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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN THE MATTER OF, Case No. 13-53846  
Detroit, Michigan  
CITY OF DETROIT, MI October 29, 2013  
\_\_\_\_\_/ 9:00 a.m.

IN RE: ELIGIBILITY TRIAL  
BEFORE THE HONORABLE STEVEN W. RHODES  
TRANSCRIPT ORDERED BY: PAUL HAGE, ESQ.

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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WITNESSES FOR            Cross  
THE CITY:

KEVYN ORR            22,69,115,  
                                 131,166,171

EXHIBITS:

ID    ADM

UAWEX619 Chain of Emails  
UAWEX620 Email

77    78  
81    81

1 (Court in Session)

2 THE CLERK: All rise. Court is in session. Please  
3 be seated. Case number 13-53846, City of Detroit, Michigan.

4 THE COURT: Good morning. Everyone appears to be  
5 here. Sir.

6 MR. CIANTRA: Good morning, Your Honor. If I may  
7 proceed.

8 THE COURT: Yes.

9 MR. CIANTRA: Thank you. Thomas Ciantra, Cohen,  
10 Weiss, and Simon, LLP for the UAW.

11 And I rise with respect to the motion I made during the  
12 examination of Mr. Moore to exclude one part of his testimony.  
13 And that is the portion of his testimony where he related a  
14 conversation in the presence of counsel with respect to the  
15 calculation of the unfunded liability of the Detroit City  
16 Retirement Plans.

17 And I'm going to make a -- a brief argument with respect  
18 to that. Cited a couple of cases. And relied on some  
19 deposition excerpts that I'll read to the Court that I've  
20 shared with counsel for the city earlier this morning.

21 We start with some of the basics. Obviously under the  
22 federal rules, discovery should be open and robust. It's  
23 intended to get at both the facts, to develop a factual  
24 record, to present to the Trier of Fact. And as well to

1 enable the parties to learn and understand the positions and  
2 contentions of the other side. That's -- that's what  
3 discovery is supposed to get at.

4 And the case law as it is developed, is clear, at least  
5 with respect to one thing which is that if a party asserts a  
6 privilege, whether it be attorney/client, the Fifth Amendment,  
7 spousal or something else, it cannot be both used as a shield  
8 against disclosure to the adversary. And then effectively as  
9 a sword through selective later disclosure.

10 And that is -- is really a matter of fundamental --  
11 fundamental fairness in the -- in the adversarial process.  
12 And the case law as I said has applied this principal in --  
13 with respect to the attorney/client privilege. It's applied  
14 it with respect to the Fifth Amendment privilege against self  
15 incrimination which obviously carries with it other  
16 constitutional values that aren't -- aren't present with  
17 respect to the attorney/client privilege.

18 But -- and the basic principle that I think that  
19 developed in that case law is that if a party is -- is going  
20 to assert privilege with respect to a particular subject  
21 matter, it has to be prepared to accept the consequence that  
22 the -- the universe of proof that may -- it may introduce with  
23 respect to that is going to be -- is going to be limited by  
24 the -- by the extent to which is has asserted the privilege.

1 that case law has developed most clearly in cases involving  
2 the Fifth Amendment privilege and I would point the Court to  
3 -- to -- two District Court decisions. One by Judge Gadola,  
4 it's a forfeiture case, U.S. v \$60,000. That is reported at  
5 763 F Supp 909. And a franchise case, a decision by Judge  
6 Rosen, Dunkin Doughnuts v Taseski. That's 47 F Supp 2d 867.

7 And in both of those cases we had parties who asserted  
8 privilege in discovery to limit inquiry and then were  
9 precluded once discovery had closed and summary judgment and  
10 trial from then selectively waiving privilege to -- to either  
11 try to defeat summary judgment or -- or defeat the claims of  
12 -- of the -- their adversary.

13 In the -- in the Dunkin Doughnuts case it was evidence  
14 with respect to sales levels under a franchise agreement and  
15 the -- the franchisee took the Fifth Amendment apparently  
16 because of the fraud allegations. In the -- the forfeiture  
17 case, it was someone whose property was seized at the airport  
18 after a, you know, dog identified it as positive for drugs.

19 In both of those cases discovery had closed. And -- and  
20 the Court precluded the party that had asserted privilege from  
21 then asserting by way of affidavit or other discovery  
22 material, evidence to try to defeat summary judgment on the  
23 principle that once the privilege had been asserted and  
24 discovery had closed, the -- the adversary was precluded from  
25 effectively from -- from rebutting it and the -- the party



1 that had asserted privilege had to accept the -- the  
2 consequences of that assertion.

3 Now here, the city largely shielded almost entirely from  
4 disclosure, the deliberations of the pension task force that  
5 there's been testimony about. That task force worked with  
6 actuaries at the Milliman firm that the -- the city had  
7 retained and it had the -- those actuaries undertake various  
8 analyses with respect to the -- the funded status of the plan  
9 and various alternatives and issues related to the plans that  
10 the -- that the city was investigating.

11 And Mr. Moore's testimony with respect to that concerned  
12 some of the work of that task force with respect to its -- the  
13 -- the actuary's calculation based on the -- the retirement  
14 system's actuary's work of what the unfunded liability of the  
15 plan was.

16 But the -- the city did not in discovery permit the  
17 objecting parties to take -- permit inquiry with respect to  
18 the deliberations of the task force. And in addition to the  
19 excerpt that -- from Mr. Moore's deposition that we recited on  
20 Thursday, which I will concede was not the crispest assertion  
21 of privilege.

22 That issue -- that tactic was clearly pursued in the  
23 deposition of the -- the actuary himself, Mr. Bowen. And I  
24 would point to two instances during my deposition of Mr. Bowen

1 retiree committee.

2 Let's talk about the -- the first one. There is an  
3 issue, Your Honor, with respect to remedies that the emergency  
4 manager has under Public Act 436. In the event that there is  
5 a certain level of under funding in the pension system, the  
6 emergency manager can take certain remedies with respect to  
7 the governance of the system.

8 And the actuaries were asked -- tasked to compute the  
9 under funding of the system lining up the provisions of this  
10 statute. The one question that became obvious was if the  
11 actuaries and the emergency manager believed that the under  
12 funding of the system permitted them to take remedies with  
13 respect to the governance of the system, essentially replacing  
14 the trustees, why had they not done so. And what does that  
15 tell us with respect to their confidence in the -- in the  
16 calculation of the under funding.

17 So with respect to that issue, I questioned the actuary  
18 with respect to the discussions of the task force where that  
19 assignment was discussed, the assignment to calculate the --  
20 the liabilities of the -- unfunded liabilities of the pension  
21 plans in light of the -- the statutory provisions.

22 And this appears beginning at Page 53 of Mr. Bowen's  
23 deposition. And I'm -- I'm using the manuscript version of  
24 the transcript. And it continues a bit further. And I'll --  
25 let me read from that -- from that transcript.

1 This is my question. The pension task force conference  
2 call that you -- that you discussed where this assignment was  
3 given to you, who participated in that? Was there an attorney  
4 on the line that participated in that call? Answer, yes,  
5 there was.

6 Okay, who was that? That would have been Evan Miller  
7 from Jones, Day.

8 All right. Did Mr. Miller give you the instruction with  
9 respect to this particular assignment? I don't recall which  
10 particular party on the pension task force asked the direct  
11 question to do this now.

12 Next question. Okay. Was there a reason given for why  
13 you were being asked to do this? An objection is raised at  
14 that point. Mr. Miller, and again, to the extent that any  
15 discussion that you had with members of the task force  
16 relating to this assignment involved counsel for the city, I  
17 would instruct you not to respond on the grounds of  
18 attorney/client privilege.

19 And then I -- then I questioned. So you can respond to  
20 that question consistent with your counsel's direction or the  
21 city -- the city counsel -- city's counsel's direction.  
22 Answer -- or the witness, I have no response.

23 Question, yes. But for Mr. Miller's instruction would  
24 you answer the question? Answer, I'm not going to disobey the  
25 attorney for my client.

1 Continue. So I assume the answer to that is yes, other  
2 than his instruction you would answer the question. The  
3 witness, answer, yes. That's -- that's a very difficult  
4 hypothetical because that instruction exists and I plan to  
5 follow the advice -- the instruction of my client's attorney.  
6 And then I respond, I think that's clear.

7 So at that point our inquiry with respect to the reasons  
8 for that calculation and that subject matter were clearly --  
9 were clearly cut off. Similarly, we sought to question the  
10 witness with respect to the -- their analysis of the costs of  
11 a defined contribution plan that they were proposing to  
12 implement as a follow on to the -- the defined benefit plan  
13 that the city contends it will no longer fund.

14 And there again at Page 77 of the transcript, I sought to  
15 question them with respect to where that 10% number -- how  
16 that 10% number was derived. And I asked beginning at Lines  
17 19 on Page 77.

18 And where -- how was that 10% number arrived at? Answer,  
19 it was provided to us by the pension task force.

20 Was there or were there discussions of using different --  
21 a different percentage of pay? Mr. Miller, wait. To the  
22 extent that those discussions if any involved counsel for the  
23 City of Detroit, I would instruct the witness not to answer  
24 those on the grounds of attorney/client privilege.

1 witness, no answer. Because of the direction of the city  
2 counsel -- the city's counsel? Answer, that's correct.

3 So at that point, Your Honor, it was pretty clear at  
4 least to me, that there was -- the city was not going to  
5 permit the actuary to testify with respect to any of the  
6 deliberations of the task force with respect to the  
7 calculations that he had made.

8 And as a result, those areas were effectively blocked off  
9 from our inquiry, both by deposition and -- and as well with  
10 respect to -- to documents. So at this point the city of  
11 course has not -- did not call the actuary to testify. They  
12 didn't put in an -- an expert report with respect to these  
13 calculations.

14 And the -- the evidence with respect to the Milliman  
15 actuary's calculations has come in through the report of Mr.  
16 Moore. That was privileged. It was made in the presence of  
17 an attorney as to which we would submit that subject was not  
18 permitted on account of their assertion of privilege, our  
19 ability to take discovery with respect to that.

20 So we would ask that just that question and answer,  
21 that's the only remedy that we are asking, be stricken from  
22 the record because it's -- it is selective use of the  
23 privilege that is simply inconsistent with notions of  
24 fundamental fairness.

1 Mr. Moore's testimony and can you identify the pages and lines  
2 that you want stricken?

3 MR. CIANTRA: I do not at this point have the  
4 official transcript. You know, I have the unofficial daily,  
5 but certainly I could provide that, Your Honor. Once -- well,  
6 I don't believe that it -- I don't believe that's been made  
7 available to us as of yet.

8 THE COURT: Okay. So what was the precise question  
9 and answer that you want stricken?

10 MR. CIANTRA: The precise question and answer that I  
11 would -- would ask that the Court strike, is the question  
12 where he report -- he was asked to report on the -- the  
13 calculation by the actuary of the -- the under funding of the  
14 city's retirement system. And he testified that the actuary  
15 had taken the calculations of the systems actuaries, revised a  
16 earnings assumption --

17 THE COURT: Right.

18 MR. CIANTRA: -- and instead of using the actuarial  
19 value of the assets, had used a market value and that that  
20 sort of in total gave the --

21 THE COURT: He adjusted the discount rate.

22 MR. CIANTRA: He adjusted -- well, there are two  
23 things. He adjusted the discount rate and then he used a  
24 market valuation of the assets --

25 THE COURT: Right.

1 MR. CIANTRA: -- as of the date and time rather than  
2 the actuarial value.

3 THE COURT: All right. Thank you, sir.

4 MR. STEWART: Geoffrey -- Geoffrey Stewart of Jones,  
5 Day for the city, Your Honor.

6 A couple of things. First of all, just to put things in  
7 perspective, the testimony we're talking about Mr. Ciantra  
8 just described, and let me make a couple of points.

9 First of all, in his deposition Mr. Moore answered every  
10 single question he was asked but one. And the one was, what  
11 did you discuss with your lawyer in preparing for your  
12 deposition. So there was no instruction to Mr. Moore to not  
13 answer any substantive question.

14 Moreover, he was asked about and he did testify about at  
15 no short length, this 3.5 billion dollar number. And I guess  
16 -- I think it was by Mr. Ciantra himself -- no, it was by Mr.  
17 Ruegger. And it's -- that questioning starts on Page 62 of  
18 his deposition and runs for at least five more pages.

19 So this is a matter that he was not instructed on. He  
20 was asked -- he was asked about and he did testify about. So  
21 this is not a matter where any inquiry was blocked. And I  
22 think I said the pages but if not, I'll repeat myself. It's  
23 62 through 67 of Mr. Moore's deposition.

24 So there is no sword/shield issue going on with respect

25 to Mr. Moore if only because of the simple expedient that only  
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1 one question was he instructed to not answer and it was one  
2 that no one I think would challenge. It's certainly an  
3 instruction objectors have given when their depositions were  
4 taken. And as I just said, he was allowed to answer questions  
5 on this very subject.

6 Mr. Ciantra then goes to a different witness, one who has  
7 not been called to testify here today, Mr. Bowen who is an  
8 actuary. And he did -- Mr. Ciantra kindly gave me the  
9 deposition cites in the hall this morning so I did have a  
10 chance to look at them.

11 There were two different topics and I agree, and I think  
12 he -- Mr. Ciantra has accurately described them of what Mr.  
13 Bowen was asked about that drew instructions. The first had  
14 do with a possibility under PA436 that if pension assets fell  
15 below 80%, the emergency manager might have the right to  
16 replace the pension plan trustees with trustees of his own  
17 choosing.

18 The question there wasn't -- and that question, that  
19 topic was certainly raised. The instruction had to do with  
20 how the subject came up in a meeting.

21 There was no instructions against and there were -- there  
22 was, I ought to say, fairly significant testimony by Mr. Bowen  
23 about Milliman, that's his firm. Of Milliman's calculations  
24 of whether or not the plan was under funded at the 80%  
25 threshold.



1 Now let me grab the pages on his deposition and we can  
2 provide that as well to the Court. That -- after the  
3 instruction, counsel then asked the question, well, sir, what  
4 did you do? And there were no instructions. That starts on  
5 Page 55 and goes at least to Page 62 of Bowen's deposition.

6 So once again I'd submit two things. One is this is not  
7 even the same subject as the testimony they would like to  
8 strike. It's not the same witness. And the witness they did  
9 question did answer all of their questions about the threshold  
10 funding and what he did among other things is to say actually  
11 if I look at your own actuary, you're so far below 80%, it's  
12 -- it's not even a real issue. And in the event by the way as  
13 we all know, the emergency manager has not replaced any  
14 trustees of the pension plan.

15 So the second one is -- is this. Milliman was asked to  
16 prepare a series of scenarios of what numbers would look like  
17 if the plans were changed to define contribution from defined  
18 benefit. And then there were various assumptions.

19 That under this assumption the numbers came out this way,  
20 and under that assumption, they came out a different way. Mr.  
21 Bowen was -- and once again obviously this is not the subject  
22 Mr. Moore testified about, this is a different subject.

23 Mr. Bowen was asked about one of these scenarios called  
24 scenario 2 where one of the assumptions came from, namely an  
25 assumption of 10% of pay as the defined contribution. And

1 counsel said, to the extent those discussions involve counsel  
2 for the city, I'd instruct you not to answer.

3 And as Mr. Ciantra quoted, the witness did not answer.  
4 However, when they went to what the scenarios were, how things  
5 were calculated, and what was done, the witness testified  
6 quite fully. His testimony started on Page 79 and continued  
7 for several pages thereafter where he described how the  
8 scenarios were run, how he used the numbers, and what results  
9 they came up with.

10 It is not the case that at that point anyone thought that  
11 there was going to be total blocking of testimony about the  
12 pension task force. And in fact Mr. Ciantra on Page 83 asked  
13 a question. Other than these, the several letters that we've  
14 gone through has Milliman analyzed any other scenarios on  
15 behalf of the pension task force? And there was an answer to  
16 that.

17 So, just to be clear, our position is there were no --  
18 there has not been a sword or shield issue. The instructions  
19 given are two in the Bowen deposition, none in the Moore  
20 deposition.

21 They do not involve the subject of Mr. Moore's testimony  
22 on the 3.5 billion dollars. And in fact he was questioned  
23 about that at his deposition and he did answer those  
24 questions.

1 inquiry into the pension task force. Two instances and only  
2 two, was there an instruction. And in that case, in both  
3 cases, counsel then proceeded with his questioning and got  
4 answers to the substantive questions and in fact went on for a  
5 number of pages in asking questions and getting answers.

6 And finally as I've said, these subjects do not relate to  
7 the 3.5 million. Anyway, they're extraneous. And so I don't  
8 think there has been any sword or shield used at all, Your  
9 Honor. Thank you.

10 THE COURT: All right. May I have the Moore and  
11 Bowen deposition transcripts, please?

12 MR. STEWART: Your Honor, I could pass you my copy  
13 now or have a clean copy delivered later today.

14 MR. CIANTRA: I have clean --

15 THE COURT: Do you have them?

16 MR. CIANTRA: I have clean copies, Your Honor.

17 THE COURT: All right. May I -- may I have your  
18 copies then? Thank you.

19 MR. CIANTRA: Yes, the whole transcript. I'll just  
20 double check to make sure, I didn't write on it. May I  
21 approach, Your Honor?

22 THE COURT: Please.

23 MR. CIANTRA: Thank you.

24 THE COURT: Now can you direct me to the page number

1 privileges are asserted?

2 MR. CIANTRA: Yes, Your Honor. Page 53, beginning  
3 on Line 12. And then continuing to Page 55, Line 8.

4 THE COURT: Thank you. Stand by, please.

5 MR. CIANTRA: Oh, I'm sorry. And then Page 77, Line  
6 19, through Page 78, Line 14. Those are the excerpts that I  
7 read to the Court.

8 THE COURT: Okay.

9 MR. CIANTRA: Thank you, Your Honor.

10 THE COURT: One second. All right. Anything  
11 further, counsel?

12 MR. STEWART: I do have one thing. All right. Your  
13 Honor, I had not known until Mr. Ciantra raised it that the  
14 relevance he was urging for this was that this point about  
15 PA436 and the assumption of power over the pension systems.

16 Leafing through this, I see that Mr. Moore was also asked  
17 about this. Pardon me. Pages 132 and following of his  
18 deposition and he answered all of those questions and there  
19 were no instructions to not answer.

20 MR. CIANTRA: I have nothing further, to add, Your  
21 Honor.

22 THE COURT: Well, before I resolve this, I want to  
23 have a conversation with Mr. Miller. Is there a Mr. Miller  
24 here?

25 MR. STEWART: He is not here. Pardon me, Your  
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1 Honor, he has been in Court, but he's not here today. He's a  
2 Jones, Day partner in the pension area.

3 THE COURT: All right. Well, communicate to him on  
4 my behalf then, please.

5 MR. STEWART: Yes, I will do so.

6 THE COURT: In the few pages of these transcripts  
7 that I have read, especially the transcript of Mr. Moore, it  
8 appears that Mr. Miller objects to virtually every question  
9 stating, "object to form". Tell him that from now on he has a  
10 standing objection on the grounds of form and he is not to  
11 interrupt the flow of depositions with that objection.

12 MR. STEWART: Pardon me. Of course, Your Honor.

13 THE COURT: All right. After reviewing these --  
14 these transcripts and reviewing the testimony that is sought  
15 to be stricken here, the Court concludes that there is no  
16 unfairness in permitting this testimony to be offered here, or  
17 received here despite the earlier claim of attorney/client  
18 privilege.

19 The Court so concludes because there was nothing about  
20 the isolated and specific claims of privilege that were  
21 asserted in the Bowen deposition that precluded a full  
22 opportunity for discovery on all factual matters that directly  
23 related to the subject of Mr. Moore's testimony now sought to  
24 be stricken. So the motion to strike is denied and I will  
25 return the transcripts to counsel.

1 MR. CIANTRA: Thank you, Your Honor.

2 THE COURT: Okay. Anything further before we resume  
3 with Mr. Orr? All right. Can we arrange for him to be  
4 brought back into the courtroom, please?

5 Mr. Orr, you may be seated. You understand that you are  
6 still under oath.

7 THE WITNESS: Yes, Your Honor.

8 (WITNESS KEVYN ORR WAS PREVIOUSLY SWORN)

9 THE COURT: Thank you. And you may proceed, sir.

10 MR. ULLMAN: Good morning, Your Honor. Anthony  
11 Ullman for the retiree committee.

12 CROSS EXAMINATION

13 BY MR. ULLMAN:

14 Q Good morning, Mr. Orr.

15 A Good morning, Mr. Ullman.

16 Q And you may recall when we broke yesterday, I had been  
17 asking you about the -- your knowledge as to the size of the  
18 unfunded pension liability. And I think we had just finished  
19 discussing the May 2013 plan that was Exhibit 407. Do you  
20 recall that in general?

21 A Yes, I do.

22 Q Okay. Now the size of the unfunded pension liability was  
23 also mentioned in the June 14 proposal which is number --  
24 Exhibit 408, is that right? Do you want to just put the cover  
25 on the screen?

1 A Yes. It was mentioned in the June 14<sup>th</sup> presentation.

2 Q And does what's written in Exhibit 408, the June 14  
3 proposal, accurately reflect your knowledge about the size of  
4 the unfunded pension liability as you understood it as of June  
5 14<sup>th</sup>, 2013?

6 A Yes. It accurately reflects the size of the unfunded  
7 pension liability to the extent -- to the best of our  
8 knowledge, yes.

9 Q Okay. So if we look at Page 23 of this document, and  
10 what we see there's a -- a bullet point there. Yeah, thank  
11 you. We can pull out. And it says, that further analysis by  
12 the city using more realistic assumptions (including by  
13 reducing the discount rate by one percentage point) suggests  
14 that the pension UAAL will be approximately 3.5 billion as of  
15 June 30, 2013. Do you see that?

16 A Yes.

17 Q Okay. And that reflects the state of things as you  
18 understood it as of June 13, 2013? I'm sorry, June 14, 2013?

19 A Yes, I believe so.

20 Q Okay. And at that point in time it was characterized as  
21 a suggestion, correct?

22 A It was characterized as a proposal based upon our best  
23 analysis at that time.

24 Q I'm focusing on the bullet point that we have

25 highlighted. This is -- this is what the analysis regarding  
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1 the unfunded pension liability suggests. Did I read that  
2 correctly?

3 A Yes. The document speaks for itself, that's what it  
4 says.

5 Q Okay. And is it fair to say that what you knew about the  
6 size of the unfunded pension liability in June 2013 was  
7 fresher in your mind in June 2013 than it is today?

8 A I think I've been aware of the unfunded -- the amount of  
9 the unfunded pension liability from then until now. I think  
10 it's been fairly consistent.

11 MR. ULLMAN: Okay. I'll move to strike as  
12 non-responsive, Your Honor.

13 THE COURT: Motion denied.

14 MR. ULLMAN: Okay. Thank you.

15 Q My question, Mr. Orr, was actually a different -- well,  
16 let me rephrase the question. Would you agree that the  
17 information that you had about the size of the unfunded  
18 pension liability as of June 14, 2013 was fresher in your mind  
19 in June of 2013 than it is today?

20 A No.

21 Q And Mr. Orr, I previously asked you about the retiree  
22 health benefits and how those were to be treated under the  
23 June 14<sup>th</sup> proposal. Do you remember that?

24 A Yes

25 Q Okay. And just for clarity, the health benefits that we  
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1 were talking about are what is referred to in the June 14  
2 proposal as OPEB, is that right?

3 A Yes. Other employee benefits.

4 Q Okay. And is it correct that according to -- in the  
5 analysis that you had as of June 14, 2013, the unfunded OPEB  
6 liabilities were reported as 5.7 billion dollars?

7 A Yes. I believe that's correct.

8 Q Okay. And that's set out in your June 14 proposal, isn't  
9 it?

10 A Yes, I believe so.

11 Q Okay. Now staying in the June 2013 time frame, and  
12 putting aside the possibility of a consensual resolution,  
13 okay. Have you come up with what you considered a viable  
14 course of action that allowed the city to cut pension benefits  
15 that did not involve a Chapter 9 filing?

16 A I'm just trying to -- that's a long question, so I'm  
17 making sure that I understand it. Putting aside a potential  
18 consensual resolution, had we come up with a viable option to  
19 cut pension benefits without filing Chapter 9.

20 Q That's the question, sir.

21 A Okay. There were other options. I don't know if they  
22 were viable or not. I think between June 14 and until a few  
23 months later, it became clear that there were no other viable  
24 options.

25 Q Okay. Thank you. Now you in fact did file the Chapter 9  
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1 petition obviously, right?

2 A I instructed my attorneys to file the Chapter 9 petition  
3 after receiving authority from the Governor.

4 Q Okay. And in fact it is the City of Detroit that is the  
5 debtor, not the emergency manager as such, right?

6 A Yes. Under 436 I act for the city.

7 Q All right. Okay. And to be clear at the time the city  
8 filed for bankruptcy, is it correct that it was your position  
9 that there had to be significant cuts in accrued pension  
10 rights for both active employees and retirees?

11 A Well, I don't know if active employees receive pensions,  
12 but I think the gist of your question is, would there have to  
13 be cuts in the accrued actuarial liability and the answer is  
14 yes.

15 Q Okay. I was asking specifically about cuts in accrued  
16 pension benefits for both actives and retired persons.

17 A Well, they're vested pension benefits that active  
18 employees if they vest, have them. And then there's accrued  
19 actuarial liabilities. Let's just assume that we're talking  
20 about both in your question, is that fair?

21 Q Yes.

22 A Okay. Then yes, there would have to be cuts.

23 Q Okay. And is it correct that as part of the proceedings  
24 in this -- in this action after the Chapter 9 filing was made,

25 that the city has in fact agreed and admitted that -- that it  
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1 in fact intends to cut vested pension benefits for actives and  
2 retired persons?

3 A I think you're referring to a request for admissions.

4 Q Yes.

5 A Yes, I believe so.

6 Q Thank you. Now I understand it's your position that the  
7 Chapter 9 filing was done under the authority of PA436, is  
8 that right?

9 A Yes.

10 Q Okay. And of course you're generally familiar with that  
11 law?

12 A Yes.

13 Q Okay. And you're also generally familiar with PA4, the  
14 predecessor statute?

15 A Not quite as familiar. Yes.

16 Q Are you aware of it?

17 A I'm aware of it.

18 Q And you were aware that it was repealed by a referendum?

19 A Yes.

20 Q Okay. And then PA436 was enacted with an appropriated  
21 measure that was tacked on that avoided the possibility of  
22 another referendum for PA436, correct?

23 A I'm aware that an appropriation measure was tacked on. I  
24 have read that that was to resolve the possibility of another  
25 referendum, yes.

1 Q Okay. And I believe that prior to your appointment as  
2 emergency manager, you yourself looked at the history of PA4  
3 and PA436 at least to some degree, is that right?

4 A If you're talking about the first day between January 30<sup>th</sup>  
5 to 31<sup>st</sup>, I looked at it initially then. And then I looked at  
6 it in more depth later.

7 Q Okay. So let's put on the screen Exhibit 403. Okay.  
8 This is an email that you wrote from January 13, 2003 (sic).  
9 Is this what you were referring to?

10 A Yeah, I think that's the email we discussed during my  
11 deposition.

12 Q Okay. And if we focus on the -- it talks about a number  
13 of things. What it does as you said, go over some of your  
14 understanding of the legislative history. And if we look at  
15 the first paragraph, it's talking about the new EM law which  
16 is PA436, correct?

17 A Yes.

18 Q And if you focus in particularly on the second to last  
19 sentence it says, by contrast Michigan's new EM law is a clear  
20 end run around the prior initiative that was rejected by the  
21 voters in November, correct?

22 A What day is this dated?

23 Q I'm sorry?

24 A Is this dated the 31<sup>st</sup>?

25 Q January -- I think I may have said the 13<sup>th</sup>, but thank  
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1 you, it is the 31<sup>st</sup>.

2 A Okay. Thank you. Yes, I see that.

3 Q Okay. And that was what you wrote in this email of  
4 January 31<sup>st</sup>?

5 A Yes. That's what I wrote one day after being approached  
6 about becoming the EM.

7 Q And then if we skip two paragraphs down, there is --  
8 right. In the last paragraph we see the -- the phrase you  
9 wrote. It says, so although the new law provides the thin  
10 veneer of a revision, it is essentially a redo of the prior  
11 rejected law and appears to merely adopt the conditions  
12 necessary for a Chapter 9 filing. Do you see that?

13 A Yes, I see it.

14 Q Okay. And that's what you wrote and concluded when you  
15 created this email in January of 2013?

16 A Yes.

17 Q And subsequent to then, to that time, have you done any  
18 further investigation as to how PA436 came about and the --  
19 the origin of the appropriations measure? It's really a yes  
20 or no question.

21 A Well, no, I want to be complete in my answer so it's not  
22 misinterpreted either by people in the courtroom or the  
23 public. But have I done further investigation --

24 Q I'm sorry, Mr. Orr, but the question is simply whether  
25 you did investigation, sir.

1 THE COURT: And as I've indicated to you before, if  
2 you can't answer a question with a yes or a no answer, just  
3 say that.

4 A Okay. I can't answer that question with a yes or no  
5 answer.

6 Q You cannot tell me yes or no whether you did any further  
7 investigation subsequent to January of 2013?

8 A It would be misleading for you to give just -- for me to  
9 give you just a yes or no answer.

10 Q Okay. Did you ask any of your colleagues at Jones, Day  
11 whether they had any information about the circumstances  
12 surrounding the repeal of PA4 or the creation and enactment of  
13 PA436?

14 A I don't think I asked anyone at Jones, Day. I think I  
15 did my own analysis.

16 Q Well, were you aware that Jones, Day was in discussions  
17 with the State of Michigan in March of 2012 concerning the  
18 challenge to PA4?

19 A No.

20 Q Okay. Well, let's put 845 on the screen. This is  
21 Exhibit 845. This is a March 24<sup>th</sup>, 2012 email. Do you -- do  
22 you need -- I think we have a hard copy in the binders there  
23 if it's easier for you to look --

24 A No, that's okay with my reading glasses, I can -- I can  
25 keep up.

1 Q Okay. And why don't you take a moment to read it because  
2 I don't want to just, you know, spring the paragraph on you.

3 A All I have on the screen is the two's.

4 Q Okay. Can you just put the -- the document on the screen  
5 so Mr. Orr can read it?

6 A Well, I can't read that. You want me to read the whole  
7 email or just --

8 Q You can look at the second page too and then I'll ask you  
9 a few questions.

10 A Okay.

11 Q And then we'll move on. Have you had a chance to look  
12 through that, Mr. Orr?

13 A I haven't read it all, but I -- I get the gist of the  
14 email.

15 Q Okay. And this is as I said it's a May -- it's a March  
16 24, 2012 email. You are not on it. I'm not suggest that you  
17 are.

18 A No.

19 Q It's talking about a meeting that took place with Braum  
20 Stibitz. That's a person from the -- of the Treasury  
21 Department of the state, is that right?

22 A Yes.

23 Q And if you look at the paragraph numbered 1 with the  
24 Arabic number 1, giving the context it says the state and the  
25 city were concerned that PA4 may not survive the petition

1 challenge. Do you see that?

2 A Yeah, that's what it -- that's what it says, yes.

3 Q Yeah, okay. And then if you go on to the next page, you  
4 go through some more discussion. It goes to the next page and  
5 there is a -- a paragraph that says based on that conclusion,  
6 it said the state quickly began evaluating the alternatives.  
7 And go through one, could a consent agreement be achieved to  
8 an artful solution such as the DEP was intended.

9 And then it goes to number three, thus, the state was  
10 looking at declaring an emergency and appointing an EFM with a  
11 likely subsequent step of a Chapter 9. Do you see that?

12 A Yes, I see that.

13 Q Then in the next paragraph it goes on to say, the state  
14 believes it needs PA4 or worse case PA72 to file a Chapter 9  
15 case based on law. And as such state legal counsel and Jones,  
16 Day provided guidance on whether a Chapter 9 filing in April  
17 could be upheld if PA 4 is pulled back at the end of April.  
18 And does that refresh your recollection, Mr. Orr, as to  
19 whether Jones, Day was involved in discussions in -- in -- or  
20 in the spring of 2012 with the state concerning PA4 and  
21 potential challenges to it?

22 A No. I have no -- I have -- did not have then and I just  
23 learned now that Jones, Day had involvement in March 2012.

24 Q Okay. Well, were you aware, or are you aware I should

25 say, that Jones, Day itself was involved in suggesting the  
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1 addition of an appropriation measure to PA436?

2 MR. STEWART: Objection, Your Honor, foundation.

3 THE COURT: I'll permit it. Go ahead, sir.

4 A No.

5 Q You've never heard that? You don't recall ever hearing  
6 that from anyone at Jones, Day?

7 A I just heard it from you.

8 Q That wasn't my question. You don't recall ever hearing  
9 that from anyone at --

10 A I never heard it from anyone at Jones, Day, no.

11 Q Okay. I'm going to show you a document and see if this  
12 refreshes your recollection. The document I'm going to show  
13 the witness is not in evidence, so I will not put it on the  
14 screen. With permission, I'll just direct --

15 THE COURT: Well, the -- the witness did not  
16 indicate a lack of recollection. He said -- the answer was  
17 no. He was not aware of that.

18 MR. ULLMAN: Well, he said he -- I thought I asked  
19 him whether he recalled ever hearing it and he said no.

20 THE COURT: That he wasn't aware of it. Is that  
21 right, sir?

22 A Yes, Your Honor.

23 MR. ULLMAN: Well, Your Honor, if -- if he saw  
24 something that refreshed his recollection that he had heard  
25 of, then he would have been aware. It's a little --

1 THE COURT: But that's a question of impeachment,  
2 not refreshing recollection.

3 MR. ULLMAN: Okay, Your Honor.

4 Q Mr. Orr, prior to the Chapter 9 filing, were you aware of  
5 any legal precedent specifically allowing a city or an  
6 emergency manager to use Chapter 9 as a means to trump a  
7 provision of the State Constitution that protects vested  
8 pension rights?

9 A I cannot answer that in a yes or no fashion. I'll give  
10 you an explanation.

11 I -- as I had said before in my background, I handle  
12 cases for federal preemption over state law in a number of  
13 different roles. And so I generally was aware and -- and as  
14 you've said before with my oath, that federal law takes over  
15 state law.

16 Was I aware of any specific cases regarding an emergency  
17 manager authorizing a Chapter 9 to trump state filings. I  
18 don't think there were any specific cases of State  
19 Constitution regarding vested pension rights. I don't think  
20 there were any specific cases that I was aware of in that  
21 regard, but I was aware of federal preemption, yes.

22 Q Okay. And were you at the time that you filed, were you  
23 aware of any legal precedent allowing a city or an emergency  
24 manager to use Chapter 9 as a means to trump a state

1 vested pension rights?

2 A Here again broadly, federal supremacy takes over state  
3 constitutional law. I don't recall any specific cases in that  
4 regard.

5 Q Okay. No specific cases regarding federal law trumping  
6 the State Constitution, is that correct?

7 A No. I think I am aware of specific cases of federal law  
8 trumping state constitutional law. What I was saying to you,  
9 I was not aware of specific cases of federal law trumping  
10 state constitutional law regarding vested pension rights.

11 Q Okay. Do you recall being deposed before right around  
12 September 16<sup>th</sup>?

13 A Yes, I was deposed.

14 Q And I think you indicated that you were testifying  
15 truthfully when you --

16 A I was testifying truthfully.

17 Q Okay. Let's show the -- the clip beginning at Page 192,  
18 Line 2. I'd like to know, Mr. Orr, whether this was testimony  
19 that you gave during that deposition?

20 MR. STEWART: Objection, Your Honor. I don't think  
21 that this is a proper use of -- of deposition testimony. And  
22 I would -- if Mr. Ullman has a question.

23 THE COURT: What -- what do you assert is improper  
24 about it?

25 MR. STEWART: Well, there has been no statement  
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1 inconsistent with the deposition.

2 THE COURT: Well, then the impeachment will be  
3 ineffective. But I'll permit counsel to -- to try.

4 Q Okay. The question is, do you recall giving this  
5 testimony that we're about to play and you can answer yes or  
6 no once you get --

7 A Yes, I recall September 16 deposition.

8 Q Okay. Why don't I just play the testimony?

9 (Video Being Playing at 9:56 a.m.; Concluded at 9:56  
10 a.m.)

11 Q Now, Mr. Orr, is it correct that you've been told by the  
12 State Attorney General that in his view the Michigan  
13 Constitution protects the pensions that you're seeking to cut?

14 A Yes.

15 Q Is it correct that prior to the Chapter 9 filing there  
16 were State Court proceedings that had been filed alleging  
17 among other things that PA436 was unconstitutional inasmuch as  
18 it purported to allow you to file for Chapter 9 without  
19 insuring that the vested pension payments were protected?

20 A Yes.

21 Q Okay. And those were pending as of July 2013, correct?

22 A I believe they began July 3<sup>rd</sup> and there was another one  
23 the following week and then one on July 15<sup>th</sup>, but yes.

24 Q Okay. And that litigation was pending in Ingham County  
25 before Judge Aquiline?

1 A Yes. There was one case prior to the July cases  
2 challenging the constitutionality of 436. But the cases  
3 you're talking about Flowers, Webster, and GRS, I think were  
4 all pending in Ingham County.

5 Q Yeah, in Ingham County. And is it correct that at -- at  
6 least at some point in July the date for the bankruptcy filing  
7 had been planned for July 19?

8 A No. I think I said before that I wanted to file as soon  
9 as I got the authority. There wasn't a planning date. But I  
10 was going to file as soon as I asked for the authority to do  
11 so.

12 Q Okay. Isn't it correct that there was a plan that had  
13 been -- a written plan that had been put in place and that had  
14 been created at least that showed the filing date of July 19?

15 A I don't know if there was, I'm trying to recall. I don't  
16 know if there was a plan. I think we had had discussions  
17 about timing, yes.

18 Q Okay. And why don't we put on the screen Exhibit 831,  
19 please. Or, yeah, I'm sorry, or we can use 452, I think  
20 that's easier.

21 Okay. And what I'm putting before you is an email with  
22 various attachments that comes from a Bill Nowling dated July  
23 8<sup>th</sup>, 2013.

24 A Yes.

25 Q And it indicates at the bottom that Mr. Nowling works for  
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1 the office of the emergency manager, you?

2 A Yes, he's my communications director.

3 Q Okay. And this is a document that was created by Mr.

4 Nowling, is that right?

5 A I assume it was. I haven't seen this document before.

6 Q Okay.

7 A But I assume it was.

8 Q Okay. And as you look at the attachments, it says

9 Chapter 9, COMS, which I assume is communications document,

10 Chapter 9 messages, Chapter 9 communications roll out from

11 July 4, 2013. Do you see that?

12 A Yes, that's what it says.

13 Q Okay. And Mr. Nowling in his ordinary course of duties

14 communicates with other people as to the state of things and

15 what the current schedule looks like, is that right?

16 A Yes. Mr. Nowling is the communications director and he

17 does a number of different things.

18 Q Okay. And if we turn to Page 7 of this document. Okay.

19 This is what we see, it looks like the roll out schedule which

20 was referred to in the attachment.

21 And if we look at the first entry, under the middle

22 column, event. It says Friday, July 19<sup>th</sup>, 2013 FILING DAY in

23 capital letters. Do you see that?

24 A Yes.

25 Q And then if you look at the second box below there is an  
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1 item for 10:00 a.m., file necessary paperwork with Court  
2 system?

3 A Yes, that's what it says.

4 Q Okay. And this is all referring to the Chapter 9 filing,  
5 isn't it?

6 A I believe so.

7 Q Okay. Now do you recall, and I think you indicated  
8 previously that in -- in early to mid-July you were aware that  
9 there was -- there had been a hearing in the State Court  
10 litigation for a TRO that had been scheduled for July 22<sup>nd</sup>, is  
11 that right?

12 A Yes.

13 Q Okay. And is it correct that the TRO hearing was then  
14 moved up to July 18 in the late afternoon?

15 A I believe so.

16 Q Okay. And is it correct that the bankruptcy filing was  
17 in fact done on July 18, not on the 19<sup>th</sup>?

18 A Yes.

19 Q And is it correct that it was around 4:06 in the  
20 afternoon of the 18<sup>th</sup> that it was filed shortly before the  
21 State Court TRO hearing was scheduled to start?

22 A If -- if that's the time it shows on the documents then  
23 yeah, that's correct.

24 Q Okay. Now why don't we put up the -- do we have the

1 is a copy from the petition.

2 And if we look at the bottom, we see the filing date and  
3 we see the filing time which is 4:06 in the afternoon. And if  
4 you look at the date, there was a date that was handwritten to  
5 July 18<sup>th</sup>. And I believe you've indicated previously that you  
6 hand wrote the date to change it from July 19 to July 18, is  
7 that right?

8 A Yes, I did that.

9 Q Okay. Now, you of course know Kenneth Buckfire, is that  
10 right?

11 A Yes, I know Ken Buckfire.

12 Q Okay. And do you recall telling Mr. Buckfire that one of  
13 the reasons that the bankruptcy filing was moved from the 19<sup>th</sup>  
14 to the 18<sup>th</sup>, was to avoid the impact of a decision in the State  
15 Court litigation that might have prevented you from filing the  
16 bankruptcy petition?

17 A I don't recall specifically saying that, but I may have  
18 said it.

19 Q Okay. So if Mr. Buckfire testified to that, would you  
20 have any reason to challenge that testimony?

21 A Like I said, I don't specifically recall it, but I have  
22 no reason -- I have no reason to say I did not say it.

23 Q Okay. And are you aware of any particular reason why the  
24 Chapter 9 filing was filed when it was other than to get a  
25 jump on a decision by the State Court?



1 A Yeah. I think I said before that once I sent the letter  
2 to the Governor, I was prepared to file the case immediately.  
3 I had said before that we were going to give it a month to try  
4 to reach some sort of consensual resolution through the  
5 process that we had outlined on June 14<sup>th</sup> and that wasn't  
6 forthcoming.

7 I had said before that things were beginning to spiral  
8 out of control. We had sat by for the better part of three  
9 weeks being sued on a regular basis. We had the Syncora  
10 litigation. And the -- TRO, temporary restraining order that  
11 was due to expire at the end of that week. There were a  
12 number of reasons besides the implication of your question  
13 which was to try to get a jump. That we were concerned about  
14 filing as soon as we could.

15 Q Okay. Mr. Orr, again, you remember testifying on  
16 September --

17 A Yes.

18 Q Of September?

19 A Uh-huh.

20 Q I'm sorry, September of -- of this year.

21 A Yeah.

22 Q And again you indicated you were testifying truthfully?

23 A Yes, I was testifying truthfully.

24 Q Okay. And can you tell me did you give the following

25 testimony that we're about to play?

1 A Sure.

2 (Video Being Played at 10:03 a.m.; Concluded at 10:04  
3 a.m.)

4 Q Okay. That was your testimony, Mr. Orr?

5 A Yes.

6 Q Okay. Now isn't it the case that subsequently the State  
7 Court ruled that PA436 was unconstitutional to the extent that  
8 it allowed a filing for Chapter 9 without protecting vested  
9 pensions?

10 A I'm aware that there was a State Court ruling. I'm not  
11 aware of the details. But I think I -- I think I have heard  
12 that. I didn't -- I may have read the ruling, but I don't --  
13 I think that's the gist of the ruling, yes.

14 Q You're aware of that in substance?

15 A I'm aware of that in substance.

16 Q Okay. And you didn't withdraw the bankruptcy petition in  
17 response to the State Court ruling, did you?

18 A No. You asked me that on September 16<sup>th</sup>. No.

19 Q Now in connection with the bankruptcy filing, you filed  
20 -- you yourself submitted a declaration, is that right?

21 A Yes.

22 Q Okay. And in it among other things you gave figures as  
23 to the city's liability in cash flow?

24 A Yes.

25 Q Okay. And on the liability side, I believe you said that  
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1 the total liabilities are over \$18,000,000,000, is that right?

2 A Yes.

3 Q Okay. And I think you also broke that \$18,000,000,000  
4 figure down in a couple of ways. And we can -- I can show  
5 you. Okay. So why don't we put -- let's put Exhibit 414 on  
6 the screen. This is your declaration that you filed, isn't  
7 it?

8 A Yes.

9 Q Okay. And if we can go to Paragraph 9 which is on --  
10 starts on Page 5 and then continues. So okay, I guess we have  
11 it all pieced together here. So we see here that you wrote in  
12 Paragraph 9 that the city has over 18,000,000,000 in accrued  
13 obligations, right?

14 A Yes.

15 Q And then you go on further to say, that there is over  
16 6,000,000,000 -- a little further down, over 6,000,000,000 in  
17 obligations backed by enterprise revenue -- enterprise  
18 revenues or that are otherwise secured?

19 A Yes.

20 Q Okay. And then you elaborate that a little more in  
21 Footnote 4. Will you put Footnote 4 on the screen? Okay.  
22 And there is a phrase in there exactly where you say -- you're  
23 elaborating on what that 6.4 billion dollar figure is. And  
24 among other things you say that that consists of 5.85 billion  
25 in enterprise fund debt. Do you see that?

1 A Yes.

2 Q Okay. And is it correct that that is basically referring  
3 to bonds that are issued by the Detroit Water and Sewer  
4 Department and state loans that are also made to the  
5 Department of Water and Sewer?

6 A Yes. That's generally -- yeah, 6,000,000,000 of it  
7 belongs to DWSD, yes.

8 Q And the DWSD, that's department of -- that's the Detroit  
9 Water and Sewer Department?

10 A Detroit Water and Sewer Department.

11 Q Okay.

12 A We call it DWSD.

13 Q And the DWSD is operated as a separate authority in  
14 Detroit, is that right?

15 A It's a department of the City of Detroit, but it is  
16 operated as a -- not as -- necessarily as an authority. It's  
17 operated with some autonomy, both operationally and as a  
18 result of Judge Cox's ruling in the Clean Water Act case.

19 Q Okay. And it keeps its own books and records?

20 A Yes.

21 Q And the DWSD is responsible for the payment of these  
22 bonds, isn't it?

23 A Yeah. There's a mechanism but generally, yes.

24 Q Okay. So the payment of these bonds, this about

1 fund, is it?

2 A Six billion.

3 Q Six billion. Did I say million?

4 A Yeah, you did.

5 Q Thank you.

6 A Okay. Six billion.

7 Q And that's -- the payment -- the responsibility for the  
8 6,000,000,000 in the DWSD related bonds and -- and loans is  
9 not allocable to the general fund, is it?

10 A No. No, it's not part of the general fund debt, but it  
11 is an obligation of the city.

12 Q Okay. And the DWSD has the financial wherewithal to make  
13 the payments on its bonds as they come due, doesn't it?

14 A Yes. And it is doing so.

15 Q Okay. Now if we look a little further in your  
16 declaration, staying with Paragraph 9. You talk about where  
17 is the 11. -- no, it's the top part. 11.9 billion in  
18 unsecured obligations to lenders and retirees.

19 A Yes.

20 Q And we go back down this time to Footnote 3. And we see  
21 in -- in little letter (a), we see the 5.7 billion -- billion  
22 dollar figure in the OPEB liabilities, right?

23 A Yes.

24 Q And then in little (b) we see that number again, 3.5  
25 billion in under funding pension liabilities, correct?

1 A Yes.

2 Q Okay. And that's a reference to the state of things as  
3 you believe them to exist or saying they existed as of June  
4 14, 2013, correct?

5 A Well, I -- I think my affidavit also includes a state of  
6 play that we believe them to exist at the time of filing.

7 Q Well, I'm looking right now at Footnote 3 which says on  
8 June 14, it says we met and these were the obligations. And  
9 it says see proposal for creditors as of June 14, correct?

10 A Yeah. I'm not taking issue with what is said in there,  
11 I'm just saying that I didn't see any change in those numbers,  
12 yes.

13 Q Okay.

14 A But the answer to your question is yes.

15 Q Okay. Now is it correct that as of June 14 -- and you  
16 had not been aware of any -- was there any substantial  
17 revision to the work that had been done regarding the size of  
18 the unfunded pension liability as you recall between June 14  
19 and the time of the bankruptcy filing?

20 A There -- there -- there is ongoing work on these issues  
21 through from June 14<sup>th</sup> until the bankruptcy filing. But there  
22 were no, to the best of my knowledge, there were no  
23 substantial changes in the amount of the debt represented by  
24 these figures.

25 Q Okay. And is it correct then that as of June 14, the  
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1 work that had been done by Milliman was in fact preliminary  
2 work?

3 A I don't remember the exact date, but I believe June 14<sup>th</sup>  
4 is correct and that Milliman's first work was done off of  
5 Gabrielle Roeder, yes.

6 Q Okay. So the June 14 preliminary.

7 A Yeah.

8 Q Was it still preliminary as you understood it as of the  
9 date of the bankruptcy filing, July 18?

10 A I don't know if it's -- if it's -- it's preliminary until  
11 we reach agreement as to what the numbers are. So the work is  
12 consistently estimates. When you say preliminary, I assume  
13 you mean that we haven't reached a final conclusion as to the  
14 amount. But this represents our best analysis of what those  
15 numbers are.

16 Q Yes. Preliminary in the sense that the Milliman firm had  
17 not reached a final conclusion as to what the right number was  
18 for the pension liability.

19 A I -- I think that's fair.

20 Q Okay. And I think you testified earlier that during this  
21 time frame, Milliman was doing an analysis of the Gabrielle  
22 Roeder work, correct?

23 A The --

24 Q Well, I'm not saying that's all, I'm just taking this  
25 piecemeal.

1 A Yeah. Well, so I don't -- without -- without looking at  
2 the actual documents, I want to be sure I'm not misleading.  
3 Milliman -- the sequence was Milliman was doing analysis of  
4 Gabrielle Roeder. Milliman then began doing its own analysis.  
5 I don't remember the exact dates, so I don't want to say June  
6 14<sup>th</sup> and it turns out it was June 15<sup>th</sup>. But generally that's  
7 the sequence and that's the approximate time.

8 Q Okay. So there are two aspects to what -- so we're  
9 clear, what Milliman was doing one, was doing an analysis  
10 based on the Gabrielle Roeder work, right?

11 A Yes.

12 Q And so we're clear Gabrielle Roeder is the actuary  
13 retained by the retirement systems, correct?

14 A Yes.

15 Q Okay. And it was also, I think you had said earlier, in  
16 the process of creating its own valuation?

17 A Yes.

18 Q Okay. And is it correct that as late as September 18,  
19 2013, Milliman had not in fact yet completed its work and the  
20 city was not in a position to know the actual size of the  
21 pension under funding?

22 A I think it's correct that as of the 18<sup>th</sup>, Milliman may  
23 have not -- here again I'm trying not to be specific with  
24 dates if they're different and are proven to be different,

25 that's fine. But that's approximately the time. I don't know  
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1 if it's fair to say that the actual valuations hadn't been  
2 concluded. Our valuations have been fairly consistent based  
3 upon the assumptions used.

4 Q Okay. And you know Charles Moore, correct?

5 A Yes.

6 Q Okay. And he is on the pension task force?

7 A Yes.

8 Q Okay. And he was tied in with the Milliman work and the  
9 status of it at various points in time?

10 A Yes.

11 Q Okay. Why don't we put on the screen some deposition  
12 transcript excerpts. Do you know what I'm -- okay.

13 This is from the deposition of Mr. Moore on September 18<sup>th</sup>  
14 of this year.

15 MR. STEWART: Objection, Your Honor.

16 MR. ULLMAN: I'm not sure what the objection is,  
17 Your Honor. I want to ask him some questions about some  
18 specific things, made -- statements made by Mr. Moore. This  
19 document has not been objected to, or rather this -- this  
20 deposition testimony has not been objected to.

21 THE COURT: It's really not appropriate to ask one  
22 witness about the testimony of another witness, or to confront  
23 one witness with the testimony of another witness. The  
24 objection is sustained.

25 Q Okay. Is it correct, Mr. Orr, that so far as you were  
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1 aware that as late as September 18<sup>th</sup>, 2013, the city and its  
2 actuary Milliman, had not completed the analysis on the  
3 unfunded pension liability?

4 A As I said, I think that's the approximate date. I don't  
5 recall independent the exact date. But I think it's around  
6 that time.

7 Q What are you saying, it's around that time that they  
8 complete -- I'm not sure when you say -- what's around that  
9 time?

10 A No, at some point Milliman completed its analysis. I  
11 don't remember the exact date that that was done.

12 Q Okay. But at -- you would agree that at least as of  
13 September 18<sup>th</sup>, 2013, that Milliman had not completed its  
14 analysis, correct?

15 A I'll agree that it was around that date. I don't want to  
16 say yes and then it turns out that they had and I was wrong  
17 because I just don't recall the date.

18 Q Okay. So that your best knowledge is around that date,  
19 around September 18<sup>th</sup>.

20 A Sometime in September.

21 Q Okay. And is it correct that as recently as September  
22 18, Milliman and the city were still in the process of trying  
23 to create their own valuation model?

24 A That -- here again, it may be around that time. I mean  
25 we continually do work on -- on valuations and analysis, but

1 that may have been the approximate time.

2 Q Okay. And to the extent that they were still working on  
3 it as of around the July -- I'm sorry, the September 18 time  
4 frame, do you have any personal knowledge as to when if ever  
5 the Milliman valuation work was completed?

6 A Do I have personal knowledge of -- of when? I believe it  
7 was completed. I don't know the exact time it was.

8 Q In any event it -- to the extent it was, it would have  
9 been sometime on or after September 18<sup>th</sup>, is that true?

10 A Yeah, if your supposition is correct, that September 18<sup>th</sup>  
11 it was still a work in progress, then it would have flowed  
12 that it would follow sometime after that.

13 Q Now I think you also made reference in your June 14  
14 proposal to the investment rate of return that had been used  
15 by the retirement systems actuary, do you recall that? A 7.9  
16 figure?

17 A Yes.

18 Q Okay. And do you want me to show that to you, or do you  
19 agree that you made some reference to that as being what you  
20 considered an inappropriate assumption?

21 A To move along, I will agree that we made a reference to  
22 in our anticipated rate of return. And if you say it was 7.9,  
23 I have no reason to -- to disagree with you.

24 Q Okay. And as it correct that as -- as late as September

1 whether the investment rate of return that was used by the  
2 retirement systems actuary was inconsistent with actuarial  
3 standards of practice?

4 A Here again I'm -- I'm going to defer to the documents and  
5 -- and the actual timing of when those reports were produced.  
6 But I think there was one report that had a range of  
7 assumptions as far as what was reasonably anticipated to be  
8 the expected rate of return.

9 Q My question is a little -- is really quite specific. Are  
10 you aware -- they called actuarial standards of practice?

11 A Yes.

12 Q Okay. And is it correct that at least as late as  
13 September 24, 2013, the Milliman firm had not opined, had not  
14 given an opinion --

15 A Right.

16 Q -- that the investment rate of return used by the  
17 retirement systems actuaries was inconsistent with actuarial  
18 standards of practice?

19 A Yeah, without seeing the report, I don't recall if  
20 Milliman ever opined. They may have, I just don't recall it.  
21 If you say that there was some time after September 24<sup>th</sup> is  
22 what you said, without getting caught up in the dates because  
23 I don't have the document, and that document speaks for  
24 itself, I have no reason to disagree with it.

25 Q Okay.

1 THE COURT: What's the relevance of all of this to  
2 whether the city was eligible to file two months earlier?

3 MR. ULLMAN: This has to go to what the city knew  
4 and what it's the city, not Mr. Orr necessarily personally,  
5 but the city and its state of mind in making the  
6 representation that the number for the unfunded pension  
7 liability was indeed 3.5 billion when we believe the evidence  
8 will show and shows that no one had come to that conclusion  
9 yet and in fact work was still ongoing.

10 THE COURT: All right. I'll permit some brief  
11 further inquiry into this and then ask you to move on.

12 MR. ULLMAN: Thank you, Your Honor.

13 Q Is it correct that as of September -- at least September  
14 24, 2003 (sic), the work done by Milliman, the city's actuary,  
15 had not in fact progressed to the point where it was even able  
16 to replicate the valuation model that had been used by the  
17 retirement systems actuaries?

18 A Mr. Ullman here again, I don't know what your dates are.  
19 And I don't recall at what point --

20 THE COURT: All right. Mr. Orr --

21 A I don't know.

22 THE COURT: If you don't know, just say --

23 A I don't know.

24 THE COURT: -- I don't know.

25 A I don't know. I'm sorry, Your Honor. I don't know.  
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1 Q Is it correct, Mr. Orr, that the last actuarial valuation  
2 for the pension liability as a whole was done as of June 2011,  
3 that's for both systems, the GRS and the police and fire?

4 A I don't know if that's the date.

5 Q Okay. Well, you recall that there was an actuarial  
6 evaluation for June 2011 that showed a total unfunded  
7 liability of about 643.8 million dollars?

8 A I don't recall if that was the date. I recall during a  
9 deposition us discussing that number. I think that number was  
10 based off the Gabrielle Roeder report as part of their annual  
11 valuation.

12 Q Yeah. And that number, the 643.8 million is referenced  
13 in the June 14 proposal, isn't it?

14 A I think it is, yeah.

15 Q Okay. And that would be for June 11, 2000 -- I'm sorry,  
16 June 2011, right?

17 A I -- I -- I think that's when the report dates back to.

18 Q Okay.

19 A The end of the calendar -- I mean fiscal year.

20 Q Now for that -- didn't mean to interrupt you. Now,  
21 taking that number, the total liability number for the  
22 unfunded pension liability of the reported figure of 643.8  
23 million, not all of that is allocable to the general fund, is  
24 it?

25 A No. I think we discussed this on September 16<sup>th</sup>. There's  
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1 a mechanism for some allocation to DWSD, but Gabrielle Roeder  
2 doesn't break that out between general fund and DWSD.

3 Q Okay. And the fact is that a substantial portion of the  
4 unfunded pension liability, the reported one, the 643.8  
5 million, was allocable to DWSD, correct?

6 A Well, I think you and I discussed on September 16<sup>th</sup> that  
7 the math, and I thought I said let's be careful. The math  
8 works out to about 38%. I -- I think that figure does not --  
9 I think that figure focuses on what was actually paid as  
10 focusing on what was obligated. That 38% might go down if you  
11 include the deferrals that we made. But generally somewhere  
12 between a third to 40% is DWSD.

13 Q Of the unfunded pension liability --

14 A Of the unfunded --

15 Q -- is allocable -- I'm sorry, I didn't mean to --

16 A I didn't mean to interrupt you, I'm sorry.

17 Q Okay. To be clear though about you said 38 to 40% of the  
18 unfunded pension liability is allocable to DWSD.

19 A What I -- what I said was, depending upon if you're  
20 looking at just what was paid for that year, or what was paid  
21 and deferred that that percentage probably ranges, because  
22 Gabrielle Roeder doesn't break out the difference between the  
23 general fund and DWSD obligations. Probably ranges between 30  
24 to 38%. I think that 38% is what we discussed during my

25 September 16<sup>th</sup> deposition.

1 Q Okay. Just so I'm clear, the 38% that we discussed was  
2 -- was allocable to the -- that we're talking about the  
3 unfunded pension liability. And you're getting a little  
4 confused is your answer?

5 A Yeah. Let me -- yeah. I'm going to try to clarify as  
6 best I can because I want to be responsive.

7 If you calculated in the total amount the city had due  
8 for instance in 2013 of about \$130,000,000, then DWSD's  
9 responsibility would be about 30% of that number. If you  
10 calculated in just the amount that was actually paid and other  
11 deferrals in other years, then the DWSD component would  
12 probably be about 38% of that number because it's -- it's a  
13 larger component of what was actually paid as opposed to what  
14 was obligated but a portion of which was deferred.

15 Q Okay.

16 A So the range depending upon whether it's -- it's all that  
17 should be paid but was deferred, or whether it's just what was  
18 actually paid, is somewhere between 30 to 38%.

19 Q Isn't it correct that the unfunded pension, just the  
20 unfunded amount allocable to DWSD is about 39 to 40%, that  
21 range?

22 A That's the figure we discussed on September 16<sup>th</sup>. And --  
23 and that -- that is correct for the amount that's actually  
24 paid. That percentage goes down if you include the deferral  
25 amount. But yes, that's correct.



1 Q Okay. Just so we're real clear, can we put up the City's  
2 Exhibit 68? Look at Page 1 first. Okay. This is the  
3 Gabrielle Roeder. It's a -- a report from July 2012. Do you  
4 see that?

5 A Yes.

6 Q And if we go to Page B3. Okay. If we can blow that up.  
7 Do you see here Gabrielle Roeder actually breaks down the --  
8 the actuarial accrued liability as of June 30, 2011?

9 A Yes.

10 Q And at the very bottom there's unfunded actuarial accrued  
11 liabilities?

12 A Yes.

13 Q Okay. You see there's a -- a total column at the far  
14 right?

15 A Yes.

16 Q Okay. And in the middle it's Department of Water and  
17 Sewage -- or Sewage?

18 A Yes, the middle column.

19 Q The two forty-seven --

20 A Yes.

21 Q And I believe if you do the math, if you divide the two  
22 forty-seven six two four figure into the total unfunded  
23 accrued liabilities, it comes out to just about 38.6%. Do you  
24 see that?

25 A Yeah, that's the discussion we had on September 16<sup>th</sup>.

1 Q Okay. And this is -- so this is talking about the  
2 unfunded liabilities only, correct?

3 A Yes.

4 Q Okay. And in the -- going back now to our discussion  
5 September 16<sup>th</sup>, do you remember that there was some -- there  
6 was some confusion over how to do the math to get the right  
7 number?

8 A Yes, I do.

9 Q And remember we first did it the wrong way and we ended  
10 up with 38%. And then we went back and tried it again and you  
11 ended up saying yes, the right number is 61 -- it was  
12 something like 61%.

13 A Well, I said if you -- I think what I said was, and I'm  
14 sorry because we were both going back and forth on the math.  
15 I think what I said is, the math is the math, but be very  
16 careful with the numbers because you'd actually have to do  
17 down. So just -- just to clarify that whole discussion --

18 Q I -- I agree.

19 A We're -- we're talking about 38%.

20 Q Right. And at the deposition I think we ended up with  
21 61, but we see now that the right number is more at -- at  
22 38.6?

23 A Yes, that's right. Attorneys doing math.

24 Q Thank you. Okay. And now with respect to the unfunded  
25 pension liability that is allocable to DWSD, that is -- DWSD

1 bears financial responsibility for that, doesn't it?

2 A Yes.

3 Q Okay. And so again that's not allocable to the general  
4 fund, is it?

5 A No. It's accounted for in DWSD, but the general fund  
6 makes the payment. So whether or not, I don't want to get  
7 confused with a legal conclusion as to whether or not there's  
8 an obligation by the city to fund that, but DWSD makes a  
9 contribution for that amount.

10 Q So ultimately it's borne that the unfund -- the pension  
11 amounts including the unfunded would ultimately be borne by  
12 DWSD, correct?

13 A Ultimately the -- the portion of that obligation due for  
14 employees at DWSD is borne by DWSD, but is still a city  
15 obligation because they're a department of the city.

16 Q Okay. But ultimately not an obligation that's payable at  
17 the end out of the general fund?

18 A It's not taken out of the general fund.

19 Q Okay. Now, is it correct -- what we've been talking  
20 about now is the 643,000,000 or so liability as of June 2011.  
21 And then we saw that there's an amount about 38 -- it was 38  
22 to 39% that's allocable to DWSD. Is it correct that with  
23 respect to the unfunded pension liability, that if it were  
24 concluded subsequently that the correct amount of the unfunded

1 as 3.5 billion, that a substantial portion of that would still  
2 remain allocable to DWSD?

3 A I -- I think I cautioned on September 16<sup>th</sup> with being  
4 careful about doing a straight line analysis. And I think I  
5 said then that you'd have to go back and do analysis of  
6 deferrals and payments and so on and so forth. So I'm going  
7 to say that again today. But if you're relying on the math, a  
8 portion of that obligation is due from DWSD.

9 Q And I was not suggesting that it was necessarily a  
10 straight line relationship, but simply that there would be a  
11 substantial portion of the unfunded liability that would  
12 remain allocable to DWSD, correct?

13 A Yeah. I'm just going to -- I'm going to caution a little  
14 bit about substantial. There will be a portion substantial if  
15 we go back and do an analysis that of the deferrals, different  
16 proportion than other things. Let's just be a little careful.  
17 But generally speaking, there are obligations due from DWSD.

18 Q Yeah. And as you sit here now you don't know what that  
19 portion that's allocable to DWSD would be, do you?

20 A No. We'd have to do an analysis.

21 Q Is it correct that the City of Detroit owns certain  
22 pieces of art that are maintained at the Detroit Institute of  
23 Arts?

24 A Yes.

25 Q Okay. And this is art that the -- we're talking about  
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1 art that the city owns itself, right, not art that's subject  
2 to any kind of public trust?

3 A Yes.

4 Q Okay. And that art is very valuable, is it not?

5 A We're currently going through a valuation, but I believe  
6 it's very valuable, yes.

7 Q Okay. And Christie's has been retained, correct?

8 A Christie's has been retained, correct.

9 Q And they were retained in August, is that right?

10 A I believe -- well, let's -- let's get by the sequence. I  
11 believe they were initially requested to come out. I told  
12 them go away. We were taken actually --

13 THE COURT: Mr. Orr, please, just answer the  
14 question. Were they retained in August?

15 A I don't recall a specific date. I think it was August.

16 Q Okay. So you were appointed the emergency manager at the  
17 end of March and Christie's was not retained until August.

18 Was that in the beginning or the end of August, do you recall?

19 A I don't know.

20 Q Okay. Now the art is a potential source of cash for the  
21 city, is it not?

22 A I don't know.

23 Q Okay. Well, isn't it potentially a very large source of  
24 cash for the city?

25 A It is valuable. I don't know if it's a large source of  
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1 cash for the city.

2 Q Okay. Have you received any estimates or preliminary  
3 views of its total value from Christie's?

4 A No.

5 Q You're aware of course of reports in the press that the  
6 art that's own by the city could be worth billions?

7 A Yes, I'm aware of press reports, yes.

8 Q Okay. And billions in cash flow would certainly help the  
9 city's financial position, would it not?

10 A I think it would.

11 Q And in fact an influx of cash of that magnitude would  
12 provide funds to at least pay pension contributions for the  
13 next several years, isn't that right?

14 A It might.

15 Q And is there -- there -- let me ask it this way. There's  
16 nothing in the June 14 proposal that recognizes the potential  
17 cash influx from the sale of art as a means to pay vested  
18 pensions, is there?

19 A June 14<sup>th</sup> proposal speaks to DIA, but we did not speak to  
20 any sale of art.

21 Q Okay. We've also talked about the Department of Water  
22 and Sewer. That's another potential cash source for the city,  
23 isn't it?

24 A Yes.

25 Q Okay. And I think you've indicated previously that  
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1 you've been looking at ways to monetize that?

2 A Well, yes.

3 Q And at this point do you have any understanding as to  
4 the, at least a preliminary valuation of what the -- the  
5 amount of cash the Department of Water and Sewer might be able  
6 to generate for the city?

7 A No.

8 Q And I take it nothing in the June 14 proposal shows any  
9 funds generated by DW -- excuse me, DWSD being used to pay  
10 retirees pension benefits, does it?

11 A Well, to the extent the June 14<sup>th</sup> report speaks to trying  
12 to monetize some value out of DWSD and that monetization would  
13 go into in some form the \$2,000,000,000 note, to the extent  
14 pensions are unsecured, they would receive a benefit from that  
15 process.

16 Q Okay. So the answer to my question is, I was correct,  
17 wasn't I, that nothing in the June 14 proposal shows any funds  
18 that might be received through DWSD is going to pay vested  
19 pension benefits?

20 A No, I don't think that's correct. I think the June 14<sup>th</sup>  
21 proposal speaks about a -- a process by which we would provide  
22 benefits through the monetization of certain city assets to  
23 the unsecured creditor class, so consequently they would  
24 benefit.

25 Q You're saying that if -- that under the June 14 proposal,  
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1 the pension holders would be treated as any other unsecured  
2 creditor and the value of their bonds might go up a little,  
3 correct?

4 A Yes.

5 Q But there's nothing in the June 14 proposal that says if  
6 we're able to get cash out DWSD, we'll use that cash to  
7 preserve pension benefits and not have to cut them or not have  
8 to cut them so significantly, is there?

9 A There is nothing that treats pension benefits differently  
10 than any other unsecured creditor.

11 Q Okay. Going back now -- just a few more questions.

12 A Okay.

13 Q To the June 14 meeting. Do you recall being there?

14 A Yes.

15 Q Okay. There were no negotiations that took place at the  
16 June 14 meeting, were there?

17 A No. I wouldn't call those negotiations.

18 Q Okay. Now subsequent to the June 14 proposal and the  
19 meeting on June 14, there -- there were series of  
20 presentations and discussions concerning the terms of the  
21 proposal with respect to various persons and entities that  
22 would be affected under it, correct?

23 A Yes.

24 Q Okay. And is it correct that you yourself did not attend

25 all of the presentations and discussions that took place  
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1 concerning that subsequent to June 14?

2 A Yes, that's correct.

3 Q Okay. And you didn't attend the June 20 meetings, did  
4 you?

5 A No. I think I did attend the June 20<sup>th</sup> meeting.

6 Q Okay. Well, I'd just like to, if we can pull up Exhibit  
7 414. This is your declaration, Mr. Orr?

8 A Yes.

9 Q I just want to ask you if you can -- if we can turn to  
10 Paragraphs 91 and 92. Well, I'll just do it. Do you see in  
11 Paragraph 91 and 92 it's both talking about the June 20  
12 meeting?

13 A Yes.

14 Q Okay. And we can also show you the preceding paragraph  
15 where it's talking about advisors.

16 A Right.

17 Q But if we focus on 91 and 92, it says on June 20, 2013,  
18 certain of these advisors met in Detroit with representatives  
19 of the city's unions and retiree associations. And then in  
20 Paragraph 92, it again in the first sentence talks about the  
21 city's advisors answering as many questions as were asked. Do  
22 you see that?

23 A Uh-huh.

24 Q Okay. And there's no reference to you personally being  
25 there at the June 20 meetings, is there?

1 A No, but I remember attending because I bought lunch.

2 Q Okay.

3 A Out of my pocket.

4 Q Okay. So if Mr. Malhotra testified that you were not  
5 present at either of the June 20 meetings, would you have any  
6 particular basis to disagree with him?

7 A No. But Mr. -- the way the meetings were designed, I  
8 think there was a session in the morning, there was a session  
9 in the afternoon. And I may have been at one session that he  
10 was not at. But I remember being at the meeting.

11 Q Okay. And there were also meetings on July 10<sup>th</sup> and 11<sup>th</sup>,  
12 correct?

13 A I believe so.

14 Q Okay. And you -- I think you indicated previously that  
15 you have no recollection of being present at those meetings,  
16 is that correct?

17 A No, I wasn't at those meetings.

18 Q Okay. Now on July 16<sup>th</sup>, you sent a letter to the  
19 Governor, is that right?

20 A Yes.

21 Q Okay. And why don't we put the July 16<sup>th</sup> letter, that's  
22 Exhibit 409 on the screen? Okay. And this is a letter on  
23 which you asked authorization to file the Chapter 9 filing, is  
24 that right?

25 A Yes.

1 Q Okay. And in this letter you went through a variety of  
2 things reviewing what you represented to be the facts for the  
3 Governor in which the Governor was to base his decision, is  
4 that right?

5 A Yes.

6 Q And among other things you discussed the substance of  
7 what happened at the various creditor meetings that took place  
8 after June 14<sup>th</sup>, is that right?

9 A Yes.

10 Q Okay. And if we look at page -- look at Pages 8 to 9 of  
11 this document, we see there is a heading entitled individual  
12 follow up meetings?

13 A Yes.

14 Q And that goes on to the next page?

15 A Yes.

16 Q Okay. So just going through this briefly, the first one  
17 talks about June 20. And it says again, the city's advisors  
18 conducted meetings with unions and retiree associations. Do  
19 you see that?

20 A Uh-huh, yes.

21 Q Okay. On the 25<sup>th</sup> it says the advisors met with various  
22 persons and among them is the GRS and PFRS? Do you see that?

23 A Yes, that's what the document says.

24 Q And that that's -- the GRS and PFRS, that's the  
25 retirement systems, right?

1 A General retirement system, police and fire retirement  
2 system, yes.

3 Q Okay. Then the next bullet on the next page talks about  
4 July 9<sup>th</sup> and 10<sup>th</sup> and it talks about due diligence with persons  
5 including GRS, PFRS. Do you see that?

6 A Yes.

7 Q Okay. And then on July 10<sup>th</sup>, it talks about follow up  
8 diligence sessions again GRS and PFRS were mentioned and the  
9 unions?

10 A Yes, I see what it says.

11 Q Okay. And then on July 11<sup>th</sup>, it again talks about  
12 sessions with business people and advisors for the unions,  
13 right?

14 A Yes.

15 Q And then finally on the last bullet it talks about  
16 negotiations with counter parties to the pension related swap  
17 contracts?

18 A Yes.

19 Q Okay. And on the -- the counter parties to the swap  
20 contracts though, they don't have anything to do, they're not  
21 the unions or retiree association or the retirement system,  
22 are they?

23 A No.

24 Q Okay. Now in this final bullet paragraph, you say the  
25 city's negotiations. Do you see that? You refer to the

1 city's negotiations?

2 A Yes.

3 Q Okay. In any of the preceding bullet paragraphs that we  
4 have talked about, did you use the word negotiations in  
5 describing what took place?

6 A The document speaks for itself, but I -- I don't see the  
7 word negotiations, no.

8 MR. ULLMAN: I have nothing further.

9 THE COURT: All right. We'll take out break now and  
10 resume at 10:55, please.

11 (WITNESS KEVYN ORR WAS TEMPORARILY EXCUSED AT 10:38 A.M.)

12 THE CLERK: All rise. Court is in recess.

13 (Court in Recess at 10:38 a.m.; Resume at 10:55 a.m.)

14 THE CLERK: Court is in session. Please be seated.

15 MR. DECHIARA: Good morning, Your Honor. Peter  
16 Dechiara from the law firm of Cohen, Weiss, and Simon, LLP for  
17 the UAW International Union.

18 CROSS EXAMINATION

19 BY MR. DECHIARA:

20 Q Good morning, Mr. Orr.

21 A Good morning, Mr. Dechiara.

22 THE COURT: You may proceed, but please no redundant  
23 questioning.

24 MR. DECHIARA: I will try my best, Your Honor, to  
25 avoid redundant questions.

1 Q Mr. Orr, you testified at the beginning of your direct  
2 fairly extensively about your background. I just want to ask  
3 you a few questions about that.

4 A Sure.

5 Q You testified you were born and raised in the State of  
6 Florida, is that correct?

7 A Yes.

8 Q Okay. Prior to --

9 THE COURT: Excuse me, the first question you asked  
10 was a redundant question.

11 MR. DECHIARA: I was just saying the framework for  
12 my next question, Your Honor. I apologize. I'll try my best  
13 to keep it focused.

14 Q Before you became emergency manager, had you ever lived  
15 in the City of Detroit?

16 A No.

17 Q Do you currently maintain a permanent residence in the  
18 Washington, D.C. area?

19 A Yes.

20 Q And I believe you -- and does your wife -- do your wife  
21 and kids live in the Washington, D.C. area?

22 MR. STEWART: Objection, relevance, Your Honor.

23 MR. DECHIARA: Your Honor --

24 THE COURT: The objection is sustained.

25 Q Okay. Since becoming emergency manager, do you commute  
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1 back and forth between Detroit and Washington, D.C.?

2 A Yes.

3 Q And you don't maintain a permanent residence in Detroit,  
4 is that correct?

5 A No.

6 Q And since you've been emergency manager you've been --

7 THE COURT: Fine. Counsel said, is that correct and  
8 you said no. So you do or you don't maintain a permanent  
9 residence here?

10 A I do not maintain a permanent residence here.

11 Q Since you've become emergency manager you -- while in  
12 Detroit you've been living out of a hotel, is that correct?

13 A Yes.

14 Q You testified -- you were asked on -- on direct whether  
15 you took the emergency manager job for the money. Do you  
16 recall that question?

17 A Yes.

18 Q And your answer on direct was no, correct?

19 A I did not take the job for the money.

20 Q Okay. How much money do you earn as emergency manager?

21 A As stated by -- stated in my contract \$275,000 a year.

22 Q Okay. And do I take it from your answer that you didn't  
23 take the job for the money to mean that when you were a  
24 partner at Jones, Day you were earning much much more than  
25 that?

1 A Yes.

2 Q And apart from your \$275,000 a year salary, do you  
3 receive any other compensation for your services as emergency  
4 manager?

5 A I do not receive directly any other compensation. If  
6 you're -- if you're trying to talk about the expenses of the  
7 hotel, I've since understood that those are paid from a fund.

8 Q What fund?

9 A I believe it was the NERD fund.

10 Q Okay. And do you know who contributes to that fund?

11 A I know nothing about that fund. I know nothing about how  
12 it's paid. I've never seen my lease.

13 Q Do you know that -- that fund, the NERD fund is the  
14 Governor's fund?

15 A I know that. I know it's related to the Governor. I  
16 don't know what you mean by the Governor's fund, but yes, I  
17 know that.

18 Q Okay. You know Richard Baird, do you not?

19 A Yes, I do.

20 Q Okay. And he is a consultant to the Governor?

21 A He is now a state employee.

22 Q As of the time that -- as of January and February of  
23 2013, was he a consultant to the Governor?

24 A Yes.

25 Q And in that period of time he worked closely with the  
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1 Governor?

2 A I don't know about his -- I assume he did. He -- I think  
3 his title was transformation manager to the Governor.

4 Q Okay. To the best of your knowledge based on your  
5 dealings with him, was it your understanding that he worked  
6 closely with the Governor?

7 A To the best of my knowledge based on my dealings with  
8 him, yes.

9 Q The meeting, and there's been a lot of testimony about  
10 this, the meeting at which Jones, Day made a pitch to become  
11 restructuring counsel for the City of Detroit was on January  
12 29<sup>th</sup>, 2013, correct?

13 A Yes.

14 Q Okay. And the very next day Mr. Baird called up the  
15 managing partner of Jones, Day, Steven Brogan to inquire about  
16 whether he could speak to you about becoming a candidate for  
17 emergency manager, is that correct?

18 A I believe that's correct.

19 Q And then the very next day after that you spoke to Mr.  
20 Baird, correct?

21 A I may have spoken to him that day, or the day after that,  
22 but it was closely after that, yes.

23 Q Okay. So it was either January 30<sup>th</sup> or January 31<sup>st</sup> that  
24 you spoke to Mr. Baird?

25 A I believe so.

1 Q Okay. Just to make the record clear, if I could ask you  
2 to turn your attention to Exhibit 401. Can -- can you blow  
3 that up a bit? Do you have that on your screen, Mr. Orr?

4 A Yes, I do.

5 Q Okay. And is that an email from -- from you to others  
6 dated January 31<sup>st</sup>, 2013?

7 A Yes.

8 Q And it says in the first sentence, I had a good  
9 conversation with -- with Rich Baird this morning? Do you see  
10 that?

11 A Yes, I do.

12 Q Does that refresh your recollection about whether it was  
13 on the 30<sup>th</sup> or the 31<sup>st</sup> that you spoke to Mr. Baird?

14 A I -- I may have spoken with him both on the afternoon of  
15 the 30<sup>th</sup> and again on the 31<sup>st</sup>. But this says I clearly spoke  
16 with him on the 31<sup>st</sup>, so I certainly spoke with him on the 31<sup>st</sup>.

17 Q You interviewed with the Governor to become emergency  
18 manager, correct?

19 A Yes.

20 Q And you interviewed with Mr. Dillon?

21 A Yes.

22 Q And you interviewed with Mr. Baird?

23 A Mr. Baird was at the meeting that I had with the  
24 Governor.

25 Q Okay. Now I believe you testified on direct that you  
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1 didn't want your decision about whether or not to become --  
2 whether or not you wanted to become emergency manager to have  
3 any impact on whether or not Jones, Day would be chosen as  
4 restructuring counsel for the city, is that -- am I getting  
5 that right?

6 A Yes. I think I testified that whether or not I was  
7 interested in becoming the emergency manager, I did not want  
8 it to either help or hurt Jones, Day.

9 Q Okay. And in fact on direct you testified that you told  
10 the Governor, and the Treasurer, and Mr. Baird that you did  
11 not want your decision about whether to become emergency  
12 manager to have any impact on whether or not Jones, Day was  
13 chosen as restructuring counsel for the city. Am I -- am I  
14 correct that that's what you testified on direct?

15 A Yes. I think I told both the Governor, and Mr. Baird,  
16 and Treasurer Dillon as well.

17 Q Okay. And the reason you told the Governor that, and the  
18 reason you told Mr. Dillon that, was because you understood  
19 that they would be in a position to have influence or impact  
20 on whether or not Jones, Day was chosen for -- as  
21 restructuring counsel, correct?

22 A I told Mr. Dillon and Mr. Baird that because they were on  
23 the review team that we pitched to. I think I told the  
24 Governor that just to reinforce what I told Mr. Baird and Mr.  
25 Dillon.

1 I assumed that Mr. Baird and Mr. Dillon would have some  
2 influence on the selection process since they were on the  
3 team. I don't think I said that just because I assumed the  
4 Governor would have that influence.

5 Q Did the Governor say anything to you in response when you  
6 said that to him?

7 A I think the Governor agreed that it went one way or the  
8 other.

9 Q Okay. I'd like to show you a document that's UAW 619.  
10 It's --

11 MR. DECHIARA: Your Honor, it's not yet admitted  
12 into evidence. I would just ask the witness to -- it's in the  
13 UAW binders which were provided to the Court and the witness  
14 and -- and city counsel this morning.

15 Q Mr. Baird, if I could ask you to turn to -- behind Tab  
16 619.

17 A Mr. Orr?

18 Q I'm sorry, whatever I said, excuse me. Mr. Orr. Are you  
19 at -- do you see this exhibit?

20 A Yes.

21 Q Okay. Am I correct that this is -- these -- this  
22 exhibit, and I'm just referring to the first page, the first  
23 page of this exhibit is a chain of emails. The first one --  
24 or the middle one is from Mr. Baird to you dated February 20<sup>th</sup>,

25 2013?

1 A Yes.

2 (UAW Exhibit 619 was identified)

3 Q Okay. Did you receive that email?

4 A Yes.

5 Q And do you recall what the -- let me just read it. It  
6 says, FYI --

7 THE COURT: Not in evidence yet.

8 MR. DECHIARA: Okay. Your Honor, I -- I would move  
9 this document at this point into evidence.

10 MR. STEWART: The objection is relevance, Your  
11 Honor.

12 MR. DECHIARA: Your Honor, a major theme of -- of  
13 our case, and I believe some of the other objectors' cases, is  
14 that the state was working hand and glove with the firm of  
15 Jones, Day to implement this effort, this scheme, this  
16 strategy to end run the Michigan Constitution in order to cut  
17 the pensions of Detroit retirees.

18 And this is one data point, if I -- if I could, that  
19 shows the intimate relationship between the state and Jones,  
20 Day. This is an email from the Governor's right hand man, Mr.  
21 Baird before Mr. Orr was emergency manager, but while he was a  
22 partner at Jones, Day saying what it says in this email which  
23 if I may refer to it --

24 THE COURT: No, that's all right I'm satisfied that  
25 the document is relevant and that objection is overruled.

1 What -- what number was it again, sir?

2 MR. DECHIARA: Six nineteen.

3 THE COURT: Okay.

4 (UAW Exhibit 619 was admitted)

5 Q Could you blow up the -- okay. Do you recall Mr. Orr,  
6 what this email was about? What the general subject matter of  
7 this exchange was?

8 A Yes.

9 Q What was it?

10 A This was discussion of a proposed partnership agreement  
11 between the Mayor and myself if I were to become emergency  
12 manager.

13 Q Okay. I'd like to refer you to second sentence. It's --  
14 Mr. Baird writes, told him that there were certain things I  
15 would not think we could agree to without your review,  
16 assessment, and determination. And then the sentence goes on  
17 and you can read it, but I'll stop reading out loud there. Do  
18 you know who -- I know you didn't write the sentence, but did  
19 you have an understanding of who the we was, that last word on  
20 the -- on the second line on the -- on the right?

21 A Yes. I think he was talking about the Mayor.

22 MR. WERTHEIMER: Pardon me. I can't hear him and I  
23 apologize.

24 THE COURT: Would you repeat your answer, please?

25 A Yes, Your Honor. Yes, I think he was talking about the  
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1 Mayor.

2 Q Okay. Mr. Baird was talking about himself and the Mayor?

3 A You know, I don't -- I don't know.

4 Q Okay. I don't want you to guess if you don't know.

5 A I don't know.

6 Q Okay. All right. But nonetheless, Mr. Baird was saying  
7 to you that he did not think that we, whoever we were, could  
8 agree to something without your review, assessment, and  
9 determination.

10 A Mr. Dechiara, let me clarify my answer. I think this  
11 email is Mr. Baird talking about an outline that he gave the  
12 Mayor. And I think the we is referring to me and Mr. Baird.

13 Q Okay. Did Mr. Baird ever explain to you apart from  
14 what's written in this email, why your agreement -- your  
15 review assessment and determination were necessary at this  
16 point in time?

17 A You know, as I read this email, Mr. Dechiara, let me  
18 further clarify.

19 THE COURT: I think I just need you to answer that  
20 question, please.

21 A Oh, I'm sorry, Your Honor. Please --

22 Q Did -- did Mr. Baird apart from what's written in this  
23 email, ever explain to you why in his view your review,  
24 assessment, and determination were necessary?

25 A I don't recall.

1 Q Okay. But just to be clear, you were a partner at Jones,  
2 Day at the time of this email, correct?

3 A Yes.

4 THE COURT: Excuse me one second. Now, witness, you  
5 say there's some testimony you'd like to clarify?

6 A Yes, Your Honor.

7 THE COURT: You can do that.

8 A I think the we that's circled here at the end of the  
9 second line is referring to both the -- the -- to Mr. Baird,  
10 to myself, and the Mayor, the royal we if you will.

11 Q And did Mr. Baird ever explain to you apart from what's  
12 written here what -- what the we was, or are you just --

13 A I don't recall. I'm just reading the context of the  
14 email.

15 Q Okay, okay. Let me refer you now to UAW Exhibit 620.  
16 It's the next tab in the book. And do you have it in front of  
17 you, Mr. Orr?

18 A Yes, I do.

19 Q Okay. Let me refer you to the -- the middle email, the  
20 one that is from Richard -- which appears to be from Richard  
21 Baird to you dated February 22<sup>nd</sup>, 2013. Do you see that?

22 A Yes, I do.

23 Q And is that in fact an email that Richard Baird sent to  
24 you on February 22<sup>nd</sup>, 2013?

25 A Yes, I believe so.



1 (UAW Exhibit 620 was identified)

2 MR. DECHIARA: Move the admission of UAW 620, Your  
3 Honor.

4 MR. STEWART: Same objection, Your Honor.

5 MR. DECHIARA: Same argument, Your Honor. It's --  
6 it's just part of the same -- and it's not like I have a lot  
7 of these. This is the only other one on this line.

8 THE COURT: All right. It is admitted. The  
9 objection on relevance grounds is overruled.

10 (UAW Exhibit 620 was admitted)

11 Q Let me if -- thank you. Let me refer to the email from  
12 Richard Baird it says, Kevyn, about to be in a car for several  
13 hours so thought I would send this to you prior to hearing  
14 back from the G a final time. Did -- did you have an  
15 understanding of who the G was? That was the Governor, wasn't  
16 it?

17 A I -- I think it's referring to the Governor, yes.

18 Q And then the -- and then the email goes on, if you agree  
19 with what I have done to the doc, based on everyone's input  
20 and agree that you should be the one to provide it to the  
21 Mayor as fully endorsed by the Governor, and the Treasurer,  
22 and you, then I think that clearly established that you are  
23 already behaving as an agent of the state committed to getting  
24 Detroit back on track.

1 you agree to the things that he refers to in that sentence  
2 that you were already behaving as an agent of the state?

3 A No.

4 Q Did you disabuse Mr. Baird of that notion and -- and --  
5 and tell him that he was wrong about that?

6 A I don't recall.

7 Q You did respond to the email, didn't you in the -- in the  
8 email that is at the top of the exhibit?

9 A Yes.

10 Q If -- if you could blow that up. And am I correct that  
11 nowhere in that response do you say anything to Mr. Baird that  
12 his statement in his email was incorrect, am I reading that  
13 email accurately?

14 A I think the email speaks for itself, yes.

15 Q Okay. Thank you. Is it your understanding that you  
16 serve at the pleasure of the Governor?

17 A Yes, provided I'm acting under 436. I think the Governor  
18 has certain authority to remove me as well as the city council  
19 and the Mayor at the end of 18 months.

20 Q Are you aware of any limits on -- are you -- can the  
21 Governor remove you at will?

22 A I think that may be a legal conclusion under the statute.

23 Q I'm not asking for your legal conclusion. I'm asking for  
24 your understanding.

25 A I don't know.

1 Q Okay. Since you've become emergency manager, you've met  
2 frequently -- frequently with the Governor, have you not?

3 A Yes.

4 Q Both in formal group settings with staff and -- and  
5 advisors present as well as one on one?

6 A I meet with the Governor --

7 Q It's a yes or no question.

8 A No.

9 Q You have not met with the Governor both in formal  
10 settings with others present as well as one on one since  
11 you've become emergency manager?

12 A Yes. I have met with the Governor in formal settings and  
13 with one on one. The difference in my answer was your use of  
14 frequently. I meet with the Governor less frequently in the  
15 one on one sessions.

16 Q Okay. But the totality of your meetings with the  
17 Governor, are frequent, correct?

18 A Yes.

19 Q Okay. And in your meetings with the Governor, have you  
20 discussed the -- prior to the bankruptcy filing, did you  
21 discuss plans for the filing of Detroit's bankruptcy petition?

22 A Outside of implicating any privilege discussions?

23 Q I'm just asking you the question.

24 MR. STEWART: I would state an objection to the

25 extent that it's going to call the witness to reveal  
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1 attorney/client information.

2 A We had discussions.

3 Q And what were your -- what was discussed? But let me --  
4 let me -- let me -- let me ask you, on how many occasions did  
5 you have those discussions?

6 A The Governor and I and the Detroit --

7 Q But do you have a number?

8 A Weekly.

9 THE COURT: That's not a number, but okay.

10 A I don't -- I don't know the number, Your Honor.

11 Q Okay. Just so I understand -- understand your testimony,  
12 testimony, Mr. Orr, you discussed with the Governor on a  
13 weekly basis plans for the filing of the -- the bankruptcy  
14 petition?

15 A No.

16 Q Okay. So my question is, how often did you meet with the  
17 Governor or speak to the Governor if it was by phone, about  
18 plans for Detroit's bankruptcy filing?

19 A Somewhere between two and four or five, maybe.

20 Q And do you have a recollection of what was said in those  
21 discussions between you and the Governor?

22 MR. STEWART: Same objection, Your Honor, to the  
23 extent it's calling for the witness to reveal privileged  
24 attorney/client communications. I would ask that he not

25 answer. But if there were such discussions without counsel  
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1 present.

2 MR. DECHIARA: I think the objection is premature,  
3 Your Honor. I simply asked whether he recalls what was said.  
4 I didn't ask I didn't yet ask him to reveal it.

5 Q Do you recall what was said in those meetings?

6 A I recall some of what was said, yes.

7 Q Okay. Now I would ask you to -- to testify as to what  
8 was said.

9 MR. STEWART: Same objection.

10 A Those meetings were held with attorneys acting as  
11 attorneys, Your Honor, and I'm remembering the admonition from  
12 the Court about my follow on deposition. So I -- I'd like to  
13 say that the Governor has a J.D., and I believe the Treasurer  
14 has a J.D., so I'm not talking about them. I'm talking about  
15 attorneys acting as attorneys.

16 THE COURT: So is it your testimony to the Court  
17 that none of the meetings at which the filing of this case was  
18 discussed, was held outside of the presence of lawyers?

19 A To the best of my recollection, none were held outside  
20 the presence of lawyers acting as lawyers.

21 Q What lawyers?

22 A I believe it was -- there were -- there were a lot of  
23 meetings with lawyers. The Governor's staff lawyers --

24 THE COURT: Fine, Mr. Orr. The question was, what

25 lawyers attended the meetings where the filing of this case  
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1 was discussed.

2 A Yes, Your Honor.

3 THE COURT: The two to five that you said. Was it  
4 five?

5 MR. DECHIARA: He said -- I think he said two to  
6 four or five.

7 A Two to four or five.

8 THE COURT: Two to four or five.

9 A Two to four or five.

10 THE COURT: Those meetings. What lawyers?

11 A There were lawyers on the Governor's staff, Valerie  
12 Brader and Mike Gadola. There were lawyers from Jones, Day at  
13 some of those meetings sometimes on the phone. There would be  
14 lawyers perhaps on the city's staff. From Jones, Day it could  
15 include David Heiman, could include Heather Lennox. I'm  
16 trying to think of other lawyers. But generally lawyers both  
17 on the Governor's staff and lawyers at the city's counsel,  
18 Jones, Day.

19 MR. DECHIARA: Your Honor, it's the UAW's position  
20 that the -- the attorney/client privilege should not apply  
21 here. That these attorneys either for the state or Jones, Day  
22 were being -- were working for the city or the state, public  
23 entities of this -- of this state, paid for by the city or the  
24 state. And their presence at these meetings should not shield  
25 from disclosure what was said at these critical meetings.

1 THE COURT: Well, how do I reconcile that with your  
2 relevance offer just a little while ago where you talked about  
3 the common, I think the word you used was scheme.

4 MR. DECHIARA: I don't see any tension between the  
5 two, Your Honor.

6 THE COURT: All right. Response, please.

7 MR. STEWART: Your Honor, there's no -- the  
8 attorney/client privilege maintained applies to government --  
9 government officials just like it will apply to private  
10 parties and because of the fact that the lawyers were there in  
11 connection with the rendition of legal advice and in  
12 conjunction with the common interest agreement, we would  
13 submit that they're privileged.

14 THE COURT: Is there any reason for a different  
15 ruling on the common interest issue here than there was  
16 earlier?

17 MR. DECHIARA: Your Honor, it's -- the UA -- UAW  
18 took issue with Your Honor's ruling on that. We moved for  
19 reconsideration. Your Honor, we're obviously not going to --  
20 we're obviously going to comply with whatever ruling you make  
21 on this issue. I've stated our argument.

22 THE COURT: And I appreciate that. I appreciate  
23 that, but my -- my question to you was in this specific  
24 context, is there -- is there a reason to have a different  
25 ruling --

1 MR. DECHIARA: No, I think -- I think this specific  
2 context --

3 THE COURT: Is there a distinction to be made here?

4 MR. DECHIARA: Yeah, this specific context is not  
5 unique, it's part of a larger effort by the city and the state  
6 to cloak under the attorney/client privilege these critical  
7 discussions that bear -- that have such importance to the  
8 people of this city and state.

9 THE COURT: All right. The Court will sustain the  
10 claim of privilege and to the extent there was a motion to  
11 compel, the Court will deny that. But I do want to clarify  
12 there was no one on one conversation between you and the  
13 Governor with no one else present where the filing of this  
14 case by the city was discussed, is that your testimony to this  
15 Court?

16 A Not that I recall, Your Honor. The Governor and I have  
17 one on ones. Okay.

18 MR. DECHIARA: Your Honor, if I may. Your Honor --

19 THE COURT: One second. You need to be near a  
20 microphone, sir.

21 MR. DECHIARA: Your Honor, I don't want to burden  
22 the record or take the Court's time necessarily. I did -- I  
23 was planning on asking the witness a series of questions about  
24 what discussions he may have had with the Governor on issues  
25 central to this case, including the timing of the bankruptcy



1 filing, the reasons for the bankruptcy filing.

2 If the Court's ruling is going to be if there were state  
3 and city attorneys present, that the attorney/client privilege  
4 applies, I would just like to note for the record that the UAW  
5 would take exception to that ruling and preserve our position  
6 for any possible subsequent proceedings.

7 THE COURT: Well, I -- I appreciate your interest in  
8 -- in saving time, but let's just clarify that the subjects  
9 you were going to ask the witness about included matters  
10 relating to the filing of the case, yes?

11 MR. DECHIARA: Yes.

12 THE COURT: Okay. And your testimony, Mr. Orr, is  
13 that every time you discuss matters relating to the filing of  
14 the case with the Governor there were counsel -- counsel and  
15 attorneys present.

16 A Yes, Your Honor.

17 THE COURT: All right. You may have that objection.

18 MR. DECHIARA: Thank you, Your Honor. I will yield  
19 to Mr. Wertheimer. I believe he had something to say.

20 MS. LEVINE: Your Honor, can all of the objectors  
21 join in that reservation of rights so we don't have to do it  
22 again?

23 THE COURT: Yes, absolutely.

24 MS. LEVINE: Thanks.

25 THE COURT: Absolutely.

1 MR. WERTHEIMER: William Wertheimer, Your Honor, on  
2 behalf of the Flowers plaintiffs. I just wanted to do a  
3 couple of things. First, join in that objection so that I  
4 didn't have --

5 THE COURT: Okay. I appreciate that.

6 MR. WERTHEIMER: -- to do it. But second, Your  
7 Honor, I would also add to the point made by counsel for the  
8 UAW, that my objection is also based on the fact that the  
9 Court consistent with its rulings yesterday relative to the  
10 Governor, has acknowledged the attorney/client privilege and  
11 says that it should apply with no more evidence than that an  
12 attorney was present at a discussion.

13 And I just want the record to reflect that it's -- our  
14 argument -- or the Flowers plaintiffs' argument is not just  
15 that these are government attorneys, but that more of a  
16 showing needs to be made for the privilege to apply, than that  
17 an attorney was present.

18 THE COURT: Well, since you've challenged that, sir,  
19 I will state for the record that my ruling is based on more  
20 than the fact that -- more than merely the fact that an  
21 attorney was present. When you're talking about as we are  
22 here, the filing of a bankruptcy case, those conversations  
23 relating to the filing of a bankruptcy case are in relation to  
24 a legal matter and not what would otherwise be an unprivileged  
25 matter.

1 MR. WERTHEIMER: I did not mean to imply that the  
2 Court was not making that ruling in that context.

3 THE COURT: All right.

4 MR. WERTHEIMER: I would add just one other point.  
5 And that is I think consistent with your rulings yesterday  
6 that the privilege would also be asserted were any questions  
7 to be asked relative to communications between the Governor  
8 and Mr. Orr relating to Section 924 of the State Constitution,  
9 the constitutional pension provision, and what its impact  
10 could be on the bankruptcy. I would assume the privilege  
11 would be asserted as to that and that the Court's ruling would  
12 be the same.

13 Again for purposes of the record, I think that was the  
14 position taken by the Governor yesterday. I think it's  
15 consistent with the Court's ruling yesterday. But I want to  
16 make sure that it's included as to this testimony also.

17 THE COURT: All I can say as to that is, it sounds  
18 like it would, but if in the context of a specific area of  
19 inquiry you think that this ruling should be different because  
20 of particular facts or circumstances, I certainly invite you  
21 to draw my attention to any distinction that you think should  
22 require a different result.

23 MR. WERTHEIMER: I -- I understand that, Your Honor.  
24 I -- my last point was just to make clear that it's my

1 to conversations between --

2 THE COURT: All right. I think we've gone as far as  
3 we can with this. So I'm going to ask that we resume with our  
4 cross examination at this time.

5 MR. WERTHEIMER: Thank you, Your Honor.

6 Q Mr. Orr, did you send a draft of your June 14<sup>th</sup> proposal  
7 to creditors, to the Governor to review? And when I say you,  
8 I mean you or your staff?

9 A I'm -- I'm trying to -- I don't recall.

10 Q Do you recall whether you received feedback from the  
11 Governor or comments of any sort on a draft of the June 14<sup>th</sup>  
12 proposal to creditors? And when I say you, I mean you or  
13 people in your office. And when I say the Governor, I mean  
14 the Governor or his staff.

15 A I don't think we received feedback.

16 Q Did you receive any comments from the Governor or his  
17 office on the proposal before it was made public?

18 A No, I'm not aware of any comments.

19 Q If the Governor had made comments or been given feedback,  
20 is that something you would have been made aware of?

21 A I might have been. It might have been done at a  
22 different level, at the drafting level.

23 Q But if the Governor of the state had comments about the  
24 June 14<sup>th</sup> proposal of the -- the key document in this case,

25 it's your testimony that you would not have been aware of his  
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1 comments?

2 A One of the key documents. And it's my testimony that  
3 those comments could have been communicated through attorneys  
4 or through a staff level that would not have gotten to me  
5 during the drafting stage.

6 Q Would they have gotten to you at some point before the  
7 document was made public?

8 THE COURT: Okay. So counsel on this question, when  
9 you say Governor, you don't mean the Governor or his staff,  
10 you mean the Governor personally?

11 MR. DECHIARA: No, I mean the Governor and his  
12 staff. Well, let me break it down to be clear. Thank you,  
13 Your Honor. I appreciate the clarification.

14 Q So let me start with the Governor. Is it your testimony  
15 that the Governor and the state had comments on the June 14<sup>th</sup>  
16 creditors' proposal, you before the document became public,  
17 would not have known about those comments?

18 A It is my testimony that I don't recall the Governor  
19 providing any comments and that if he had, they may not have  
20 made their way to me.

21 Q You -- you are aware, are you not, that part of your June  
22 14<sup>th</sup> proposal, where that stated that there must be significant  
23 cuts to accrued pension liabilities?

24 A Yes. I think we said that in the June 14<sup>th</sup> proposal.

25 Q And was the June 14<sup>th</sup> proposal negotiable? Were you  
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1 prepared to negotiate on it?

2 A Yes. That's why we called it a proposal.

3 Q And were you prepared to negotiate on every -- every  
4 element of it?

5 A Yes. I think we said that.

6 Q And were you prepared to negotiate a -- an agreement that  
7 would not have had any cuts to accrued pension liabilities?

8 A I'm not sure that's accurate. I think the amount of  
9 unaccrued pension liabilities was so significant that we may  
10 not --

11 THE COURT: All right. Mr. Orr, again, I have to  
12 ask you please, just answer the question. We're going to be  
13 here a really long time if you insist on going on and on.

14 A And -- and I don't want that, Your Honor. I'll try to  
15 answer just the question. Please, Mr. Dechiara.

16 Q I'll -- I'll repeat the question.

17 A Uh-huh.

18 Q Were you prepared in response to your proposal, your June  
19 14<sup>th</sup> proposal, to accept any counter proposal that had as part  
20 of the counter proposal, an element that would have spared,  
21 that would have not had -- would not have impaired at all  
22 accrued pension liabilities?

23 A We were prepared to accept any counter proposal.

24 Q Including a counter proposal that would have had no cuts

25 at all in accrued pension liabilities, is that your testimony?  
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1 A Yes.

2 Q Okay. And are you prepared to do that today?

3 A If there's a counter proposal, yes. When you say accept,  
4 Mr. Dechaira, we'll accept counter proposals, that's not  
5 agreed to.

6 Q Okay. Thank you for that clarification. That's what I'm  
7 getting at. Okay. So let me -- let me try it again because I  
8 think that's an important point. At the time you made the  
9 June --

10 THE COURT: While we're clarifying here, I'm going  
11 to strike the last question and answer about what he's willing  
12 to do today.

13 MR. DECHIARA: Thank you, Your Honor. I -- I -- I  
14 will not go there.

15 Q At the time you made the June 14<sup>th</sup> proposal, until the  
16 time you filed for bankruptcy, were you prepared to agree to  
17 an agreement with the stakeholders that would have spared the  
18 pension -- accrued pension liabilities from any cuts?

19 A Probably not.

20 Q Is it -- am I correct that the procedure at the June 14<sup>th</sup>  
21 meeting was that for an attendee, in other words someone who  
22 was invited to attend, for an attendee to make a comment or  
23 ask -- ask a question, they had to fill out a card and have  
24 that card brought up to the front of the room and read -- read  
25 by someone else?

1 A Yes, I believe so.

2 Q You -- is your testimony here today on direct -- I mean,  
3 not on direct, but on cross by -- by the retiree committee  
4 that you did attend the June 20<sup>th</sup> meeting?

5 A Yes.

6 Q Okay. Do you recall giving a deposition in this  
7 proceeding on September 16<sup>th</sup>?

8 A Yes.

9 Q Okay. And did you testify truthfully in that deposition?

10 A Yes.

11 Q I'd like to read for you, from Page 261 of your  
12 deposition. I'm at Line 16.

13 Question, okay. So do you recall whether you attended  
14 June 20<sup>th</sup>? Answer, I think I did, but I don't recall.

15 A Yes.

16 Q Is it true that as of June 16<sup>th</sup> you could not recall with  
17 certainty whether you had attended the June 20<sup>th</sup> meeting?

18 A As of September 16<sup>th</sup>?

19 THE COURT: You mean September 16<sup>th</sup>?

20 MR. DECHIARA: Yes, I'm sorry.

21 A Okay.

22 Q Thank you. As of September 16<sup>th</sup>?

23 A I -- I think my answer was, I think I did, but I didn't  
24 recall with specificity. I now recall that I did.

25 Q Was there something that happened between September 16<sup>th</sup>  
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1 and today that caused your recollection to improve on that  
2 point?

3 A Yes.

4 Q What happened?

5 A I went over my old American Express bills.

6 Q Fair enough. Was the same procedure that you -- that you  
7 -- I asked you about -- about using the cards, did that apply  
8 to the June 20<sup>th</sup> meeting as well?

9 A I don't recall.

10 Q I'd like to show you what's been admitted into evidence,  
11 it's in your UAW binder as Exhibit 623. Do you -- do you  
12 recognize this -- is this -- it's a two page document. If you  
13 can look at both pages. Putting aside this particular  
14 document, is this the form of the question cards that were  
15 used at these meetings?

16 A I don't recall.

17 Q Okay. Do you recall this particular document?

18 A I do not.

19 Q Do you agree that the June 20<sup>th</sup> meeting was an  
20 informational meeting?

21 A Yes. I would agree in part it was informational.

22 Q Are you familiar with the term OPEB, other post  
23 employment benefits?

24 A Yes.

25 Q Okay. Did anyone at Jones, Day ever communicate to you  
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1 that the UAW was interested in setting up a process for  
2 negotiating over OPEB benefits?

3 A I don't recall.

4 Q Let me now refer you to your July 16<sup>th</sup> letter requesting  
5 permission from -- requesting authorization to file for  
6 bankruptcy. Do you recall that letter?

7 A Yes, I do.

8 Q Did you or your staff show a draft of that letter to the  
9 Governor or his staff at any time before July 16<sup>th</sup>?

10 A No, I don't think so.

11 Q Did you or your staff show a draft of the July 16<sup>th</sup> letter  
12 to the Treasurer or his staff at any time before July 16<sup>th</sup>?

13 A No, I don't think so.

14 Q I'd like to show you -- well, first, I'd like to call  
15 your attention to the July 16<sup>th</sup> letter which is Exhibit 409.  
16 Could you please call up Exhibit 409? Mr. Orr, could you  
17 please turn to Exhibit 626 in the UAW binder?

18 A Yes, I have it.

19 Q And this appears to be a July 10<sup>th</sup> email from Andy Dillon  
20 to certain individuals, none of whom appear to be you? Do you  
21 see that?

22 A Yes.

23 Q Okay. Did you -- have you ever seen this document  
24 before?

25 A I have not.

1 Q Okay. Let me refer you, and I'm not going to read it  
2 because it's not in evidence. But let me just refer you to  
3 the -- do you see the numbered paragraphs on the bottom of  
4 page -- the first page?

5 A Yes.

6 Q Okay. Let me refer you to the first one. If you could  
7 just read that to yourself.

8 A Yes.

9 Q Okay.

10 THE COURT: What's the purpose of this, counsel?

11 MR. DECHIARA: Your Honor, the purpose of this is to  
12 show, to clearly show, we believe, that the Treasurer, not  
13 only was shown a draft of the July 16<sup>th</sup> letter in contradiction  
14 to the witness' testimony, but that the -- the Treasurer's  
15 comments on the draft were incorporated into the final letter.

16 THE COURT: Is the document in evidence?

17 MR. DECHIARA: No, it's not, Your Honor, but --

18 THE COURT: Okay. So, you can't confront him with  
19 it until it is.

20 MR. DECHIARA: I'm trying to refresh -- Your Honor,  
21 we -- we do intend to put it into -- into evidence, but I'm  
22 trying to establish to essentially impeach this witness'  
23 testimony that a draft was not provided to the Treasurer by  
24 pointing out to him what I just said.

25 THE COURT: Well, why don't you just point it out to  
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1 me after the document is in evidence.

2 MR. DECHIARA: I will, Your Honor.

3 Q Let me ask if Exhibit 44 can be called to the screen.

4 And while that's being done, Mr. Orr, let me ask you, when did  
5 you begin to -- you didn't write the July 16<sup>th</sup> letter on July  
6 16<sup>th</sup>, correct? The preparation for that letter became -- began  
7 earlier?

8 A Yes. There were drafts of that letter being made earlier  
9 than July 16<sup>th</sup>.

10 Q Okay. Can we turn to Page 61 of Exhibit 44? And if you  
11 could blow that up, please. And by the way, Mr. Orr, Exhibit  
12 44 is the executive summary of the June 14<sup>th</sup> proposal, correct?

13 A Yes.

14 Q Okay. And that was presented at the June 14<sup>th</sup> meeting?

15 A Yes.

16 Q And on Page 61, third bullet point, it says that there  
17 would be -- it says as part of the calendar, there would be an  
18 evaluation period from July 15<sup>th</sup> to July 19<sup>th</sup>, 2013. Do you see  
19 that?

20 A Yes.

21 Q Okay. And you told the attendees at the June 14<sup>th</sup>  
22 meeting, and I think I'm quoting you accurately from your  
23 direct, but tell me if I'm not, "that that was a schedule that  
24 you were sticking to".

25 A Yes.

1 Q Did you say that?

2 A Yes.

3 Q Okay. And in fact you did not stick to that schedule,  
4 isn't that a fact?

5 A We substantially stuck to it, yes, but no, not exactly on  
6 the 19<sup>th</sup>.

7 Q Well, in fact you filed for bankruptcy on the 18<sup>th</sup>,  
8 correct?

9 A Yes.

10 Q And in fact before July 15<sup>th</sup>, you were already writing  
11 your July -- what became your July 16<sup>th</sup> letter, correct?

12 A I or members --

13 Q Just answer the question.

14 A I wasn't writing it.

15 Q It was -- the letter was being prepared, is that correct?

16 A Yes.

17 Q Did you tell -- did you contact the stakeholders or the  
18 creditors who were at the June 14<sup>th</sup> meeting and tell them that  
19 you were not going to be sticking to the schedule the way you  
20 had told them you would? Did you do that?

21 A No.

22 Q You testified, I believe on direct, that as a result of  
23 the Flowers, Webster and -- lawsuits and the lawsuit by the  
24 pension funds, that the situation, and I think I'm quoting you  
25 correctly on direct, but -- but tell me if I'm not. Was

1 becoming out of control? Was -- was that your direct  
2 testimony?

3 A I think that's -- yes. I think that's substantially my  
4 testimony.

5 Q Okay. Is it fair to say that the plaintiffs in the -- in  
6 those three lawsuits were exercising their lawful right to go  
7 to the state judiciary to obtain a determination on a  
8 important issue of law?

9 A I think the plaintiffs were doing whatever they thought  
10 was in their best interest.

11 Q That may be, but that doesn't answer my question.

12 A But your question were they exercising their judicial  
13 rights. I -- I don't know what they were doing. I know that  
14 they were not keeping with the schedule and not coming forward  
15 with counter proposals, that's what I know.

16 Q Well, they were filing lawsuits with the state judiciary,  
17 correct?

18 A Yes.

19 Q And you consider that to be behavior that was out of  
20 control?

21 A No. I consider that to be behavior that was calculated  
22 to undermine my ability to discharge my obligations under the  
23 statute.

24 Q It was calculated to prevent you from filing for  
25 bankruptcy, wasn't that what it was about?

1 A No. I -- I didn't say that.

2 Q Could it -- could you not have waited a few days to see  
3 how the Courts would have -- the State Courts would have  
4 resolved important issues involving the statute and the  
5 Constitution?

6 A Mr. Dechaira, we'd waited almost a month.

7 Q Okay. Have you ever spoken to the Governor about having  
8 the state assume some or all of the city's pension  
9 liabilities?

10 A I don't recall.

11 Q You don't recall ever having done that?

12 A No, I don't.

13 Q Okay. So you -- you may have done it, and you just don't  
14 recall?

15 A Yes.

16 Q Did you ever undertake or cause to --

17 THE COURT: One second. I want to make sure I  
18 understand that answer.

19 A Yes.

20 THE COURT: You do not remember asking the Governor  
21 to write a check for 3.5 billion dollars?

22 A This is the problem with a yes or no. The number may not  
23 have been 3.5 billion. The -- the question may have come in  
24 in terms of some assistance. But I don't recall asking it in

25 that context, Your Honor. There are things I can testify to,  
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1 it's just that question I don't recall.

2 Q Just so the record is clear, let me ask it again. Do you  
3 recall ever making a request to the Governor in any context  
4 seeking assistance, financial assistance from the state for  
5 some or all, any -- any amount of the state's pension  
6 liabilities -- of the city's pension liabilities?

7 A I don't recall asking for assistance in that form.

8 Q Do you recall asking in any form?

9 A I recall having discussions about whether the state would  
10 be in a position to make any assistance to the city to deal  
11 with its problems and I think I said this publicly before.  
12 And that it was made clear that the city's obligated to  
13 resolve its own problems.

14 Q When -- when did you make that request?

15 A I don't recall.

16 Q Was it before you filed for bankruptcy?

17 A Probably.

18 Q You don't remember when?

19 A I do not remember when.

20 Q Was it a request in writing?

21 A I don't think so.

22 Q Was it -- was it a request face to face with the  
23 Governor?

24 A Yes.

25 Q Was -- do you recall where the meeting took place?



1 A No, our meetings either take place in Lansing or here in  
2 -- in -- in Cadillac Place, but I don't recall which -- which  
3 location.

4 Q Do you recall who was present other than you and the  
5 Governor?

6 A There were -- it was -- it would have been in the Detroit  
7 team meeting.

8 Q What does that mean? Who -- who would have been present  
9 at the meeting?

10 A In -- in those meetings, sometimes it's me and the  
11 Governor, Treasurer Dillon, Tom Saxon on behalf of the state,  
12 Braum Stibitz occasionally, Rich Baird, Valerie Brader, Mike  
13 Gadola. There may be attorneys on the line, my state liaison  
14 Greg Tedder. There may be other attendees at those meetings.

15 Q What to the best of your recollection was said at that  
16 meeting on the subject that I've just asked you about?

17 MR. SCHNEIDER: Objection, Your Honor, on behalf of  
18 the state. I object to any conversation--

19 THE COURT: Go ahead and approach the podium and --  
20 and -- and speak, sir.

21 MR. SCHNEIDER: Objection to the -- on behalf of the  
22 state to any content of this that might implicate the  
23 attorney/client privilege.

24 THE COURT: How is the state providing help to the

1 protected by attorney/client privilege?

2 MR. SCHNEIDER: The reason why I'm stating this is  
3 because I believe the witness --

4 THE COURT: I just need an answer to my question.

5 MR. SCHNEIDER: Could you state it again, please?

6 THE COURT: How is a conversation between Mr. Orr  
7 and the Governor about whether the state can or is willing to  
8 help the city with its fiscal problems, protected by  
9 attorney/client privilege?

10 MR. SCHNEIDER: Well, to the extent that attorneys  
11 were present and attorney discussion was relevant -- relevant  
12 to that, and that these conversations did take place if that  
13 is what happened with attorneys advising and being there for  
14 the purpose of that, I believe that that would be  
15 attorney/client privilege information.

16 THE COURT: Well, but how is -- how is it a  
17 discussion about a legal matter?

18 MR. SCHNEIDER: I don't know what the witness is  
19 going to testify to. The reason why I objected is because the  
20 statement was made that attorneys were present. And that's --  
21 that's the --

22 THE COURT: Well, but you certainly agree with the  
23 proposition that just because attorneys were present doesn't  
24 make every conversation protected by the attorney/client  
25 privilege, don't you?

1 MR. SCHNEIDER: I believe in this situation --

2 THE COURT: Don't you, sir?

3 MR. SCHNEIDER: I think when the attorneys are  
4 present, Your Honor, my position is, is that they are there  
5 for the purposes of providing legal advice.

6 THE COURT: So there's like a presumption. Any law  
7 in support of that?

8 MR. SCHNEIDER: Well, Your Honor, I'm willing to  
9 yield back to the city. I just wanted my objection noted to  
10 the extent that attorney/client privilege is --

11 THE COURT: Well, counsel, we don't make objections  
12 for the sake of making objections for the record. We make  
13 objections because you don't want the testimony to come in and  
14 you have to be prepared to argue that.

15 MR. SCHNEIDER: That's true. And I don't know what  
16 the testimony is and that's why I was objecting.

17 THE COURT: All right. I'm going to hold that --  
18 that this question does not relate to a legal matter and  
19 therefore is not protected by the attorney/client privilege  
20 even though there may have been attorneys who were either  
21 listening in to the conversation, or participating in it. So,  
22 please answer the question.

23 Q Okay. What was said at that meeting on the subject I  
24 asked you about?

25 A I don't recall the specifics, but the subject was  
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1 generally discussed that there was no ability for the state to  
2 provide direct financial assistance to the city and that we  
3 had to find a way to resolve our problems based upon what we  
4 could work with.

5 Q The words that you just said, were you saying those  
6 words, or was -- was the Governor saying those words?

7 A It -- it was an exchange. I don't recall verbatim what  
8 was said during the exchange.

9 Q Did the Governor in any forum deny the request that you  
10 were making?

11 A I guess you could call that -- I don't know one, if it  
12 was a request, or one if you call it denial. I know there was  
13 a dialogue and it became clear that there would be no  
14 assistance coming from the state.

15 Q Were you in that meeting seeking assistance from the  
16 state?

17 A I don't know if we were just seeking assistance for the  
18 state, Mr. Dechaira. As I said, it was part of a dialogue and  
19 -- over a number of different things.

20 Q Well, Mr. Orr, I wasn't at the meeting. I'm asking you,  
21 do you -- do you know what you were doing in that meeting on  
22 this subject?

23 A As I've said, we have weekly meetings. We discussed a  
24 number of things. In those meetings there was an exchange in

1 city.

2 It became clear as a part of that discussion that the  
3 state would not be forthcoming with any assistance from the  
4 city. The exact exchange and the exact dialogue, I do not  
5 recall, but that is the gist of the discussion.

6 Q Okay. And I'm not going to ask you to recollect  
7 verbatim, I wouldn't expect that what was said. But I want to  
8 just get some basic information.

9 A Uh-huh.

10 Q Were you in what you said seeking in one form or another,  
11 aid from the state for this -- to pay for -- to help pay for  
12 the city's pension liabilities?

13 A I don't recall.

14 Q Okay. And do you recall whether the Governor responded  
15 in any way to what was said on that subject, other than what  
16 you've already said?

17 A I don't recall.

18 Q Have you ever undertaken or caused to be undertaken any  
19 analysis of whether it would be possible to craft a legal  
20 claim by the city against the state to try to hold the state  
21 responsible for some or all of the city's pension liabilities?  
22 Have you ever caused any analysis to be undertaken on that  
23 point?

24 A No, not that I'm aware of.

25 Q Have you ever looked into the issue of whether or not  
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1 there might be a conflict of interest between the existence of  
2 such a claim and your position being paid by the state and  
3 being housed by the Governor's NERD fund? Have you ever  
4 looked -- done any analysis to look into whether or not there  
5 might be a conflict of interest?

6 A No.

7 Q Are you familiar with the concept of deferred  
8 compensation?

9 A Yes, I'm familiar with it.

10 Q And is it your understanding that when an employee works  
11 in exchange for his or her labor, the employee receives  
12 current wages but also in certain circumstances part of that  
13 compensation for the worker's labor is deferred until  
14 retirement. Is that your understanding of what deferred  
15 compensation is?

16 A It can mean that, yes.

17 Q Okay. And in that context if you have deferred  
18 compensation such as a pension, is it your understanding that  
19 that pension even though it's collected in retirement, has  
20 already been earned through years of labor by the employee?

21 A Mr. Dechiara, I believe that implicates a legal  
22 conclusion. It might be true.

23 Q Well, I'm not asking a legal conclusion, unless you have  
24 one. But I'm -- I'm looking for your understanding apart from  
25 any legal conclusion.

1 A My understanding of your concept that pensions are a form  
2 of deferred compensation, I'm aware of that. My understanding  
3 in this situation as to whether or not the pension fund is  
4 adequately protected, that responsibility is a different  
5 understanding.

6 Q My question is, has the pension already been earned  
7 through the employee's years of labor for the City of Detroit?  
8 That's my question. Do you have an understanding of that --  
9 that, one way or another?

10 A Yes.

11 Q And what's your understanding?

12 A My understanding is that the concept you're trying to  
13 discuss is one where the employee's pension is earned through  
14 the labor.

15 Q Okay. Is -- would you agree with me in your position as  
16 emergency manager that to revitalize the City of Detroit  
17 requires capable and committed employees working for the city?

18 A Yes.

19 Q Have you done any analysis as to whether proposing -- or  
20 strike that. Have you done any analysis as to whether cutting  
21 accrued retiree benefits for active employees would negatively  
22 impact their morale?

23 A No.

24 Q Have you done any analysis such as speaking to a labor

25 economist as to whether or not cutting accrued retiree

1 benefits for active employees of the city would diminish the  
2 city's ability to attract and retain committed and capable  
3 employees? Have you ever undertaken any analysis on that  
4 point?

5 A I'm thinking it through because we recently held a job  
6 fair and we received over 1,700 applications, so it doesn't  
7 appear that the current situation is impairing our ability to  
8 attract workers.

9 Q That was not my question, Mr. Orr.

10 A That's -- have I done analysis? Yes.

11 Q I'm sorry?

12 A Yes.

13 Q You have done analysis?

14 A In my mind that's an analysis.

15 Q You -- so you have done your own analysis, is that what  
16 you're testifying?

17 A Yes. Unless you want to define some other term, yes.

18 Q So, tell me what your analysis is?

19 A My analysis is that during the course of the job fair,  
20 we've seen another employees come in. My analysis is that  
21 we've spoken with several uniform unions who have said that  
22 their morale is increasing even under the current  
23 circumstances.

24 My analysis is, that I've spoken with city employees that  
25 say despite the current circumstances, they continue to work



1 hard at their jobs and they're committed to assist this city  
2 going forward.

3 Q You testified on direct, I believe, that your June 14<sup>th</sup>  
4 proposal was in the best interests of the citizens of Detroit.  
5 Do you recall that?

6 A Yes.

7 Q And -- and when you say the best interests of the  
8 citizens of Detroit, are you including the retirees of the  
9 City of Detroit?

10 A Not all the retirees are citizens of Detroit, Mr.  
11 Dechiara.

12 Q The ones that are, are you including among the citizens  
13 of Detroit for whom you think your proposal would be in the  
14 best interest?

15 A I'm including the -- I'm sorry.

16 Q Are you including retirees?

17 A I'm including all of the 700,000 residents of the citizen  
18 of Detroit and if that includes retirees, yes, I'm including  
19 them.

20 Q Do you have any doubt that some of the retirees of the  
21 City of Detroit live in the City of Detroit?

22 A No, I do not.

23 Q Okay. Have you done any analysis in coming to the  
24 conclusion that your proposal is in the best interests of the  
25 city -- of the citizens of the City of Detroit including the

1 retirees? Have you done any analysis of the amount that  
2 Detroit retirees receive on average annually in pension?

3 A Have I done?

4 Q Yes.

5 A No.

6 Q Have you taken any steps to inform yourself as to that  
7 question, what's the average annual pension of a Detroit  
8 retiree?

9 A Yes.

10 Q Have you? Okay. And did you come -- did you learn the  
11 answer?

12 A I've seen ranges, but yes.

13 Q Okay. And what's the range?

14 A The ranges have gone from 19,000, approximately 24,000,  
15 to 35,000 or more.

16 Q And do you know whether there's any federal or other  
17 insurance that would cover retirees to which -- strike that.  
18 Are you aware of whether there's any federal or other  
19 insurance that would provide benefits to retirees in the event  
20 that their accrued pension liabilities were impaired?

21 A Yes.

22 Q What -- there -- is it your belief there is insurance?

23 A No, you asked me if I were aware.

24 Q Okay. And is there such insurance?

25 A No.

1 Q Okay. Have you done any analysis to determine whether if  
2 retirees, whether they're earning \$18,000 a year in  
3 retirement, or \$24,000 a year, have you done any analysis  
4 whether under your proposal to significantly cut their  
5 pensions, have you done any analysis to determine whether  
6 those retirees would be able to make ends meet in terms of  
7 paying their mortgage, paying their rent, putting food on the  
8 table, buying their medications, et cetera? Have you done any  
9 analysis?

10 MR. STEWART: Objection. Objection, Your Honor,  
11 relevance.

12 MR. DECHIARA: We think it --

13 THE COURT: Objection is -- the objection is  
14 sustained.

15 MR. DECHIARA: I have nothing further, Your Honor.

16 CROSS EXAMINATION

17 BY MS. LEVINE:

18 Q For two more minutes. Good morning, Mr. Orr.

19 A Good morning, Ms. Levine.

20 MS. LEVINE: Your Honor, Sharon Levine, Lowenstein,  
21 Sandler for AFSCME.

22 Q Mr. Orr, do you receive -- do you recall receiving a  
23 request from Ed McNeil on behalf of AFSCME's Council 25 on --  
24 actually let me go back. You were -- your -- you first day of  
25 work if you will as the emergency manager, was March 25?

1 A Yes.

2 Q Do you recall receiving a request from Ed McNeil on  
3 behalf of AFSCME Council 25 on March 25 to meet with you on  
4 behalf of not only himself, but -- but a coalition of 30 city  
5 unions who had previously worked together with regard to  
6 concessionary bargaining and wanted to work together with you?

7 A Are you talking about proposed two year collective  
8 bargaining agreement that was presented to me on the --

9 Q No, no. I guess I've already -- a question. Did you get  
10 a request?

11 A That was presented to me on the 26<sup>th</sup>.

12 Q Did you get a request? Do you recall getting a request  
13 from Ed McNeil on March -- on your first day of work, on March  
14 25<sup>th</sup> asking you and inviting you to meet with him and the  
15 coalition of unions to work together with regard to the -- to  
16 solving Detroit's problems?

17 A Are you talking about the request of Mr. McNeil said he  
18 taped to the door?

19 Q That's the one.

20 A The one. I recall that that was sent to someone on my  
21 staff. I recall the next day I also got another request.

22 Q And did you respond by offering to set up a meeting?

23 A I think I said I was willing to meet with anyone going  
24 forward.

25 Q No, no. But they specifically asked you to schedule a  
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1 meeting with them and it's -- actually let me rephrase it.

2 Isn't it true that you actually never met with the coalition  
3 of unions separate -- separate and apart from the meetings  
4 that we've been -- or the presentations that we've previously  
5 been discussing that occurred on the 4<sup>th</sup>, the big 4<sup>th</sup>, what  
6 we'll call the big 4<sup>th</sup>?

7 A Me personally?

8 Q Yes.

9 A Yeah, I believe that's true.

10 Q All right. Is it your position that you directed  
11 somebody on your behalf to meet with the coalition separate  
12 and apart from the June 14, June 20, July 10, and July 11  
13 meetings with the coalition of unions?

14 A Are we still talking about the request?

15 Q The -- the question is, did you direct somebody on your  
16 behalf to meet with the coalition of unions separate and apart  
17 from the June 14, June 20, July 10, and July 11 presentations  
18 prior to the filing of the bankruptcy petition on July 18<sup>th</sup>?

19 A There were meetings with other CDA's. I don't know  
20 specifically the coalition. The request that you're talking  
21 about was a request to enter into collective bargaining which  
22 has been suspended by 436.

23 Q I'm going to try again.

24 THE COURT: No. We're going to take our lunch break

1 having the witness answer questions. So I'm going to instruct  
2 you to counsel with your client over this lunch break about  
3 the absolute criticality of just answering the question. Will  
4 you do that, please?

5 MR. SHUMAKER: I will do that, Your Honor.

6 A I apologize, Your Honor.

7 THE COURT: Mr. Orr, I will accept your apology, if  
8 you accept my advice and your attorney's advice.

9 A Yes, Your Honor.

10 THE COURT: All right. 1:30.

11 (WITNESS KEVYN ORR WAS TEMPORARILY EXCUSED AT 12:00 P.M.)

12 THE CLERK: All rise. Court is in recess.

13 (Court in Recess at 12:00 p.m.; Resume at 1:30 p.m.)

14 THE CLERK: All rise. Court is in session. Please  
15 be seated. Recalling case number 13-53846, the City of  
16 Detroit, Michigan.

17 THE COURT: It appears everyone's here. You may  
18 proceed.

19 BY MS. LEVINE:

20 Q Good afternoon, Your Honor. Mr. Orr.

21 A Good afternoon, Ms. Levine.

22 Q Going back to where we were right before we broke for  
23 lunch. So on March 25, 2013, you received a request from Ed  
24 McNeil from AFSCME Michigan Council 25 to meet, correct?

25 A Yes.

1 Q And that request was on behalf of not only himself, but a  
2 coalition of approximately 30 unions, correct?

3 A I believe so.

4 Q And in that request he indicated that the coalition of  
5 unions had met previously including with Ernst and Young and  
6 were -- had agreed to concessions that hadn't been imposed,  
7 but they -- they wanted to continue that dialogue with you,  
8 correct?

9 A I don't recall the specifics of the request.

10 Q Well, you received a copy of a letter which I believe you  
11 described as being taped to your door?

12 A Yes.

13 Q And you gave that letter to somebody who worked for you  
14 in order to respond, is that correct?

15 A Yes. I or a member of my staff.

16 Q Okay. And do you recall who you gave the letter to?

17 A I do not.

18 Q Did you meet with that coalition of unions?

19 A Not to the best of my knowledge.

20 Q Did anybody -- did you direct anybody to meet with that  
21 coalition of unions prior to the time that you filed the  
22 bankruptcy?

23 A I don't recall.

24 Q Well, isn't it true that there was no meeting between

25 anybody on behalf of the emergency manager and that coalition  
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1 of unions prior to the filing of the bankruptcy case?

2 A I don't know.

3 Q If you personally attended a meeting with the coalition  
4 of unions, is that something you believe you would recall?

5 A I might.

6 Q Okay. Besides the June 14 proposal, presentation,  
7 between March 25 and June 18 -- I'm sorry, and June 13, you  
8 were never personally in a room with anybody from AFSCME where  
9 the topic of concessions, labor, pension, or health benefits  
10 was discussed, correct?

11 A I don't think so.

12 Q And between March 25 and June 13<sup>th</sup> you had no telephone  
13 calls with anybody from AFSCME where the topic of concessions,  
14 labor, pension, or health benefits was discussed, correct?

15 A I don't recall.

16 Q Do you recall having those types of conversations by  
17 telephone?

18 A I don't recall.

19 Q Between June 14 and July 18, other than attending the  
20 presentation on June -- on June 14, you were never in the same  
21 room with anybody from AFSCME where the proposal for creditors  
22 was discussed, correct?

23 A I don't recall.

24 Q Between June 14 and July 18<sup>th</sup>, you did not participate in  
25 any telephone calls with anybody from AFSCME where the



1 proposal for creditors was discussed, correct?

2 A Not to the best of my recollection.

3 Q At the June 14 presentation of the so-called proposal to  
4 creditors, your team perhaps through counsel announced that  
5 these were not negotiations, correct?

6 A I believe so.

7 Q Is it true that -- that your team also announced that  
8 these were not negotiations at the June 20, July 9, and July  
9 10 presentations?

10 A I don't know.

11 Q Okay. So going back to when you were still at Jones, Day  
12 and even before your -- your practice was primarily  
13 bankruptcy, is that correct?

14 A Yes, I think that's fair.

15 Q So you're generally -- generally familiar with the  
16 process for achieving labor concessions under 1113 of the  
17 Bankruptcy Code?

18 A Generally, yes.

19 Q And it's your understanding that under 1113 there are  
20 certain protections that are afforded unions that don't exist  
21 for example, under Bankruptcy Code Section 365, is that  
22 correct?

23 A Generally, yes.

24 Q And are you generally familiar with the process for  
25 achieving concessions to retiree health benefits under

1 Bankruptcy Code Section 1114?

2 A I'm -- I'm familiar with Section 1113 generally, yes.

3 THE COURT: The last question was about Section  
4 1114.

5 A 1114, yes, I am.

6 Q And are you generally familiar with the process for  
7 seeking a distressed termination of a single employer defined  
8 benefit pension plan in the corporate context under Chapter  
9 11?

10 A Generally, yes.

11 Q So generally under Bankruptcy Code, Section 1113 and  
12 1114, in order to modify or get concessions with regard to  
13 CVA's or retiree health, there are certain elements that the  
14 case law deciphering 1113 has come up with, correct?

15 A I believe so.

16 Q And that would include presenting a proposal explaining  
17 the concessions that are being requested, correct?

18 A I believe there's a process under 1113. I don't know if  
19 it's that specific but generally, yes.

20 Q And does that process also include having the proposal be  
21 based on complete reliable information?

22 MR. STEWART: Objection, Your Honor, it calls for a  
23 legal conclusion.

24 Q Is it your understanding that under 1113 and 1114 the  
25 process for seeking concessions under -- under collective

1 bargaining agreements and retiree health requires that the  
2 proposal be based on complete and reliable information?

3 A I think the statute speaks for itself.

4 Q I'm asking your understanding, Mr. Orr.

5 A I don't know.

6 Q Is it your understanding that under 1113 and 1114 the  
7 proposal needs to be fair and equitable?

8 A Yes.

9 Q And is it your understanding that under 1114 and 1113  
10 there have to be good faith negotiations?

11 A Yes.

12 Q Are you aware that AFSCME made information requests both  
13 through Ed McMahon (sic) and Steve Kreisberg requesting  
14 additional information following the June 14 proposal?

15 A No.

16 Q Do you know whether or not all of the information  
17 requests made from various constituencies were responded to in  
18 the ordinary course between June 14, but prior to the filing  
19 of the bankruptcy case?

20 A No.

21 Q Okay. During the time that you were at Jones, Day,  
22 Jones, Day was debtor's counsel in Chrysler, correct?

23 A Yes.

24 Q And isn't it true in Chrysler that vested pension  
25 benefits survived even though creditors were adjusted?

1 A Yes.

2 Q And isn't it true that Jones, Day represent -- was  
3 conflicts counsel in AbitiBowater and vested -- vested pension  
4 benefits survived even though creditor claims were -- were  
5 compromised?

6 A I don't know.

7 Q And isn't it true that in AES Eastern Energy, Jones, Day  
8 represented a committee of certificate holders where the  
9 pension, vested pension benefits survived, but the claims of  
10 creditors were adjusted?

11 A I don't know.

12 Q And isn't it true that Jones, Day represented the debtor  
13 in Dana where the pension, vested pension benefits survived  
14 and the claims of creditors were adjusted?

15 MR. STEWART: Objection, relevance.

16 MS. LEVINE: Your Honor, it goes to good faith  
17 negotiations with regard to whether or not we can actually  
18 have a situation where vested pension benefits survive and you  
19 can adjust the claims of creditors to successfully go through  
20 a bankruptcy process.

21 THE COURT: Well, the problem is that not only is  
22 every case different, but of course Chapter 11 is different  
23 from Chapter 9. So the objection is sustained.

24 Q Well, Mr. Orr, unlike Chapter 11, in all of those cases

25 where if the pensions had been terminated the retirees would  
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1 have had the benefit of a PBGC. Isn't it true that under  
2 Chapter 9 there is no similar insurance protection?

3 A It is true that under Chapter 9 there's no protection by  
4 PBGC.

5 Q And isn't it true that the current protection provided by  
6 the PBGC now is over \$57,000 a year?

7 A I don't know.

8 Q Well, assuming for the moment that it is over \$57,000 a  
9 year. Isn't it true that all of the retirees who received  
10 pension benefits in -- from Detroit would fall within the PBGC  
11 protections if that protection existed in municipal  
12 situations?

13 MR. STEWART: Objection, calls for speculation.

14 THE COURT: That objection is overruled. Please  
15 answer if you can.

16 A I don't know.

17 Q Mr. Orr, is it your understanding that to the extent  
18 pension benefits are cut, the individual retirees will become  
19 unsecured creditors?

20 A Yes.

21 Q So then is it your understanding that to the extent  
22 retiree pension benefits are cut, the individual retirees  
23 would share in the \$2,000,000,000 note that's -- that exists  
24 under the currently existing proposal for creditors?

25 A Yes.

1 Q So is it your understanding then that the individual  
2 retirees would have to file proofs of claim in order to assert  
3 their claims in this bankruptcy case?

4 A I don't know.

5 Q Well, how would they -- how would you know the dollar  
6 amount of the claims of the individual retirees in order to  
7 determine what their pro rata share is under the  
8 \$2,000,000,000 note?

9 A I don't know how to answer your question.

10 Q Prior to the time that Detroit filed for bankruptcy, did  
11 the retirement system discontinue paying pension benefits?

12 A Prior to the time?

13 Q Uh-huh.

14 A No, I don't think so.

15 Q And in fact as we sit here today, they continue to make  
16 the pension benefits payments, correct?

17 A Yes.

18 Q Anywhere in the proposal for creditors, Exhibit 43 or  
19 Exhibit 44, is there a chart or explanation that an individual  
20 retiree can look at to know exactly what their benefit would  
21 be if in fact the proposal for creditors were implemented?

22 A No, I don't think so.

23 Q Mr. Orr, there was some press coverage that seemed to  
24 imply that you were considering or would consider a

1 freezing pension benefits. Is that under consideration by  
2 you?

3 THE COURT: Excuse me, are you talking about now?

4 MS. LEVINE: I'm talking about now.

5 MR. STEWART: Objection, relevance, Your Honor.

6 MS. LEVINE: Well, then I'm going to ask the next  
7 question.

8 THE COURT: I'm sorry then what?

9 MS. LEVINE: Then I'm going to ask him whether he  
10 considered it before July 19<sup>th</sup>, Your Honor.

11 THE COURT: You may ask that question.

12 Q Are -- are you considering it now?

13 THE COURT: Well, I'm sorry, my ruling was you can  
14 ask about his intent as of July, but --

15 MS. LEVINE: Your Honor --

16 THE COURT: But what's the relevance of that now?

17 MS. LEVINE: Your Honor, it goes in part to the --  
18 to the discussion that we've been having or the arguments that  
19 we've been making with regard to good faith. We had a month  
20 and three days in order to negotiate prior to the bankruptcy.  
21 If all we had were no real negotiations just presentations,  
22 and no opportunity to have a dialogue with regard to some of  
23 these issues and they are in fact being considered now, then  
24 why weren't they considered then.

1 Q Mr. Orr, did you consider freezing the pensions prior to  
2 July 19<sup>th</sup>?

3 A Yes.

4 Q And in connection with that consideration, did you talk  
5 at all to the -- with the Governor about the state providing  
6 support to the extent it was necessary in order to fund any  
7 shortfall to effectuate a freezing?

8 A I don't recall.

9 Q In the Governor's testimony before this Court, with  
10 regard to being questioned on vested pension benefits, he  
11 responded, if the Court ordered you had to pay them, you would  
12 pay them.

13 So in other words it appeared that the Governor was  
14 saying that if in fact the Court directed that he pay whatever  
15 was necessary in order to keep the vested pension benefits  
16 from being impaired or diminished he would pay that. Have you  
17 had conversations with the Governor prior to July 19<sup>th</sup> in that  
18 regard?

19 A No.

20 Q From January 2012, but prior to being retained by the  
21 city, did your firm -- did your prior firm provide services to  
22 the Governor?

23 A I don't know.

24 Q Did they provide services to the state?

25 A I don't know.



1 Q Did they provide services to anybody affiliated with the  
2 Governor or the state?

3 A I don't know.

4 Q Did you run a conflict search before you took the  
5 position as emergency manager?

6 A No, I resigned from my firm.

7 Q And do you know whether or not your firm ran a conflict  
8 search before being retained as counsel to the city in these  
9 proceedings?

10 A I recused myself from the retention process, I don't  
11 know.

12 Q Prior to July 19, did you or did anybody on your behalf  
13 if you didn't do it personally, or on behalf of the City of  
14 Detroit, ask the Governor or anybody associated with the  
15 Governor, for funding to avoid impairing or diminishing vested  
16 pension benefits?

17 MR. STEWART: Objection, foundation.

18 THE COURT: What foundation is missing?

19 MR. STEWART: Well, she asked for whether Mr. Orr,  
20 any of his staff, or anyone else asked the Governor. This  
21 witness can only testify as to what he knew.

22 MS. LEVINE: I'll -- I'll rephrase, Your Honor.  
23 There was a on his behalf in there, but it may have gotten  
24 lost for the record.

25 Q As we sit here today, have you or has anybody on your  
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1 behalf, or anybody on behalf of the City of Detroit who -- who  
2 responds to you, ask the Governor, or anybody affiliated with  
3 the state, for funding to avoid impairing or diminishing  
4 vested pension benefits, outside of any request that may have  
5 been made through mediation?

6 A I don't know.

7 Q Well, we've heard the Governor testify and we've seen in  
8 the press that the Governor's view seems to be that Detroit  
9 has to handle Detroit's own problems. Are you familiar with  
10 that press?

11 A Yes.

12 Q Is that consistent with your conversations with the  
13 Governor?

14 A Yes.

15 Q And we've heard both you and the Governor speak about the  
16 fact that you serve at the pleasure of the Governor, correct?

17 A Yes.

18 Q At any time between July 15<sup>th</sup> and -- or July 14<sup>th</sup> and July  
19 18<sup>th</sup>, did you ever feel that your job was in jeopardy?

20 A Not at all.

21 MS. LEVINE: No further questions. Thank you.

22 A Thank you.

23 THE COURT: Who is next?

24 CROSS EXAMINATION

25 BY MS. GREEN:

1 Q Good afternoon, Mr. Orr. Jennifer Green on behalf of the  
2 retirement systems for the City of Detroit.

3 A Good afternoon, Ms. Green.

4 Q We've met on a few occasions at your prior deposition.

5 A Yes, we have.

6 Q I want to follow up on a question, something you stated a  
7 second ago. Why did you tell Christie's to go away in May of  
8 2013?

9 A We were immediately trying to assess a number of  
10 different things and I felt that that wasn't as high a  
11 priority as getting a real view of the financial condition of  
12 the city. And I didn't think it was ready to be assessed yet.

13 Q And you changed your mind as of August 5<sup>th</sup> when I believe  
14 they were retained, correct?

15 A Approximately around that time.

16 Q I'd like to draw your attention to Exhibit 865 if I may.  
17 Do you have the appropriate witness binder or would you like  
18 to see it on the screen?

19 A I'll find it.

20 MR. STEWART: State exhibit, retirees? The exhibit  
21 retiree committee.

22 Q If you're okay with the screen, we can do the screen as  
23 you have been. I just wanted to verify.

24 A I'll do the screen.

25 Q Okay. Do you recognize that email, Mr. Orr?

1 A Yes.

2 Q And it's dated February 11<sup>th</sup>, 2013?

3 A Yes.

4 Q And you were still a Jones, Day partner at this time?

5 A Yes.

6 Q When exactly did you resign from Jones, Day?

7 A I resigned effective Friday, March 15<sup>th</sup>.

8 Q If I may draw your attention to the first paragraph. It  
9 -- it talks about preparation -- well, I assume that's what  
10 the abbreviation prep stands for, correct?

11 A Uh-huh.

12 Q Prep for EM appointment is important. Ideally we would  
13 like to plan for orderly transition to EM, whoever it is, not  
14 a splash landing. Does that -- do you remember getting this  
15 email?

16 A Yes.

17 Q And the second paragraph talks about I am not sure the  
18 state, Dillon, Baird, Governor, are really thinking on an  
19 operational and practical level. Do you see that part?

20 A Yes.

21 Q Further down there's a paragraph that states, it would be  
22 a better process if the firm is on the ground working,  
23 preparing and coming up with a well thought out game plan  
24 before EM is appointed. Do you see that portion?

25 A Yes.

1 Q At this time you were not yet appointed emergency  
2 manager, correct?

3 A Correct.

4 Q At the bottom of the page, there is discussion about J.B.  
5 should be there to make sure EM and process works. Question,  
6 maybe how does state get city and us six to eight weeks before  
7 appointment if possible. So my question for you is, was  
8 Jones, Day already working on this case before your official  
9 appointment six weeks later?

10 A Not to the best of my knowledge.

11 Q As of your appointment in March your public contract  
12 states that your salary is \$275,000, correct?

13 A Yes.

14 Q Are there any supplements or bonus payments associated  
15 with that contract?

16 A No.

17 Q I'd like to direct your attention to Exhibit 807. Do you  
18 recognize this email, Mr. Orr?

19 A Yes.

20 Q Bullet point 2 talks about your contract period not to  
21 exceed 18 months with incentives if job is completed sooner  
22 based on mutually agreed milestones. The next bullet point  
23 talks about an intent to raise private funding for performance  
24 measure outcome bonus. And this is before -- this is a month  
25 before you were appointed?

1 A Yes.

2 Q Was there ever an incentive bonus included in your  
3 compensation package?

4 A No.

5 Q After you were appointed, was there any change to your  
6 contract?

7 A No.

8 Q Was there ever a request made from a state fund to have a  
9 performance bonus included with your contract?

10 A No. This is the only time it was mentioned, I let it  
11 drop.

12 Q You were never sent a letter in April of 2013 relating to  
13 a -- a performance bonus?

14 A I don't recall.

15 Q You are familiar with the NERD fund, I think we've talked  
16 about it a few times?

17 A I have heard what I read in the paper.

18 Q This is not in our witness binder. I will give you a  
19 copy.

20 THE COURT: Not in the exhibit binder.

21 MS. GREEN: It is not in the exhibit binder, Your  
22 Honor. We received it on Friday afternoon with the latest  
23 production from the city and the state. So I apologize it's  
24 not in our binder.

25 THE COURT: Yes, is there an exhibit number on it?

1 MS. GREEN: It will be 869.

2 THE COURT: Okay.

3 Q Do you recognize the letter dated April 12<sup>th</sup>, 2013?

4 A No.

5 Q You were never sent a letter discussing an early out  
6 provision incentive payment in addition to your regular  
7 compensation?

8 A No.

9 Q And there has been no discussion or contract -- contract  
10 executed where you would get an early payment bonus if you  
11 completed your emergency manager goals before the 18 months is  
12 completed?

13 A No.

14 Q I'd like to draw your attention now to Exhibit 853. For  
15 starters Mr. Orr, do you -- do you recognize this email dated  
16 January 28<sup>th</sup>, 2013?

17 A I don't recall specifically but I see that I was one of  
18 the addressees.

19 Q For starters, what is Detroit News?

20 A I think that's a -- I don't know.

21 Q Have you ever heard the phrase project Detroit used  
22 internally at Jones, Day?

23 A Yes.

24 Q Is it -- is it perhaps a play on the French pronunciation  
25 of Detroit?

1 A It might well be, I don't know for sure.

2 Q So this email is relating to the City of Detroit. At the  
3 bottom I'd like to draw your attention to Paragraph 4. June  
4 -- I'm sorry, January 28<sup>th</sup> was the day before you pitched your  
5 services to the State of Michigan and the City of Detroit,  
6 correct?

7 A Yes.

8 Q At the bottom there, the discussion about avoiding  
9 pitfalls of alienating the state, e.g. if something happens to  
10 city's pension, state will probably step up to deal with, but  
11 thus far has failed to concede this point at all. Do you  
12 recall any discussion about trying to side step this issue in  
13 your pitch to the state and city officials?

14 A No.

15 Q In your pitch to the state and to the city, was this  
16 issue of seeking contributions from the State of Michigan ever  
17 raised?

18 A Not that I recall.

19 Q And when was the first time that after you became  
20 emergency manager the issue of potentially seeking  
21 contributions from the State of Michigan was -- was raised?

22 A I don't recall.

23 Q Yesterday you were asked to answer whether under PA436  
24 you believed you had the authority to impair pensions. Do you  
25 recall that question?



1 A Yes.

2 Q I believe your response was, that you felt it called for  
3 a legal conclusion?

4 A Yes.

5 Q Do you recall being asked the same question following  
6 your June 14<sup>th</sup> meeting where you laid out the proposal for  
7 creditors?

8 A Generally, yes.

9 Q Do you recall what your response was?

10 A No, I don't.

11 Q Can you pull up the part number 1? I'm going to ask you  
12 if you've -- if this refreshes your recollection.

13 A Uh-huh.

14 Q To what your response was at the time.

15 (Video Being Played at 1:57 p.m.; Concluded at 1:58 p.m.)

16 Q Do you recall answering the question in that manner on  
17 June 14<sup>th</sup>?

18 A That was a press event after the meeting. I might well  
19 have said that, I don't recall specifically.

20 Q Assuming that's what you said --

21 A Uh-huh.

22 Q By legislative relief, did you mean a constitutional  
23 amendment?

24 A I don't recall.

25 Q Did you mean legislative relief in the form of

1 contributions from the State of Michigan?

2 A No, I don't recall.

3 Q You don't recall one way or the other what you meant?

4 A I -- I don't recall one way or the other.

5 Q You would agree with me though that this response is  
6 different than the response you gave yesterday?

7 A No.

8 Q How so?

9 A Well, I think this response I was saying that you can  
10 negotiate which is what I think I said yesterday. Read it  
11 back. I think this one said legislation. I think yesterday I  
12 also said that discussion was in the context of federal  
13 supremacy. And I'll stand by those statements.

14 Q Was there any discussion following this statement as to  
15 whether you should continue to make such statements regarding  
16 the need for legislative relief in the face of the pensions  
17 clause?

18 A No.

19 Q Were you ever advised that you should not state in the  
20 future that legislative relief would be necessary if there was  
21 not a consensual agreement?

22 A No.

23 Q Mr. Orr, did you have any involvement in the creation of  
24 the pension task force?

25 A Yes.

1 Q How so?

2 A Everything that's done under the aegis of 436 and the  
3 efforts that we're making in the city is done under my  
4 authority, so I suppose I had some involvement.

5 Q And am I understanding it correctly that the pension task  
6 force consists of attorneys from Miller, Canfield, attorneys  
7 from Jones, Day, and then certain other financial advisors,  
8 correct?

9 A Financial and operational advisors, yes.

10 Q Okay. And when was it created?

11 A I don't know.

12 Q Was it in place before you became emergency manager?

13 A Not to the best of my knowledge.

14 Q Okay. And -- and who created it specifically? Was it  
15 you under PA436?

16 A I don't recall.

17 Q Who else, if I may ask, would have the authority to  
18 create a pension task force if it wasn't you?

19 A As part of the financial stability agreement and the  
20 memorandum of understanding, both of which were entered into  
21 in 2012, there were certain tasks that were to be undertaken  
22 at that point. The task force itself as you're referencing  
23 may have begun at that process.

24 Since Jones, Day got involved further in 2013, there may

25 have been other attorneys added to that task force, but the  
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1 MOU of November 2012 speaks to certain tasks that Milliman,  
2 Miller -- Miller, Canfield, Conway, MacKenzie, E & Y, are  
3 supposed to undertake.

4 Q And what was the purpose of the pension task force?

5 A I don't know.

6 Q Well, who does it report to?

7 A Well, it now reports to me.

8 Q But you don't know the purpose of it?

9 A Well, the purpose as spelled out in the MOU was to  
10 examine certain pension issues. But you asked me what was the  
11 purpose of the task force as far as I understand it. It's  
12 what it does for me now.

13 Q Okay. So what does it do for you now?

14 A It -- it analyzes and reports to me different issues  
15 regarding the city's pension obligations.

16 Q Have there been any findings, written reports,  
17 memorandums, anything like that --

18 A Yes.

19 Q -- created by the pension task force?

20 A The task force or members of the task force.

21 Q Have those documents been produced in this litigation?

22 A I don't know.

23 Q And no one from either of the two retirement systems was  
24 asked to participate in the pension task force, correct?

25 A I don't know.

1 Q Well, did you personally ask anyone from any of the  
2 retirement systems to participate in the task force?

3 A No.

4 Q And no one from any of the retiree associations or active  
5 employee associations were asked to join this pension task  
6 force, correct?

7 A I don't know.

8 Q And no one from the unions were asked to join the pension  
9 task force?

10 A I don't know.

11 Q But you don't know, or you did not do it?

12 A I did not ask them.

13 Q Okay. Would anyone else have authority to be asking  
14 people to join the pension task force?

15 A Yes.

16 Q Who would that be?

17 A The people that were tasked, I think, under the MOU in  
18 2012 and members of my staff whether they joined it or asked  
19 them to participate would be authorized to solicit information  
20 from other parties.

21 Q But to your knowledge none of those people reached out to  
22 any of the people I just listed, the retirement systems active  
23 employees, retirees, or unions to join the pension task force,  
24 correct?

25 A I don't know.

1 Q And this task force was not -- the existence of the task  
2 force was not made public until the bankruptcy filing,  
3 correct?

4 A I don't know if that's true.

5 Q Did the pension task force ever approach the retirement  
6 systems to discuss any creative options relating to the design  
7 of the pension plans or any cash flow changes that could be  
8 made to resolve under funding problems?

9 A I don't know.

10 Q Yesterday I believe you stated that with respect to your  
11 -- or I'm going to call them commercial creditors. You said  
12 that you followed all the notice provisions in the loan  
13 documents and you sent notices of the June 14<sup>th</sup> meeting,  
14 correct?

15 A Yeah. I said that we followed -- followed notice  
16 provisions, sent notices to all record holders or their  
17 agents, and also received telephone calls and other requests.

18 Q Did you do the same thing with any active employees or  
19 retirees?

20 A I believe we reached out to -- I -- I don't know for  
21 sure.

22 Q Okay. Let's talk about what attempts if any you made to  
23 mobilize the actives or the retirees.

24 A Uh-huh.

25 Q Did you or anyone on your team make phone calls to each  
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1 individual?

2 A To each individual active employee?

3 Q Or retiree.

4 A No, not that I know of.

5 Q Did you reach out by mail, write letters, things of that  
6 nature?

7 A To the actives I believe we reached out. There certainly  
8 -- there are actives on my staff so they would have been  
9 aware. There are actives that are working with the  
10 consultants, so they would have been aware. To the retirees,  
11 we asked certain bargaining units, unions to represent them  
12 and they declined.

13 Q My question was, did you reach out directly to any of the  
14 retirees before the June 10<sup>th</sup> or June 14<sup>th</sup> meetings?

15 A I don't know. I don't recall.

16 Q Did you post any public notices in newspapers or  
17 advertise on television that there were these meetings coming  
18 up?

19 A I don't recall.

20 Q Did you set up a web site where you could communicate  
21 directly with any of the retirees or actives?

22 A We have a web site in the city. Whether or not that's of  
23 the type you're talking about to communicate directly, you  
24 have to examine the web site.

25 Q I have.

1 A Okay.

2 Q I did not see anything. It's your web site. Do you have  
3 anything on that web site that you believe enabled you to  
4 directly communicate with actives or retirees?

5 A Yes, I think I do, yeah.

6 Q Okay. Did you use anything on your web site before the  
7 June 14<sup>th</sup> and June 10<sup>th</sup> meetings to reach out directly to any of  
8 the actives or retirees?

9 A Not that I recall.

10 Q Okay. Did you mail a copy of your proposal for creditors  
11 to all of the -- or any of the actives or the retirees?

12 A I don't know.

13 Q You -- you do have a list of all those names though,  
14 don't you?

15 A We believe we have a list of all active employees. I  
16 would think that we would have a list of all retirees. I know  
17 we asked for some help in compiling that list, but they're our  
18 list.

19 Q And if you needed those identities there were places you  
20 could look and people you could ask for that information,  
21 correct?

22 A We did ask.

23 Q And you -- you never attempted to develop sub groups of  
24 these retirees so that you could negotiate with them directly,  
25 correct before the bankruptcy?



1 A I don't know.

2 Q Are you familiar with anyone else on your staff being  
3 tasked with breaking up the group of retirees into smaller  
4 groups to be able to negotiate with smaller groups directly?

5 A Yes.

6 Q Okay. Who on your staff was responsible for that?

7 A There are members both on the legal team and on the  
8 actuarial as well as the -- well, principally that would have  
9 been -- probably members on the legal team.

10 Q And who would those individuals be that were tasked with  
11 breaking the retiree groups into smaller sub sections?

12 A That would have been led by the -- probably Evan Miller  
13 at Jones, Day.

14 Q And when did these smaller sub group negotiations, or  
15 alleged negotiations take place?

16 A I don't know.

17 Q Are there any documents that actually reflect that  
18 smaller sub groups were created for the purpose of  
19 negotiating?

20 A I -- I don't know.

21 Q Have any documents been -- been produced in this case  
22 that show that actual sub groups had been developed?

23 A A lot of documents have been produced. There may well  
24 have been. I don't know for sure.

25 Q Are you familiar with any such documents?

1 A I wasn't involved in the document production, no.

2 Q Are you familiar with testimony on Friday that there was  
3 no attempt made to create smaller sub groups of retirees?

4 A No, I'm not familiar with that testimony.

5 Q If it was from Mr. Buckfire who was your lead negotiator  
6 for your financial advisory team, would it surprise you to  
7 hear him saying that there had been no group, smaller sub  
8 group developed?

9 A No. Mr. Buckfire may have not have been involved in all  
10 aspects of it.

11 Q Okay. So it's your testimony the Jones, Day lawyer was  
12 tasked with breaking out smaller sub sections and negotiating  
13 directly?

14 A It's my testimony that they could have been. I don't  
15 recall specifically the timing or the sub groups as you're  
16 characterizing it.

17 Q Okay. So if we ask the retirees that are testifying next  
18 week if anyone contacted them for the purpose of breaking into  
19 smaller sections so that they could be negotiated with  
20 directly, we're going to expect to hear that yes, Evan Miller  
21 contacted me to negotiate?

22 MR. STEWART: Objection, Your Honor, calls for  
23 speculation.

24 THE COURT: Sustained.

25 Q What specific strategies other than this apparent sub  
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1 group that you've formulated, did you come up with to overcome  
2 what was the perceived impractical nature of directly dealing  
3 with large groups of people?

4 A Can you impact that question a little bit?

5 Q What specific strategies did you come up with to try to  
6 overcome any perceived difficulty with negotiating with large  
7 numbers of people, list them?

8 A Related to retirees?

9 Q Yes.

10 A Okay. Because your question said, as you did, we asked  
11 for a retiree committee in bankruptcy. You're talking about  
12 before?

13 Q Before bankruptcy.

14 A Before bankruptcy. We had made requests from certain of  
15 the bargaining units to represent retirees. I have certainly  
16 met with I believe the Police and Fire Retiree Association.

17 Q Okay. Would that be the sum total of what you did?

18 A It may not be. Many of my consultants meet with  
19 different groups all the time. And sometimes I'm not aware of  
20 all meetings.

21 Q We talked a little bit about the pension task force. Was  
22 there a negotiations task force that was put together by your  
23 team?

24 A By my team?

25 Q Yes.

1 A I would think the entire effort was a negotiations task  
2 force.

3 Q But there was no specific committee on your team dealing  
4 with how to tackle the problem of the retirees that needed to  
5 be negotiated with, correct?

6 A My team and consultants worked together collaboratively.  
7 Whether or not that's called a task force as a proper noun, is  
8 a different question.

9 Q Well you had names for your teams. I'm asking was there  
10 an official team dedicated to negotiating with retirees? Yes  
11 or no?

12 A Not -- I don't know. Not that I'm aware of.

13 Q The June 10<sup>th</sup>, June 14<sup>th</sup>, and June 20<sup>th</sup> presentations, I  
14 believe we're all in agreement now were purely informational.  
15 I believe that's what you've said between yesterday and today,  
16 correct?

17 A Generally, yes.

18 Q In the June 10<sup>th</sup> time frame, you held the -- the public  
19 meeting at Wayne State, correct?

20 A Yes.

21 Q And that was as I believe you testified kind of the  
22 ground work and you were laying the foundation for the  
23 negotiations that you expected to occur in the following  
24 weeks?

25 A No. I think what I testified to was that the June 10<sup>th</sup>  
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1 meeting was required as a public meeting within 30 days of my  
2 May 12<sup>th</sup> report.

3 Q You may have said that. At some point you agree with me  
4 that that was your first public meeting and you were trying to  
5 set the foundation for what was to occur? Maybe I'm  
6 mischaracterizing slightly, but it's the gist of what I got  
7 from what you said yesterday.

8 A Well, I -- I can't be responsible for the gist of what  
9 you got. What I said was, the June 10<sup>th</sup> meeting was required  
10 by 436 within 30 days of the May 12<sup>th</sup> report. There were many  
11 things that were done at that meeting, but what I was trying  
12 to relay yesterday was I was meeting my statutory obligations  
13 under 436.

14 Q Okay. Do you remember at that June 10<sup>th</sup> meeting that it  
15 was video taped?

16 A Yes.

17 Q And in fact you've posted these videos on your emergency  
18 manager web site, correct?

19 A Yes.

20 Q Do you recall being asked a question by a retiree at the  
21 June 10<sup>th</sup> meeting about what to expect to happen to their  
22 pension funds?

23 A I don't recall a specific question, but you're welcome to  
24 show it to me.

25 Q I will do that.

1 (Video Being Played at 2:12 p.m.; Concluded at 2:14 p.m.)

2 Q So on June 10<sup>th</sup> when asked by a retiree what was to happen  
3 to their pension benefits, you said they were sacrosanct and  
4 they could not be touched, correct?

5 A I think there was more to that clip.

6 Q I'm only asking about that part. I -- we can keep  
7 playing it. You say except OPEB's are different. Is that --  
8 did that refresh your recollection of what you followed  
9 that --

10 A No. I mean the entire clip. I think there were multiple  
11 questions, but that clip speaks for itself, yes.

12 Q Okay. So on June 10<sup>th</sup> you told retirees at the June 10<sup>th</sup>  
13 meeting that their pensions were sacrosanct and they couldn't  
14 be touched. And four days later you held the proposal for  
15 creditors meeting.

16 And at that time you produced a 135 page proposal and I  
17 believe we've shown it up on the screen a few times Page 109  
18 where you say significant cuts will have to be taken. Did you  
19 invite all the same retirees to the second meeting and then  
20 explain to them that what they may have heard at the June 10<sup>th</sup>  
21 meeting was now being changed?

22 A I don't know.

23 Q Well, did you correct any misunderstanding out there  
24 where retirees thought their pension obligations were indeed  
25 sacrosanct and safe?

1 A I may well have.

2 Q So you told them no cuts. Four days later you said cuts.  
3 And that was on June 14<sup>th</sup>. And the time line that you laid out  
4 on your proposal for creditors slated June 17<sup>th</sup> through July  
5 12<sup>th</sup> as the initial discussion round, correct?

6 A It is whatever it is in the document, yes.

7 Q We've looked at it a few times. I won't bother pulling  
8 it up again. So on the 14<sup>th</sup> you -- you did state there had to  
9 be cuts. And three days later the negotiations were to  
10 commence, correct?

11 A Yes, generally.

12 Q Okay. And the data room wasn't live until June 20<sup>th</sup>,  
13 right?

14 A I don't know.

15 Q If other people have testified June 20<sup>th</sup>, does that sound  
16 about correct?

17 A That -- that would not surprise me. I don't know the  
18 exact date.

19 Q And as of the 20<sup>th</sup> the data room was not fully populated  
20 with the -- with the data, right?

21 A I don't know. I wasn't populating the data room.

22 Q And if other people testified that it was not fully  
23 populated would that --

24 A That would not surprise me.

25 Q Okay. So three days into the initial round of  
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1 discussions with all the stakeholders, the documents were  
2 still not up? You gave a proposal for creditors that changed  
3 information that you had said at the public meeting on the  
4 10<sup>th</sup>. And you did not give a copy of this proposal for  
5 creditors to all of the retirees, correct?

6 A Not necessarily, Ms. Green.

7 Q Okay. When was the first time that you realized Chapter  
8 9 was going to be necessary to cut the pension benefits?

9 A I don't know if I realized Chapter 9 was going to be  
10 necessary just to cut the pension benefits.

11 Q Did you know it before you said on the 10<sup>th</sup> that pension  
12 benefits could not be touched?

13 A I think you're taking that quote out of context, but let  
14 me respond this way. The 10<sup>th</sup> and 14<sup>th</sup>, we were negotiating  
15 with Bammel. We thought that was going to spur other  
16 settlements and other negotiations. I had made no conclusion  
17 regarding Chapter 9 at that point.

18 Q Well, isn't it true you were being advised by your  
19 financial advisors that Chapter 9 was necessary?

20 A Chapter 9 had been discussed since 2005, Ms. Green.

21 Q Can we look at Exhibit 870, please? You were in contact  
22 with your financial advisors continuously throughout this  
23 period, correct, Mr. Orr?

24 A Yes.

25 Q And Chuck Moore is one of your financial advisors?



1 A Yes.

2 Q And he's on the pension task force?

3 A Yes.

4 MR. STEWART: Counsel, could I get a copy of that  
5 document? I don't think we have it.

6 MS. GREEN: Oh, this was just -- I'm sorry, Your  
7 Honor. This was produced on Friday as well. And we do have  
8 extra copies for the Court today.

9 Q Do you recognize this email?

10 A Is it in here?

11 Q It should be on the screen.

12 A Okay. Okay. Thank you.

13 Q Do you recognize this email dated June 7<sup>th</sup>, 2013?

14 THE COURT: Do you have a number for this?

15 MS. GREEN: It's 870, Your Honor.

16 THE COURT: Thank you.

17 A Yes.

18 Q And at the bottom of that email it's -- it's a whole  
19 string and there's an email from Chuck Moore at Conway,  
20 MacKenzie dated 6-5-2013?

21 A Yes.

22 Q And it's an email to you, correct?

23 A Yes.

24 Q Discussing a lengthy call with Milliman this afternoon?

25 A Yes.

1 Q And you received this -- this email, right?

2 A Yes, I believe so.

3 Q On the second page there are numbered paragraphs. I'd  
4 like to call your attention to Paragraph 3. Just above it  
5 it's talking about under funding liability.

6 And it states, we anticipate a significant reduction and  
7 already accrued benefits will be required in order to get  
8 required contributions to the level of available cash to  
9 service the UAAL. It appears this may only be possible in a  
10 Chapter 9 proceeding.

11 A Yes.

12 Q Do you -- do you recall receiving that portion of the  
13 email?

14 A Yes.

15 Q And this was on June 5<sup>th</sup>?

16 A It's dated June 5<sup>th</sup>, so I assume I received it around  
17 then, yes.

18 Q But on the meeting of June 10<sup>th</sup> you responded to questions  
19 regarding the pension benefits and you stated that they could  
20 not be touched?

21 A In the clip that you showed, yes.

22 Q So did you knowingly give misinformation to the retirees  
23 that were asking questions on the 10<sup>th</sup>?

24 A No.

25 Q I believe that you testified earlier that Ernst and  
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1 Young, Miller, Buckfire, and Conway, MacKenzie had all been  
2 engaged by the city prior to your arrival, correct?

3 A Yes.

4 Q And they were working since 2012 putting all the  
5 financial data together, correct?

6 A I believe Ernst and Young was engaged in 2012. The  
7 others may have begun work either at the end of December 2012,  
8 or the beginning of 2013.

9 Q And all of their work culminated with this proposal for  
10 creditors that you laid out in the middle of June?

11 A Yes.

12 Q So that took your team of three financial advisor firms,  
13 yourself, and whomever else you had working on it, several  
14 months, five, six months all together, maybe longer?

15 A I believe they met in 2013 and began to come up with  
16 concepts and it culminated in this document. But if that's  
17 your supposition, yes.

18 Q Okay. And yet the time frame that you laid out for the  
19 initial rounds of discussions with the relevant stakeholders  
20 lasted from June 17<sup>th</sup> to July 12<sup>th</sup>, right, just a three week  
21 period?

22 A July 19<sup>th</sup>, but yes.

23 Q And the evaluation period that you set forth in your  
24 proposal for creditors was July 15<sup>th</sup> through the 19<sup>th</sup>, right?

25 A Yes.

1 Q I think you stated earlier that the pre-petition lawsuits  
2 helped force the bankruptcy filing, correct?

3 A I think I said either on September 16<sup>th</sup>, or yesterday, or  
4 the day before, that we were getting ready to lose control,  
5 that those lawsuits were creating concerns, yes.

6 Q Okay. And I believe you said that at first you ignored  
7 the -- the lawsuits that were filed?

8 A Yes.

9 Q How long did you ignore them for?

10 A Almost three weeks.

11 Q Okay. You were asked yesterday if you were aware of any  
12 hearings that were scheduled in State Court lawsuits as of the  
13 time that you sent your letter on the 16<sup>th</sup>?

14 A Yes.

15 Q And you stated that at time you were unaware of any  
16 hearings in the State Court litigation? The 16<sup>th</sup>.

17 A I don't -- yeah. I don't know if as of the 16<sup>th</sup>. I don't  
18 -- I don't recall when I became aware. There were hearings  
19 scheduled for the following week. I may not have known as of  
20 the 16<sup>th</sup>.

21 Q What about the 18<sup>th</sup> when you filed the petition?

22 A I think by the 18<sup>th</sup>, I knew there were hearings scheduled  
23 for the following week.

24 Q You said earlier that you were concerned that one of

1 your authority under PA436 to get your job done, something to  
2 that effect. Do you recall that from this morning?

3 A Yes.

4 Q What authority under PA -- PA436 did you think was going  
5 to be undermined?

6 A All of my authority.

7 Q And in fact you expected these lawsuits, didn't you?  
8 Let's call up Exhibit 403. Do you recognize this email from  
9 January of 2013?

10 A Yes.

11 Q And isn't it true that at that time you were observing  
12 that there were already reports that "opponents of the prior  
13 law are already lining up to challenge this law"?

14 A Yes.

15 Q So as of January before you even were appointed emergency  
16 manager, you expected a legal battle forthcoming, correct?

17 A Not of the nature you're talking about, but yes, I  
18 expected that there were challenges because that's what I  
19 read.

20 Q Well, and to be clear the State Court lawsuits were  
21 challenges to PA436 and your authority thereunder, correct?

22 A Yes. But I don't want to mislead you. This is talking  
23 about lawsuits to PA436. I wasn't expecting injunctions, I  
24 was expecting more lawsuits in the nature of declaratory  
25 judgments and the like.

1           So the specifics of the lawsuit, I wasn't talking about  
2 in here. But I was expecting challenges because that's what  
3 was being talked about in the news reports.

4 Q       Well, and there were in fact declaratory judgments sought  
5 in those pre-petition lawsuits, weren't there?

6 A       I believe so.

7 Q       Okay. And the retirement systems didn't file their  
8 lawsuit until July 16<sup>th</sup>, correct?

9 A       Yes. I believe GRS filed July 15<sup>th</sup>.

10 Q       Well, either way it was -- it was after the week, after  
11 in your own time line, it was after the period where you had  
12 set aside for discussions to take place with your  
13 stakeholders?

14 A       Yes.

15 Q       Okay. So there were no -- there wasn't a lawsuit  
16 vis-a-vis the retirement systems during the week that you were  
17 meeting with the retirement systems, correct?

18 A       I don't think so.

19 Q       And I believe you said yesterday the TRO from the Syncora  
20 litigation was set to expire within 14 days?

21 A       Yes.

22 Q       And that would take you to July 19<sup>th</sup>?

23 A       I believe so.

24 Q       But the July 19<sup>th</sup> date was set forth on your proposal for

1 correct?

2 A I think it was set forth related to everything.

3 Q Yesterday you talked a lot about the swap transactions  
4 and that negotiation. At your deposition you testified that  
5 they were extraordinarily complex. I presume that your  
6 testimony would be the same today?

7 A The swap transactions.

8 Q Yes.

9 A Yes.

10 Q And those negotiations started in earnest on June 4<sup>th</sup>,  
11 right?

12 A I don't recall the exact date, but that sounds about  
13 right.

14 Q Okay. And the general terms of that negotiation were  
15 agreed upon around June 11<sup>th</sup>?

16 A Generally, yes. Generally about those days, yeah.

17 Q And then between June 11<sup>th</sup>, and July 15<sup>th</sup> through the 17<sup>th</sup>,  
18 the paperwork was drafted and the forbearance agreement was  
19 executed, correct?

20 A Yes, forbearance and optional termination agreement, yes.

21 Q Okay. So even though the transactions were extremely  
22 complex, and I believe you testified that the negotiations  
23 were -- there was a lot of back and forth?

24 A Uh-huh, yes.

25 Q Even with all of that, the whole thing was wrapped up in  
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1 about four weeks, right?

2 A Yes, I believe so.

3 Q And that freed up the casino revenue?

4 A Yes.

5 Q That you thought was critical to the city's liquidity?

6 A Yes.

7 Q And yet having successfully negotiated that complex deal,  
8 you didn't continue down the path of negotiating. Two days  
9 after you executed the forbearance agreement you actually  
10 filed your bankruptcy petition, correct?

11 A That's correct. Forbearance agreement is dated July 15<sup>th</sup>  
12 and we filed on July 18<sup>th</sup>.

13 Q In three days?

14 A Whatever that is, yeah.

15 Q Okay. We talked a lot about negotiations. Isn't it true  
16 though that if negotiations do not -- if there's -- I'm sorry,  
17 let me restate that. It was a terribly started question.

18 A I understand.

19 Q We talked about negotiations, but isn't it true that if a  
20 consensual deal is not worked out, the city will use the cram  
21 down provisions of the Bankruptcy Code to force a resolution?

22 A The city would propose a resolution, but the cram down  
23 provisions are available in Bankruptcy Code.

24 Q So the answer is yes?

25 A We hope to reach a negotiated solution even now.



1 Q But if you don't, the answer is yes, correct?

2 A If I don't we will address that situation then, but  
3 certainly cram down is an opportunity available to us.

4 Q And the \$2,000,000,000 note that was proposed, there's no  
5 recourse if the city fails to pay that note back, correct?

6 A It is a non-recourse note.

7 Q And in fact as of June 14<sup>th</sup> the proposal for creditors  
8 does not actually identify anywhere in that document the  
9 amount that an individual -- an individual's benefits would be  
10 impacted, correct?

11 MR. STEWART: Objection, asked and answered before,  
12 Your Honor.

13 THE COURT: Sustained.

14 Q If an individual retiree was looking to find how much  
15 their individual pension benefits would be impacted prior to  
16 the bankruptcy filing, where would they look?

17 MR. STEWART: Same objection, Your Honor.

18 MS. GREEN: A different question.

19 THE COURT: Well, it's slightly different. What's  
20 the answer, please?

21 A I don't know, Your Honor.

22 Q Mr. Orr, earlier we looked at Exhibit 831. If we could  
23 see that again, please. This is the time line from July 8<sup>th</sup>.  
24 Bill Nowling or Nowling is your press secretary?

25 A He's my communications director, yes.

1 Q Okay. I would draw your attention to about three pages  
2 in. There is a list of bullet points relating to a  
3 communications plan. There we have it. And as of July 8<sup>th</sup>  
4 your communications plan was that you believe the Court  
5 supervised restructuring is the best and most efficient way to  
6 secure a viable strong future for Detroit, correct?

7 A Yes.

8 Q And further down on the page, there is a bullet point  
9 that states, we negotiated in good faith with all of Detroit's  
10 creditors and we will continue to work cooperatively with them  
11 in the Federal Bankruptcy Court process, correct?

12 A Yes.

13 Q And it states that at this point it would be impractical  
14 to continue discussions out of Court, correct?

15 A Yes, it says that.

16 Q And it states that the State of Michigan has authorized  
17 the emergency manager to take this step?

18 A Yes.

19 Q As of July 8<sup>th</sup>, you had not yet even conducted several of  
20 the meetings with the relevant stakeholders, correct?

21 A July 8<sup>th</sup>?

22 Q Right.

23 A I think we had meetings beginning on June 17<sup>th</sup>, so we had  
24 conducted a number of meetings.

25 Q What about the ones on the 10<sup>th</sup> and the 11<sup>th</sup>? Those had  
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1 not even taken place, correct?

2 A Of July.

3 Q Right.

4 A Yes. No, they hadn't taken place.

5 Q And I think we established earlier that all the  
6 presentations on the 10<sup>th</sup>, 14<sup>th</sup>, and 20<sup>th</sup> were merely  
7 informational and presentational, correct?

8 A Of July?

9 Q Of June.

10 A Of June, yes.

11 Q Okay. And this same document has the filing date of the  
12 19<sup>th</sup>, right?

13 A Yes.

14 Q Okay. Was there another document that set forth some  
15 sort of contingency plan if negotiations actually were  
16 fruitful?

17 A It looks like this is one of them.

18 Q Where on here does it say what your steps are if the  
19 negotiations, the meetings that took place July 10<sup>th</sup> and 11<sup>th</sup>  
20 where --

21 A Did you say that they were fruitful, or unfruitful?

22 Q If they were fruitful.

23 A Oh, they were fruitful.

24 Q Where is your plan for if the negotiations on the 10<sup>th</sup> and  
25 11<sup>th</sup> worked out?

1 A Rephrase your question because I'm not sure I'm  
2 understanding it.

3 Q This document lays out a time line as of July 8<sup>th</sup>.

4 A Contingency plan, yes.

5 Q Okay. Where on the document does this say it's a  
6 contingency plan?

7 A No. I'm just saying that you do contingency planning.  
8 It doesn't have to be called a contingency plan. You plan for  
9 contingencies before the last minute, Ms. Green, I'm sure  
10 you're aware of that.

11 Q Okay. So where is the contingency plan for if  
12 negotiations were fruitful?

13 A I don't know.

14 Q In the 200,000 pages of documents the city has produced,  
15 is there a single contingency plan relating to negotiations  
16 with creditors?

17 MR. STEWART: Objection, Your Honor, foundation.

18 THE COURT: Overruled. Answer the question if you  
19 know.

20 A I don't know.

21 MS. GREEN: Your Honor, I'm sorry. I'm just going  
22 through my notes. I want to make sure I got everything.

23 Q I have one more question. At the June 10<sup>th</sup> proposal, or  
24 I'm sorry, public meeting.

25 A Uh-huh.

1 Q Do you recall talking about your authority under PA436?

2 A Yes.

3 Q Do you recall making a statement about how powerful your  
4 authority was under PA436?

5 A Yes, I do remember that.

6 Q Do you remember saying, and I don't want to misquote you,  
7 so I'm going to have to play the clip, but do remember saying  
8 that the statute itself was powerful, but you had a much more  
9 powerful Chapter 9?

10 A Yes. I remember saying that I have a very powerful  
11 statute, 436 is even a more powerful statute, Chapter 9, but I  
12 don't want to use it.

13 Q And didn't you end with but -- let's just play the clip  
14 from what you actually said before --

15 MR. STEWART: Your Honor, objection. The -- the  
16 witness has stated his memory. There's no reason to -- to  
17 show a -- a clip.

18 THE COURT: I'll permit it, go ahead. Go ahead.

19 MS. GREEN: The clip says something different.

20 THE COURT: Go ahead.

21 (Video Being Played at 2:35 p.m.; Concluded at 2:35 p.m.)

22 Q Do you also recall just prior to that June 10<sup>th</sup> meeting  
23 the -- the email we looked at earlier from Chuck Moore stating  
24 that Chapter 9 would be necessary to deal with the pension  
25 obligations?

1 A I recall receiving that email.

2 Q When you were discussing to the public this issue with  
3 respect to Chapter 9, were you aware of the fact that your  
4 financial advisors had already set on a course for Chapter 9  
5 proceedings?

6 A I'm not sure we'd set on a course for Chapter 9  
7 proceedings. We were trying very hard to get some consensual  
8 resolutions and had one in hand.

9 Q Last question. Do you remember being asked by a precinct  
10 delegate for the Democratic party after you made that  
11 statement about Chapter 9. Do you remember a woman standing  
12 up and asking you -- stating that she felt as though she was  
13 threatened by your Chapter 9 comments?

14 A No, I don't remember. Somebody may have said that, I  
15 don't remember.

16 Q Do you believe that when you stated that you had a very  
17 powerful Chapter 9, that you were trying to set the tone for  
18 the negotiations that were to take place over the following  
19 weeks?

20 A No, not necessarily. I was just speaking.

21 MS. GREEN: I have nothing further, Your Honor.

22 CROSS EXAMINATION

23 BY MR. WERTHEIMER:

24 Q Good afternoon, Mr. Orr. My name is Bill Wertheimer and

25 I represent the Flowers plaintiffs, the plaintiffs in that  
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1 lawsuit --

2 A Good afternoon, Mr. Wertheimer.

3 Q We have not met, have we?

4 A No, we have not.

5 Q I'd like to clear up, if I can, the timing related to  
6 these hearings in the State Court. You testified that the  
7 suits were filed on July 3<sup>rd</sup>, correct? The Flowers and the  
8 Webster suits were filed on July 3<sup>rd</sup>, correct?

9 A Yes, I believe so.

10 THE COURT: Counsel, I have to caution you not to  
11 ask any redundant questions.

12 MR. WERTHEIMER: That was -- I will not further.

13 Q Did you also learn at the same time you learned about the  
14 lawsuits that along with the lawsuits the same day the  
15 lawsuits were filed, the Judge in that case entered an order  
16 to show cause scheduling a hearing for preliminary injunctions  
17 on the Websters and Flowers case for July 22<sup>nd</sup>?

18 A No.

19 Q When in time did you learn that hearings were scheduled  
20 for July 22<sup>nd</sup> in front of Judge Aquiline?

21 A I'm not aware if I ever knew in front of which Judge. I  
22 think I learned that a few days or weeks later.

23 Q Okay. Have you ever in your meetings or communications  
24 with the Governor, or any of his staff people in any way

1 representative of the people of the City of Detroit to make a  
2 legal claim against the state, that the state would be  
3 obligated to pay any pension monies that the city could not  
4 pay because of Article 9, Section 24 of the Constitution?

5 A No, I don't think so.

6 Q In any of your conversations with the Governor, beginning  
7 at the time you became emergency manager in March, did you  
8 ever communicate to the Governor what you communicated to that  
9 retiree at a public meeting, that is that because of the state  
10 law in Michigan pensions are sacrosanct?

11 A I don't recall.

12 Q You don't recall? Are you testifying under an oath you  
13 -- oath you don't recall one way or another whether you used  
14 the term sacrosanct in your discussions with the Governor  
15 relative to this issue?

16 MR. STEWART: Objection, asked and answered.

17 THE COURT: The objection is sustained.

18 Q In your -- these conversations with the Governor, any of  
19 them from the time you became emergency manager, have you had  
20 discussions with the Governor about your claim that federal  
21 law trumps state law on this pension issue?

22 MR. STEWART: Objection, Your Honor. To the extent  
23 that the question calls for the witness to reveal privileged  
24 attorney/client communications. If there were lawyers in the



1 advice, I would object.

2 MR. WERTHEIMER: Can I follow up a question?

3 THE COURT: Uh-huh, sure.

4 Q First of all, have you had any discussions with the  
5 Governor where the issue of the impact of the filing of a  
6 federal bankruptcy would have on this state constitutional  
7 right outside the presence of attorneys?

8 A No.

9 Q How many meetings have you had with the Governor either  
10 personally or over the telephone since you became emergency  
11 manager approximately?

12 MR. STEWART: Objection, asked and answered.

13 THE COURT: Sustained.

14 Q It was two to four or five, right?

15 A No, I have weekly meetings but two to four or five with  
16 the Governor.

17 Q Okay. Thank you.

18 A Uh-huh.

19 Q And in your meetings were there ever occasions where  
20 attorneys were present and in your view of things you were not  
21 seeking legal advice, they just happened to be either on the  
22 line or in the meeting?

23 A With the Governor?

24 Q Yes.

25 A Yes.

1 Q In those meetings, were there occasions where you and the  
2 Governor discussed the issue of federal law trumping or in  
3 some way allowing you to adversely impact pension benefits?

4 MR. STEWART: Renew my earlier objection, Your  
5 Honor.

6 THE COURT: Which objection, sir?

7 MR. STEWART: The -- the -- to the extent that the  
8 -- the question asks for the witness to reveal attorney/client  
9 communications, we'd object.

10 MR. WERTHEIMER: I'm only now asking about meetings  
11 where he's acknowledged the attorneys were not there giving  
12 legal advice. He says there were such meetings.

13 MR. STEWART: The question of -- I'm sorry. The  
14 question of whether federal law trumps, or trumps the Michigan  
15 Constitution is clearly a request for legal advice.

16 MR. WERTHEIMER: He's now testifying. That's not  
17 what Mr. Orr said. Mr. Orr said --

18 THE COURT: The problem is your question was  
19 misleading, sir. Because you asked --

20 MR. WERTHEIMER: With all due respect, Your Honor, I  
21 don't believe it was.

22 THE COURT: Excuse me, you -- you asked were there  
23 such meetings and there may have been. But that doesn't mean  
24 that every subject that was covered in such meeting was --

25 were subjects that did not involve legal advice.

1 MR. WERTHEIMER: Well, then may I ask the question?

2 Q At these -- these one or more meetings where there were  
3 attorneys present, either on the telephone or in person, but  
4 where you're not talking about legal advice or seeking legal  
5 advice from those attorneys, in any of those contexts, did you  
6 and the Governor talk about what the impact of your filing a  
7 Chapter 9 proceeding might be on the pension rights of  
8 citizens of the State of Michigan?

9 MR. STEWART: Same objection, Your Honor. That  
10 issue is by definition one of a legal character.

11 THE COURT: It seems to me, but I'll permit the  
12 witness to answer.

13 A No.

14 MR. WERTHEIMER: Thank you.

15 THE COURT: Any other questions for the witness?  
16 Any redirect? Oh, this I assume had all been worked out. I'm  
17 sorry.

18 MS. BRIMER: I'm standing, Your Honor. I'll --

19 THE COURT: How many more?

20 MS. BRIMER: Good afternoon, Your Honor. Lynn M.  
21 Brimer appearing on behalf of the Retired Detroit Police  
22 Officers Association.

23 CROSS EXAMINATION

24 BY MS. BRIMER:

25 Q Mr. Orr, my name is Lynn Brimer.

1 A Good afternoon, Ms. Brimer.

2 Q We have never met before?

3 A No, we have not.

4 Q Mr. Orr, I'd like to go back to some discussion prior to  
5 your appointment as the -- as the emergency manager. Do you  
6 recall when you first learned that Jones, Day would be  
7 involved in preparing or presenting a pitch to the City of  
8 Detroit for engagement?

9 A Yes.

10 Q And when was that?

11 A Two weeks or so prior to the pitch.

12 Q So about --

13 A Mid-January.

14 Q About mid-January?

15 A Yes.

16 Q And at that point in time did the topic of a Chapter 9  
17 filing come up in your discussions?

18 A No, not initially, no.

19 Q Could we have Exhibit 866, please? Do you -- do you see  
20 that Exhibit 866?

21 A Yes.

22 Q All right. Now that's an email from Ms. Ball and you're  
23 listed on there at the end of the carbon copies, is that  
24 correct?

25 A Yes.

1 Q What is Ms. Ball's role in connection with the City of  
2 Detroit project at Jones, Day?

3 A Ms. Ball is one of the attorneys at Jones, Day in the  
4 restructuring practice that was at the pitch -- pitch  
5 presentation.

6 Q Okay. So if you'd go down midway through the page you'll  
7 see there is a paragraph that says Kevyn.

8 A Uh-huh.

9 Q I assume that's you, Mr. Orr?

10 A Uh-huh.

11 Q There are diversity related issues. You have to be the  
12 star on this stuff and be able to discuss what we can provide.  
13 (We do submit reports to the Bar Association). Also, can you  
14 check with Dan Moss where he is on updating our Chapter 9  
15 paper with new decisions like the ones in California, PA, and  
16 Alabama among others.

17 A Yes.

18 Q All right. Who is Mr. Moss?

19 A Mr. Dan Moss is an attorney at Jones, Day seated at  
20 counsel's table.

21 Q And he was involved in the project to pitch to the City  
22 of Detroit, correct?

23 A Yes.

24 Q All right. Now already at least as early as January 15,

1 Jones, Day attorneys, is that correct?

2 A Yes, it appears to be so.

3 Q So now you spent the -- the pitch was actually made on  
4 January 29<sup>th</sup>, is that correct?

5 A Yes.

6 Q And who attended that pitch?

7 MR. STEWART: Objection, Your Honor, asked and  
8 answered.

9 THE COURT: Sustained.

10 Q There were attorneys from various offices of Jones, Day  
11 at that pitch, is that correct?

12 A Yes.

13 Q And in that two week period were there discussions among  
14 the attorneys of the role each would play in the pitch with  
15 the city?

16 A Yes.

17 Q And during any of those discussions, did Ms. Ball ever  
18 discuss any prior involvement with the State of Michigan?

19 A Not with me.

20 Q Was Ms. Lennox also involved in the pitch?

21 A Yes.

22 Q And did Ms. Lennox ever discuss in any of the meetings or  
23 conversations preparing for the pitch, her role or Jones,  
24 Day's role in connection with prior advice rendered to the  
25 State of Michigan?

1 A Not that I recall.

2 Q Now shortly after the pitch you were approached in  
3 connection with becoming the emergency manager?

4 A Yes.

5 Q And there were discussions internally with respect to  
6 what Jones, Day may be able to do to generate funding for the  
7 project and to nationalize the project, is that correct?

8 A I think there was an email, yes.

9 MS. BRIMER: Could we have 605? It's 805, I  
10 apologize. And, Your Honor, I'm using exhibits that have been  
11 admitted.

12 THE COURT: Thank you.

13 Q This is an email chain between you and Mr. Moore -- Moss,  
14 is that correct?

15 A Yes.

16 Q Do you see that? Okay. Now if you go down to the second  
17 page, it begins with an email to you from Ms. Ball, the last  
18 sentence -- well, actually we'll go all the way down to the  
19 first food for thought. For your conversation with Baird and  
20 us, I understand Bloomberg Foundation has a keen interest in  
21 this area. Do you know what area she is referring to?

22 A I do not.

23 Q Well, and the subject is D. Do you know what that D is  
24 referring to?

25 A I think it's referring to Detroit.

1 Q Okay. I was thinking about whether we should talk to  
2 Baird about financial support for this project and in  
3 particular the EM. So the issue is discussions with respect  
4 to whether or not you can generate additional funding for it,  
5 is that correct?

6 A I believe so.

7 Q The last sentence is, I can ask Harry, I believe that's  
8 Harry Wilson from the auto task force, for contact  
9 information. This kind of support and weighs -- nationalizes  
10 the issue and the project. What project is that she's  
11 referring to, do you know?

12 A I assume she's referring to something related to Detroit.

13 Q So she related to the -- does the project relate to the  
14 representation of the City of Detroit by the Jones, Day  
15 attorneys?

16 A I don't know.

17 Q All right. So then if you go up from that, there is an  
18 email from Mr. Moss to you that begins, making this a national  
19 issue is not a bad idea. It provides political cover for the  
20 state politicians. Indeed this gives them an even greater  
21 incentive to do this right because if it succeeds, there will  
22 be more than enough patronage to allow either Bing or Snyder  
23 to look for higher callings whether cabinet, Senate, or  
24 corporate. Further, this would give you, I assume you means  
25 you, Mr. Orr.



1 A Uh-huh.

2 Q Would give you cover and options on the back end, I  
3 assume that's when you're finished with your appointment as  
4 the EM, to make up for lost time here.

5 A Yeah.

6 Q Is the perception at Jones, Day that your appointment as  
7 the emergency manager for the City of Detroit is lost time?

8 A No.

9 Q Then why would Mr. Moss have included that sentence in an  
10 email, if you know?

11 A I don't know.

12 Q Was it important to move forward with this project in a  
13 fashion that provided political cover for those who are  
14 involved?

15 A No. I think I say that in one of the following emails.

16 Q Now when did you first learn that the Mayor -- I mean  
17 that the Governor would be supporting your candidacy as the  
18 emergency manager?

19 A Sometime after we met in mid-February.

20 Q Could we have 807? So 807 is an email chain between  
21 yourself and Mr. Baird, is that correct?

22 A Yes.

23 Q The Re line is tribute to my dad, Reverend Dr. Allen E.

24 Orr.

25 A Senior.

1 Q If we could go to the email midway down from Mr. Baird to  
2 you dated February 12, 2013. Do you recall receiving this  
3 email?

4 A Yes.

5 Q And I think we've discussed part of this email with Ms.  
6 Green. But the paragraph that begins a little further down,  
7 Kevyn, I know you have work -- you have to work logistics on  
8 your end, but I do want you to know our folks are already  
9 behaving if you have -- as if you accepted the job. I guess  
10 that's human nature since the chemistry envisioned was so  
11 aligned with our own.

12 The last sentence in that paragraph reads, anyway, I need  
13 to clue -- I need you to clue me in. Are you feeling  
14 differently because the boss and his team are already  
15 arranging for the church and pastor and I need to talk them  
16 off the ledge if you tell me we are misreading the  
17 relationship.

18 So already by February 12<sup>th</sup> you understood that the  
19 Governor was seriously supporting your candidacy, is that  
20 correct?

21 A Yes.

22 Q Did you at that point in time do anything to advise the  
23 Governor that you would not be taking the position?

24 A No. I think I still was taking it under consideration.

25 Q Let's see here. All right. I'd like to -- I do have an  
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1 exhibit here --

2 THE COURT: Actually, Ms. Brimer, I'm -- I'm going  
3 to conclude Court now. We do have some housekeeping matters  
4 that I need to review with everyone. How much longer will  
5 your cross examination be?

6 MS. BRIMER: Probably only about 15 minutes, Your  
7 Honor.

8 THE COURT: And the other cross examination, sir?

9 MR. WILKINS: About 10 to 15 minutes.

10 THE COURT: Ms. Patek?

11 MS. PATEK: It will be less than that, Your Honor.

12 THE COURT: All right. So we'll reconvene next  
13 Monday morning at 9:00 a.m.

14 Now I have been advised regarding exhibits and your other  
15 property that your choices are a little more constrained at  
16 this point. You can either leave them in the jury room where  
17 they will be locked, or you can take them with you. But we  
18 can't leave them in place between now and Monday. I think  
19 Judge Cook will be using this courtroom for other purposes.  
20 Who else is the city intending to call, please?

21 MR. STEWART: This is our last witness, Your Honor.

22 THE COURT: All right. Monday morning when we meet,  
23 I would like some good faith estimate from the objecting  
24 parties as to how long your case will take. We need that

25 because if it's going to go beyond Thursday of that week, we  
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1 need to arrange for -- for courtrooms after that.

2 All right. Any other further housekeeping matters? Yes,  
3 Ma'am.

4 MS. LEVINE: Your Honor, just a question. Assuming  
5 the witnesses conclude maybe even Monday or Tuesday, can  
6 closings be after we submit our briefs on 11-13 on Wednesday,  
7 or are you going to want closings to be --

8 THE COURT: No, I want closings immediately after  
9 the conclusion of the proofs.

10 MS. LEVINE: Thank you.

11 MR. DECHIARA: One question in that regard, Your  
12 Honor. Is it your expectation that if we are not finished for  
13 whatever reason Tuesday afternoon that we will go Wednesday  
14 despite the current mediation order that's in place?

15 THE COURT: I had not taken that into account. Is  
16 this something you need to know now, or can I get back to you  
17 on Monday on that?

18 MR. DECHIARA: No, you can get back to us on Monday,  
19 Your Honor.

20 THE COURT: All right. If -- if -- if I don't,  
21 please remind me of this question. Anything further, anyone?  
22 All right. We'll stand in place while Mr. Orr takes his exit.  
23 And my apologies to you for blasting out of here at lunch  
24 without giving you that opportunity, sir.

25 A Thank you. Thank you.

1 THE COURT: But go ahead and we'll just wait here.

2 (WITNESS KEVYN ORR WAS EXCUSED AT 2:59 P.M.)

3 THE COURT: Jim, you'll let us know when we can go.

4 Ready?

5 THE CLERK: All rise.

6 THE COURT: All right.

7 THE CLERK: Court is adjourned.

8 (Court Adjourned at 2:59 p.m.)

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We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Deborah L. Kremlick, CER-4872  
Letrice Calloway

Dated: 11-4-13