absent sufficient academic background and training, and having failed to verify the information relied upon in making its calculations, neither Charles Moore nor any other individual designated by the City to testify should be permitted to offer an opinion or conclusion concerning the quantum of the City's underfunding of pension liabilities.

II. CONCLUSION

10. For the foregoing reasons, the Committee respectfully requests that the Court enter an order, in the form attached hereto as Exhibit 1, precluding Charles Moore or any other individual designated by the City to testify at the Eligibility Hearing from offering an opinion or conclusion as to the City's pension liabilities.

Dated: October 21, 2013

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Counsel for the Official Committee of Retirees

EXHIBIT 1

Proposed Order

**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF MICHIGAN
 SOUTHERN DIVISION**

-----X	:	Chapter 9
In re	:	
	:	Case No. 13-53846
CITY OF DETROIT, MICHIGAN,	:	
	:	Hon. Steven W. Rhodes
Debtor.	:	
	:	
	:	
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**ORDER GRANTING MOTION *IN LIMINE* TO EXCLUDE
 OPINIONS OR CONCLUSIONS AS TO THE CITY OF
 DETROIT, MICHIGAN'S UNDERFUNDING OF PENSION LIABILITY**

This matter having come before the Court on the motion (the "Motion") of the Official Committee of Retirees, for entry of an order excluding opinions or conclusions offered by Charles Moore or any other individual designated by the City of Detroit, Michigan to testify at the October 23 eligibility hearing (the "Hearing") as to the City's underfunding of pension liabilities;

IT IS HEREBY ORDERED that the Motion is granted.

IT IS FURTHER ORDERED that Charles Moore or any other individual designated by the City of Detroit, Michigan to testify at the Hearing is precluded from offering an opinion or conclusion as to the City's underfunding of pension liabilities.

Dated: October __, 2013

Steven Rhodes
 United States Bankruptcy Judge

EXHIBIT 2

Notice of Motion and Opportunity to Object

**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
	:	
	:	Expedited Consideration
	:	Requested
	:	
	:	
	-X	

**NOTICE OF THE OFFICIAL COMMITTEE OF RETIREE’S MOTION
IN LIMINE TO EXCLUDE OPINIONS OR CONCLUSIONS AS TO THE
CITY OF DETROIT, MICHIGAN’S UNDERFUNDING OF PENSION LIABILITY**

PLEASE TAKE NOTICE that on October 21, 2013, the Official Committee of Retirees, filed its *Motion in Limine to Exclude Opinions or Conclusions As to the City of Detroit, Michigan’s Underfunding of Pension Liability* (the “*Motion in Limine*”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order excluding Charles Moore or any other individual designated by the City of Detroit, Michigan (the “City”) from offering opinions or conclusions as to the City’s underfunding of pension liabilities at the Eligibility hearing, set to commence in the Bankruptcy Court on October 23, 2013.

PLEASE TAKE FURTHER NOTICE that **your rights may be affected** by the relief sought in the *Motion in Limine*. **You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.**

PLEASE TAKE FURTHER NOTICE that if you do not want the Bankruptcy Court to grant the Official Committee of Retiree’s *Motion in Limine*, or you want the Bankruptcy Court to consider your views on the *Motion in Limine*, by **October 22, 2013 at 4:00 p.m. (EDT)** you or your attorney must:

1. File a written objection or response to the *Motion in Limine* explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court’s electronic case filing system in accordance with the Local Rules of the Bankruptcy Court.
2. If an objection or response is timely filed and served, the clerk will schedule a

hearing on the Motion *in Limine* and you will be served with a notice of the date, time and location of the hearing.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take steps, the court may decide that you do not oppose the relief sought in the *Motion in Limine* and may enter an order granting such relief.

Dated: October 21, 2013

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EXHIBIT 3

**Brief
(Not Applicable)**

EXHIBIT 4

Certificate of Service

**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	:	

CERTIFICATE OF SERVICE

I, Claude D. Montgomery, hereby certify that service of the Motion *in Limine* of the Official Committee of Retirees to Exclude Opinions or Conclusions as to the City of Detroit, Michigan’s Underfunding of Pension Liability was filed and served via the Court’s electronic case filing and noticing system on October 21, 2013.

/s/ Claude D. Montgomery

EXHIBIT 5

**Affidavits
(Not Applicable)**

EXHIBIT 6

Excerpts from Transcripts of Depositions of Charles Moore and Glenn Bowen

Page 1	1 IN THE UNITED STATES BANKRUPTCY COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 In re Chapter 9 6 CITY OF DETROIT, MICHIGAN, Case No. 13-53846 7 Debtor. Hon. Steven W. Rhodes 8 _____/ 9 10 DEPONENT: CHARLES M. MOORE 11 DATE: Wednesday, September 18, 2013 12 TIME: 10:02 a.m. 13 LOCATION: MILLER CANFIELD PADDOCK & STONE PLC 14 150 West Jefferson, Suite 2500 15 Detroit, Michigan 16 REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267 17 18 19 20 21 22 23 24 25	Page 3
Page 2	1 APPEARANCES: 2 3 JONES DAY 4 By: Evan Miller 5 51 Louisiana Avenue, NW 6 Washington, D.C. 20001.2113 7 202.879.3939 8 -and- 9 MILLER CANFIELD PADDOCK AND STONE PLC 10 By: Jonathan S. Green 11 150 West Jefferson, Suite 2500 12 Detroit, MI 48226.4415 13 313.496.7997 14 Appearing on behalf of the Debtor 15 16 DENTONS US LLP 17 By: Arthur H. Ruegger 18 1221 Avenue of the Americas 19 New York, NY 10020.1089 20 212.768.6881 21 Appearing on behalf of Retirees Committee 22 23 24 25	Page 4

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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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1 A. The rate of payouts is another area where the
2 actuaries make assumptions as to what benefits will be
3 paid in what periods and to the extent that those are
4 underestimated, that can impact the funded position as
5 well. Tying into previous assumptions that I had
6 indicated.

7 Q. So is it -- is it your position that the City views
8 the actuarial payout assumptions as understating
9 unfunded liabilities?

10 MR. MILLER: Object to form. Go ahead.

11 A. As an example, Mr. Ruegger, the actuarial valuation
12 assumes certain payouts. The actual payouts in the
13 most recent completed year of plan assets were
14 substantially higher than what was anticipated prior
15 to that valuation being done and so at a minimum that
16 would indicate that there were more assets that were
17 paid out than what was assumed by the actuary.

18 Q. Other than the assumptions and methods you've
19 identified, are there any other assumptions and
20 methods that to your understanding the City views as
21 understating the systems' unfunded liabilities?

22 A. The City and most importantly its actuary has not
23 completed its analysis on the unfunded position. The
24 City is trying to undertake a process to actually
25 develop a more concrete valuation model on its own so

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1 it's been relying on the valuation model of the
2 pension systems' actuary. As such we have focused on
3 a few items here, but until the City completes its
4 analysis and completes its own actuarial valuation,
5 neither the City nor its actuary nor I would be able
6 to say what all the assumptions are that could be used
7 to either overstate or understate the funded position.

8 Q. Very well.

9 Let's turn to one of the assumptions that
10 you address in your declaration and specifically in
11 paragraph 11 you talk about the projected net rate of
12 return. The 7.0 percent or 7.25 percent figure, do
13 you see that in paragraph 11?

14 A. Yes, sir.

15 Q. Those were not figures that were recommended by a
16 particular actuary; were they?

17 A. The 7 percent is actually higher than the rate that
18 Milliman, the City's actuary, had originally put
19 forward, which in its view would result -- the rate at
20 which there was a fifty-fifty chance of achieving that
21 rate.

22 MR. RUEGGER: All right. I'm going to move
23 to strike, because with all respect that was not
24 responsive to my question, Mr. Moore.

25 Q. I understand Milliman has prepared a variety of

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1 letters and reports and we'll take those up with the
2 Milliman folks, but I'm trying now to focus on the 7.0
3 figure. That was a figure selected by the City for
4 illustrative purposes; correct?

5 MR. MILLER: Object to form.

6 A. Yes.

7 Q. And that was not the specific figure or a specific
8 figure recommended by Milliman or any other actuary;
9 correct?

10 A. I can't speak to any other actuary, but going back to
11 the previous question, yes, 7 percent was used for
12 illustrative purposes.

13 Q. The -- and the Milliman analysis that's been
14 undertaken so far, to your understanding, that hasn't
15 been the product of work on the actual data for the
16 systems; has it?

17 MR. MILLER: Object to form.

18 MR. RUEGGER: Okay, that was a poor
19 question, I'll try again. Actually withdrawn.

20 Q. Related to the projected net return, in paragraph 15
21 of your declaration, I believe it's 15, you have a --
22 we'll get to it.

23 Let's talk now about the concept of
24 smoothing that you reference in paragraph 12. In your
25 understanding smoothing is a common calculation used

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1 by actuaries related to pension projections; correct?

2 A. I would clarify your question from the standpoint of
3 typically pension boards will decide on the policies
4 and then actuaries will perform calculations based on
5 the policies that a board will decide to use.

6 Q. But smoothing is a common practice for actuaries; is
7 it not?

8 MR. MILLER: Object to form.

9 A. Based on my experience, yes, there is a number of
10 plans that I've looked at that involve a smoothing.

11 Q. And would you agree that smoothing is a method to
12 manage the effect of investment volatility on
13 contributions and to provide a more consistent measure
14 of plan funding over time?

15 MR. MILLER: Object to form.

16 A. Generally speaking, yes. What's important to note is
17 that smoothing is a concept, and I agree with the
18 purpose of that concept. The number of years over
19 which a pension system may smooth can differ
20 significantly.

21 Q. Based on the -- well, withdrawn.

22 To your knowledge is smoothing generally
23 consistent with the actuarial standards of practice?

24 MR. MILLER: Object to form.

25 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

Page 1

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
 12 DEPOSITION of GLENN DAVID BOWEN
 13 Washington, D.C.
 14 Tuesday, September 24, 2013
 15
 16
 17
 18 Pages: 1 - 213
 19 Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR,
 20 CCR, CLR, RSA
 21 Assignment Number: 472421
 22 File Number: 105824

Page 2

1 September 24, 2013
 2 9:47 a.m.
 3
 4
 5 Deposition of GLENN DAVID BOWEN held
 6 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.
 17 Sebo, Registered Merit Reporter, Certified Real-Time
 18 Reporter, Registered Professional Reporter,
 19 Certified Shorthand Reporter, Certified Court
 20 Reporter, Certified LiveNote Reporter, Real-Time
 21 Systems Administrator and a Notary Public in and for
 22 the District of Columbia.

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<p style="text-align: right;">Page 145</p> <p>1 this development, that there would be no further 2 transfers from the DB plan assets into -- into 3 individual accounts; thus no calculation was 4 needed. 5 Q. On the Page 3 we see Rule-of-Thumb 6 Adjustments. 7 Do you see that? 8 A. I do. 9 Q. And on the -- the last adjustment, the 10 pages that -- Total actuarial accrued liability 11 decreases by 10 percent due to the plan freeze and 12 the cancellation of all future COLAs. 13 Do you see that? 14 A. I do. 15 Q. And what is the source of 16 the 10 percent number that you used there? 17 A. It is due to the plan freeze and the 18 cancellation of COLAs, so we would have done two 19 separate calculations or two separate estimates to 20 determine the 10 percent overall estimate for those 21 plan changes and the plan freeze. 22 I believe we discussed this before, but</p>	<p style="text-align: right;">Page 147</p> <p>1 and then one for the COLA cancellation. 2 Q. The rule-of-thumb adjustment not above 3 that, but two above that says that Total benefit 4 payments increased by 4.25 percent annually in the 5 baseline scenario and by 2.17 percent in 6 Scenario 2. 7 And how did you derive those estimates? 8 A. The total benefit payment increased. 9 And to put this in chronology, we had discussed 10 earlier today that Milliman had calculated benefit 11 payments from Gabriel, Roeder projections when they 12 were available. At this time, they weren't. 13 The 4.25 percent was an estimate based 14 upon historical growth and benefit payments as new 15 members retired. The 2.17 lower estimate for 16 Scenario 2 was adjusted downward to reflect a plan 17 freeze which generates future lower benefit 18 payments and the cancellation of cost-of-living 19 increases as well. 20 Q. When you say "adjusted downward," in 21 this instance, is it a -- is it a -- an estimate 22 that is based on a -- simply the judgment of the</p>
<p style="text-align: right;">Page 146</p> <p>1 it was based upon a lower expectation of future 2 benefits, which generates a lower liability. And 3 then the cancellation of future COLAs generates 4 lower future benefit payments as well. 5 So in using information we were able to 6 draw from the valuation reports, we prepared 7 estimates of those two topics. 8 Q. Are these the estimates that you, in an 9 earlier document, called "guesses"? 10 A. I'm not sure which -- I mean, you can 11 put that particular document back in front of me. 12 I've used the phrase "rough guess"; I've used the 13 phrase "estimate" -- 14 Q. Rough guess. 15 A. Rules of thumb, I would say, by 16 definition, are rough guesses. They're defined to 17 give us a proxy of what we -- the result we would 18 arrive at had we done more detailed modeling. 19 Q. And you have a workpaper showing this 20 calculation? 21 A. Yes. We would have developed two 22 calculations, one for the impact of the plan freeze</p>	<p style="text-align: right;">Page 148</p> <p>1 actuaries? Is that -- is that what this is? Or do 2 you have specific data that you point to to take 3 that number down from the baseline scenario? 4 A. We -- we do not have a specific full 5 valuation run where we've modeled the overall 6 group, each on an individual basis, to develop 7 these numbers. 8 The 4.25, as I stated, was based upon 9 trailing growth and benefit payments. The 2.17 10 would have been adjusted based upon what 11 information was available in the valuation report, 12 and it reflects an adjustment for the plan freeze 13 and for the cancellation of future COLAs, so, 14 actually, two adjustments to get the 4.25 to the 15 2.17. 16 Q. Let me see. Just a few more of these 17 letters, Mr. Bowen. 18 - - - 19 (Whereupon, a letter with attachment 20 was marked, for identification 21 purposes, as Bowen Deposition 22 Exhibit Number 11.)</p>

<p style="text-align: right;">Page Page 205</p> <p>1 pension task force.</p> <p>2 Q. And you -- you had not -- no idea why</p> <p>3 the pension task force asked for this?</p> <p>4 A. The request came to us from the pension</p> <p>5 task force, and I suppose they wanted an answer to</p> <p>6 this question.</p> <p>7 Q. You said earlier that you're in the</p> <p>8 process of doing, I think you used the word,</p> <p>9 "replication"?</p> <p>10 A. That is correct.</p> <p>11 Q. And can you just tell me what -- what a</p> <p>12 replication is?</p> <p>13 A. We gather census data from, in this</p> <p>14 case, the actuary, who has taken raw system data,</p> <p>15 edited it for -- edited it for use in their</p> <p>16 valuation system. We take that data, we take our</p> <p>17 understanding of the benefit provisions that exist</p> <p>18 in the plan and apply the actuarial assumptions and</p> <p>19 methods used by the system actuary to try to see if</p> <p>20 we can develop the same results based on the same</p> <p>21 inputs.</p> <p>22 Q. So is it, like, proofreading the work</p>	<p style="text-align: right;">Page Page 207</p> <p>1 Q. Do you know why a replication is being</p> <p>2 done by Milliman at this time?</p> <p>3 A. We were requested to replicate by the</p> <p>4 pension task force.</p> <p>5 Q. Do you know what the projected costs of</p> <p>6 the replication is going to be?</p> <p>7 A. I don't know off the top of my head.</p> <p>8 Q. Okay.</p> <p>9 MR. SHERWOOD: Mr. Bowen, I think</p> <p>10 that's everything. And I thank you for your time</p> <p>11 today. I have no further questions.</p> <p>12 MR. MILLER: Thank you.</p> <p>13 MR. MUTH: We're done?</p> <p>14 MR. MILLER: Okay.</p> <p>15 MR. CIANTRA: Thank you.</p> <p>16 (Whereupon, at 3:38 p.m., the</p> <p>17 deposition was concluded.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page Page 206</p> <p>1 of the system actuary?</p> <p>2 A. I'm not sure if "proofreading" is the</p> <p>3 right word, but I think replication -- we're trying</p> <p>4 to replicate -- we're trying to do what they did</p> <p>5 with the materials they had.</p> <p>6 Q. And where does that stand? Is that</p> <p>7 almost done?</p> <p>8 A. Well, it is in progress. We have done</p> <p>9 some programming. We're doing internal checking</p> <p>10 and peer review. And as we talked about earlier</p> <p>11 today, we have outstanding questions.</p> <p>12 Q. I don't think we talked about that on</p> <p>13 the record.</p> <p>14 But --</p> <p>15 A. Okay.</p> <p>16 Q. -- do you have -- do you have an idea</p> <p>17 when the replication will be done?</p> <p>18 A. Actually, I believe we did speak about</p> <p>19 this on the record earlier, and I don't believe we</p> <p>20 have an indication when we'll be receiving answers</p> <p>21 from the system or system actuary. So it's very</p> <p>22 tough for me to give you an ETA.</p>	<p style="text-align: right;">Page Page 208</p> <p>1 CERTIFICATE</p> <p>2 DISTRICT OF COLUMBIA:</p> <p>3 I, Cindy L. Sebo, a Notary Public within</p> <p>4 and for the Jurisdiction aforesaid, do hereby</p> <p>5 certify that the foregoing deposition was taken</p> <p>6 before me, pursuant to notice, at the time and place</p> <p>7 indicated; that said deponent was by me duly sworn</p> <p>8 to tell the truth, the whole truth, and nothing but</p> <p>9 the truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition is</p> <p>13 a true record of the testimony given by the witness;</p> <p>14 and that I am neither of counsel nor kin to any</p> <p>15 party in said action, nor interested in the outcome</p> <p>16 thereof.</p> <p>17</p> <p>18 </p> <p>19</p> <p>20</p> <p>21 Cindy L. Sebo, RMR, CRR, RPR, CSR,</p> <p>22 <small>CHINA, 3480 STATE OF CALIFORNIA, 1998 Public Notary Commission Expires April 14, 2015</small> CCR, CLR, RSA, Notary Public</p>