

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

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

**DEBTOR’S OPPOSITION TO OBJECTORS’ MOTION TO  
ADMIT CERTAIN DEPOSITION TESTIMONY OF  
KEVYN ORR AND KENNETH BUCKFIRE**

The Objectors<sup>1</sup> move the Court to admit certain deposition testimony of Kevyn Orr and Kenneth Buckfire (Dkt #954) for purposes of the upcoming evidentiary hearing relating to the *Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 465(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019,*

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<sup>1</sup> The movants are: Syncora Capital Assurance Inc. and Syncora Guarantee Inc. (“Syncora”), Erste Europäische Pfandbrieffund Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A., DEPFA Bank PLC, Ambac Assurance Corporation, National Public Finance Guarantee Corporation, Assured Guaranty Municipal Corp., Financial Guaranty Insurance Company, the Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit, and the Official Committee of Retirees.

*and (III) Granting Related Relief* dated July 18, 2013 (Dkt #17) (“Assumption Motion”).

1. The City opposes the Objectors’ motion for the following reasons.

2. First, the Objectors’ method of dealing with what is essentially deposition designations and counter-designations (by filing a motion *in limine*) is improper and inefficient. There will likely be multiple other parties that wish to designate deposition testimony of multiple other witnesses as part of the hearings regarding the City’s Assumption Motion and Motion to Approve Post-Petition Financing (Dkt #157) (“Consolidated Hearing”). If the Court approves this motion, the result would be similar motions filed piecemeal.

3. Second, the Court and parties already have a roadmap to deal with this issue efficiently. During the Eligibility Trial, the parties coordinated the filing of deposition designations and counter-designations smoothly. On the final day of the Eligibility Trial, the parties presented the Court with transcripts that indicated (via different color highlights) designations and counter-designations.

4. Accordingly, the City respectfully requests that the Court deny Objectors’ motion and instruct the parties to coordinate when and how

deposition designations and counter-designations (along with any evidentiary objections to such designations and counter-designations) will be submitted to the Court. A proposed order reflecting this approach is attached as Exhibit 1A.

5. If the Court desires to grant the Objectors' motion, the City requests in the alternative, that the Court allow the City to counter-designate portions of Messrs. Orr and Buckfire's depositions testimony now. Attached are said deposition transcripts depicting Objectors' designations (highlighted in yellow) and City's counter-designations (highlighted in blue). Exs. 5 (Orr) and 6 (Buckfire).

6. A proposed order reflecting the City's alternative position is attached as Exhibit 1B.

Dated: December 10, 2013

Respectfully submitted,

/s/ David G. Heiman

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*Counsel for the City of Detroit*

## SUMMARY OF ATTACHMENTS

The following documents are attached and labeled in accordance with Local Rule 9014-1(b).

Exhibits 1A and 1B	Proposed Forms of Orders
Exhibit 2	None [Notice Not Required]
Exhibit 3	None [Brief Not Required]
Exhibit 4	Certificate of Service [To Be Separately Filed]
Exhibit 5	Deposition Transcript of Kevyn Orr from August 30, 2013 (includes Objectors' designations and City's counter-designations)
Exhibit 6	Deposition Transcript of Kenneth Buckfire from August 29, 2013 (includes Objectors' designations and City's counter-designations)

**EXHIBIT 1A – PROPOSED ORDER**

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

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

**ORDER DENYING THE OBJECTORS' MOTION TO  
ADMIT CERTAIN DEPOSITION TESTIMONY OF  
KEVYN ORR AND KENNETH BUCKFIRE**

This matter coming before the Court on the motion of the Objectors for the entry of an order admitting the deposition testimony identified in Exhibit 6-A and Exhibit 6-B to *The Objectors' Motion to Admit Certain Deposition Testimony of Kevyn Orr and Kenneth Buckfire*; the Court having reviewed the Objectors' motion, as well as the City's Response, IT IS HEREBY ORDERED THAT:

1. The court DENIES the Objectors' motion to admit the deposition testimony of Messrs. Orr and Buckfire designated in Exhibit 6-A and Exhibit 6-B to the Objectors' motion.



2. The parties are instructed to coordinate the filing of deposition designations and counter designations, along with any evidentiary objections to said designations and counter-designations.
3. The parties should be prepared to present their plan to the Court on the first day of the upcoming hearing regarding the City's Assumption Motion (Dkt #17) and Motion to Approve Post-Petition Financing (Dkt #157) ("Consolidated Hearing").
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**Signed on December \_\_, 2013**

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**Steven Rhodes**  
**United States Bankruptcy Judge**

**EXHIBIT 1B – PROPOSED ORDER**

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

-----X		
In re	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	:	
	:	
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**ORDER GRANTING THE OBJECTORS' MOTION TO  
ADMIT CERTAIN DEPOSITION TESTIMONY OF  
KEVYN ORR AND KENNETH BUCKFIRE**

This matter coming before the Court on the motion of the Objectors for the entry of an order admitting the deposition testimony identified in Exhibit 6-A and Exhibit 6-B to *The Objectors' Motion to Admit Certain Deposition Testimony of Kevyn Orr and Kenneth Buckfire*; the Court having reviewed the Objectors' motion, as well as the City's Response, IT IS HEREBY ORDERED THAT:

1. The court GRANTS the Objectors' motion to admit the deposition testimony of Messrs. Orr and Buckfire designated in Exhibit 6-A and Exhibit 6-B to the Objectors' motion, subject to evidentiary objections by the City.

2. The City's counter-designations of the deposition testimony of Messrs. Orr and Buckfire identified in exhibits 5 and 6 of its Opposition to the Objectors' Motion is admitted, subject to evidentiary objections by the Objectors.
3. The Objectors and City exchange any evidentiary objections to the designations and counter-designations before the upcoming hearing regarding the City's Assumption Motion (Dkt #17) and Motion to Approve Post-Petition Financing (Dkt #157) ("Consolidated Hearing").
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**Signed on December \_\_, 2013**

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**Steven Rhodes**  
**United States Bankruptcy Judge**

**EXHIBIT 2**

*None [Notice of Motion and Opportunity to Object Not Required]*

**EXHIBIT 3**

*None [Brief Not Required]*

**EXHIBIT 4**

*Certificate of Service [To Be Separately Filed]*

**EXHIBIT 5**

*Deposition Transcript of Kevyn Orr from August 30, 2013*

*(Objectors' designations highlighted in yellow;  
City's counter-designations highlighted in blue)*



**In The Matter Of:**

*City of Detroit*

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*Kevyn Orr*

*August 30, 2013*

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*Original File ORR\_KEVYN.txt*  
*Min-U-Script® with Word Index*

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1 UNITED STATES BANKRUPTCY COURT  
 2 FOR THE EASTERN DISTRICT OF MICHIGAN  
 3 SOUTHERN DIVISION  
 4  
 5 In Re:  
 6  
 7 City OF DETROIT, MICHIGAN Chapter 9  
 8 Case No.13-53846  
 9 Debtor. Hon. Steven Rhodes  
 10 /  
 11  
 12  
 13 The Videotaped Deposition of KEVYN ORR,  
 14 Taken at 1114 Washington Boulevard,  
 15 Detroit, Michigan,  
 16 Commencing at 8:32 a.m.,  
 17 Friday, August 30, 2013,  
 18 Before Cindy Mendenhall, RPR, CSR-5220.  
 19  
 20  
 21  
 22  
 23  
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1 Q. My name is Steve Hackney. I'm an attorney at Kirkland  
 2 & Ellis and I represent Syncora Capital Assurance and  
 3 Syncora Guarantee. It's Nice to meet you.  
 4 **A. Nice to meet you.**  
 5 Q. Could you state your name for the record?  
 6 **A. Sure. Kevyn Dwayne Orr.**  
 7 Q. Mr. Orr, you understand the way a deposition works,  
 8 right?  
 9 **A. I think I do.**  
 10 Q. In fact, you have taken depositions in your career;  
 11 isn't that correct?  
 12 **A. I have.**  
 13 **Q. If I ask a question that isn't clear, will you ask me**  
 14 **to rephrase it?**  
 15 **A. Yes.**  
 16 **Q. And if I ask a question and you answer it, I'm going**  
 17 **to assume that you understood it; is that fair?**  
 18 **A. Yes.**  
 19 **Q. Mr. Orr, in the course of negotiating and executing**  
 20 **the forbearance agreement, did you receive legal**  
 21 **advice?**  
 22 **A. Yes. The forbearance and the optional payment**  
 23 **agreement?**  
 24 **Q. That's right.**  
 25 **A. And we'll refer to that as forbearance agreement going**

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1 Detroit, Michigan  
 2 Friday, August 30, 2013  
 3 8:32 a.m.  
 4  
 5  
 6 **VIDEO TECHNICIAN:** We are now on the  
 7 record. This is the videotaped deposition of Kevyn  
 8 Orr being taken on Friday, August 30th, 2013. The  
 9 time is now 8:32 a.m. We are located at  
 10 1114 Washington Boulevard, Detroit, Michigan. We are  
 11 here in the matter of In Re: City of Detroit,  
 12 Michigan, case number 13-53846 in the United States  
 13 Bankruptcy Court of the Eastern District of Michigan.  
 14 My name is Bailey Wellman, video  
 15 technician. Will the court reporter swear in the  
 16 witness.  
 17 **KEVYN ORR,**  
 18 was thereupon called as a witness herein, and after  
 19 having first been duly sworn to testify to the truth,  
 20 the whole truth and nothing but the truth, was  
 21 examined and testified as follows:  
 22 **EXAMINATION**  
 23 **BY MR. HACKNEY:**  
 24 **Q. Mr. Orr, good morning.**  
 25 **A. Good morning.**

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1 **forward?**  
 2 **Q. I was going to call it that because it's shorter, if**  
 3 **that's okay.**  
 4 **A. Sure. That's fine.**  
 5 **Q. But you're right. That's what I mean.**  
 6 **A. Yes. Yes, I did receive legal advice.**  
 7 **Q. And did you receive legal advice from the City's law**  
 8 **department on the subject?**  
 9 **A. I don't recall. I don't think so.**  
 10 **Q. Did you receive legal advice from Jones Day on the**  
 11 **subject?**  
 12 **A. Yes, among others.**  
 13 **Q. And I take it that you relied on the legal advice you**  
 14 **received in making the decision to execute the**  
 15 **forbearance agreement?**  
 16 **A. Legal advice and business advice from our consultants,**  
 17 **yes.**  
 18 **Q. Who were the others that you obtained legal advice**  
 19 **from?**  
 20 **A. May have obtained legal advice from our local counsel.**  
 21 **Q. Ah, yes.**  
 22 **A. And in fact I said I don't recall if I obtained any**  
 23 **legal advice from the corporation counsel's office. I**  
 24 **just don't recall, so I'm not going to speculate.**  
 25 **Q. Three possible. You know you got legal advice from**

1 Jones Day.  
 2 **A. Absolutely.**  
 3 Q. You may have or did from local counsel.  
 4 **A. Yes.**  
 5 Q. And you can't recall whether you did from the City's  
 6 law department.  
 7 **A. Yes.**  
 8 Q. Are you waiving the attorney-client privilege in  
 9 connection with the motion to assume the forbearance  
 10 agreement?  
 11 **MR. SHUMAKER:** Objection, could call for  
 12 the revelation of attorney-client communication.  
 13 You can answer the question, but yes or no.  
 14 **A. No.**  
 15 **BY MR. HACKNEY:**  
 16 Q. If I ask you questions regarding the legal advice  
 17 rendered to you in connection with the forbearance  
 18 agreement's negotiation or execution, you will refuse  
 19 to answer those questions on the grounds of the  
 20 attorney-client privilege; is that correct?  
 21 **MR. SHUMAKER:** If you're asking what the  
 22 advice is, certainly. The communications between  
 23 counsel and what he was -- what he was advised on,  
 24 certainly.  
 25 **THE WITNESS:** Right.

1 factors were considered by Mr. Orr, but obviously if  
 2 you're going to ask what he was -- what he was advised  
 3 by counsel, then I'm going to instruct him not to  
 4 answer.  
 5 **A. When I say more than likely, that's -- that's exactly**  
 6 **the distinction that I'm trying to make. Did I have**  
 7 **discussions with my counsel? Yes. Did those**  
 8 **discussions take into consideration some of those**  
 9 **factors? Yes. Am I going to tell you what those**  
 10 **discussions were and what, if any, conclusions were**  
 11 **made? No.**  
 12 **BY MR. HACKNEY:**  
 13 Q. Okay. Fair enough.  
 14 On July 15, 2013, the City entered into  
 15 what we're going to call the forbearance agreement  
 16 with the Swap counterparties and the service  
 17 corporations; is that correct?  
 18 **A. Yes.**  
 19 Q. When did negotiations around that agreement with the  
 20 Swap counterparties begin after your appointment?  
 21 **A. I think there were discussions about negotiations**  
 22 **almost immediately after my appointment. My specific**  
 23 **knowledge -- when you say negotiations, what do you**  
 24 **mean?**  
 25 Q. Well, let me -- let me ask it a different way, which

1 **BY MR. HACKNEY:**  
 2 Q. Okay. That's correct?  
 3 **A. Yes. That is correct.**  
 4 Q. So if I ask you what your view is on the likelihood  
 5 that the City's Swap and validity arguments will  
 6 prevail, you will assert the attorney-client  
 7 privilege; is that correct?  
 8 **A. Yes, more than likely.**  
 9 Q. If I ask you your view on the likelihood that the  
 10 pledge of the gaming revenues under the Michigan  
 11 Gaming Act is an invalid pledge, you'll assert the  
 12 attorney-client privilege, correct?  
 13 **A. Yes, more than likely.**  
 14 Q. If I ask you questions regarding the likelihood that  
 15 the City would prevail on a claim or defense against  
 16 the Swap counterparties, you'll assert the  
 17 attorney-client privilege, correct?  
 18 **A. Yes, more than likely.**  
 19 Q. And I guess I gotta clarify. When you say more than  
 20 likely, I mean are you asserting the privilege with  
 21 respect to those types of questions? I'm trying to  
 22 save having to --  
 23 **A. Sure.**  
 24 **MR. SHUMAKER:** Let me state for the record  
 25 you can ask questions as to whether those -- those

1 is isn't it true that Mr. Buckfire was the lead  
 2 negotiator for the City on the business terms of what  
 3 became the forbearance agreement?  
 4 **A. Yes.**  
 5 Q. And Mr. Buckfire has testified that the negotiations  
 6 in earnest regarding what became the forbearance  
 7 agreement were conducted between June 4th and  
 8 June 11th of 2013?  
 9 **A. I don't recall those specific dates, but I think**  
 10 **that's the right time frame. Let me -- let me try to**  
 11 **be as clear as I can so we can move on. We began**  
 12 **talking, discussing ways with my advisors, without**  
 13 **discussing what we discussed, to provide the City with**  
 14 **liquidity almost immediately upon my appointment. The**  
 15 **negotiations that you're referring to I believe did**  
 16 **occur within that time frame.**  
 17 Q. Okay. So you don't have a basis as you sit here today  
 18 to contradict Mr. Buckfire's recollection of when the  
 19 key negotiations over the business terms of the  
 20 forbearance agreement were conducted?  
 21 **A. No. It might be earlier, but that's the approximate**  
 22 **time frame.**  
 23 Q. And as he was the lead negotiator, he's probably the  
 24 guy who would know, right?  
 25 **A. Sure, absolutely.**

1 Q. Okay. And you did not participate directly in those  
 2 negotiations; isn't that correct?  
 3 A. No. No. I did participate at some point in June  
 4 with -- I had no face-to-face meetings, but there were  
 5 several phone calls with a principal on the other  
 6 side.  
 7 Q. Do you remember when those phone calls took place?  
 8 A. I do not remember the exact date. I believe those  
 9 calls took place in the first and second week of June  
 10 prior to the June 14th creditor's meeting.  
 11 Q. Okay. And what was the substance of those calls?  
 12 A. The nature of the proposed settlement and the amount  
 13 of the discount.  
 14 Q. And who were you talking to?  
 15 A. I don't remember. A Mr. Kuderic (phonetic)? There  
 16 was one individual, and perhaps others on a conference  
 17 call that Ken and I -- Ken and I had, Ken Buckfire and  
 18 I had. One or two conference calls the first week of  
 19 June and then perhaps another couple of conference  
 20 calls the second week of June.  
 21 Q. And this was prior to an agreement in principle being  
 22 struck?  
 23 A. Yes. Yes. Yes.  
 24 Q. Okay. And tell me what was said on these conference  
 25 calls if you can divide them in your mind.

1 anything out from these conversations.  
 2 A. No. I'm -- I'm trying to relay to you that there  
 3 were -- there were some very difficult discussions the  
 4 first week on a series of conference calls.  
 5 Negotiations broke down and that first week we walked  
 6 away believing that the concept of the settlement  
 7 wasn't going to work. I came away with a very sincere  
 8 feeling that it wasn't going to work.  
 9 Those negotiations started again. It may  
 10 have even started over the weekend, but they started  
 11 the second week. They broke down again. There was a  
 12 conference call where we -- the parties hung up  
 13 without having reached an agreement. Then I believe  
 14 later -- the afternoon, and it may have been the  
 15 11th -- I said it was the second week -- there were a  
 16 series of calls going back and forth where the actual  
 17 terms of the discount and the framework for the  
 18 settlement was finally hammered out.  
 19 Q. Okay. Can you dial in with any more specificity the  
 20 dates that these calls took place?  
 21 A. Like I said, the first of -- it is consistent with my  
 22 memory that, yes, we started around the June 4th time  
 23 frame. As I said, there was a weekend. June 10th was  
 24 my public meeting, so June 11th is entirely reasonable  
 25 as the date that we finally reached an agreement.

1 A. Generally speaking, without violating confidential  
 2 settlement negotiations, we were talking about the  
 3 amount of the discount for the optional termination  
 4 payment. At several points discussions broke down and  
 5 the parties pledged to keep the lines of communication  
 6 open, but felt that there may not be a settlement.  
 7 I actually, several times, came away  
 8 believing there was not going to be a settlement. I  
 9 think there was a -- without running on, I think a  
 10 weekend transpired, and then negotiations began anew  
 11 the second week. Those negotiations broke down a time  
 12 or two, and then eventually I believe an agreement in  
 13 principle was reached at some point that week.  
 14 Q. If Mr. Buckfire testified there was an agreement in  
 15 principle by June 11th of 2013, does that sound  
 16 correct to you?  
 17 A. Yes, the second -- yes. Yes, it does.  
 18 Q. Now, you prefaced your answer without divulging  
 19 confidential settlement communications, and I'll tell  
 20 you that Rule 408 doesn't actually make your  
 21 settlement communications privileged, and I mean from  
 22 discovery it may have implications for admissibility  
 23 at trial.  
 24 A. Yes.  
 25 Q. So I want to make sure that you're not leaving

1 Q. Okay. Do you maintain a calendar that would reflect  
 2 any of these calls or dates?  
 3 A. No. Because they were very much off the cuff and ad  
 4 hoc and they were not -- my calendar is more of a  
 5 formal process where it has to go through my  
 6 administrative assistant and it's put in, and then I  
 7 either accept or deny it, and I don't have any of  
 8 these calls basically because it was very quick and it  
 9 was very dynamic and as I said, they actually broke  
 10 down several times.  
 11 Q. Would you agree that, notwithstanding your involvement  
 12 in these calls with the Swap counterparties, it's  
 13 still fair to characterize Mr. Buckfire --  
 14 A. Yes.  
 15 Q. -- as the lead negotiator for the City?  
 16 A. Yes.  
 17 Q. Using Mr. Buckfire's recollection of June 4th as kind  
 18 of the kickoff of these negotiations which you don't  
 19 have a basis to --  
 20 A. No.  
 21 Q. -- contradict --  
 22 A. Not at all.  
 23 Q. -- I'd like to kind of level set where you were at  
 24 going in to June 4th. Okay?  
 25 Your assumption prior to June 4th was that

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1 the Swap counterparties could unilaterally --  
 2 unilaterally terminate the Swap, correct?  
 3 **MR. SHUMAKER:** Objection, form.  
 4 **A.** Well, my understanding was the City -- there were a  
 5 series of events which put the City in default. The  
 6 consent agreement prior to my appointment, the consent  
 7 agreement, the declaration of a financial emergency,  
 8 my appointment was an event of default. My  
 9 understanding was that due to those multiple events of  
 10 default, the counterparties had the ability to  
 11 exercise their rights and deprive the City of much  
 12 needed casino revenue.  
 13 **BY MR. HACKNEY:**  
 14 **Q.** We'll get to the casino revenue in a moment which is  
 15 something that's trapped under -- potentially trapped  
 16 under the collateral agreement, right?  
 17 **A.** Right.  
 18 **Q.** I want to talk about the Swap agreement which can lead  
 19 to a large termination payment --  
 20 **A.** Yes.  
 21 **Q.** -- that the service corporations might owe.  
 22 **A.** Yes.  
 23 **Q.** And you understand the distinction between those two  
 24 documents --  
 25 **A.** Yes.

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1 **Q.** -- right?  
 2 **A.** Um-hm.  
 3 **Q.** And your assumptions prior to the June 4th meeting  
 4 were that as a result of these events of default under  
 5 the Swap that occurred, some of them, prior to your  
 6 appointment --  
 7 **A.** Yes.  
 8 **Q.** -- that the Swap counterparties could unilaterally  
 9 terminate the Swap and demand a sizable payment from  
 10 the service corporations, correct?  
 11 **MR. SHUMAKER:** Objection, form, foundation.  
 12 **A.** Yeah, my assumption was, my understanding was that,  
 13 yes, they could terminate and demand a sizable  
 14 payment, whether from the service corporations or  
 15 eventually from the City. It would hit our bottom  
 16 line, yes.  
 17 **BY MR. HACKNEY:**  
 18 **Q.** That's right because it ripples --  
 19 **A.** Yes.  
 20 **Q.** -- through the service corporations to the City by the  
 21 service agreements, right?  
 22 **A.** Yeah.  
 23 **MR. SHUMAKER:** Objection, form.  
 24 **A.** If that is in fact the process, yes.  
 25 **BY MR. HACKNEY:**

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1 **Q.** Now, another one of your assumptions prior to June 4  
 2 was that the Swap counterparties could also  
 3 unilaterally trap cash under the collateral agreement,  
 4 right?  
 5 **MR. SHUMAKER:** Objection, form, calls for a  
 6 legal conclusion.  
 7 **A.** My understanding was that the Swap counterparties  
 8 could instruct the custodian to exercise their rights  
 9 to trap cash.  
 10 **BY MR. HACKNEY:**  
 11 **Q.** And that was one of the rights that they had as you  
 12 were going into the negotiations with them, correct?  
 13 **MR. SHUMAKER:** Objection, form, calls for a  
 14 legal conclusion.  
 15 **A.** My understanding -- yes. My understanding was that  
 16 they had that right.  
 17 **BY MR. HACKNEY:**  
 18 **Q.** That's why you were negotiating with them, right?  
 19 **A.** My -- we were negotiating with them to make sure that  
 20 the City had access to the revenue that it needed  
 21 quite badly and that the City would not suffer the  
 22 imposition of a fairly significant termination  
 23 payment.  
 24 **Q.** Now, another one of your assumptions prior to June 4  
 25 was that no other party could stop the Swap

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1 counterparties from either terminating the Swaps or  
 2 trapping cash, correct?  
 3 **MR. SHUMAKER:** Objection, form, foundation.  
 4 **A.** Yeah, my assumption was -- or, rather, my  
 5 understanding was that the Swap counterparties had  
 6 certain rights and that they had the ability to  
 7 exercise those rights and remedies. Whether another  
 8 party could, quote-unquote, stop them could depend on  
 9 a number of different factors.  
 10 **BY MR. HACKNEY:**  
 11 **Q.** So was that something -- that was not something that  
 12 you had considered then as of June 4th?  
 13 **A.** Yes.  
 14 **MR. SHUMAKER:** Objection, form.  
 15 **A.** Yeah. We had considered whether or not there were  
 16 perhaps other risks involved. What I'm saying to you  
 17 is I had not, as you phrased the question, reached a  
 18 conclusion as to whether or not someone would have the  
 19 ability to stop them from exercising those rights.  
 20 **BY MR. HACKNEY:**  
 21 **Q.** Okay. So you considered the question, but you hadn't  
 22 answered, in your money mind, whether or not there was  
 23 a party out there that could stop the Swap  
 24 counterparties from acting.  
 25 **MR. SHUMAKER:** Objection, form.

1 A. We believe that the Swap counterparties could act. I  
2 think there's a series of letters subsequently with  
3 discussion with your client about their lack of  
4 ability to stop the Swap counterparties from acting,  
5 but I'm -- what I'm trying to relay to you is we had  
6 to assess whether they were risks to that, and my  
7 understanding was that they had the right to exercise  
8 their remedies.

9 BY MR. HACKNEY:

10 Q. Okay. Now, I want to also get a level set on your  
11 objectives going into the negotiations, and I  
12 understand that when I say you, I mean the City,  
13 Mr. Buckfire, there are multiple parts --

14 A. My -- my team --

15 Q. That's right.

16 A. -- consultants.

17 Q. I may be a little euphemistic, but I'll try to be  
18 precise at the right times.

19 A. That's fine.

20 Q. Okay.

21 MR. SHUMAKER: Steve, if I could just  
22 object. If you could just define what you mean by  
23 level set, I would appreciate that.

24 MR. HACKNEY: I want to go back in time --

25 MR. SHUMAKER: Okay.

1 Now, I'm going to ask about the City's  
2 objectives in entering into the negotiations. Okay?  
3 Objective one of the City was to get the  
4 counterparties to waive their cash trap at least on an  
5 interim basis to allow the City access to casino  
6 revenues, correct?

7 A. I don't know if I would characterize it as objective  
8 one. It wasn't as if we were trying to prioritize one  
9 objective over the other. It was an objective to make  
10 sure that the cash did not get trapped.

11 Q. Okay. So that was one of the objectives.

12 A. Yes.

13 Q. A second objective was that you wanted to modify the  
14 Swap to get a discount on the termination amount,  
15 correct?

16 A. Yes. That was certainly an objective, yes.

17 Q. Okay.

18 MR. SHUMAKER: Objection there to the  
19 extent that it calls for a legal conclusion.

20 BY MR. HACKNEY:

21 Q. And the third was that you wanted to obtain an option  
22 about when you could direct the termination of the  
23 Swap, correct?

24 MR. SHUMAKER: Objection, calls for a legal  
25 conclusion.

1 MR. HACKNEY: -- to prior to the June 4  
2 commencement of negotiations.

3 MR. SHUMAKER: Okay.

4 MR. HACKNEY: That's what I mean by level  
5 set.

6 MR. SHUMAKER: Okay. Thank you.

7 BY MR. HACKNEY:

8 Q. Now, I'd like to ask about your objectives as you go  
9 into the negotiation. Okay?

10 A. Um-hm.

11 Q. You understand that when you go into a negotiation  
12 it's important to have an understanding of both the  
13 financial realities that your party is -- is facing as  
14 well as the legal realities that your party's facing,  
15 correct?

16 A. Yes.

17 Q. That informs the negotiation, right?

18 A. In making an informed decision, I would say you want  
19 to have an understanding of those factors.

20 Q. And you also want to understand what your counterparty  
21 in the negotiation needs and wants are as well as  
22 their potential legal rights, right?

23 A. What your counterparty negotiations perceived needs  
24 and rights are.

25 Q. That's right. That's right.

1 A. Here again, I understand your characterization. I'm  
2 going to say that that -- that is a fair  
3 characterization without trying to quantify as one  
4 objective is more important than the others, and let  
5 me explain my answer.

6 The City was at risk of significant  
7 reduction in cash flow at that period. I think at one  
8 point there were various projections that showed as us  
9 having as little as four or nine million dollars of  
10 cash on hand in mid-June. In fact, sometime around  
11 that period I heard that an employee of the City had  
12 gone to cash their paycheck and the paycheck had  
13 bounced. They came back in later that afternoon and  
14 it cashed, but we were -- we were that precarious in  
15 terms of our cash.

16 We knew we were at risk with regard to the  
17 Swap agreement both for trapping casino revenue as  
18 well as the termination payment. We also knew that we  
19 would need to analyze what the right were -- rights  
20 were and to have time to resolve that issue. So to  
21 the extent your characterization of three objectives  
22 encompasses those concepts, then that's a fair  
23 characterization.

24 BY MR. HACKNEY:

25 Q. And I don't mean to order them, but -- so I won't



1 focus on it. I just gave you them in an --  
 2 A. Sure.  
 3 Q. -- order.  
 4 A. Right.  
 5 Q. But those were three objectives of your negotiations,  
 6 correct?  
 7 A. I think it's fair to say that.  
 8 Q. And you achieved those three objectives in the  
 9 forbearance agreement, correct?  
 10 A. We believe so.  
 11 Q. Tell me what you and Mr. Buckfire discussed as he's  
 12 going into the June 4 meeting. So what was his  
 13 mission?  
 14 A. Well, I'm trying to -- generally speaking, because  
 15 some of these conversations may have occurred on phone  
 16 calls where my attorneys were present, but generally  
 17 speaking, the characterization of what you just talked  
 18 about, getting a discount of the termination payment,  
 19 making sure that the casino revenue wasn't trapped,  
 20 getting time to find an alternative source of funding,  
 21 making sure that the City had sufficient cash to  
 22 commence some immediate reinvestment and public  
 23 health, safety and welfare initiatives that we were  
 24 focused on, all of those concepts were caught up in  
 25 these discussions.

1 effective on the 25th to date regularly, daily, sure.  
 2 Q. On this subject.  
 3 A. Oh, sure. On the subject of freeing up cash, on the  
 4 subject of alternatives, on the subject of relieving  
 5 us from our obligations under the Swaps, we -- we --  
 6 we have conversations regularly.  
 7 Q. So going -- using the June 4th date, Mr. Buckfire goes  
 8 into a negotiation in New York with the Swap  
 9 counterparties, correct?  
 10 A. As to the best of my knowledge -- I'll stick with  
 11 June 4th, because you have told me that's what Ken  
 12 said, and so I assume that's the date -- yes.  
 13 Q. And whenever the date was, there was a first meeting  
 14 that he took in person with the Swap counterparties,  
 15 correct?  
 16 A. Yes. To the best of my recollection, I believe it was  
 17 a meeting.  
 18 Q. What offer was he authorized to make in that meeting,  
 19 if any?  
 20 A. I don't recall if there was a specific offer in that  
 21 meeting. I think our discussions centered around  
 22 getting the best deal we could. We may have discussed  
 23 trying to even have the potential termination --  
 24 optional termination payment or more, so I don't think  
 25 we had it as strict as, you know, your marching orders

1 Q. Okay. So the way we described your objectives is a  
 2 fair way to describe the marching orders that  
 3 Mr. Buckfire had going in to the June 4 meeting.  
 4 MR. SHUMAKER: Objection to form.  
 5 A. Yeah, you know, marching orders -- I think that  
 6 Mr. Buckfire, myself, our attorneys, the consultants  
 7 and accountants reached a consensus.  
 8 BY MR. HACKNEY:  
 9 Q. About what the City should do?  
 10 A. About what the City needed to do.  
 11 Q. And what -- and that consensus was to try and achieve  
 12 the three objectives we talked about earlier.  
 13 MR. SHUMAKER: Objection to form.  
 14 A. Here again, I'll stay by the concept that, you know --  
 15 I understand for your purposes you're trying to  
 16 characterize the three objectives, but the objectives,  
 17 in my opinion, were quite broader. The efforts to try  
 18 to achieve the objectives, as you call them, were  
 19 necessary for some of the things, priorities the City  
 20 needed to do.  
 21 BY MR. HACKNEY:  
 22 Q. Did you have any conversations with anyone else in  
 23 advance of June 4 about the anticipated negotiations?  
 24 A. Oh, sure. We -- we -- my -- my team and I have  
 25 conversations from the time my appointment became

1 are to say do this and go in.  
 2 It was to go in and have a discussion with  
 3 the representatives of the counterparty about what we  
 4 needed to get so that the City could function first  
 5 with cash flow, not any priority, but also to get a  
 6 discount over that termination payment.  
 7 Q. So did Mr. Buckfire have authorization to make a  
 8 formal proposal in the first meeting?  
 9 A. Yes.  
 10 Q. And to your knowledge did he make one?  
 11 A. I believe so.  
 12 Q. What was the proposal?  
 13 A. I don't remember what the exact number was, but I  
 14 believe the concepts were consistent throughout.  
 15 Q. And what were the concepts?  
 16 A. Same thing that we just said, to -- to try to get a  
 17 discount over the termination payment, to try to make  
 18 sure that the cash wasn't trapped, make sure we had  
 19 some time to find a way to pay even the discounted  
 20 amount.  
 21 Q. Did Mr. Buckfire report back to you after the June 4th  
 22 meeting about what had transpired?  
 23 A. Yes.  
 24 Q. What did he tell you transpired?  
 25 A. Had a discussion. I don't have notes, but my general

1 recollection is had a discussion with the  
 2 counterparties, discussed a range of alternatives, our  
 3 first overture was rejected, but we would have further  
 4 discussions.  
 5 Q. And do you remember whether they countered?  
 6 A. I don't remember specifically. I believe they may  
 7 have.  
 8 Q. Okay. Do you know the terms of their counter?  
 9 A. Generally in the same concept I said. If you're  
 10 looking for a number, for instance, we said 50 percent  
 11 and they came back with 98. I don't recall those  
 12 specifics.  
 13 Q. So you can't give me the bid and the ask --  
 14 A. Yeah.  
 15 Q. -- on what the Swap would be modified as far as the  
 16 termination?  
 17 A. Yes, that's correct.  
 18 (Discussion off the record at 8:56 a.m.)  
 19 (Back on the record at 8:56 a.m.)  
 20 BY MR. HACKNEY:  
 21 Q. Did the City enter into a nondisclosure agreement in  
 22 connection with these negotiations?  
 23 A. Yes, I believe so.  
 24 Q. With the Swap counterparties?  
 25 A. Yes.

1 MR. HACKNEY: I think we would ask to see  
 2 if that could be produced. I know that there's not  
 3 formal written discovery, but the Court has also  
 4 indicated that all documents relating to the debtors  
 5 are effectively discoverable in bankruptcy, so I'd ask  
 6 that you consider that and we can address it later.  
 7 MR. SHUMAKER: We'll look into it.  
 8 BY MR. HACKNEY:  
 9 Q. Now the -- I know that -- I've established already  
 10 that you -- you don't have an independent recollection  
 11 of the specific dates any of this occurred. I'm  
 12 making representations to you as an officer who was  
 13 here yesterday.  
 14 A. Right.  
 15 Q. So subject to my representations being accurate,  
 16 Mr. Buckfire's recollection was that the next meeting  
 17 in person with the Swap counterparties was June 8th.  
 18 A. That's sou -- as I said, there was a first week and  
 19 there was a second week and that sounds about  
 20 accurate. I believe June 8th may have been a weekend,  
 21 so as I said before some of these discussions may have  
 22 occurred over the weekend.  
 23 Q. Okay. So discussions had not broken down at this  
 24 point, correct?  
 25 A. No. They may have. I think they broke down at some

1 point during the first week, but they -- they resumed.  
 2 My interpretation was that they broke down, and then  
 3 they recommenced a second week.  
 4 Q. Okay. So on -- if there -- to the extent  
 5 Mr. Buckfire's right that there was an in-person  
 6 June 8th meeting --  
 7 A. Yeah.  
 8 Q. -- do you remember what his -- what your marching  
 9 orders to him were as he went into that meeting?  
 10 A. Here again, the concept of marching orders, we were  
 11 trying to get to an agreement generally, and I believe  
 12 the instructions were to continue to move towards that  
 13 process, whatever that was. And so the specific  
 14 bid/ask that were going on throughout that time, I  
 15 don't -- I don't recall, but the general concept was  
 16 to continue to try to move to a point to get to a  
 17 discount number or a discount process.  
 18 Q. Is it fair to say that if I ask you for the specific  
 19 ebb and flow of the negotiations between the Swap  
 20 counterparties in terms of the precise business  
 21 deal --  
 22 A. Right.  
 23 Q. -- you would have to defer to Mr. Buckfire's  
 24 recollection because he was more intimately involved?  
 25 A. That's fair. Because Ken was -- Ken would have the

1 direct meetings and then call me back. We'd go back  
 2 and forth, and I didn't keep notes and I didn't keep a  
 3 calendar, so --  
 4 Q. I asked you about nondisclosure agreements, but did  
 5 the City execute any other agreements of any kind with  
 6 the Swap counterparties during this period that you  
 7 were negotiating the forbearance agreement?  
 8 A. No, not that I know of.  
 9 (Discussion off the record at 8:59 a.m.)  
 10 (Back on the record at 8:59 a.m.)  
 11 MR. HACKNEY: No. Problem. Let's go off  
 12 the record.  
 13 VIDEO TECHNICIAN: The time is 8:59 a.m.  
 14 We are off the record.  
 15 (Recess taken at 8:59 a.m.)  
 16 (Back on the record at 9:08 a.m.)  
 17 VIDEO TECHNICIAN: We are back on the  
 18 record at 9:08 a.m.  
 19 BY MR. HACKNEY:  
 20 Q. Mr. Orr, I want to clear something up. Maybe I've  
 21 been saying it the wrong way. I've been using the  
 22 term "marching orders" with the respect to the way  
 23 that you and Mr. Buckfire operated.  
 24 A. Right.  
 25 Q. And is a better way to say it that you authorized

1 Mr. Buckfire to negotiate the best possible deal he  
 2 could with the Swap counterparties and that's what he  
 3 did?  
 4 **A. That's a fair characterization, sure.**  
 5 Q. And at some point did he come out of a meeting and  
 6 say, Mr. Orr, this is the best deal that I'm able to  
 7 get out of these Swap counterparties and it's my  
 8 advice that we take it?  
 9 **A. Yes.**  
 10 Q. And was that on or about June 11th, 2013, which is the  
 11 date he recalls the agreement in principle being  
 12 reached?  
 13 **A. Yes.**  
 14 **MR. SHUMAKER:** Objection to form.  
 15 **BY MR. HACKNEY:**  
 16 Q. And what was the agreement in principle that was  
 17 reached as you understood it?  
 18 **A. The agreement was essentially that in exchange for a**  
 19 **reduced optional termination payment -- we'll just**  
 20 **call it the payment under the forbearance agreement --**  
 21 **the Swap counterparties would agree not to trap the**  
 22 **cash, they would agree to release their liens, and**  
 23 **also release their claims, I believe, against your**  
 24 **client, Syncora, and we would have access to that cash**  
 25 **going forward provided we made the discounted payment**

1 Q. And you did not invite Syncora to participate in these  
 2 negotiations, correct?  
 3 **A. Correct.**  
 4 Q. And you did not inform Syncora of the existence of  
 5 these negotiations, correct?  
 6 **A. The reason I'm hesitating is at some point clearly**  
 7 **Syncora became aware, so I don't know how they were**  
 8 **informed, but I did not do it, correct.**  
 9 Q. You didn't do it.  
 10 **A. Correct.**  
 11 Q. And you did not invite FGIC to attend these  
 12 negotiations, correct?  
 13 **A. I believe that's correct.**  
 14 Q. And you didn't direct anyone acting on your behalf to  
 15 invite FGIC, correct?  
 16 **A. Correct.**  
 17 Q. Nor did you inform FGIC of the existence of these  
 18 negotiations, correct?  
 19 **A. Me personally, no.**  
 20 Q. You didn't invite U.S. Bank as trustee to the funding  
 21 trust or as custodian or contract administrator to  
 22 attend any negotiations, correct?  
 23 **A. Me personally, no.**  
 24 Q. And you didn't direct anyone else acting on your  
 25 behalf to do so, correct?

1 **at some point in the future. I believe at that point**  
 2 **it was in the next 60, 90 days.**  
 3 Q. Isn't the -- wasn't the agreement in principle that  
 4 you'd have an option to direct the termination of the  
 5 Swap?  
 6 **MR. SHUMAKER:** Objection, calls for a legal  
 7 conclusion.  
 8 **A. Yeah. I believe the way it works is we would have an**  
 9 **option to request the counterparties exercise their**  
 10 **rights at a discounted level.**  
 11 **BY MR. HACKNEY:**  
 12 Q. And I'm not asking about the forbearance agreement.  
 13 I'm asking about the agreement in principle.  
 14 **A. Yeah, I think those were the general confines of the**  
 15 **agreement in principle.**  
 16 Q. Okay. Now, you did not invite anyone else to the  
 17 negotiations with the Swap counterparties; isn't that  
 18 correct?  
 19 **A. I did not invite anyone else. I don't know if Ken**  
 20 **invited anyone else or anyone else on my behalf**  
 21 **invited anyone else.**  
 22 Q. And you did not direct anyone such as Mr. Buckfire or  
 23 others to invite any other parties into the  
 24 negotiation, correct?  
 25 **A. Correct.**

1 **A. Correct.**  
 2 Q. Now, why didn't you invite Syncora into these  
 3 negotiations with the Swap counterparties?  
 4 **A. After consultations with my, you know, team, we didn't**  
 5 **think Syncora had any right to be involved in the**  
 6 **negotiations.**  
 7 Q. And that's because Syncora had no rights under the  
 8 relevant documents?  
 9 **A. That was my understanding, yes.**  
 10 Q. Now, at any time during these negotiations -- and by  
 11 these negotiations, I mean through the June 11th  
 12 agreement in principle.  
 13 **A. Um-hm.**  
 14 Q. Okay? I understand that there are legal negotiations  
 15 of the scrivener of the document --  
 16 **A. Sure.**  
 17 Q. -- between June 11 and July 15. I going to ask you  
 18 about them, but when I say these negotiations, I'm  
 19 talking about the ones that we're talking about right  
 20 now --  
 21 **A. Um-hm.**  
 22 Q. -- that led to the agreement in principle.  
 23 **A. Okay.**  
 24 Q. At any time prior to June 11th, did the Swap  
 25 counterparties send a notice of a default under the

1 Swap?  
 2 A. I don't recall, but I don't think so.  
 3 Q. At any time prior to June 11th, did the Swap  
 4 counterparties designate an early termination date?  
 5 A. I don't recall, but I don't think so.  
 6 Q. Did they ever threaten to?  
 7 A. They didn't threaten me.  
 8 Q. They never threatened you personally.  
 9 A. Right.  
 10 Q. Did they threaten other people who reported the  
 11 threats to you?  
 12 A. Not that I know of.  
 13 Q. At any time during these negotiations, did the Swap  
 14 counterparties designate an optional early  
 15 termination?  
 16 A. Not that I know of.  
 17 Q. Did they ever threaten to do that?  
 18 A. Not me.  
 19 Q. And did they ever threaten anyone else who reported  
 20 the threat to you?  
 21 A. Not to my knowledge, no.  
 22 Q. At any time during these negotiations, did the Swap  
 23 counterparties contend that the City was in breach of  
 24 the collateral agreement?  
 25 A. Which collateral agreement are you talking about?

1 A. Right.  
 2 Q. I'll say that.  
 3 A. Okay.  
 4 Q. I've talked about events of default under the Swap  
 5 that could lead to the big termination payment.  
 6 A. Right.  
 7 Q. We talked about that earlier, right?  
 8 A. Right.  
 9 Q. I'm talking specifically now about whether there were  
 10 events of default under the collateral agreement. Had  
 11 you breached any of the provisions of the collateral  
 12 agreement?  
 13 MR. SHUMAKER: Objection, calls for a legal  
 14 conclusion.  
 15 A. Yeah. That's why I'm being a little -- a little  
 16 careful here. There may be conduct under the Swaps  
 17 that could be conceivably a breach under collateral  
 18 agreement. I don't know what they are, so I'm being  
 19 hesitant. But to get to your question, were we making  
 20 the payments due under the Swaps? Yes.  
 21 BY MR. HACKNEY:  
 22 Q. What was -- what was the conduct under the Swap that  
 23 might be --  
 24 A. I'm not sure.  
 25 Q. As you sit here today, are you aware of any breaches

1 Q. The collateral agreement with respect to the casino  
 2 revenues.  
 3 A. The 2009 agreement?  
 4 Q. Yes.  
 5 A. Okay. Not that I recall.  
 6 Q. In fact, the City was endeavoring to make the monthly  
 7 Swap payments into the holdback account throughout  
 8 this period, correct?  
 9 A. Yes. They were being paid in the ordinary course.  
 10 Q. And to the best of your knowledge, the City has  
 11 complied with all of its obligations under the  
 12 collateral agreement vis-à-vis the Swap  
 13 counterparties.  
 14 A. No.  
 15 Q. That's not correct?  
 16 A. No, I mean I think we were -- as I said previously  
 17 today, we were in default.  
 18 Q. Of the collateral agreement?  
 19 A. Right. You mean in terms of making the payments due  
 20 under the agreement?  
 21 Q. Well, the collateral agreement I know so -- the  
 22 collateral agreement and the Swap are -- they are two  
 23 different agreements --  
 24 A. Yes.  
 25 Q. -- that certainly relate to one another.

1 of the collateral agreement by the City?  
 2 MR. SHUMAKER: Objection, calls for a legal  
 3 conclusion.  
 4 A. None from my perspective, but there might be. What I  
 5 don't want to do is sit here today and try to draw a  
 6 conclusion as to what might be a breach of the  
 7 collateral agreement vis-a-vis the Swap agreement.  
 8 I'm trying to answer your question that we were making  
 9 the payments that were due.  
 10 BY MR. HACKNEY:  
 11 Q. Yeah, I appreciate that. I mean, I guess your answer  
 12 is there may be breaches of the collateral agreement,  
 13 there may not be, you don't know.  
 14 A. I don't know, that's right.  
 15 Q. Now, this June 11th agreement in principle that we  
 16 were talking about earlier --  
 17 A. Right.  
 18 Q. -- was there a term sheet?  
 19 A. No. To the best of my recollection, I did not see a  
 20 term sheet at that time.  
 21 Q. And just to be clear, do you know whether there was a  
 22 term sheet that you just didn't see?  
 23 A. Yeah. There might have been a term sheet that I  
 24 didn't see. I think Ken and I and some of the other  
 25 attorneys at Jones Day, Corinne, David Heiman and

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1 others would have a -- I'm trying to relay to you a  
 2 sense that we'd have calls, but sometimes I don't  
 3 recall seeing a specific term sheet at that time.  
 4 Q. I'm going to distinguish this from when you get into  
 5 the definitive document negotiation that's going to  
 6 become the forbearance agreement.  
 7 A. Right.  
 8 Q. You're familiar with the idea that sometimes parties  
 9 hash out a non-binding term sheet --  
 10 A. Yes.  
 11 Q. -- to get an understanding on the business terms, and  
 12 then they progress from the term sheet to the  
 13 definitive document. You're familiar with that  
 14 concept.  
 15 A. Yes.  
 16 Q. So I want to put the definitive documents over here.  
 17 A. Okay.  
 18 Q. Do you remember whether there was a term sheet?  
 19 A. There eventually was a term sheet. I just don't  
 20 remember whether or not it was on June 11th.  
 21 Q. That's fine. So do you think it went agreement in  
 22 principle, non-binding term sheet, and then  
 23 negotiation of definitive documents?  
 24 A. Yes.  
 25 MR. SHUMAKER: You're talking about in

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1 time?  
 2 MR. HACKNEY: Yes.  
 3 MR. SHUMAKER: Chronologically?  
 4 MR. HACKNEY: Yes.  
 5 BY MR. HACKNEY:  
 6 Q. And so at some point you did see a non-binding term  
 7 sheet that embodied the agreement in principle  
 8 Mr. Buckfire had negotiated, correct?  
 9 A. Yes. Oh, yes.  
 10 Q. Okay.  
 11 MR. HACKNEY: Is that something that the  
 12 City's willing to produce?  
 13 MR. SHUMAKER: We'll look into it. I  
 14 don't -- I don't see that one as being an issue.  
 15 MR. HACKNEY: Okay.  
 16 MR. SHUMAKER: To the extent we have it.  
 17 BY MR. HACKNEY:  
 18 Q. And the term sheet was consistent with the agreement  
 19 in principle that we discussed earlier that  
 20 Mr. Buckfire negotiated?  
 21 A. Yes. It had obviously, as terms do, have more  
 22 information, but it was consistent.  
 23 Q. So between July 11 -- I'm sorry.  
 24 Between June 11th --  
 25 A. Okay.

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1 Q. -- and July 15th, which is the execution date of the  
 2 forbearance agreement --  
 3 A. Yes.  
 4 Q. -- you pivot from negotiating this agreement in  
 5 principle that Mr. Buckfire has struck to now  
 6 documenting it, correct?  
 7 A. Yes.  
 8 Q. Now, Mr. Buckfire has testified that those -- that  
 9 those negotiations proceeded without interruption from  
 10 June 11th to Ju -- July 15th. Is that consistent with  
 11 your recollection?  
 12 A. The negotiations continued. I think there were other  
 13 events related to the agreement, some of them by your  
 14 client in that time frame, but yes, we continued  
 15 negotiating.  
 16 Q. Okay. And there were no serious interruptions in  
 17 those negotiations, correct?  
 18 MR. SHUMAKER: Objection to form.  
 19 A. There was an agreement reached. I'm going to take  
 20 your time frame, June 11th. Ken and I had a  
 21 discussion about the amount. It was somewhere south  
 22 of 25 percent. I believe in the same second week I  
 23 said we can't do this deal for less than a 25 percent  
 24 discount. I believe the negotiations broke down, then  
 25 the next day they came back without changing the

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1 framework of the agreement, just the number changed,  
 2 the discount went up, and then I believe that -- yes,  
 3 I believe negotiations continued continually  
 4 throughout that time.  
 5 BY MR. HACKNEY:  
 6 Q. And they -- they continued from June 11 to July 15  
 7 without serious interruption, correct?  
 8 MR. SHUMAKER: Objection to form.  
 9 A. Yeah, here again, your characterization of serious  
 10 interruption and to July 15th, I don't want to testify  
 11 to your characterization. What I can say is it was my  
 12 understanding that negotiations continued from that  
 13 second week of June to that date, if that's the date  
 14 that you're relaying to me based upon Mr. Buckfire's  
 15 testimony.  
 16 BY MR. HACKNEY:  
 17 Q. Were there any serious interruptions in the  
 18 negotiations between June 11 and July 15?  
 19 MR. SHUMAKER: Same objection.  
 20 A. You keep saying serious, and to the best of my  
 21 knowledge there were no material or significant  
 22 interruptions. I don't want to try to characterize  
 23 what serious means. I think negotiations continued  
 24 unabated.  
 25 BY MR. HACKNEY:

1 Q. There were little -- there may have been points of  
 2 contention between the parties, but they continued  
 3 steadily from June 11 to July 15, true statement?  
 4 A. Here again, I believe June 14th was the creditor's  
 5 meeting, and I don't have a document to refresh my  
 6 recollection in front of me, but I believe your client  
 7 sent a letter at some point during that time which I  
 8 think had an impact on negotiations, so I'm being  
 9 careful with the concept that they continued without  
 10 serious interruption because I think there may have  
 11 been interruptions.  
 12 Q. So there may have been a serious interruption in the  
 13 negotiations.  
 14 A. Yeah. I just don't remember the time frame. I mean  
 15 you probably recall there were a series of letters  
 16 between Mr. LeBlanc and your client at first to the  
 17 custodian and then to me and then I wrote back to him.  
 18 I'm just not recalling the specific dates of those  
 19 letters, but I believe they were during this time.  
 20 Q. And those caused a serious interruption in the  
 21 negotiations, right?  
 22 A. Here again, you say -- you say serious, and I'm saying  
 23 it caused an interruption. There was -- there were --  
 24 I recall there were letters that I was sending back  
 25 and forth, and so whether or not it was serious, I

1 negotiations had been stalled by Syncora?  
 2 A. Well, I think there were discussions about Syncora's  
 3 behavior that was reflected in my letters.  
 4 Q. That wasn't my question. My question was did you tell  
 5 Mr. Buckfire that there had been -- that the  
 6 negotiations had been stalled as a result -- as a  
 7 resort of Syncora's conduct?  
 8 A. Sir, that's your phrase, "stalled." What I said was I  
 9 think they did have an impact on the negotiations  
 10 because there were communications going back and  
 11 forth, I think we discussed them, and I think I sent a  
 12 series of letters back and forth to your client as a  
 13 consequence of that behavior.  
 14 Q. You wouldn't use the -- you wouldn't use the word  
 15 stalled to describe the negotiations impact --  
 16 Syncora's impact on the negotiations, correct?  
 17 A. Yeah, I'm not going to use any adjectives --  
 18 specifically what I said is they had an impact.  
 19 Q. But you can't say that they stalled?  
 20 A. I don't know if they did or they didn't. I said they  
 21 had an impact.  
 22 Q. Okay. And did you inform Mr. Buckfire that there had  
 23 been a serious interruption in the negotiations with  
 24 the Swap counterparties?  
 25 MR. SHUMAKER: Objection, asked and

1 believe they're interruptions, if this is the time  
 2 frame I'm thinking of. If they came after the  
 3 June 14th date and it was July 17th, for instance,  
 4 that's when that -- those events occurred.  
 5 Q. Okay.  
 6 A. I just don't recall the times.  
 7 Q. I'll represent to you, and I'm going to show it to you  
 8 in a moment, but Syncora's letter was June 17th.  
 9 A. Okay. Then that -- yeah, then that -- that caused  
 10 some disruption.  
 11 Q. It caused some disruption, but did it cause a serious  
 12 interruption in the negotiations?  
 13 A. Yeah, because the benefit that we -- we were supposed  
 14 to get which was -- actually as I recall, your client  
 15 sent a letter to UBS. UBS expressed some concern.  
 16 The negotiations that we were going through were  
 17 impacted by those concerns and, here again, recalling  
 18 off the top of my head, there were discussions then.  
 19 Mr. LeBlanc sent me a letter, I sent him one, I think  
 20 he sent me another one, I think we exchanged two or  
 21 three letters, and those all had an impact on the  
 22 negotiations, yes.  
 23 Q. Did they stall the negotiations?  
 24 A. To some degree I believe they did.  
 25 Q. And did you inform Mr. Buckfire that these important

1 answered.  
 2 A. Yeah, here again, I don't think I had to inform him.  
 3 We were all of the opinion that after announcing, I  
 4 believe -- after reaching, rather, we thought was  
 5 agreement in principle, I believe that following  
 6 Monday, if it's the 17th, your client sent a letter  
 7 and interjected itself into this process and --  
 8 BY MR. HACKNEY:  
 9 Q. So Mr. --  
 10 A. -- that had an impact.  
 11 Q. Sorry to interrupt you.  
 12 A. You're okay.  
 13 Q. Mr. Buckfire was well aware of the serious  
 14 interruption in the negotiation process, correct?  
 15 MR. SHUMAKER: Objection, foundation, form.  
 16 A. Here again, you keep saying serious interruption. I  
 17 said it had an impact. Whether or not that stopped us  
 18 from having discussions with the Swap counterparties  
 19 and going forward, it certainly had an impact on the  
 20 process.  
 21 BY MR. HACKNEY:  
 22 Q. It didn't stop the process, though, did it?  
 23 A. It had an impact on it. We were -- we were trying to  
 24 continue going forward in figuring out what your  
 25 client's intent was and whether or not it should have

1 an impact on the Swap counterparties or the custodian.  
 2 Q. But did you inform Mr. Buckfire that Syncora's  
 3 letter -- Mr. Buckfire, the lead negotiator of the  
 4 business terms of the deal, that Syncora's letter had  
 5 disrupted the negotiations of this important  
 6 agreement?  
 7 A. I don't know if I --  
 8 MR. SHUMAKER: Objection, form.  
 9 A. I don't know if I had to inform Mr. Buckfire. He saw  
 10 the letters that were going back and forth and I'm  
 11 sure he was aware that they had an impact on what we  
 12 were trying to achieve.  
 13 MR. HACKNEY: Let me hand you a document  
 14 I've marked for purposes of identification as Orr  
 15 Exhibit 1.  
 16 MARKED FOR IDENTIFICATION:  
 17 DEPOSITION EXHIBIT 1  
 18 9:24 a.m.  
 19 BY MR. HACKNEY:  
 20 Q. Is this a copy of Syncora's June 17th, 2013 letter?  
 21 A. Um-hm.  
 22 Okay. I've read the letter.  
 23 Q. Have you had a chance to read it?  
 24 A. Yes.  
 25 Q. First question, are there any statements you consider

1 the tenor, without parsing through the entire letter,  
 2 we believed that the tenor of the letter was  
 3 inappropriate.  
 4 Q. But there were -- are there any other statements that  
 5 were false in this letter other than the sentence you  
 6 identified on the cross-default?  
 7 MR. SHUMAKER: I want you to go through it  
 8 sentence by sentence.  
 9 A. We write in reference to the General Receipts  
 10 Subaccount under the cap --  
 11 COURT REPORTER: I'm sorry.  
 12 A. Okay. The first sentence of the first paragraph is a  
 13 reference in it, so I don't believe that would fall  
 14 into whether or not it's true or false. It's what  
 15 they purport to be writing to. I suppose someone  
 16 could take an interpretation that to the extent  
 17 they're trying to reference the cross  
 18 collateralization is false, but I'm not trying to be  
 19 insincere, so I'm just going to go through the letter.  
 20 The second sentence of the first paragraph  
 21 is a general business nomenclature, so that's a throw  
 22 away. June 14th service corporations failed to -- the  
 23 first sentence of the second paragraph I believe we  
 24 did fail to make the June 14th payment.  
 25 BY MR. HACKNEY:

1 to be false in this letter?  
 2 A. I think there was a discussion that some of the  
 3 statements regarding the cross-default provision --  
 4 this is -- this is what I understood of this letter  
 5 after -- without going into specific discussions with  
 6 my attorneys, that I had with my attorneys, that my  
 7 understanding was Syncora was attempting to tell U.S.  
 8 Bank, as custodian, that the default on the COP  
 9 payment on June 14 constituted some form of a  
 10 cross-default and therefore it impacted the settlement  
 11 we were teaching -- attempting to reach under the Swap  
 12 agreement.  
 13 We did not believe that those two events  
 14 had a relationship in that position it appeared  
 15 Syncora was taking, trying to tell U.S. Bank not to  
 16 release any of the casino revenue to us, was  
 17 appropriate.  
 18 Q. Other than the letter characterizing the missed  
 19 payment as a cross-default, other than the sentence,  
 20 are there any other sentences in this letter that you  
 21 think are false?  
 22 A. Well, the first paragraph is an introductory  
 23 paragraph, so I don't think that's relevant. The  
 24 second paragraph -- the last paragraph is someone  
 25 reserving their rights, and that's fine. Generally

1 Q. The second sentence we've discussed.  
 2 A. Which is the substantive sentence I believe is -- is  
 3 the one that we had issues with, we felt was  
 4 inappropriate.  
 5 The third paragraph, first sentence, I  
 6 don't know whether that was false or not because I  
 7 wasn't privileged to -- privy to that conversation.  
 8 The second sentence is a request of the third  
 9 paragraph. That consent is required for any release,  
 10 I think that was another -- the last sentence of the  
 11 third paragraph I think we had a problem with that,  
 12 and as I said before, the final paragraph sentence I  
 13 don't think is germane to discussion that we're  
 14 having. It's a standard business sentence.  
 15 Q. And the last sentence of the third paragraph you had a  
 16 problem with because you don't think Syncora has  
 17 consent rights, correct?  
 18 A. Yes, that's correct, yeah.  
 19 Q. Now, how did this letter disrupt negotiations with the  
 20 Swap counterparties?  
 21 A. Well, my -- my understanding is it raised concerns as  
 22 far as what Syncora thought their rights were and what  
 23 they were going to do. I think people have to  
 24 understand this was a very sensitive and urgent  
 25 situation. As I said before, the week before we had

1 checks bounce, we were running about four or nine  
2 million dollars, we needed urgent access to the -- to  
3 the revenue, and I think it caused all parties to take  
4 a step back.

5 Q. And how long did they step back?

6 A. I don't -- to be perfectly honest with you, I don't --  
7 I don't really recall. I remember, as I said before,  
8 after this letter there were a series of letters that  
9 went back and forth, and I recall that there was some  
10 concern by the counterparties as to their potential  
11 exposure based upon Syncora's behavior and whether or  
12 not they would be free to give us access to the casino  
13 revenue.

14 Q. They were concerned that Syncora might be right,  
15 correct?

16 A. No. That's your characterization. I think my general  
17 understanding was that everyone felt Syncora was quite  
18 wrong.

19 Q. Didn't you just say that they were worried about their  
20 exposure?

21 A. Well, their exposure in terms of -- not that they were  
22 right, their exposure in terms of potential litigation  
23 and having to parse through a position which they  
24 thought was unfounded.

25 Q. So they were worried about having to engage in a

1 Q. Was there anything that you can recall today that  
2 happened on July 5th that was so urgent it couldn't  
3 wait six hours?

4 A. Every -- every day -- let me be clear about this, so  
5 we can just get by it. Every day that the City does  
6 not make reinvestment in the City that has tens of  
7 thousands of abandoned structures, that has four of  
8 the most dangerous neighborhoods in the country, that  
9 has police cars with over 250,000 miles on them, that  
10 has police officers I believe during this time, one of  
11 whom got shot in the head by a perpetrator that nine  
12 cars had surrounded and remains in the hospital today,  
13 every day that this City does not make reinvestment is  
14 a dangerous day.

15 Q. Were there any negotiations scheduled for July 5th,  
16 2013, the day after July 4?

17 A. I don't -- I don't recall. If there's something you  
18 can refresh my recollection. I believe there was --  
19 there was something on July 5th. I'm just not  
20 recalling what it was.

21 Q. Did this letter cause the negotiations to cease  
22 between June 17th and when you're able to obtain the  
23 TRO on July 5th?

24 A. I wouldn't say whether it caused them to cease. As I  
25 said before, it had an impact and it was disruptive.

1 litigation with Syncora over a frivolous legal  
2 position that Syncora was taking?

3 MR. SHUMAKER: Objection to form.

4 BY MR. HACKNEY:

5 Q. That's your understanding?

6 A. Well, no. You're characterizing it as frivolous. I  
7 think any prudent business people when they receive  
8 letters like this, if they don't believe they are well  
9 founded are certainly justified in being concerned  
10 about potential litigation.

11 Q. Were there any out-of-the-ordinary emergencies in the  
12 City of Detroit on July 5th that demanded your  
13 attention?

14 A. There are always out-of-the-ordinary emergencies in  
15 the City of Detroit.

16 Q. What were the ones on July 5th?

17 A. I don't -- I don't remember the ones on July 5th, but  
18 I'm sure you can check. We can -- you know, you can  
19 check the press reports as far as -- so there are  
20 shootings daily, there are fires, there are unfunded  
21 mandates within the City.

22 Q. Anything that stands out in your mind?

23 A. There are always -- there are always emergencies.  
24 Nothing that stands out in my mind, but on any given  
25 weekend, we get 30 shootings a weekend.

1 Q. Okay. So it had an impact, but it didn't cause them  
2 to stop, correct?

3 A. To some degree the parties -- you know, to some degree  
4 my recollection is -- here again, understanding that  
5 I'm the client and I'm relying on my team, my  
6 understanding was it had an impact and it was  
7 disruptive.

8 Q. Did negotiations stop between June 17th and July 5th?

9 A. I don't know if they completely stopped because your  
10 characterization of negotiations could include  
11 discussions about what to do with Syncora's  
12 interruption.

13 Q. So the answer to my question is no, they did not stop?

14 A. No. The answer to your question is just what I said.  
15 The characterization of the interruption could include  
16 this letter.

17 Q. Okay. But it's a simple question, and you were the  
18 person that was involved for the City in making the  
19 ultimate decision. Did the negotiations of the  
20 forbearance agreement's final terms stop between  
21 June 17th and July 5th when you're able to get a TRO?

22 MR. SHUMAKER: Objection, asked and  
23 answered.

24 A. Sir, I'm going to stick with my answer. It was  
25 disruptive and it was -- had an impact.



1 BY MR. HACKNEY:  
 2 Q. Can you answer the question as to whether they  
 3 stopped?  
 4 A. Your characterization --  
 5 MR. SHUMAKER: Objection, asked and  
 6 answered.  
 7 A. On any given day they may have. I'm going to stick  
 8 with my answer.  
 9 BY MR. HACKNEY:  
 10 Q. Were there any negotiations with the Swap  
 11 counterparties between June 17th and July 5th?  
 12 A. There probably were.  
 13 Q. After Syncora -- let me -- let me stop.  
 14 So after you obtained the TRO, did that  
 15 facilitate the resumption of the negotiations?  
 16 A. When did we obtain the TRO?  
 17 Q. July 5th.  
 18 A. That was the event I was talking about. I think it  
 19 certainly facilitated the parties continuing to  
 20 discuss, yes.  
 21 Q. It didn't resolve any of Syncora's rights, correct?  
 22 A. Well, we didn't -- we didn't --  
 23 MR. SHUMAKER: Objection to the extent it  
 24 calls for a legal conclusion.  
 25 A. We didn't think Syncora had rights in this regard, but

1 A. I don't recall if it was one week later or not. I  
 2 believe it was dissolved a week or so ago. I don't  
 3 recall whether or not we were willing to resolve it  
 4 one week later -- dissolve it one week later.  
 5 Q. If I told you that your counsel represented to me on  
 6 July 12th, one week after the TRO was entered, that  
 7 you were willing to dissolve the TRO, do you have a  
 8 basis to contradict that?  
 9 MR. SHUMAKER: Objection, form, foundation.  
 10 A. Yeah, if my counsel was telling you that in the  
 11 context of potential settlement negotiations, I'm --  
 12 I'm a little hesitant to characterize what he said,  
 13 but I have no basis -- if my counsel represented that  
 14 to you, I have no basis to object to that.  
 15 BY MR. HACKNEY:  
 16 Q. And if they represented it in pleadings to the Court,  
 17 you don't have a basis to dispute that either?  
 18 A. No.  
 19 Q. Okay. So this critical TRO that you had obtained,  
 20 your counsel was willing to dissolve ten days after it  
 21 was entered, correct?  
 22 MR. SHUMAKER: Objection. Counsel, this is  
 23 discovery about the assumption motion, correct? I  
 24 mean this is not discovery for the City's lawsuit  
 25 against Syncora.

1 my understanding of the TRO was to cause Syncora to  
 2 cease and desist from its behavior.  
 3 BY MR. HACKNEY:  
 4 Q. But you understand that whatever Syncora's rights were  
 5 before the TRO, they were after the TRO. The TRO  
 6 doesn't resolve Syncora's rights. It's just an  
 7 interim measure. You understand that as a lawyer,  
 8 right?  
 9 A. Well --  
 10 MR. SHUMAKER: Same objection, form.  
 11 A. And let's get by this, sir. Yes, I am an attorney,  
 12 but I do not have a license in the state of Michigan  
 13 and I'm not practicing law now nor do I have  
 14 malpractice insurance, so I think it's fair for me to  
 15 act as a -- act as a client, a business person, and  
 16 not draw a legal conclusion as far as what your  
 17 client's rights are.  
 18 BY MR. HACKNEY:  
 19 Q. And the TRO was very important because it stopped  
 20 Syncora from doing what it was doing, correct?  
 21 A. Yes. My understanding is it did, sure.  
 22 Q. And that was critical, right?  
 23 A. I thought it was appropriate, yes.  
 24 Q. And then you were willing to dissolve the TRO one week  
 25 later, correct?

1 MR. HACKNEY: Syncora -- Syncora's alleged  
 2 conduct is included in Mr. Orr's affidavit. It's  
 3 described in the assumption motion. I mean, come on,  
 4 this is right up Main Street.  
 5 A. Well, sir, I understand you're trying to get me to  
 6 characterize what we were doing for purposes in the  
 7 litigation. If you want to stick to the facts as far  
 8 as what happened, I'm happy to talk to you about  
 9 those, but you asked me a question before as to  
 10 whether or not I would have any reason to object on  
 11 what my counsel represented to you and I said no.  
 12 BY MR. HACKNEY:  
 13 Q. If Syncora's letter represented such a threat to the  
 14 City, why were you willing to dissolve the TRO that  
 15 stopped the impact of Syncora's letter?  
 16 MR. SHUMAKER: Objection, form, foundation.  
 17 A. Here again, there. There -- part of your question is  
 18 calling for a little bit of speculation. Clearly, you  
 19 were having discussions with my counsel potentially  
 20 about what could be done to resolve this issue. Your  
 21 question may not include the context of all of those  
 22 discussions.  
 23 BY MR. HACKNEY:  
 24 Q. I'm referring to statements you made in pleadings.  
 25 A. Well, I'm trying to respond to your question. There

1 may be other reasons why they made those  
 2 representations. What I will say to you is what I  
 3 said before. If my counsel represented to you that we  
 4 were willing to dissolve it, I have no reason to  
 5 contradict that.  
 6 Q. And they would have done that at your behest, right?  
 7 MR. SHUMAKER: Objection, form, foundation.  
 8 A. They -- we would have the -- they would have had the  
 9 authority to do that, yeah.  
 10 BY MR. HACKNEY:  
 11 Q. During the course of your negotiations back to the  
 12 agreement in principle of what became the forbearance  
 13 agreement, did you ever solicit the views of any of  
 14 the other monoline insurers, such as Ambac or Assured  
 15 or National about what they thought the City should  
 16 do?  
 17 A. Not that I recall.  
 18 Q. Did you ever solicit the views of any COP holders  
 19 about what they thought the City should do with  
 20 respect to the --  
 21 A. I didn't solicit their views, no.  
 22 Q. Did you direct anyone acting on your behalf to solicit  
 23 the views of any of those parties?  
 24 A. Not that I recall.  
 25 Q. Isn't it true that getting the forbearance agreement

1 who had a gun pointed at her three times in her front  
 2 yard by people who were stripping a car in front of  
 3 her -- that's a very serious threat in the City, and I  
 4 don't want anyone to undermine the concept that this  
 5 revenue is necessary to make this City a safer place.  
 6 Q. So it's fair to say that when it comes to the City's  
 7 access to casino revenues, lives of the people of the  
 8 City of Detroit are at stake?  
 9 A. Lives of the people of the City of Detroit are at  
 10 stake every day.  
 11 Q. I know that's true. I'm aware of the fact people that  
 12 live and die, but I'm asking with respect to access to  
 13 the casino revenues. Access to the casino revenues is  
 14 something that lives are at stake regarding, correct?  
 15 A. Health, safety and welfare of the citizens are crucial  
 16 and this casino revenue allows us to enhance that.  
 17 Q. And lives are at stake, right?  
 18 A. Health, safety and welfare of the City is crucial and  
 19 this casino revenue allows us to enhance that.  
 20 Q. Can you agree with me that lives are at stake?  
 21 MR. SHUMAKER: Objection, asked and  
 22 answered.  
 23 A. I've answered the question.  
 24 BY MR. HACKNEY:  
 25 Q. That's not something you can agree with?

1 was a life or death issue for the City of Detroit?  
 2 A. Yes, getting the forbearance agreement was very  
 3 important to the City of Detroit.  
 4 Q. Is it a life or death issue?  
 5 MR. SHUMAKER: Object to form.  
 6 A. When you say life or death, you know, here again I'm  
 7 trying to be responsive, but I want (sic) to  
 8 characterize it. The City needs the casino revenue  
 9 badly. It was cash poor at that time. It would have  
 10 facilitated without access, and it continues to be  
 11 relatively cash poor without access. It could have  
 12 facilitated a cash crisis. Life or death suggests to  
 13 me it was critical and it might have been life or  
 14 death, but what it does mean is that we could not have  
 15 made the investment and cannot make the investment  
 16 that is so crucial for the City.  
 17 BY MR. HACKNEY:  
 18 Q. In fact, isn't it your position that without access to  
 19 the casino revenues that people in the City of Detroit  
 20 may die?  
 21 A. Yes.  
 22 Q. Okay.  
 23 A. People -- you know, you may think of that as  
 24 hyperbole, but this is a City where between car  
 25 jackings, crime -- just last week, there was a woman

1 A. I told you, lives are at stake in the City every day.  
 2 Q. Are they at stake with respect to access to the --  
 3 A. Every day --  
 4 Q. -- casino revenues?  
 5 A. I will say again, every day that we don't have access  
 6 to casino revenue, we cannot make the necessary  
 7 reinvestment in this City to provide for the health,  
 8 safety and welfare of the citizens, and that's a true  
 9 statement.  
 10 Q. If I said that lives are at stake with respect to the  
 11 casino revenues, can you agree with that statement?  
 12 MR. SHUMAKER: Objection, asked and  
 13 answered.  
 14 A. I've answered your question.  
 15 BY MR. HACKNEY:  
 16 Q. Can you -- can you agree with my statement?  
 17 A. I've answered your question.  
 18 Q. I disagree that you've answered my question. We'll  
 19 take the objection up at the -- with the Court, but  
 20 are lives at stake with respect to access to the  
 21 casino revenues?  
 22 A. I've answered your question.  
 23 (Whereupon Rick Frimmer left the  
 24 deposition at 9:41 a.m.)  
 25 MR. HACKNEY: Well, we're going to have to

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1 take a motion to compel then on this one, Greg. I've  
2 not gotten an answer to that question.  
3 **MR. SHUMAKER:** I disagree.  
4 **BY MR. HACKNEY:**  
5 **Q.** We can agree that access to the casino revenues was an  
6 issue of extreme importance to the City, right?  
7 **A.** Yes.  
8 **Q.** There was no guarantee going into the negotiations  
9 with the Swap counterparties that they were going to  
10 grant you that access, correct?  
11 **A.** That is true.  
12 **Q.** Given the importance of this issue, what was your  
13 backup plan?  
14 **A.** We had discussed a number of alternatives, but quite  
15 frankly, there were none that made any sense.  
16 **Q.** So what -- so you had no backup plan?  
17 **A.** No. Sir, this City had reduced FTEs by over  
18 20 percent before I got here. The police department  
19 had lost hundreds, I believe, before I got here under  
20 the point -- this year, from January 1, we've lost in  
21 excess of 300 employees.  
22 Even if you did an analysis of the City of  
23 \$40,000, the salary per FTE, and the City benefits  
24 account for 108 percent of FTE, so let's say 80,000  
25 times 300 lost employees. That's only 24 million

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1 dollars. So even if we reduced the City -- tried to  
2 reduce it by more employees beyond the roughly 9,700  
3 that we have, you wouldn't have a way to stem the loss  
4 of almost 132 to 180 million dollars in casino  
5 revenue. So when you say what other alternatives we  
6 had, this was a crucial component of any plan that we  
7 would have.  
8 **Q.** Do you have any --  
9 **A.** This is the third largest source of income for the  
10 City.  
11 **Q.** And I -- I have a limited time with you today,  
12 Mr. Orr, and I'd appreciate it if you answered my  
13 questions directly to the extent you're able.  
14 Did you have a backup plan if you couldn't  
15 get the Swap counterparties to waive their cash  
16 trapping rights?  
17 **A.** We discussed alternatives. When you say plan, that  
18 suggests to me that we were going to say we were going  
19 to do this if we can't do that. We had discussed  
20 alternatives.  
21 **Q.** But you can't say that you had a plan?  
22 **A.** No. This was crucial.  
23 **Q.** And if Mr. Buckfire testified that you'd just started  
24 developing your backup plan recently, do you have a  
25 basis to contradict that?

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1 **A.** No. That's what I was just saying. We had discussed  
2 alternatives, but this was crucial.  
3 **Q.** Given the importance of this issue, I assume that you  
4 had made requests from the State of Michigan to  
5 provide the City with liquidity prior to June 4th;  
6 isn't that correct?  
7 **A.** Sir, you can assume whatever you want. The reality is  
8 under my contract I have an obligation to report and  
9 coordinate with the State. We had had discussions, I  
10 believe, with the State about potential liquidity, and  
11 we were told that that would be unavailable.  
12 **Q.** And you conveyed to the State the seriousness of the  
13 City's situation, correct?  
14 **A.** I don't think I had to convey to the State the  
15 seriousness of the City's situation. I think the  
16 State's well aware.  
17 **Q.** So the State understood that getting liquidity was a  
18 life or death issue for the City of Detroit, correct?  
19 **MR. SHUMAKER:** Objection, form, foundation,  
20 calls for speculation.  
21 **A.** Whatever the State understood, what I'm trying to tell  
22 you is I conveyed to them what our needs are.  
23 **BY MR. HACKNEY:**  
24 **Q.** You conveyed the extreme seriousness of the situation  
25 to the State, correct?

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1 **A.** As I said, I don't think I had to convey it to the  
2 State. The State had just been through almost two  
3 years of determining a financial emergency existed.  
4 **Q.** And the State did not provide the City with any  
5 liquidity prior to June 4th, correct?  
6 **A.** No.  
7 **Q.** I am correct that they didn't?  
8 (Whereupon Jerome Goldberg entered the  
9 deposition at 9:44 a.m.)  
10 **A.** You are correct, they did not.  
11 **BY MR. HACKNEY:**  
12 **Q.** Now, given that seriousness of the liquidity crisis  
13 and the life or death issues that were facing the  
14 City, I assume you also evaluated the value of the  
15 City's non-core assets for possible sale, correct?  
16 **MR. SHUMAKER:** Object to the form,  
17 mischaracterizes his testimony.  
18 **A.** Is that a compound question?  
19 I think in our June 14 proposal and the run  
20 up to the June 14 proposal, we had listed in our  
21 proposal for creditors a number of assets of the City,  
22 and we had also said that we were in the process of  
23 evaluating what to do.  
24 **BY MR. HACKNEY:**  
25 **Q.** And the City owns a fine art collection; isn't that

1 correct?

2 **A. The City owns the Detroit Institute of Arts in its**

3 **collection.**

4 Q. And did you attempt to value the art collection with

5 an eye towards selling pieces of the art collection to

6 relieve the City's life or death liquidity crisis?

7 **MR. SHUMAKER: Object to the form.**

8 **A. Prior to June 14th?**

9 **BY MR. HACKNEY:**

10 Q. Prior to June 11th, which is the date of the agreement

11 in principle.

12 **A. No. We've entered into an agreement with Sotheby's to**

13 **begin that process now, not related to relieving the**

14 **liquidity crisis, just as a matter of prudence to**

15 **determine the value of assets.**

16 Q. Your expectation is that the -- that the City's art

17 collection is very valuable; isn't that correct?

18 **A. I've been told that, yes.**

19 Q. Isn't it possible it may be worth billions of dollars?

20 **A. That would be speculation. I've been told it is**

21 **valuable.**

22 Q. Could it be worth hundreds of millions of dollars?

23 **A. That would be speculation. I've been told that it's**

24 **valuable.**

25 Q. Okay. So as of June 4th, you didn't know whether or

1 entities that have long names that I'll only say to

2 you if you want -- really want me to.

3 **A. We'll stipulate I know what you mean by the service**

4 **corporations.**

5 Q. And there are two of them?

6 **A. There are two.**

7 Q. Okay.

8 **A. Police and Fire General Services.**

9 Q. There you go. So you already know them and you said

10 the names. So the two service corporations are

11 parties to the forbearance agreement, correct?

12 **A. Yes.**

13 Q. And Mr. Buckfire testified yesterday, I'll represent

14 to you, that his understanding is that you directed

15 the service corporations to execute the forbearance

16 agreement and they did so; is that correct?

17 **A. No.**

18 Q. Okay. Were there arms' length negotiations with the

19 service corporations?

20 **A. To the best of my knowledge, there was.**

21 Q. And who led those?

22 **A. I'm not quite sure. I know that -- in response to**

23 **your question, I did not direct a service corporation.**

24 **They were organized by the City. And they are managed**

25 **by City employees, but I had no direct -- I gave no**

1 not the City might have billions of dollars of art

2 sitting in its art institute; is that your testimony?

3 **A. No. My testimony is that I understand it as valuable.**

4 **The exact value of it is to be determined.**

5 Q. And you made no effort to sell any of that art prior

6 to engaging in the negotiations with the Swap

7 counterparties, correct?

8 **A. No. That's true.**

9 Q. What about federal aid? Did you attempt -- did you

10 attempt to obtain federal aid prior to the June 4

11 commencement of negotiations with the Swap

12 counterparties?

13 **A. I don't know if it was prior to or around that time.**

14 **It may have been. We may have sought federal aid**

15 **prior to that.**

16 Q. And you conveyed the seriousness of the situation to

17 whomever you spoke to at the federal government?

18 **A. Yes, I believe the federal government was aware of the**

19 **seriousness of the situation.**

20 Q. And the federal government was also unwilling to

21 provide aid to the City of Detroit; is that your

22 testimony?

23 **A. Yes, direct aid.**

24 Q. Let me ask you some questions about the service

25 corporations. The service corporations are two

1 **direct instruction to either of the service**

2 **corporations.**

3 Q. Okay. So my question was about negotiations with the

4 service corporations.

5 **A. Right.**

6 Q. Who conducted the arms' length negotiations with the

7 service corporations on behalf of the City?

8 **A. I'm not sure.**

9 Q. Well, you know it wasn't you?

10 **A. Yes, it wasn't me.**

11 Q. And did you ever direct Mr. Buckfire to engage in

12 direct negotiations with the service corporations?

13 **A. No. I directed Mr. Buckfire to do whatever needed to**

14 **get done to get the agreement in principle resolved**

15 **and signed. That's what I did, but I did -- said**

16 **nothing specific. Just to be responsive to your**

17 **question, said oh, go talk to the service**

18 **corporations, there was nothing that specific.**

19 Q. So to the extent there was a negotiation that needed

20 to be had, it was his job to go have it?

21 **A. It was his or someone else on my -- on my**

22 **reorganization team's job, yeah, sure.**

23 Q. Well, did you direct anyone else on your team to go

24 negotiate with the service corporations?

25 **A. No. Once we reached an agreement in principle, I**

1 directed my team to more or less go forth and get it  
 2 documented and get it done.  
 3 Q. And the service corporations are legally separate from  
 4 the City, correct?  
 5 A. Yes, they are.  
 6 Q. Your powers as emergency financial manager do not  
 7 extend to the service corporations, correct?  
 8 A. I haven't examined that question, so I can't answer  
 9 you yes or no.  
 10 Q. Can you direct their actions under PA 436?  
 11 A. I'm not sure.  
 12 Q. Do you have any firsthand knowledge that the service  
 13 corporations engaged in arms' length negotiations with  
 14 the Swap counterparties?  
 15 A. No.  
 16 Q. If they had, do you think that's something you would  
 17 have likely heard about?  
 18 MR. SHUMAKER: Objection, calls for  
 19 speculation.  
 20 A. I may have. As emergency manager, there are a number  
 21 of things that occur, as you might imagine, on a daily  
 22 basis that I may or may not hear of. I might have.  
 23 BY MR. HACKNEY:  
 24 Q. As you sit here today, though, can you recall hearing  
 25 that there were ongoing negotiations between the

1 BY MR. HACKNEY:  
 2 Q. Do you understand that the collateral agreement  
 3 secures the City's obligation to the service  
 4 corporations and the service corporations' obligation  
 5 to the Swap counterparties?  
 6 A. That's the legal conclusion. It might. That's -- I'm  
 7 going to stay away from relaying my understanding  
 8 because, frankly, I haven't -- I'm going to be  
 9 careful, frankly. It might.  
 10 Q. Okay. You don't know as you sit here today?  
 11 A. I have an impression of something along those lines,  
 12 yes.  
 13 Q. And what is it?  
 14 A. That it does -- it may well secure it. It's just that  
 15 it's a legal conclusion that I don't want to make.  
 16 Q. Okay.  
 17 A. Okay.  
 18 Q. Isn't it fair to say, though, that the collateral  
 19 agreement's existence meant that the service  
 20 corporations could rely on the City to make its  
 21 quarterly Swap-related interest payments?  
 22 A. Yeah, my understanding is that the casino revenue  
 23 comes in daily. It's put into an account. Monthly  
 24 there are payments that are put into the custodial  
 25 account and those payments are disbursed orally.

1 service corporations and the Swap counterparties?  
 2 A. No.  
 3 Q. Isn't it true that the City's obligation to the  
 4 service corporations under the service contracts with  
 5 respect to the hedge-related payments were secured by  
 6 the collateral agreement?  
 7 MR. SHUMAKER: Objection, calls for a legal  
 8 conclusion, foundation.  
 9 If you understand it, you can answer it.  
 10 A. I'm trying not to draw a legal conclusion. Repeat  
 11 your question; let me see if I can answer it.  
 12 BY MR. HACKNEY:  
 13 Q. I was just asking whether -- you understand that the  
 14 service corporations have service contracts with the  
 15 City?  
 16 A. Yes.  
 17 Q. And you understand that the City has hedge-related  
 18 payments that it has to make to the service  
 19 corporations --  
 20 A. Yes.  
 21 Q. -- that they then can use to make to the Swap  
 22 counterparties under the Swap?  
 23 A. Yes.  
 24 MR. SHUMAKER: Objection, calls for a legal  
 25 conclusion.

1 Q. Now, if the City's able to perform under the  
 2 forbearance agreement and exercises the option, the  
 3 effect of this is that the hedge will be terminated,  
 4 correct?  
 5 MR. SHUMAKER: Object to the form, calls  
 6 for a legal conclusion.  
 7 A. I believe there will no longer be a need for the  
 8 hedge, yes.  
 9 BY MR. HACKNEY:  
 10 Q. And the collateral agreement will also be terminated  
 11 in that event, correct?  
 12 A. If we -- if the City performs?  
 13 Q. Right.  
 14 A. Yes.  
 15 Q. And that will free up the casino revenues to be used  
 16 by the City, correct?  
 17 A. Yes.  
 18 Q. Okay. How does that benefit the service corporations?  
 19 A. I don't know if it does or doesn't. I know it  
 20 benefits the City.  
 21 Q. Can you think of a way that it benefits the service  
 22 corporations as you sit here today?  
 23 A. No. That would be speculation.  
 24 Q. And you understand that the service corporations  
 25 depend on the City to make the payments of their

1 various obligations both under the COPs and the Swap?  
 2 **A. I believe that's true.**  
 3 Q. They don't have any independent sources of income?  
 4 **A. To the best of my knowledge, they do not.**  
 5 Q. And your view today is that the City of Detroit is  
 6 insolvent, correct?  
 7 **A. Yes, yes.**  
 8 Q. And fair to assume that by extension the service  
 9 corporations are also insolvent, too?  
 10 **MR. SHUMAKER: Objection, calls for**  
 11 **speculation.**  
 12 **A. I don't know if that's true or not.**  
 13 **BY MR. HACKNEY:**  
 14 Q. Now, isn't it true that the composition of the service  
 15 corporations' boards of directors includes three City  
 16 officers and at least one City Council member?  
 17 **A. Yes. I think I said before there are City employees**  
 18 **and City representatives on the boards.**  
 19 Q. And in fact the person who signed the forbearance  
 20 agreement on behalf of the service corporations was  
 21 the president of both service corporations, correct?  
 22 **A. Yes, I believe so.**  
 23 Q. And her name is Cheryl Johnson, right?  
 24 **A. Yes.**  
 25 Q. And she is also the City's finance director, correct?

1 **course and scope of their employment as employees of**  
 2 **the City.**  
 3 Q. Okay. So as you sit here today, you can't say that  
 4 that indemnification policy would extend to City  
 5 employee actions taken in their capacity as service  
 6 corporations --  
 7 **A. Correct.**  
 8 **MR. SHUMAKER: Objection, calls for a legal**  
 9 **conclusion.**  
 10 **BY MR. HACKNEY:**  
 11 Q. I will -- I'm sorry.  
 12 **A. Okay.**  
 13 Q. As emergency financial manager, you control the salary  
 14 of all City employees; isn't that correct?  
 15 **A. As emergency manager.**  
 16 Q. As emergency manager, right?  
 17 **A. Right.**  
 18 Q. Sorry. Is that the proper --  
 19 **A. It changed with Public Act 436. Public Act 72 was EFM**  
 20 **and now I'm an EM.**  
 21 Q. Okay. Got to get my lingo.  
 22 **A. Yeah.**  
 23 Q. And you do, as emergency manager, control the salary  
 24 of all City employees, correct?  
 25 **A. I have the authority to control the salary of all City**

1 **A. Yes.**  
 2 Q. Okay. Portia Roberson --  
 3 **A. Um-hm.**  
 4 Q. -- is the City's corporation counsel, right?  
 5 **A. Yes.**  
 6 Q. And she's also on the board of both service  
 7 corporations, correct?  
 8 **A. To the best of my knowledge, that's true.**  
 9 Q. Do you know who made the decision at the service  
 10 corporations to enter into the forbearance agreement?  
 11 **A. I do not.**  
 12 Q. Did you have any conversations with either Ms. Johnson  
 13 or Ms. Roberson about the service corporations  
 14 entering into the forbearance agreement?  
 15 **A. No.**  
 16 Q. Isn't it true that the policy of the City is to  
 17 indemnify the service corporation directors for  
 18 actions they take in their capacity as City employees?  
 19 **A. I don't know that.**  
 20 Q. You don't know if that's the policy of the City?  
 21 **A. I do not. I know the City has an indemnification**  
 22 **policy. I don't know if it applies to the service**  
 23 **corporations.**  
 24 Q. Okay, but does it apply to the City employees?  
 25 **A. It applies to City employees acting within their**

1 **employees. I have not exercised that authority for**  
 2 **all City employees.**  
 3 Q. Okay. And you have the power to reduce those City  
 4 employee salaries to zero if you choose, correct?  
 5 **A. I think I do, yes.**  
 6 Q. And you have done that on at least one prior occasion,  
 7 I believe, correct?  
 8 **A. Yes, I did do that.**  
 9 Q. Okay. Now, are you aware that the insurers, the Swap  
 10 insurers, like Syncora and FGIC, contend that the  
 11 hedges cannot be terminated without their consent  
 12 where there are termination events or events of  
 13 default?  
 14 **A. I have heard that. I m -- I have no independent**  
 15 **awareness of that.**  
 16 Q. So when did you first hear that?  
 17 **A. I think it was all caught up in this time frame of**  
 18 **the -- of the discussion after the agreement in**  
 19 **principle, before the forbearance agreement was**  
 20 **reached.**  
 21 Q. Your best recollection is that you heard that prior to  
 22 the execution of the forbearance agreement?  
 23 **A. I believe it may have been prior to execution.**  
 24 Q. But you have taken -- you have taken no steps to  
 25 **evaluate whether the City concurs with the insurers'**

1 construction on this point?  
 2 **A. No. I don't think that's exactly true. I think there**  
 3 **were -- as I said before, there were a series of**  
 4 **letters and discussions that went on from the second**  
 5 **week of June throughout some point in July where I**  
 6 **believe there may have been discussions in that**  
 7 **regard, validity of that point.**  
 8 **Q. Okay. But if I ask you to express the City's view on**  
 9 **the legal merits of the insurers' contention that they**  
 10 **have the right to consent, you'll decline to answer**  
 11 **those questions because it tends to reveal the**  
 12 **attorney-client privilege.**  
 13 **MR. SHUMAKER: That's right and also calls**  
 14 **for a legal conclusion, yes.**  
 15 **MR. HACKNEY: But you'll -- I want to save**  
 16 **a big string of questions, so if I want to ask him**  
 17 **what are the pros and cons of the argument, who's**  
 18 **likely to win, how will it all come out --**  
 19 **BY MR. HACKNEY:**  
 20 **Q. You won't answer those questions on the grounds of**  
 21 **the -- because it would tend to reveal attorney-client**  
 22 **advice, correct?**  
 23 **MR. SHUMAKER: Well, I don't want to**  
 24 **prevent you from asking any questions and I don't --**  
 25 **but if he has an understanding independent of advice**

1 **A. I will assert the privilege.**  
 2 **Q. And if I ask you what are the arguments for and**  
 3 **against this point, you'll assert the privilege.**  
 4 **A. I will assert the privilege, but I am aware there are**  
 5 **a number of objections that have been filed in the**  
 6 **case that have addressed those issues and none of them**  
 7 **have caused me any surprise.**  
 8 **Q. If I said that the City -- if I asked you what the**  
 9 **City's view is on -- well, let me take a step back.**  
 10 **Do you agree that the insurers can block an**  
 11 **early termination of the Swap, that this would be**  
 12 **important to assessing whether the City was in danger**  
 13 **of owing a termination payment?**  
 14 **MR. SHUMAKER: Objection, calls for a legal**  
 15 **conclusion.**  
 16 **A. Yes, same thing. I'd only have a response to that**  
 17 **based upon discussions I've had with counsel.**  
 18 **BY MR. HACKNEY:**  
 19 **Q. Do you agree that the insurers can block a**  
 20 **termination, that it would make sense to negotiate**  
 21 **with the insurers to determine whether you can secure**  
 22 **their agreement not to consent to any termination?**  
 23 **MR. JURGENS: Objection, form.**  
 24 **MR. SHUMAKER: Same objection.**  
 25 **A. Same response. It would only be based upon**

1 he's given -- but clearly to the extent it's going to  
 2 reveal attorney-client communication, I will tell him  
 3 not to answer.  
 4 **MR. HACKNEY: Okay. I'll ask him that.**  
 5 **BY MR. HACKNEY:**  
 6 **Q. Does the City concur in the insurers' view?**  
 7 **MR. SHUMAKER: Objection, calls for a legal**  
 8 **conclusion and could ask for attorney-client**  
 9 **communications.**  
 10 **MR. HACKNEY: Are you instructing him not**  
 11 **to answer?**  
 12 **MR. SHUMAKER: To the extent that the**  
 13 **question goes to that, yes.**  
 14 **A. Maybe I can help out in this line of questioning.**  
 15 **Any -- I have not acted as an attorney on this job for**  
 16 **the aforementioned reasons, so any opinion that I**  
 17 **would express on behalf of the City in this regard**  
 18 **would be solely as a result of communications with**  
 19 **counsel and discussions.**  
 20 **BY MR. HACKNEY:**  
 21 **Q. That was my expectation. So if I ask you if the City**  
 22 **concurred, that's going to get into what your lawyer**  
 23 **thinks.**  
 24 **A. That's exactly right.**  
 25 **Q. So you -- you will assert the privilege.**

1 **discussions I've had with counsel.**  
 2 **BY MR. HACKNEY:**  
 3 **Q. Are you aware that the insurers contend that they have**  
 4 **the right to control all actions that may be taken by**  
 5 **the Swap counterparties in connection with the -- with**  
 6 **the Swaps?**  
 7 **A. I am aware of that, yes.**  
 8 **Q. When did you first develop that awareness?**  
 9 **A. During some course of the correspondence that occurred**  
 10 **during this time frame that we previously discussed**  
 11 **today.**  
 12 **Q. And have you taken steps to evaluate whether the City**  
 13 **concurs with the insurers' construction of the**  
 14 **operative documents on this point?**  
 15 **A. Have we taken steps? Yes.**  
 16 **Q. Yeah. And what is the City's position?**  
 17 **MR. SHUMAKER: Objection, calls for the**  
 18 **provision of attorney-client communications, and I**  
 19 **will instruct him not to answer.**  
 20 **BY MR. HACKNEY:**  
 21 **Q. Yeah, I'm just going -- I'm making a record here.**  
 22 **Okay? I don't want to have -- I tried to --**  
 23 **A. I'm with you. I'm with you.**  
 24 **Q. And if I ask you what the arguments are on both sides**  
 25 **of this point, you'll also refuse to answer on the**

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1 grounds of the privilege.  
 2 A. Here again, there are objections in the case that make  
 3 some of those arguments, but I will not specifically  
 4 answer.  
 5 Q. Because of the privilege.  
 6 A. Because of the attorney-client privilege and it calls  
 7 for a legal conclusion.  
 8 Q. And if I ask you who had the better side of the  
 9 argument, you would say the same thing?  
 10 A. Same thing.  
 11 MR. SHUMAKER: Same objection, same  
 12 instruction.  
 13 A. I would say the same thing. I would say the same  
 14 thing.  
 15 BY MR. HACKNEY:  
 16 Q. Do you agree that the insurers can control all actions  
 17 of the Swap counterparties in connection with the  
 18 Swaps, that this would be important in terms of  
 19 assessing whether the City should negotiate with the  
 20 insurers?  
 21 MR. SHUMAKER: Objection, foundation, calls  
 22 for a legal conclusion.  
 23 You can answer to the extent you have an  
 24 understanding.  
 25 A. It's also a little speculative because it's a

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1 hypothetical. If then is usually a hypothetical, so I  
 2 would -- for the same reasons as we discussed before,  
 3 I would say that to the extent it calls for a legal  
 4 conclusion, I'll refuse to answer.  
 5 I would say as a rational person, if you  
 6 were put in a corner, then you might want to consider  
 7 your alternatives, including negotiations.  
 8 BY MR. HACKNEY:  
 9 Q. With the insurers?  
 10 A. With whoever, yes, whoever's --  
 11 Q. I mean it's just a simple point. We have five minutes  
 12 left. I'm going to milk them.  
 13 A. Okay.  
 14 Q. But it's a simple point, which is if the insurers can  
 15 potentially direct, like a marionette, the actions of  
 16 the Swap counterparties, and I understand --  
 17 A. Right.  
 18 Q. -- that you're not agreeing with that --  
 19 A. Right.  
 20 Q. -- okay, but if they can --  
 21 A. Um-hm.  
 22 Q. -- they're a potential party that you can go negotiate  
 23 with to play off against the Swap counterparties,  
 24 correct?  
 25 MR. SHUMAKER: Objection, calls for

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1 speculation.  
 2 A. Yeah, here again, I mean if that happened, possibly,  
 3 but that's a speculative question, so I'm going stay  
 4 away from it.  
 5 BY MR. HACKNEY:  
 6 Q. It is speculation, but it's logical --  
 7 A. As I said in my answer, a rational person would make  
 8 that --  
 9 Q. Yeah.  
 10 A. If you were put in a corner, you'd have to find some  
 11 way out, and negotiation might be one of those  
 12 sources, but to the extent your question is also  
 13 speculation, I'm going to defer from answering.  
 14 Q. Do you agree that the insurers are entitled to control  
 15 all of the actions of the Swap counterparties; it  
 16 raises the risk that the deal negotiated in the  
 17 forbearance agreement may be for naught?  
 18 MR. SHUMAKER: Objection, calls for  
 19 speculation.  
 20 A. Yeah, here again, maybe not.  
 21 BY MR. HACKNEY:  
 22 Q. Those are things you haven't -- you haven't considered  
 23 prior to today, fair statement?  
 24 A. That's a fair statement.  
 25 Q. Okay. Have you ever heard the phrase "play both ends

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1 against the middle"?  
 2 A. Oh, have I ever heard the phrase?  
 3 Q. Yes.  
 4 A. Yes.  
 5 Q. You're a bankruptcy lawyer, right?  
 6 A. Yes.  
 7 Q. You were, I should say.  
 8 A. I was.  
 9 Q. And that's one of the time-honored tricks of  
 10 bankruptcy negotiation, right, is to play parties off  
 11 against one another to try and get the best deal?  
 12 A. I'm not going to call it a trick.  
 13 Q. Tools.  
 14 A. Tools, tactics. You know, there -- lawyer, as a  
 15 negotiator, getting a yes, discussing a number of  
 16 different alternatives.  
 17 Q. And one of them is playing off both ends against the  
 18 middle?  
 19 A. Could be. People do that all -- outside of legal  
 20 issues, they do that in negotiation.  
 21 Q. Isn't it true that prior to July 17 the City never  
 22 engaged in substantive negotiations with Syncora?  
 23 A. I don't know if that's true. You said July 17th?  
 24 Q. Yeah. That's the date of the execution of the  
 25 forbearance agreement.



1 A. Right. I don't know if that's true. I believe there  
 2 were discussions that may have been, but you  
 3 characterize it as substantive negotiations, so I  
 4 don't know if that's true.  
 5 Q. You certainly didn't participate in any substantive  
 6 negotiations with Syncora, correct?  
 7 A. Well, I -- you know, you say negotiations. I know  
 8 there were a series of letters going back and forth  
 9 and I know that there was a letter -- I just don't  
 10 recall when I sent it -- to Mr. LeBlanc that said if  
 11 you want to have serious negotiations, then let's have  
 12 a discussion, but let's stop sending these letters  
 13 back and forth.  
 14 Q. But isn't it your position that there were no serious  
 15 negotiations with Syncora because Syncora would not  
 16 make a proposal?  
 17 A. I believe in one of those letters I expressed that  
 18 concern, yes.  
 19 Q. And to your knowledge Syncora never made a proposal to  
 20 the City of Detroit prior to July 17th, correct?  
 21 A. Yeah, I believe there was a discussion -- well, there  
 22 was discussion about an exchange of NDAs, and Syncora  
 23 said they wanted to make a proposal, but they first  
 24 wanted to see the proposal from the Swap  
 25 counterparties, and I believe in one of my letters to

1 July 17th, correct?  
 2 A. I believe -- July 17th?  
 3 Q. (Nods head).  
 4 A. I believe that's true. As I said, I think there was  
 5 some discussion about a potential offer from Syncora,  
 6 but I believe that got caught up in the NDA issue and  
 7 that went away, so yes, I believe that's true.  
 8 Q. And your recollection in the NDA issue is that the  
 9 City wanted an NDA, but Syncora wouldn't sign it?  
 10 A. My recollection -- no. My recollection was the City  
 11 needed an NDA because we were asking all parties --  
 12 nondisclosure agreement, we were asking all parties to  
 13 sign them. There was some discussion -- I put in a  
 14 letter, I seem to recall, that Syncora sign one, but I  
 15 don't want to speculate or mischaracterize. There  
 16 were some discussion about a NDA before Syncora would  
 17 show us their proposal and something about they wanted  
 18 to see the Swap counterparties' proposal before  
 19 signing an NDA first or something along those lines.  
 20 Q. You're not aware of any situation where the City  
 21 refused to sign an NDA with Syncora, correct?  
 22 A. No, not that I'm aware of.  
 23 Q. In fact, it was the City that wanted an NDA with  
 24 Syncora?  
 25 A. Yes. I believe that's true.

1 Mr. LeBlanc, I said well, the parties need to sign a  
 2 NDA, and my understanding was Syncora declined to do  
 3 that.  
 4 MR. HACKNEY: Let's actually take a break  
 5 right now in light of the videotape and maybe we can  
 6 use it as a chance to stretch our legs and use the  
 7 restroom.  
 8 VIDEO TECHNICIAN: The time is 10:04 a.m.  
 9 This marks the end of tape number 1. We are off the  
 10 record.  
 11 (Recess taken at 10:04 a.m.)  
 12 (Back on the record at 10:14 a.m.)  
 13 VIDEO TECHNICIAN: We are back on the  
 14 record at 10:14 a.m. This marks the beginning of tape  
 15 number 2.  
 16 BY MR. HACKNEY:  
 17 Q. Mr. Orr, I kind of want to cut through this with  
 18 Syncora. I understand that there were letters back  
 19 and forth between you and Syncora.  
 20 A. Yes.  
 21 Q. But I just want to make clear for the record that  
 22 there were not substantive negotiations of the type  
 23 that you engaged in with the Swap counterparties with  
 24 Syncora about an alternative proposal to the  
 25 forbearance agreement prior to its execution on

1 Q. And it's also true that you did not engage in  
 2 substantive negotiations with FGIC about an  
 3 alternative to the forbearance agreement prior to  
 4 July 17th, correct?  
 5 A. Yeah, with regard to the issue of substantive, I'll --  
 6 I'll, you know, caution that I'm not -- I'm not  
 7 necessarily characterizing, but to the best of my  
 8 knowledge, that's a fair characterization.  
 9 Q. You didn't make a proposal about an alternative to  
 10 FIGC and FIGC didn't make one to you.  
 11 A. Yes, to the best of my knowledge, that's true.  
 12 Q. And that's also true with respect to Syncora, correct?  
 13 A. Yes, that's true.  
 14 Q. Now, I think you've testified previously that no  
 15 proposal was forthcoming from Syncora in connection  
 16 with the TRO proceedings.  
 17 A. Okay.  
 18 Q. I'll just represent that to you --  
 19 A. Okay.  
 20 Q. -- as a way of --  
 21 A. Yeah. In one of my affidavits --  
 22 Q. That's right.  
 23 A. -- or something, yeah.  
 24 Q. Were you aware that Mr. Buckfire had had a  
 25 conversation with Todd Snyder of Syncora?

1 A. As I said, there were -- you know, during this --  
 2 there were many conversations that were going back and  
 3 forth and I wasn't necessarily aware of all of them.  
 4 I knew they were -- they were going back and forth,  
 5 but it is -- if that's true, it wouldn't surprise me.  
 6 Q. So you don't remember it as you sit here today?  
 7 A. No, I do not.  
 8 Q. Okay. Because this was in the -- this was in the  
 9 period of where the cash was being trapped.  
 10 A. Right. But, sir, here again, there were so many -- so  
 11 many discussions going back and forth about so many  
 12 things. I mean in this period we were dealing with  
 13 the June 10th meeting, the June 14th creditor's  
 14 presentation, trying to do the Swap settlement, the  
 15 run up to my quarterly report. There were just --  
 16 there were a lot of conversations about a lot of  
 17 things. I simply don't remember.  
 18 Q. Okay. And I take it you don't recall that Mr. --  
 19 whether Mr. Buckfire told you that Syncora had  
 20 described to him the general structure of a proposal  
 21 it wanted to make?  
 22 A. He may have. I just don't recall it.  
 23 Q. Okay. It's true, isn't it, that as of the date of the  
 24 execution of the forbearance agreement, your office  
 25 had received multiple calls from Claude LeBlanc at

1 Q. We can say that there are lots.  
 2 A. There are lots.  
 3 Q. Okay.  
 4 A. Okay.  
 5 Q. And there's no reason you can think of today that the  
 6 City wouldn't enter into one with Syncora.  
 7 A. No.  
 8 Q. Were you aware that Syncora wanted a nondisclosure  
 9 agreement so that it could make a proposal that would  
 10 be an alternative to the Swap counterparties?  
 11 A. As I said, I believe I have a letter that discusses  
 12 the NDA issue, but it was caught up in something  
 13 related to Syncora -- as I understood it, Syncora  
 14 wanting to see the Swap counterparty proposal first  
 15 prior to entering an NDA.  
 16 Q. Did you ever hear that Syncora had gotten over that  
 17 issue and was now willing to just make a proposal to  
 18 the City?  
 19 A. No.  
 20 Q. So no one ever told you that?  
 21 A. No, I don't recall ever hearing that.  
 22 Q. Okay. Would that have been significant to you if you  
 23 heard that?  
 24 MR. SHUMAKER: Objection, calls for  
 25 speculation.

1 Syncora, correct?  
 2 A. I'm not aware of that. There may have been multiple  
 3 calls, but I'm not aware -- I received no calls.  
 4 Q. Okay. So you don't -- I take it your secretary --  
 5 A. My office may have. Yeah, my secretary may have, but  
 6 I didn't.  
 7 Q. So you don't know whether he called you or not?  
 8 A. If you're representing to me that he did, I have no  
 9 reason to believe that that's untrue.  
 10 Q. Okay. And I take it you have never called personally  
 11 Mr. LeBlanc --  
 12 A. No.  
 13 Q. -- isn't that correct?  
 14 A. No, I don't think so.  
 15 Q. So you didn't return those calls if they were made?  
 16 A. No.  
 17 Q. I just want -- I guess I -- the City has entered into  
 18 numerous nondisclosure agreements --  
 19 A. Right.  
 20 Q. -- in these cases, correct?  
 21 A. Yes.  
 22 Q. I mean has it entered into hundreds?  
 23 A. I don't know. I don't -- I don't operate the data  
 24 room or any others, but I suspect there's certainly  
 25 many.

1 A. Yeah. Here again, it depends upon what point in time,  
 2 if we were already bound by the definitive term sheet  
 3 and then -- or the agreement, I believe the  
 4 forbearance agreement has an obligation we cooperate  
 5 with Swap counterparties, so it wouldn't have mat --  
 6 no, it would not have mattered at that time, so it  
 7 depends on when that would have occurred.  
 8 BY MR. HACKNEY:  
 9 Q. But if it was prior to July 17th, if there were any  
 10 parties that were out there that thought they had a  
 11 good deal for the City, that would have been something  
 12 you wanted to know?  
 13 A. We are always willing to listen to parties that think  
 14 they have a good deal for the City.  
 15 Q. Isn't it true that the City's decision to enter into  
 16 the forbearance agreement was made by you, in your  
 17 role as emergency manager?  
 18 A. Yes, after consultation with my -- with my employees,  
 19 staff and consultants, yes.  
 20 Q. And when did you make that decision?  
 21 A. To enter into the actual agreement?  
 22 Q. Yes.  
 23 A. The day I signed it.  
 24 Q. July 15th, 2013?  
 25 A. I believe so, yes.

1 Q. And what advisors did you rely upon in making this  
 2 decision?  
 3 A. My attorneys, Mill -- my investment banker, Miller  
 4 Buckfire; our accountants, Ernst & Young; virtually --  
 5 virtually -- Conway McKenzie, our operational advisor,  
 6 virtually all of them.  
 7 Q. All of your third party advisors?  
 8 A. Yes, yes.  
 9 Q. And anyone else that you relied upon in making the  
 10 decision?  
 11 A. Oh, probably members of my immediate staff such as my  
 12 senior advisor, chief of staff, but less so. More of  
 13 my outside third party advisors.  
 14 Q. What documents did you rely upon in making the  
 15 decision, if any?  
 16 A. We looked at a number of -- the term sheet, the actual  
 17 draft of the forbearance agreement. There may have  
 18 been some e-mails. I just recall a lot of telephone  
 19 calls. There may have been some forecast, cash  
 20 forecast, and actuals, and some of the public reports  
 21 I had issued regarding our cash position.  
 22 Q. Any other documents you can remember considering as  
 23 part of this decision to enter into the forbearance  
 24 agreement?  
 25 A. There may have been correspondence. As I said, there

1 A. Yeah. That's a --  
 2 MR. SHUMAKER: Object to form.  
 3 A. That's a fair characterization. As I said, I'm trying  
 4 to stay away from acting as an attorney in this job.  
 5 BY MR. HACKNEY:  
 6 Q. Okay.  
 7 A. For a number of reasons.  
 8 Q. So you relied on your advisors to explain to you how  
 9 the COP Swap agreements worked?  
 10 A. Yes.  
 11 Q. And you also relied on them to explain to you how the  
 12 COP Swap agreements worked in conjunction with the  
 13 forbearance agreement that you were about to execute?  
 14 MR. JURGENS: Object to form.  
 15 A. Yes.  
 16 BY MR. HACKNEY:  
 17 Q. So what is the relationship between the forbearance  
 18 agreement and the COPs Swap structure?  
 19 A. Well, my understanding is that the forbearance  
 20 agreement is related to the Swaps structure, but that  
 21 the COPs structure is unrelated.  
 22 Q. Okay. So the forbearance agreement is part of the  
 23 same subject matter as the collateral agreement and  
 24 the Swaps agreement, but not the COPs part of the  
 25 structure?

1 were letters that were exchanged between Mr. LeBlanc  
 2 and myself, and others, the letter you showed me  
 3 today. I'm just trying to capture the universe of  
 4 what would have been included, but any -- any and all  
 5 documents related to this that I would have seen would  
 6 probably fall under that characterization.  
 7 Q. Any legal memoranda from Jones Day that you considered  
 8 in making this decision?  
 9 A. Yes, probably.  
 10 Q. Okay. Written legal memoranda that you reviewed?  
 11 A. Yeah, including e-mails. Yeah.  
 12 Q. Now, did you take time to familiarize -- to  
 13 familiarize yourself with any of the legal documents  
 14 relating to the COPs Swap structure in connection with  
 15 your decision to execute the forbearance agreement?  
 16 A. I relied -- I may have seen them, but I relied upon  
 17 consultation with my counsel and investment bankers.  
 18 Q. The documents I'm referring to are -- can we agree  
 19 they're relatively complicated legal documents?  
 20 A. Yeah, I'd say they're not simple documents. It's not  
 21 a -- you know, an auto purchase contract, yeah.  
 22 Q. Right. So can I fairly characterize that -- that you  
 23 may have looked at the documents, but you didn't  
 24 attempt to master -- master them in terms of their  
 25 legal ins and outs?

1 A. That's my understanding.  
 2 Q. Okay. In your legal career, have you come across the  
 3 concept of the idea that two different contracts can  
 4 be part of one integrated transaction?  
 5 A. Sure. Yes.  
 6 Q. You're familiar with that as an idea?  
 7 A. Oh, yeah, sure.  
 8 Q. Okay. What do you understand that to mean?  
 9 MR. SHUMAKER: Objection, form.  
 10 A. There are a number of ways that two different  
 11 documents were -- may refer to the other, as simple as  
 12 attachments, exhibits, the master -- the master  
 13 service agreement on a loan, for instance. There are  
 14 a number of ways that one document can relate to  
 15 another as explicitly expressed and intended.  
 16 BY MR. HACKNEY:  
 17 Q. Yeah, and I know this is a -- you know, we're not  
 18 talking about was the stoplight red or green here, but  
 19 you are also a lawyer with a relatively --  
 20 A. I was.  
 21 Q. -- sophisticated clientele and experience?  
 22 A. Well --  
 23 Q. You understand the idea that two different contracts  
 24 can form part of one larger agreement?  
 25 A. Oh, sure. Yeah.

1 Q. Is the forbearance agreement part of an integrated  
 2 transaction with the amended Swap agreements?  
 3 MR. SHUMAKER: Objection, calls for a legal  
 4 conclusion.  
 5 A. Yeah, I'm going to stay away from characterizing it as  
 6 an integrated transaction. That may have legal  
 7 consequence. I know they are related.  
 8 BY MR. HACKNEY:  
 9 Q. Okay. They are related, but you can't answer today  
 10 whether they're part of an integrated transaction as  
 11 the person who executed it on behalf of the City?  
 12 A. Yeah.  
 13 MR. SHUMAKER: Same objection.  
 14 A. Yeah, because -- because of legal implications of  
 15 using that nomenclature.  
 16 BY MR. HACKNEY:  
 17 Q. Okay. So it may be, it may not be, you just don't  
 18 know?  
 19 A. Precisely. I'll rely on the attorneys to characterize  
 20 that.  
 21 Q. Is the forbearance agreement part of an integrated  
 22 transaction with the collateral agreement?  
 23 MR. SHUMAKER: Same objection.  
 24 A. Same answer. I'll rely on the attorneys to  
 25 characterize it as integrated. I know I signed the

1 legal question?  
 2 A. I'm saying I can't reveal attorney-client  
 3 communications, and based upon the characterization, I  
 4 have formed no independent decision outside of  
 5 discussions with my attorney as to whether or not  
 6 they're integrated.  
 7 Q. Okay. Let me ask you the reverse question, which is,  
 8 is the forbearance agreement a separate agreement from  
 9 the collateral agreement?  
 10 A. Is it a separate agreement?  
 11 Q. Yeah.  
 12 A. I believe it's related to it, but yeah, it was a  
 13 separate agreement, sure. It wasn't entered into  
 14 contemporaneously.  
 15 Q. Meaning one that does not form part of a common  
 16 agreement with the collateral agreement?  
 17 A. Here again, you're using a characterization as common  
 18 agreement or integrated. I'm going to stay away  
 19 because those may have legal connotations. What I  
 20 know is the forbearance agreement was entered into in  
 21 2009, and the collateral agreement attempts to resolve  
 22 issues of default that are raised by the forbearance  
 23 agreement and also including obligations of the City.  
 24 Q. Isn't it -- I'd like to shift and ask you a question  
 25 about the service agreements between the City and the

1 forbearance agreement.  
 2 BY MR. HACKNEY:  
 3 Q. You did?  
 4 A. Yes.  
 5 Q. So it may be, it may not be, you don't know?  
 6 A. Correct.  
 7 Q. And did you consider any of those questions when you  
 8 entered into the forbearance agreement?  
 9 A. We may have had some discussions. The question such  
 10 as whether they're integrated or supersede or are  
 11 related may have been discussed.  
 12 Q. But as you sit here today, you can't answer my  
 13 question about whether it is integrated into other  
 14 agreements or not?  
 15 A. True. I'm going to re -- because of the possible  
 16 legal implications of anything I say, I'm going to  
 17 rely on our counsel.  
 18 Q. Okay. Well, I guess there are legal implications of  
 19 all of the testimony that you give today --  
 20 A. Yeah.  
 21 Q. -- both good and bad.  
 22 A. Right.  
 23 Q. So I guess are you saying that you can't reveal  
 24 attorney-client communications or are you saying that  
 25 you just don't know the answer to this particular

1 service corporations.  
 2 A. Okay.  
 3 Q. Isn't it true that the City is in default of its  
 4 obligations under the service agreements because it  
 5 missed the --  
 6 A. June 14th payment?  
 7 Q. That's right.  
 8 A. We're in default.  
 9 Q. Okay. And isn't it also true that the City is not  
 10 proposing to cure those defaults in connection with  
 11 the assumption of the forbearance agreement?  
 12 A. I believe that's true.  
 13 Q. And you would agree that the City is not going to  
 14 provide assurances that it will perform with the  
 15 service agreements in the future, correct, as part of  
 16 the assumption motion?  
 17 A. I'm going to be careful here because we're -- we're  
 18 trying to have discussions about what we're going to  
 19 do with regard to the proposal, so I don't want to say  
 20 now something that may or may not occur in the future,  
 21 but there is no present intent -- in response to your  
 22 question, no present intent to do that.  
 23 Q. You certainly haven't represented that you will as  
 24 part of the assumption motion?  
 25 A. Yes.

1 Q. We talked about this earlier. I don't want to reask  
 2 the question, but I want to tie it up in connection  
 3 with the assumption motion, which is, there are also  
 4 events of default existing under the Swaps.  
 5 A. Yes.  
 6 Q. Those are the cause of all the problems, right?  
 7 A. Yes.  
 8 Q. The City is not proposing to cure those defaults in  
 9 connection with the assumption agreement, correct?  
 10 A. I'm going to be careful with the characterization of a  
 11 cure because, as you know, and -- I have formed no  
 12 independent decision as to whether or not that  
 13 nomenclature's true. What I will say is that pursuant  
 14 to the forbearance agreement we are attempting to  
 15 resolve any and all defaults that may have occurred  
 16 under the collateral agreement.  
 17 Q. Under -- and I was asking about the Swaps.  
 18 A. And the Swaps.  
 19 Q. And the Swaps.  
 20 So the forbearance agreement is an effort  
 21 to resolve any defaults that exist under the  
 22 collateral agreement and amended Swaps?  
 23 A. Yes.  
 24 Q. Okay. And in your view it does that?  
 25 A. Yes.

1 in addition, obligates those parties to release liens  
 2 and potential claims as a result of the transaction.  
 3 Q. Okay. So the practical impact of it -- put aside the  
 4 legal beagle words.  
 5 A. Right.  
 6 Q. The practical impact of it is during the optional  
 7 termination period, the Swap counterparties waive  
 8 whatever rights they have under the Swaps and the  
 9 collateral agreement to either demand cash or to  
 10 terminate the Swap?  
 11 A. Yeah, here --  
 12 MR. JURGENS: Object to form.  
 13 MR. SHUMAKER: Objection, calls for legal  
 14 conclusion and form.  
 15 A. Here again, I'm going to stay away from whether or not  
 16 they waive. What it says is forbearance, and my  
 17 understanding is that they forebear from exercising  
 18 any of those rights during the operative terms of the  
 19 agreement.  
 20 BY MR. HACKNEY:  
 21 Q. We talked about the benefits of the forbearance  
 22 agreement before. I'm going to try and summarize your  
 23 prior testimony to try and move us along, but you  
 24 should listen to my summary and see if I'm correct.  
 25 A. Okay.

1 Q. Okay.  
 2 A. Yes.  
 3 Q. So I'll say it this way. In your assumption motion,  
 4 isn't it true the City doesn't promise to cure any  
 5 defaults under the collateral agreement or the Swap  
 6 agreement; isn't it that correct?  
 7 A. Here again, and I'm not trying to be evasive. I  
 8 just -- you know, there are concepts of cure in the  
 9 bankruptcy code, for instance, with regard to the  
 10 assumptions of contracts so on and so forth, and I  
 11 want to make sure that I don't testify as to a legal  
 12 conclusion. So what I will say is we are trying -- by  
 13 the assumption agreement and forbearance agreement, we  
 14 are trying to resolve all defaults under those  
 15 documents, both the collateral agreement and the  
 16 Swaps.  
 17 Q. Okay. And how does it achieve that resolution?  
 18 A. Well, the documents speaks for itself, but generally  
 19 speaking, it imposes obligations upon us to perform a  
 20 certain ways within certain time frames with regard to  
 21 the potential termination payment. It therefore gives  
 22 us a discount for that payment. It releases the  
 23 casino revenue and imposes obligations, and this is my  
 24 language, upon the Swap counterparties not to trap  
 25 that revenue upon performance of certain obligations,

1 Q. But the benefits of the forbearance agreement are  
 2 access to the casino revenues during the option  
 3 period, a workable unwind of the Swaps, and a  
 4 discounted termination payment?  
 5 A. And a release of liens and potential claims against  
 6 the insured, yes.  
 7 Q. Correct. Those are kind of some of the key elements  
 8 of the forbearance agreement.  
 9 A. Yes.  
 10 Q. I want to start with the casino gaming revenues.  
 11 A. Um-hm.  
 12 Q. How does the forbearance agreement provide the City  
 13 with better access to gaming revenues than it has  
 14 right now?  
 15 A. Well, as -- I think as we discussed earlier today,  
 16 there's always the risk that because there are events  
 17 of default under the Swaps, that those revenues  
 18 could -- that default could be declared and those  
 19 revenues could be trapped, so it removes that level of  
 20 uncertainty, which is crucial for the City. Cash is  
 21 critical for the City.  
 22 So once you remove that level of  
 23 uncertainty and the City has certainty, as we've seen  
 24 in some of our proposals that we made for creditors,  
 25 the City can then reasonably count on having access to

1 **that cash in terms of going forward.**  
 2 Q. Now, if the collateral agreement operates the trapped  
 3 cash automatically upon an event of default under the  
 4 Swap --  
 5 A. Um-hm.  
 6 Q. -- is there anything in the forbearance agreement that  
 7 alters that mechanism?  
 8 **MR. SHUMAKER:** Objection, calls for legal  
 9 conclusion.  
 10 A. Yeah, here again, your conclusion if it acts to trap  
 11 automatically, I don't know if I would characterize it  
 12 that way. I know that the agreements work that money  
 13 comes in on a daily basis. That money is put into I  
 14 think one account. At the end of each month, some  
 15 portion of that money is sent out to another account,  
 16 and every quarter that money is disbursed. I'm not  
 17 going to characterize as to whether or not it would --  
 18 it would change that mechanism automatically.  
 19 **BY MR. HACKNEY:**  
 20 Q. Okay. You can't say if it does or it doesn't?  
 21 A. Correct.  
 22 Q. And can you say here today whether the collateral  
 23 agreement operates automatically or does not?  
 24 A. The collateral agreement, it's my understanding, using  
 25 your words automatically, operates to trap cash, but

1 automatically.  
 2 Q. Okay. And is that based on conversations you've had  
 3 with counsel?  
 4 A. Yes.  
 5 Q. And if I ask you for the pros and cons of that  
 6 argument as to who's likely to win and how the City  
 7 came to its view, you would refuse to answer those  
 8 questions on the basis of the attorney-client  
 9 privilege, correct?  
 10 A. Yes, sir.  
 11 Q. Now, you also mentioned that the forbearance  
 12 agreement -- or we talked about the idea that the  
 13 forbearance agreement provides for a workable unwind  
 14 of the Swap, correct?  
 15 A. Right.  
 16 **MR. JURGENS:** Objection to form.  
 17 **BY MR. HACKNEY:**  
 18 Q. How does it do that?  
 19 A. Well, my understanding, as I said before, in the  
 20 forbearance agreement, the parties agree to certain --  
 21 certain events that we will pay -- meaning the City --  
 22 will pay a discount, an optional termination payment  
 23 or cause that payment to be made; that in  
 24 consideration for that payment, the parties to the  
 25 agreement will release any claims they have to

1 maybe not in the way that is detrimental to the City.  
 2 It has two accounts, a subrecipient holding account --  
 3 **COURT REPORTER:** Subrecipient?  
 4 **THE WITNESS:** Subrecipient.  
 5 A. -- two accounts, an initial general account and then a  
 6 subrecipient account. We'll just call them that.  
 7 Those monies come in -- so when you use  
 8 automatic, those monies come in daily, but they're  
 9 disbursed according to the terms, and have been  
 10 disbursed according to their terms.  
 11 Q. I'm not talking about interim trapping that --  
 12 A. Right.  
 13 Q. -- happens in the first part of the month until the  
 14 whole bank account builds up.  
 15 A. Right.  
 16 Q. I'm talking about what I'll call big time cash  
 17 trapping upon an event of default --  
 18 A. Right.  
 19 Q. -- or termination event.  
 20 A. Right.  
 21 Q. So let me go back. I guess my question is, like, do  
 22 you have a view on whether that big time cash trapping  
 23 is supposed to happen automatically under the  
 24 collateral agreement?  
 25 A. My understanding is that it does not happen

1 trapping the casino revenue; and, here again, the  
 2 parties will release their liens and any potential  
 3 claims they have against the insured.  
 4 Q. The discount that you obtained through the  
 5 negotiations that Mr. Buckfire led --  
 6 A. Right.  
 7 Q. -- is a discount to the so-called early termination of  
 8 the Swap.  
 9 A. Yes.  
 10 Q. Correct?  
 11 A. Yes.  
 12 Q. So if you just read the Swap agreement, it would -- it  
 13 implies a termination value, correct?  
 14 **MR. JURGENS:** Objection, form.  
 15 **MR. SHUMAKER:** Objection, Calls for --  
 16 **BY MR. HACKNEY:**  
 17 Q. It implies an early termination value?  
 18 **MR. JURGENS:** Objection to form.  
 19 A. We'll use a nomenclature. It implies a value for  
 20 termination fee that I understand represents the loss  
 21 expectation of the counterparties.  
 22 **BY MR. HACKNEY:**  
 23 Q. That's exactly right.  
 24 And the discount you negotiated in the  
 25 forbearance agreement is a discount to that amount in

1 the Swap?  
 2 MR. JURGENS: Objection to form.  
 3 MR. SHUMAKER: Objection to form.  
 4 A. It is a discount to that, yes. It is a discount to  
 5 that expected amount.  
 6 BY MR. HACKNEY:  
 7 Q. Yeah. It is a discount to what would otherwise be  
 8 owing under the Swap in the absence of the forbearance  
 9 agreement if the Swap counterparties designated an  
 10 early termination.  
 11 A. I believe that's correct.  
 12 MR. JURGENS: Objection to form.  
 13 BY MR. HACKNEY:  
 14 Q. Okay. Now, you know that there's a different concept  
 15 which is an optional early termination under the Swap,  
 16 correct?  
 17 A. Um-hm.  
 18 Q. Is that correct?  
 19 A. Well, the way the agreement is worded, forbearance and  
 20 optional termination --  
 21 Q. I'm not talking about the forbearance agreement.  
 22 A. Okay.  
 23 Q. I'm sorry if that wasn't clear --  
 24 A. Oh.  
 25 Q. -- and I don't mean to interrupt you.

1 Q. I'm just talking about with respect to the Swap.  
 2 Interest rates are favorable for the Swap  
 3 counterparties.  
 4 A. On -- and I'm going to be careful here because on any  
 5 given day interest rates might swing and be favorable  
 6 to us based upon what we might owe, but generally  
 7 speaking, if you're saying -- what do you mean by in  
 8 the money?  
 9 Q. Yeah. So what I mean is if the Swap was terminated  
 10 today --  
 11 A. Right.  
 12 Q. -- it's the service corporations that would owe money  
 13 to the Swap counterparties, not the Swap  
 14 counterparties that would owe money to the service  
 15 corporations.  
 16 MR. JURGENS: Objection.  
 17 MR. SHUMAKER: To be clear, the Swap  
 18 counterparties are UBS and Merrill Lynch.  
 19 A. Yeah.  
 20 BY MR. HACKNEY:  
 21 Q. That's what I mean by in the money.  
 22 A. Yeah, I -- I think that's true.  
 23 Q. Okay. I mean that's -- I'm not trying to be flip, but  
 24 that is the reason that you negotiated the discount?  
 25 A. That's the mechanism, yes. Yeah.

1 A. Okay.  
 2 Q. Under the Swap --  
 3 A. Right.  
 4 Q. -- there is a different type of termination that's  
 5 called an optional early termination. Are you aware  
 6 of that?  
 7 A. I am aware of that.  
 8 Q. Okay. That's one where the insured -- the Swap  
 9 counterparties contend that they can terminate the  
 10 Swap and walk away with no payment.  
 11 A. Any understanding I would have about what the Swap  
 12 counterparties can do would be based upon  
 13 consultations with counsel, but suffice it to say I  
 14 have heard of that concept.  
 15 Q. Okay. So if I ask you about the pros and cons of that  
 16 argument and who would likely to win, you would assert  
 17 the attorney-client privilege; is that correct?  
 18 MR. SHUMAKER: We would.  
 19 A. Yes.  
 20 BY MR. HACKNEY:  
 21 Q. Okay. But I do want to say that you understand that  
 22 the Swap counterparties are substantially in the money  
 23 under prevailing interest rates, correct?  
 24 A. There is a lot of money that the City's going to owe,  
 25 yes.

1 Q. Okay. I want to make an obvious point, which is the  
 2 Swap counterparties have never come to the City and  
 3 said hey, we're going to exercise that optional early  
 4 termination rights that has us walking away and being  
 5 paid nothing, correct?  
 6 MR. JURGENS: Form.  
 7 MR. SHUMAKER: Objection form, too.  
 8 A. To the best of my knowledge, I've never heard that.  
 9 BY MR. HACKNEY:  
 10 Q. Obviously if they had, you would have been --  
 11 COURT REPORTER: I'm sorry.  
 12 BY MR. HACKNEY:  
 13 Q. Let me -- if you had heard them threaten that, it  
 14 would have made Mr. Buckfire's negotiation a lot  
 15 easier.  
 16 A. I think it would have made the entire situation a lot  
 17 easier, but I've never heard that.  
 18 Q. They've never offered to walk away without any  
 19 payment.  
 20 A. I've never heard them offer to walk away without a  
 21 payment.  
 22 Q. Okay. Too bad.  
 23 A. I'm more than willing to accept that offer.  
 24 Q. I was going to say we're all open, right?  
 25 A. Right.

1 Q. I want to go back to the forbearance agreement. We  
 2 were talking about the things that it does in terms of  
 3 providing access to casino revenues, allowing for an  
 4 unwind of the Swap. These were my descriptions of  
 5 it --  
 6 **A. Right.**  
 7 Q. -- candidly, from your motion --  
 8 **A. Right.**  
 9 Q. -- but we were talking generally about these things.  
 10 The valuable consideration that the City gets under  
 11 the forbearance agreement are all things that it can  
 12 exercise without any consent from any other party,  
 13 correct?  
 14 **MR. SHUMAKER:** Objection, calls for a legal  
 15 conclusion.  
 16 You can answer.  
 17 **A. That's my understanding of the way it works, yeah.**  
 18 **BY MR. HACKNEY:**  
 19 Q. Do you agree that the effect of the forbearance  
 20 agreement, if the option is exercised, is to modify  
 21 the amount of the termination payment owed under the  
 22 Swaps down to whatever percentage is applicable as of  
 23 that date?  
 24 **MR. JURGENS:** Objection to form.  
 25 **MR. SHUMAKER:** Objection, form, calls for a

1 **MR. HACKNEY:** I understand you want to  
 2 preserve objections. This is the individual who  
 3 signed the agreement --  
 4 **A. Yeah, the --**  
 5 **MR. HACKNEY:** -- so I'm asking him for his  
 6 understanding.  
 7 **MR. SHUMAKER:** Okay. That's fine.  
 8 **A. Yeah, the mechanism is such that it's not our**  
 9 **termination, that it's the parties -- it's the**  
 10 **counterparties' termination.**  
 11 **BY MR. HACKNEY:**  
 12 Q. That's right. It's their termination right, but the  
 13 City gets to direct them to exercise it.  
 14 **A. Correct.**  
 15 Q. Okay. Is that a right that the City currently  
 16 possesses under any of the other agreements to the  
 17 best of your knowledge?  
 18 **A. To the best of my knowledge, no.**  
 19 Q. That's a right it obtained as a result of the  
 20 forbearance agreement, correct?  
 21 **A. Correct.**  
 22 Q. And the City's able to exercise that right to direct  
 23 the actions of the Swap counterparties without the  
 24 consent of any third party, correct?  
 25 **A. To the best of my knowledge, that's true.**

1 legal conclusion.  
 2 **A. If you're talking about the forbearance agreement and**  
 3 **the formula that's involved for the percentage change**  
 4 **depending upon -- as linked to time, as well as the**  
 5 **requirement that we get approval of the agreement at a**  
 6 **certain time period, yes, that's true.**  
 7 **BY MR. HACKNEY:**  
 8 Q. Okay. I mean the effect of the forbearance agreement  
 9 is that instead of owing what the City would owe under  
 10 the Swap, which is the hundred percent of the  
 11 termination value, it now owes -- only owes the  
 12 discounted amount?  
 13 **A. Yes.**  
 14 Q. So the effect is that it modifies that provision in  
 15 the Swap in a way that's favorable for the City?  
 16 **MR. JURGENS:** Objection to form.  
 17 **A. That's a fair characterization.**  
 18 **THE WITNESS:** Sorry.  
 19 **BY MR. HACKNEY:**  
 20 Q. Now, the forbearance agreement, another part of it,  
 21 that it allows the City to direct the Swap  
 22 counterparties to terminate the Swap, correct?  
 23 **MR. SHUMAKER:** Objection, calls for a legal  
 24 conclusion.  
 25 **MR. JURGENS:** Objection.

1 Q. Now, if Syncora has the right to control all actions  
 2 of the Swap counterparties under the contract  
 3 administration agreement, your position is that the  
 4 forbearance agreement overrides that provision in the  
 5 contract administration agreement; is that correct?  
 6 **MR. SHUMAKER:** Objection, calls for  
 7 speculation.  
 8 **A. I think it calls for speculation and it also**  
 9 **essentially implies a legal analysis. I will defer to**  
 10 **my counsel as to what our position would be. What I**  
 11 **do know is that forbearance agreement gives us certain**  
 12 **rights.**  
 13 **BY MR. HACKNEY:**  
 14 Q. Okay. What if I said that when it comes to the  
 15 interaction between Syncora's alleged control rights  
 16 under the contract administration agreement and the  
 17 City's alleged control right under the forbearance and  
 18 optional termination agreement, you would refuse to  
 19 answer those questions on the grounds that it would  
 20 get into attorney-client advice that you've received  
 21 from your counsel, correct?  
 22 **A. That is correct.**  
 23 **MR. SHUMAKER:** It most likely would,  
 24 depending upon how you phrased the question.  
 25 **MR. HACKNEY:** I'm asking.



1 A. Yeah, no. These issues I have discussed with my  
2 counsel. We have discussed pros and cons as I said  
3 earlier today, and as you notice, although I'm not an  
4 attorney here, I've practiced before, none of this  
5 surprises me. Some of these issues are expressed in  
6 the objections. It's just that I want to be very  
7 careful about relaying to you any of my perceptions  
8 about these issues based upon discussions I've had  
9 with counsel.

10 Suffice it to say we think that I have the  
11 right -- the City has the right under forbearance  
12 agreement to exercise its rights under that agreement.

13 BY MR. HACKNEY:

14 Q. Okay. So -- but you -- you can't give me your  
15 understanding of how Syncora's alleged rights under  
16 the contract administration agreement interact with  
17 the City's alleged rights under the forbearance  
18 agreement.

19 A. I can't do that without implicating conversations I've  
20 had with my counsel.

21 Q. And just for the record, you won't?

22 A. And I won't.

23 Q. That's right.

24 A. And I won't, yes.

25 Q. What are the downsides of the forbearance agreement to

1 direct U.S. Bank to trap the casino revenues; isn't  
2 that correct?

3 A. I think if there were events of default, and here they  
4 are, yes.

5 Q. Yeah. That was a driver of the negotiation --

6 A. Yes.

7 Q. -- correct?

8 A. Certainly is, yes.

9 Q. And your understanding is that as part of the  
10 forbearance agreement during the -- during the --  
11 during the forbearance period, the Swap counterparties  
12 have temporarily relinquished that right to direct  
13 cash trapping so long as the optional termination  
14 period is pending.

15 A. Yes, they are forbearing from exercising their right.

16 Q. Okay. Now, you understand that cash passes through  
17 the general receipts subaccount on a monthly basis.  
18 We talked about that earlier.

19 A. Right.

20 Q. It's trapped until a certain point and then the City  
21 makes the holdback account, and when they get --  
22 become equal, there's a discharge of payment to the  
23 City from the general receipts subaccount, and then  
24 for the remainder of the month, the City gets access  
25 to the casino revenues, correct?

1 the City?

2 A. From my perspective?

3 Q. Yeah.

4 A. None.

5 Q. So this agreement that Mr. Buckfire negotiated is one  
6 of those happy agreements. It's all upside and no  
7 downside.

8 A. It's not happy. I mean, I'm not going to characterize  
9 it as happy. There's a significant sum of money that  
10 the City has got to pay, but it does remove a certain  
11 amount of uncertainty and allows the City to be able  
12 to plan to make the reinvestment that's crucial for it  
13 to go forward. So I wouldn't characterize it as happy  
14 by any means, but it's an obligation that the City  
15 entered into a long time ago -- several years ago --  
16 that we have to resolve so we can have unfettered  
17 access to the casino revenue.

18 Q. I want to go back to the subject of cash trapping  
19 really quick because we had just moments ago talked  
20 about whether it worked automatically --

21 A. Right.

22 Q. -- or whether it worked upon notice.

23 A. Right.

24 Q. But prior to the forbearance agreement, it was your  
25 view that the Swap counterparties had the right to

1 A. Yes. My understanding is about \$500,000 a day are  
2 paid into those accounts and the mechanism is very  
3 similar to what you said --

4 Q. Okay.

5 A. -- how it operates.

6 Q. Can we agree that the way the forbearance agreement  
7 works is that certainly between July 17th and now and  
8 from now to whenever the forbearance, the option is  
9 either exercised or expires, there's going to be cash  
10 that passes through this account, already passed  
11 through the account, that goes to the City?

12 A. Yes. There should be.

13 Q. If the option expires without the City's exercise of  
14 the option, isn't it true that under the forbearance  
15 agreement, the City has no obligation to put that cash  
16 back into the -- into the general receipts subaccount?

17 MR. SHUMAKER: Objection, calls for a legal  
18 conclusion.

19 A. I --

20 BY MR. HACKNEY:

21 Q. Just asking for your understanding of how the  
22 agreement works.

23 A. Sure. And my understanding of how the agreement  
24 works, without having it in front of me and consulting  
25 counsel, is the parties revert back to the status quo

1 ante as where they were, and I do not recall that  
 2 there's an obligation for remittor (sic) --  
 3 Q. Yeah.  
 4 A. -- of monies that were paid during the forbearance  
 5 period.  
 6 Q. And the agreement does speak for itself. I'm just  
 7 asking for your understanding of the agreement.  
 8 A. That's my understanding.  
 9 Q. I have read the agreement, and my reading of  
 10 Section 1.2(c) of the agreement is that when the  
 11 option expires without being exercised, that it's just  
 12 as you said, everyone is restored to the status quo  
 13 ante, but the City doesn't have to put the money it  
 14 received back in the -- in the interim back into the  
 15 account.  
 16 A. Right, which is status quo because we would have  
 17 received that money in any event.  
 18 Q. Okay. But what I just said is also your  
 19 understanding?  
 20 A. Yes.  
 21 Q. Can we agree that -- we talked about waiver and  
 22 forbearance and they are two different concepts, but  
 23 can we agree that the Swap counterparties have  
 24 certainly waived their right to obtain the cash that  
 25 passes through the account during the option period?

1 terms of each Swap agreement, it is the view of the  
 2 Swap counterparties that one or more events of default  
 3 and/or additional termination events has occurred,  
 4 with the service corporations" -- "with the service  
 5 corporation as the defaulting party or sole affected  
 6 party, and therefore each of SBS and UBS has the right  
 7 to designate an early termination date for the related  
 8 Swap agreements."  
 9 Do you see that?  
 10 A. Yes, I do.  
 11 Q. I have a long set of questions here that I would like  
 12 to collapse if I could, which is, this just says it's  
 13 the view of the Swap counterparties. The fact of the  
 14 matter is it's also the City's view that there are  
 15 termination events and events of default existing  
 16 under the Swap.  
 17 A. Yes, I think that's fair.  
 18 Q. And that as a result of those termination and events  
 19 of default in the absence of this agreement, the Swap  
 20 counterparties would have the right to designate an  
 21 early termination date.  
 22 A. Yes.  
 23 Q. If I asked you to catalog all of the termination  
 24 events and events of default under the Swap, would you  
 25 be able to do that?

1 MR. SHUMAKER: Objection, calls for a legal  
 2 conclusion.  
 3 MR. JURGENS: Objection to form.  
 4 A. I'm going to stay away from characterizing what  
 5 consequences are if we don't exercise the option under  
 6 the agreement.  
 7 BY MR. HACKNEY:  
 8 Q. Let me hand you this forbearance agreement.  
 9 A. Okay.  
 10 Q. I've marked it as Orr Exhibit 2.  
 11 A. Okay.  
 12 MARKED FOR IDENTIFICATION:  
 13 DEPOSITION EXHIBIT 2  
 14 10:48 a.m.  
 15 A. Okay.  
 16 BY MR. HACKNEY:  
 17 Q. Do you have it in front of you?  
 18 A. Yes.  
 19 Q. And is that, to the best of your knowledge, a true and  
 20 accurate copy of the forbearance agreement?  
 21 A. Yes, it appears to be.  
 22 Q. Now, if you look at the -- on page 2 of the second  
 23 full recital?  
 24 A. Uh-hm.  
 25 Q. You'll see that it says, "Whereas, pursuant to the

1 A. No, I wouldn't, not without a consulting client and a  
 2 long compendium of events that occurred before I was  
 3 appointed.  
 4 Q. You do know some of them offhand.  
 5 A. Sure, like the consent agreement, the declaration of  
 6 financial emergency, the appointment of the financial  
 7 advisory board, the failure to make some of the --  
 8 there are a bunch of them, but I couldn't catalog them  
 9 all.  
 10 Q. Yeah. Your appointment?  
 11 A. My appointment. I'm an event of default.  
 12 Q. You are -- you are an embodiment of default.  
 13 A. I'm an embodiment of default.  
 14 Q. So at some point we will have to cure you.  
 15 A. You will have to talk to my wife about that.  
 16 Q. Okay. The -- okay. So that is helpful. I was going  
 17 to go through some of these things, but it doesn't  
 18 sound like there's an actual dispute between the City  
 19 and the Swap counterparties on this point, correct?  
 20 A. No.  
 21 Q. Now, I want to ask you a different question, though.  
 22 A. Sure.  
 23 Q. This is different from what I was just asking, so --  
 24 A. Okay.  
 25 Q. As of July 17th, had you evaluated where there were

1 any termination events where the Swap counterparty was  
 2 the sole affected party?  
 3 **MR. SHUMAKER:** Objection, calls for a legal  
 4 conclusion.  
 5 **A. Yeah.**  
 6 **BY MR. HACKNEY:**  
 7 **Q. I'm not asking for the advice. I'm asking had you**  
 8 **evaluated that.**  
 9 **A. We had evaluated a number of issues and suffice it to**  
 10 **say that was probably one of them.**  
 11 **Q. You can't remember whether it was or it wasn't?**  
 12 **A. I can't remember if --**  
 13 **Q. Pretty technical question?**  
 14 **A. Yeah. As I said before, I'm not trying to be evasive.**  
 15 **It's just that the conversations I have with my**  
 16 **counsel, investment banker, you know, on a daily**  
 17 **basis, are -- there are days when there are dozens.**  
 18 **Q. Now, if I asked you whether you had evaluated whether**  
 19 **there were any events of default under the Swap where**  
 20 **the Swap counterparties were the defaulting party --**  
 21 **A. Sure.**  
 22 **Q. -- can you answer that question?**  
 23 **A. Whether I personally or whether it had been done on**  
 24 **the payoff of the team?**  
 25 **Q. Either.**

1 **question without implicating discussions. No. It**  
 2 **might -- it might implicate some discussions I had**  
 3 **with counsel.**  
 4 **Q. Okay. Mr. Orr, is the forbearance agreement a**  
 5 **settlement?**  
 6 **MR. SHUMAKER:** Objection, calls for a legal  
 7 conclusion.  
 8 **A. Let me say this. I'm aware that the motion pending in**  
 9 **front of the Court is both for -- we call in**  
 10 **bankruptcy, what I used to call in bankruptcy, both an**  
 11 **assumption of an agreement and a ^ 9019 settlement.**  
 12 **BY MR. HACKNEY:**  
 13 **Q. So it's been held out by the City as a settlement,**  
 14 **correct?**  
 15 **A. Yeah. I think there's a debate as to whether or not**  
 16 **you need to seek settlement approval in a Chapter 9**  
 17 **case, but we are.**  
 18 **Q. Okay. Does the forbearance agreement settle any**  
 19 **claims on a final basis?**  
 20 **A. I think it does.**  
 21 **Q. Isn't it true, though, that if the City doesn't**  
 22 **exercise the option, everyone goes back to the status**  
 23 **quo ante?**  
 24 **A. Yes. That's the contingency, yes.**  
 25 **Q. Okay. So if that were to happen, everyone's claims**

1 **A. I personally don't recall doing that. I do recall**  
 2 **that members of the team and I may have had those**  
 3 **discussions, yes.**  
 4 **Q. Is it fair to say that if I ask you to describe to me**  
 5 **what potential events of default or termination events**  
 6 **where the Swap counterparties were the sole affected**  
 7 **party or the defaulting party --**  
 8 **A. Right.**  
 9 **Q. -- you would decline to answer those questions on the**  
 10 **basis of the attorney-client privilege?**  
 11 **MR. SHUMAKER:** To the extent they would  
 12 reveal those communications, of course.  
 13 **MR. HACKNEY:** Well, I mean --  
 14 **A. Yes, I would.**  
 15 **BY MR. HACKNEY:**  
 16 **Q. Okay. Even if I ask you about your understanding of**  
 17 **the position, your position is that you don't have one**  
 18 **independent of your legal advisors.**  
 19 **A. I -- on this question, I don't have one independent of**  
 20 **my legal advisors.**  
 21 **Q. So I can't ask you what your understanding is --**  
 22 **A. Right.**  
 23 **Q. -- because it will necessarily reveal the legal advice**  
 24 **you got.**  
 25 **A. I'm trying to see if there's a way I can answer your**

1 **would still be in play.**  
 2 **A. I'm going to be careful with the word claims, but**  
 3 **everyone would revert back to the status quo ante.**  
 4 **Q. Okay. So whatever claims they had at the status quo**  
 5 **ante they'd have again?**  
 6 **A. Yeah, whatever claims -- technically, whatever claims,**  
 7 **colloquially, whatever they had would, revert back to**  
 8 **the status quo ante.**  
 9 **Q. Can we agree that in that eventuality no claims of any**  
 10 **of the parties of the forbearance agreement would have**  
 11 **been finally resolved by the forbearance agreement?**  
 12 **A. To the best of my knowledge, yes.**  
 13 **Q. Now, put aside the threat of declaring an early**  
 14 **termination under the Swap --**  
 15 **A. Right.**  
 16 **Q. -- which we've discussed extensively today as a right**  
 17 **the Swap counterparties have under the Swap --**  
 18 **A. Okay.**  
 19 **Q. -- put that aside. Have you evaluated, separate and**  
 20 **apart from that, whether there are other tort or**  
 21 **contract claims that the Swap counterparties may have**  
 22 **against the City?**  
 23 **A. I think there were discussions, but, here again, those**  
 24 **would be wrapped up in attorney-client communications.**  
 25 **Q. So if I asked you to reveal the assessment of whether**

1 there were other claims that the Swap counterparties  
 2 have against the City, you would decline to answer  
 3 those questions on the grounds of attorney-client  
 4 privilege?  
 5 A. I think I would have to. I do recall discussions, but  
 6 I think I'd have to decline on the basis of  
 7 attorney-client privilege.  
 8 Q. Have the Swap counterparties threatened to bring any  
 9 claims against the City?  
 10 A. Well, here again, being careful with the word claims,  
 11 you mean unrelated to the defaults such as tort  
 12 claims?  
 13 Q. I guess I would say the Swap agreement is one you  
 14 understand that's between the Swap counterparties and  
 15 the service corporations.  
 16 A. Right.  
 17 Q. Okay. So I'm trying to put that in a box for now.  
 18 A. Right.  
 19 Q. And we've talked about that extensively.  
 20 A. Right.  
 21 Q. So other than any claims they may have against the  
 22 service corporations --  
 23 A. Right.  
 24 Q. -- that could absolutely have implications for the  
 25 City, but other than that, have the Swap

1 A. No. I don't recall doing that.  
 2 Q. So you haven't assessed that?  
 3 A. Not me independently, no.  
 4 Q. Okay. And it's not something you took into account as  
 5 part of this agreement?  
 6 A. No. We -- there was a discussion about the interest  
 7 of all the parties. I, independently, did not  
 8 handicap whether the service corporations might bring  
 9 a claim against the City. I think there were  
 10 discussions about it. Many of those discussions would  
 11 have been caught up in the general discussions that I  
 12 was having with counsel and my other advisors.  
 13 Q. And you wouldn't be able to discuss them?  
 14 A. No.  
 15 Q. But the service corporations' claims against the City,  
 16 those are not resolved by the forbearance agreement,  
 17 correct?  
 18 A. If they have any. I don't think they are.  
 19 Q. Let me cut to it. Is it fair to say you haven't given  
 20 this any real consideration?  
 21 A. Yeah. We -- it is fair to say that it was -- there  
 22 was no real deep consideration of it. We did consider  
 23 it.  
 24 Q. Now, as the City evaluated whether it has claims  
 25 against the Swap counterparties --

1 counterparties threatened to bring any other claims  
 2 directly against the City?  
 3 A. None that I'm aware of.  
 4 Q. I may have asked you this earlier, but I just -- I  
 5 want to make sure that I didn't miss it and so if it's  
 6 asked and answered I apologize, but did the City  
 7 evaluate whether it is in breach of the collateral  
 8 agreement?  
 9 A. Did we evaluate it?  
 10 Q. Yeah.  
 11 A. Yes, I and my consultants evaluated it.  
 12 Q. Is this one where if I asked you the results of those  
 13 evaluations you'd decline to answer?  
 14 A. Yes.  
 15 Q. It is true that prior to the forbearance agreement,  
 16 the only direct contractual agreement under which both  
 17 the City and the Swap counterparties had signed was  
 18 the collateral agreement, correct?  
 19 A. To the best of my knowledge, that's correct.  
 20 Q. Now, have the service corporations threatened to bring  
 21 any claims against the City?  
 22 A. None that I'm aware of.  
 23 Q. And have you undertaken an assessment of the  
 24 likelihood of the service corporations to the extent  
 25 they were to assert claims against the City?

1 A. Um-hm.  
 2 Q. -- okay?  
 3 A. Um-hm.  
 4 Q. And if I ask you to tell me what claims you have, will  
 5 you tell me them or will you assert the privilege?  
 6 MR. SHUMAKER: I would instruct the witness  
 7 that may implicate attorney-client communications.  
 8 A. I would have no independent knowledge of what claims  
 9 may have other than discussions I've had with counsel  
 10 so I wouldn't answer.  
 11 BY MR. HACKNEY:  
 12 Q. Okay. If I ask you what's the likelihood that you'll  
 13 win on the claims?  
 14 A. Same answer.  
 15 Q. You would follow the advice --  
 16 A. Yeah.  
 17 Q. -- and assert the privilege?  
 18 A. Yeah.  
 19 Q. Okay.  
 20 A. In my prior life, as an attorney, likely would be a  
 21 hundred percent.  
 22 Q. Okay.  
 23 A. But I can't say that.  
 24 Q. Well, let me ask you -- let me ask you just a -- sort  
 25 of this is your understanding of the forbearance

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1 agreement.

2 **A. Right.**

3 Q. What claims are you asking the Court to approve the

4 settlement of?

5 **A. In claims that might be had by the parties vis-à-vis**

6 **each other.**

7 Q. So any and all claims that they have under the Swaps

8 or the collateral agreement or the service contracts

9 or any other contracts --

10 **A. Yes.**

11 Q. -- those claims are being resolved by the forbearance

12 agreement?

13 **A. To the best of my knowledge, that is true.**

14 Q. Okay. And the result of the forbearance agreement is

15 that the City will be able to perform under the

16 forbearance agreement without being subject to any

17 liability to any third party?

18 **A. That is my understanding.**

19 Q. And so will the Swap counterparties, correct?

20 **A. That is my understanding.**

21 Q. It will give you what I'll call a clean closing?

22 **A. As I said earlier this week, it will bring us to**

23 **closure and certainty, yes. Earlier today.**

24 Q. That is also one of the values of this agreement to

25 both and you the Swap counterparties, you the City?

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1 **A. Right.**

2 Q. Which is that it absolves you for any liability in

3 connection with the relevant agreements?

4 **MR. SHUMAKER: Objection to form.**

5 **BY MR. HACKNEY:**

6 Q. As a result of performance under the forbearance

7 agreement, correct?

8 **MR. SHUMAKER: Objection calls for**

9 **speculation.**

10 **A. My understanding is that it provides us with closure**

11 **and finality regarding any claims and relationships**

12 **that the parties have.**

13 **BY MR. HACKNEY:**

14 Q. Okay. And there's no trailing liability?

15 **A. That is correct.**

16 Q. And just for the record, if I asked to you assess the

17 likelihood of success of all of the different claims

18 that are being resolved by the forbearance agreement,

19 you would assert the attorney-client privilege and

20 refuse to answer?

21 **A. That is correct. I have made no independent**

22 **assessment outside of any conversation I would have**

23 **had with counsel and my advisors.**

24 Q. Now, Mr. Orr, I'm going to speculate you may have

25 negotiated a settlement or two in your life as a

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1 lawyer.

2 **A. That's a fair statement.**

3 Q. And isn't it also fair -- I will tell you I have as

4 well, but --

5 **A. Right.**

6 Q. Isn't it common that settlement agreements typically

7 involve releases of liability by the parties against

8 one another?

9 **A. It is not uncommon for there to be releases in**

10 **settlement agreements.**

11 Q. And I will tell you I actually was racking my brain to

12 see whether I ever entered into a settlement agreement

13 that didn't have a release. I couldn't think of one.

14 **Have you ever entered into a settlement agreement that**

15 **didn't have a release?**

16 **A. Yes.**

17 Q. Okay. You have?

18 **A. Yes, I have.**

19 Q. Okay. Do you know whether the forbearance agreement

20 contains a release of claims by the parties against

21 one another?

22 **MR. SHUMAKER: Objection, calls for legal**

23 **conclusion.**

24 You can answer.

25 **A. Okay. I'd have to read through it and consult with my**

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1 **counsel to make sure. I know the agreement speaks for**

2 **itself.**

3 **BY MR. HACKNEY:**

4 Q. It does, but as you sit here today, I take it you

5 reviewed the forbearance agreement in connection with

6 the preparation for your deposition?

7 **A. Maybe not as in depth as you might think.**

8 Q. Okay. I know you have a lot on your plate.

9 **A. I have a lot on my plate.**

10 Q. But I guess I'm saying are you seriously unaware as to

11 whether there's a release in the forbearance

12 agreement?

13 **A. Seriously or not, I think the forbearance agreement**

14 **resolved all claims between the parties. Sitting here**

15 **today without examining it, I'm not aware as to**

16 **whether or not it specifically has a release.**

17 Q. Okay. So the -- whether it's in the forbearance

18 agreement or in the effect of its approval, it

19 operates as a release for everyone involved?

20 **A. Yeah. The reality is -- when you asked me the**

21 **question before as to whether or not it has a release,**

22 **the reality is that to the extent you asked -- I**

23 **believe in the motion you asked for assumptions and**

24 **9019 settlement that the order might well contain a**

25 **release so -- I wasn't trying to be truculent with**

1 you. I'm just saying that, yes, the effect of the  
 2 approval of the agreement should have that impact.  
 3 Q. I'm not going to try to go claim by claim because your  
 4 understanding is it releases all claims of the Swap  
 5 counterparties, the service corporations, and the City  
 6 against one another?  
 7 A. Yes.  
 8 Q. Now, the Swap insurers, as part of the forbearance  
 9 agreement, they get a release of their insurance  
 10 obligations under the Swap in the event the City  
 11 directs an optional termination, correct?  
 12 A. Yes, I believe that's true.  
 13 Q. And this was one of the things that the City has  
 14 touted, which is to say, hey, Swap insurers, pipe down  
 15 this is good for you, right?  
 16 MR. SHUMAKER: Objection to form.  
 17 A. Yeah, without characterizing, you know, the colloquial  
 18 characterization, yes, we think that's a benefit.  
 19 BY MR. HACKNEY:  
 20 Q. That's a concept that you've argued in your papers --  
 21 A. Yes.  
 22 Q. -- as to why the Swap insurers should be happy?  
 23 A. Yes.  
 24 Q. Now, do you understand you -- you have argued that  
 25 this is a benefit to the Swap insurers under the

1 under the agreement?  
 2 A. As a layperson, I really haven't examined it.  
 3 Q. So don't know one way or the other?  
 4 A. Don't know one way or the other.  
 5 Q. Do you have a view as to whether Syncora or FGIC, for  
 6 that matter, can sue to enforce the agreement?  
 7 A. I don't have one way or the other.  
 8 Q. They may have, they may not have?  
 9 A. Yeah. I'd probably weigh on the side of they don't,  
 10 but I -- I don't have a view one way or the other.  
 11 Q. And have you considered the possibility that if they  
 12 don't have the right to sue to enforce the agreement,  
 13 that they also would not have the right to sue to  
 14 enforce the release that's in the agreement?  
 15 MR. SHUMAKER: Objection --  
 16 A. They might or they might --  
 17 MR. SHUMAKER: -- calls for a legal  
 18 conclusion.  
 19 A. They might or they might not.  
 20 BY MR. HACKNEY:  
 21 Q. And let's be frank. That's not your concern, right?  
 22 A. Well, to be honest with you, you know, without getting  
 23 into whether or not there may be equitable rights,  
 24 estoppel, third party intended, unintended beneficiary  
 25 rights, things along those lines, what I do know --

1 forbearance agreement, correct?  
 2 A. Yes, I believe so.  
 3 Q. Are the swap insurers third party beneficiaries as you  
 4 understand it as the signatories to the agreement --  
 5 of the agreement?  
 6 MR. SHUMAKER: Objection, calls for a legal  
 7 conclusion.  
 8 A. Here, I'm not acting as a lawyer as I understand it.  
 9 I'll have to decline from answering whether or not  
 10 they're third party beneficiaries. As you know,  
 11 they're intended beneficiaries, incidental  
 12 beneficiaries. A lot of these questions are questions  
 13 of fact, so that would draw me into a legal analysis  
 14 and I'll stay away from that.  
 15 BY MR. HACKNEY:  
 16 Q. Let me -- let me -- let me -- what I'll do then is  
 17 I'll ask you your understanding as a layperson --  
 18 A. Okay.  
 19 Q. -- because you are -- you can say that you're acting  
 20 as a layperson --  
 21 A. I am.  
 22 Q. -- so to speak.  
 23 A. Yes.  
 24 Q. Okay. As a layperson person, do you have a view one  
 25 way as to whether Syncora is a third party beneficiary

1 incidental benefits -- what I do know is the  
 2 agreement, and what we've said is it provides a  
 3 benefit to the insured.  
 4 Q. That's right, but you obviously don't represent the  
 5 insured, you represent the City?  
 6 A. I am employed by the governor on behalf of the City,  
 7 that is correct.  
 8 Q. And so if the insurer can't enforce the agreement to  
 9 take advantage of the release, that's the insurer's  
 10 problem, correct?  
 11 A. Well, without characterizing whether or not it's their  
 12 problem or so, my fiduciary duty runs to the City in  
 13 its interest; it does not necessarily run to Syncora.  
 14 Q. Yeah. Can we agree that you certainly didn't  
 15 negotiate into the agreement any specific provision  
 16 granting the insurers the right to sue to enforce that  
 17 provision?  
 18 A. I made no instruction to my team to negotiate such a  
 19 provision.  
 20 Q. In entering into the forbearance agreement, did you  
 21 consider whether or not the automatic stay would apply  
 22 to cash trapping if the City filed for bankruptcy?  
 23 MR. SHUMAKER: Objection, calls for a legal  
 24 conclusion.  
 25 A. Without getting -- here again, there were discussions

1 because, quite frankly, at the time we were in  
2 negotiating this agreement in June, we were hoping  
3 that this agreement and its announcement was for other  
4 creditors to -- and other stakeholders, including the  
5 labor side, to come in and negotiate additional  
6 agreements. So we may have had discussion about what  
7 the impact, if we filed bankruptcy, would have been,  
8 but, frankly, at this time we were hoping we were  
9 going to get a round of agreements in place.

10 BY MR. HACKNEY:

11 Q. You knew that as of July 15th, when you executed the  
12 forbearance agreement, that bankruptcy was possible?

13 A. Oh, sure. We knew it was possible, yeah.

14 Q. Fair to say that by July 15th, given all the work that  
15 was going on, you were of the view that it was likely?

16 A. No, not really. We had been sued -- the governor and  
17 the treasurer had been sued a few weeks before that.  
18 The following week I believe one union had joined in  
19 that suit and the Monday of the week after that, the  
20 governor and I were sued, and I believe July -- I  
21 don't have a calendar. I believe July 15th was that  
22 Monday.

23 Q. It was.

24 A. Yes. So we signed this agreement and, frankly, even  
25 at that time, because there was a whole lot of things

1 A. No. I -- let's be clear. I think we had them before.  
2 I think we had them around that time because in that  
3 week, when I was sued that Monday, there were  
4 discussions about what they may be and we were signing  
5 this agreement at the time.

6 Q. If I ask you about the specifics of the conversations  
7 you had about whether the automatic stay applied and  
8 the likelihood that it would or wouldn't, you'll  
9 decline to answer those questions on the basis of the  
10 attorney-client privilege, correct?

11 A. Yes, again, today I would have to do that.

12 Q. The one thing I will say that we can agree on, though,  
13 is that if the automatic stay did bar cash trapping,  
14 that would be valuable to the City because at least  
15 during the pendency of the bankruptcy it would then  
16 have access to the casino revenues, correct?

17 A. Well, it's -- here again, it's a hypothetical and  
18 contingent question, but I take your meaning, and what  
19 I would say is I think certainly one of the benefits  
20 of the automatic stay is that you maintain the status  
21 quo and access to cash. There are also provisions  
22 however in the bankruptcy code -- I'm not acting as an  
23 attorney, but I am aware -- of Safe Harbor provisions  
24 related to certain financial instruments and you have  
25 to factor that in as well.

1 going on, there was litigation, there were stays in  
2 place, there were appeals to the state court, it  
3 certainly was possible and we were with doing  
4 contingency planning given the paper, but we have not  
5 made any determination at that point as to whether or  
6 not, excuse me, we were going to file.

7 Q. It was certainly possible enough that it behooved you  
8 to analyze whether the automatic stay might be a way  
9 to get access to the casino revenues, correct?

10 A. Yeah, I don't recall whether or not we did it then or  
11 before or just during that week, but -- but we --  
12 there was some discussion about the impact of the  
13 automatic stay, yes.

14 Q. So is it possible that you did not evaluate the  
15 applicability of the automatic stay in the event of a  
16 bankruptcy prior to executing the forbearance  
17 agreement?

18 MR. SHUMAKER: Objection --

19 A. No.

20 MR. SHUMAKER: -- asked and answered.

21 A. No. What I said is at some point during that time or  
22 even prior we had to have those discussions.

23 BY MR. HACKNEY:

24 Q. You may have had them in advance of July 15th, you may  
25 not have, you just can't remember?

1 Q. And those are?

2 COURT REPORTER: Can you please slow down?

3 THE WITNESS: I'm sorry.

4 BY MR. HACKNEY:

5 Q. Those are risk factors that might make the automatic  
6 stay not applicable?

7 A. That's correct.

8 MR. SHUMAKER: Objection, calls for a legal  
9 conclusion.

10 A. I was informed without telling specific --

11 BY MR. HACKNEY:

12 Q. Right.

13 A. -- conversations that those are issues you have to  
14 take into consideration.

15 Q. And so let me try and collapse this if I can. If I  
16 ask you about whether the casino revenues are special  
17 revenues being applied to indebtedness, you will  
18 refuse to answer?

19 MR. SHUMAKER: You can ask him whether he  
20 considered them, but in terms of likelihood of success  
21 or communication between --

22 BY MR. HACKNEY:

23 Q. I'll do it that way.

24 Did you consider whether there were special  
25 revenues that were accepted from the automatic stay

1 under 922(d)?  
 2 **A. We considered all of these issues including the**  
 3 **interaction 922(d) with 362 and I considered them in**  
 4 **the context with my counsel.**  
 5 Q. Okay. You considered whether 362(b)(17) exception for  
 6 Swap collateral applied?  
 7 **A. Yes.**  
 8 Q. Did you consider whether the collateral account --  
 9 rather, the gaming revenues were even property of the  
 10 estate at all?  
 11 **A. Yes.**  
 12 Q. So you considered all those questions.  
 13 **A. Um-hm.**  
 14 Q. Your counsel rendered advice to you about the  
 15 likelihood, the pros and cons of the arguments, and  
 16 you're not at liberty to provide that advice to us  
 17 because it would invade the attorney-client privilege?  
 18 **A. Yes, I believe that's correct.**  
 19 Q. But I do want to get -- I do want to just get your  
 20 agreement that the question is important to at least  
 21 one of the benefits of the forbearance agreement which  
 22 was the interim access to cash during the optional  
 23 termination period.  
 24 **A. I think the question is relevant.**  
 25 Q. Yeah.

1 because you might be able to get longer access to cash  
 2 from the automatic stay than you were getting from the  
 3 forbearance agreement, correct?  
 4 **A. Here again, that's a contingent it might, but that has**  
 5 **to be drawn up also in discussion of potential risk**  
 6 **that Safe Harbor provision would allow the**  
 7 **counterparties to exercise their rights and therefore**  
 8 **obviate any benefits the City could receive from the**  
 9 **automatic stay.**  
 10 Q. That's right.  
 11 **A. So we considered all of those.**  
 12 Q. So just to be clear, if I ask you about the specific  
 13 ins and outs of all those potential arguments,  
 14 likelihoods of success and so forth, you will not  
 15 answer those questions on the basis of the  
 16 attorney-client privilege, correct?  
 17 **A. That is correct.**  
 18 Q. Oh, I know. The City recently argued in court against  
 19 yours truly that the automatic stay bars the cash  
 20 trapping provisions of the collateral agreement. Are  
 21 you aware of that?  
 22 **A. I believe I am, yes.**  
 23 Q. Yeah. In fact, I think that your spokesman,  
 24 Mr. Nowling, may have made statements in the press  
 25 about the impact of the judge's rulings. Are you

1 **A. Yes.**  
 2 Q. In fact the optional termination period, it could end  
 3 as soon as on September 16th; at the latest it goes to  
 4 June 30, 2014, right?  
 5 **A. Correct.**  
 6 **MR. SHUMAKER:** Objection, document speaks  
 7 for itself.  
 8 **A. Yeah, the document --**  
 9 **BY MR. HACKNEY:**  
 10 Q. Whatever it says --  
 11 **A. Yeah.**  
 12 Q. -- that's your understanding?  
 13 **A. Yes.**  
 14 Q. So that -- the forbearance agreement -- let's put it  
 15 this way, Mr. Orr. The forbearance agreement gets you  
 16 access to cash during the optional termination period.  
 17 **A. Yes, I believe that's true.**  
 18 Q. If the automatic stay applied, it might get access to  
 19 the casino revenue during the whole bankruptcy,  
 20 correct?  
 21 **A. It might.**  
 22 Q. Yeah. We're talking about different things that you  
 23 consider as you're analyzing your options, right?  
 24 **A. Yeah, correct.**  
 25 Q. And this is -- this is a potentially important one

1 familiar with those statements?  
 2 **A. I am.**  
 3 Q. Did the Swap counterparties give their consent to the  
 4 City to make those arguments in court?  
 5 **A. I don't know.**  
 6 Q. And -- so you don't know whether they did or they  
 7 didn't?  
 8 **A. That is correct.**  
 9 Q. You understand that as originally designed the Swaps  
 10 were designed to hedge against interest rate risk on  
 11 the floating COPs?  
 12 **MR. SHUMAKER:** Objection, calls for a legal  
 13 conclusion.  
 14 **MR. JURGENS:** Objection to form as well.  
 15 **A. That is my understanding.**  
 16 **BY MR. HACKNEY:**  
 17 Q. And I can unpack it if you want. I know we get into  
 18 the --  
 19 **A. That's my understanding.**  
 20 Q. Yeah, okay. Let's just do basics of interest rate  
 21 risk, which is if the interest rates go above the  
 22 hedge rate, then now the Swap counterparties have to  
 23 pay the difference to the service corporations so that  
 24 they can pay the difference to the floating rate COPs,  
 25 correct?



1 **MR. SHUMAKER:** Objection, form.  
 2 **A. That is my understanding.**  
 3 **BY MR. HACKNEY:**  
 4 **Q.** That's how the hedge works.  
 5 Now, interest rates do not favor the City  
 6 in the Swaps -- we asked that earlier.  
 7 **A. Right.**  
 8 **Q.** I will strike that.  
 9 But more basics of interest rate hedging,  
 10 so as the interest rates go up and start to approach  
 11 the hedge, the amount the City owes under the Swap via  
 12 service corporations goes down?  
 13 **A. That -- that is my understanding.**  
 14 **Q.** And as it crosses over the hedge line, the service  
 15 corporation could actually be in the money?  
 16 **MR. JURGENS:** Objection to form.  
 17 **A. Yeah, here again, we had the discussion about in the**  
 18 **money or not, but to the extent your point is saying**  
 19 **that they would benefit more from the hedge than the**  
 20 **counterparties would, that is my understanding.**  
 21 **BY MR. HACKNEY:**  
 22 **Q.** When the interest rates get above the hedge line?  
 23 **A. (Nods head).**  
 24 **Q.** That's right.  
 25 **Okay.** Now, when you were entering into the

1 **Q.** Okay. No disrespect to the fine lawyers at Jones Day.  
 2 I don't know if I can calculate future interest rates  
 3 as a lawyer.  
 4 It was in Miller Buckfire's province to do  
 5 it. They may have done it in conjunction with Jones  
 6 Day?  
 7 **A. Yes, yes.**  
 8 **Q.** Okay. And any review of forward curves or different  
 9 interest rate implications currently existing in the  
 10 market would have been done by Miller Buckfire?  
 11 **A. Yes.**  
 12 **Q.** And your recollection is that it was done and it was  
 13 something that you considered as part of the decision  
 14 entering into this agreement?  
 15 **A. I believe so.**  
 16 **Q.** You're aware, for example, that the Federal Reserve  
 17 has indicated intent to scale back its monthly bond  
 18 purchases?  
 19 **A. I heard that.**  
 20 **Q.** And --  
 21 **A. Quantitative reasoning --**  
 22 **Q.** Yeah.  
 23 **A. Yeah.**  
 24 **Q.** And you're aware that many people believe that that  
 25 may lead interest rates to rise; isn't that right?

1 forbearance agreement on July 17th, what steps did you  
 2 take personally to evaluate future -- I'm sorry. I  
 3 misspoke, didn't I?  
 4 **A. Yeah.**  
 5 **Q.** When you entered into the forbearance agreement on  
 6 July 15th --  
 7 **A. Right.**  
 8 **Q.** -- what steps did you take prior to that time to  
 9 evaluate future interest rate moves?  
 10 **A. Any discussions in those -- that regard would have**  
 11 **been with our investment bankers and generally with**  
 12 **our attorneys. What I'm trying to think of is were**  
 13 **there any discussions that I had with Miller Buckfire**  
 14 **which would not have been confidential in that regard.**  
 15 **I don't think that there were. What I can say is that**  
 16 **we evaluated the potentiality of the -- of the**  
 17 **interest rate fluctuation as indexed to LIBOR going up**  
 18 **or down, but I think most of those, if not all of**  
 19 **them, were in communications with one or more of my**  
 20 **attorneys.**  
 21 **Q.** And when you say we evaluated the interest rate  
 22 fluctuations, that would have been tasked to Miller  
 23 Buckfire to do?  
 24 **A. Yes, Miller Buckfire in conjunction with folks from**  
 25 **Jones Day. Yeah, sure.**

1 **A. Yes.**  
 2 **Q.** Okay. Did you analyze the likelihood that the  
 3 interest rates would rise or was that also tasked to  
 4 Miller Buckfire?  
 5 **A. I didn't do it independently. That would have been**  
 6 **tasked to Miller Buckfire.**  
 7 **Q.** And if I asked what that analysis showed, I would have  
 8 to ask Mr. Buckfire that?  
 9 **A. Yes, you would.**  
 10 **Q.** Okay.  
 11 **A. Yes, you would.**  
 12 **Q.** Let me ask you about -- in the motion to assume the  
 13 forbearance agreement, the City states that it has  
 14 examined whether there are viable actions to challenge  
 15 the Swap contracts. Do you recall that?  
 16 **A. Yes.**  
 17 **Q.** Under what theory could the City challenge the  
 18 validity of the Swap contracts?  
 19 **A. Any theories that we discussed -- I'll give you two**  
 20 **answers. One, many of the theories, my understanding**  
 21 **is and somebody -- I haven't read all of the**  
 22 **objections, but I've read some of them. Some of the**  
 23 **objections in this case have discussed some of those**  
 24 **theories.**  
 25 **Two, any theories which we would have**

1 examined, either independently or in the context of  
 2 reviewing and handicapping the probability of success  
 3 of some of the objections, would have been done with  
 4 counsel.  
 5 Q. And so you'll refuse to describe both the theories and  
 6 their likelihood of success because it would invade  
 7 the attorney-client privilege; is that correct?  
 8 A. Yes. Unfortunately, yes.  
 9 Q. If I asked you what likelihood of success the City  
 10 attributes to an action seeking to declare the Swaps  
 11 invalid, you'll decline to answer that on the  
 12 attorney-client privilege?  
 13 A. Yes.  
 14 Q. Can we agree that if the Swaps are not valid, it  
 15 wouldn't make sense for you to enter into the  
 16 forbearance agreement?  
 17 A. No, not necessarily. There may be other prudent  
 18 reasons that the City might want to bring closure  
 19 and certainty is access to its cash flow irrespective  
 20 of the probability that the Swaps are valid or not  
 21 valid.  
 22 Q. In your proposal for creditors on June 14, 2013, you  
 23 said that the City has identified certain issues  
 24 related to the validity and/or enforceability of the  
 25 COPs --

1 Q. Okay. And you'll assert the attorney-client privilege  
 2 as a protection against describing the invalidity of  
 3 the COPs analysis?  
 4 A. Yes, because I did no independent analysis.  
 5 Q. Has the City completed its investigation into this  
 6 issue?  
 7 A. No. The City's investigation into a number of things  
 8 are ongoing.  
 9 Q. Okay. And this is one of them?  
 10 A. This is one of them, yeah.  
 11 Q. Okay. So the City hasn't reached a conclusion on this  
 12 subject because it hasn't concluded its investigation  
 13 into the subject, correct?  
 14 A. It -- I think that's fair, yes.  
 15 Q. And has the City considered whether the service  
 16 agreements between the service corporations and the  
 17 City are lawful?  
 18 A. I don't recall if we looked into that.  
 19 Q. So that's one that you --  
 20 A. I just don't recall if that was one.  
 21 Q. You may have investigated, you may have not?  
 22 A. Correct. I don't recall that one.  
 23 Q. If you have investigated, do you know if the  
 24 investigation has concluded or do you not know?  
 25 A. No. If we had investigated or are investigating it,

1 A. Yes.  
 2 Q. -- that may warrant further investigation.  
 3 A. Yes.  
 4 Q. Do you remember that?  
 5 A. Yes.  
 6 Q. I'm saving us from having to go through that --  
 7 A. Yeah, yeah. No. I remember.  
 8 Q. What issues has the City identified?  
 9 MR. SHUMAKER: Again, I'm going to caution  
 10 the witness --  
 11 A. Yeah.  
 12 MR. SHUMAKER: -- if this is going to  
 13 reveal attorney-client communications to not answer.  
 14 Subject to that, you can answer.  
 15 A. Here again, there would be no issues that -- and I  
 16 hate to keep saying this. There'd be no issues that I  
 17 independently would have identified because I'm trying  
 18 very hard not to act as a lawyer. I would have only  
 19 identified those issues and had discussions of them in  
 20 consultations with my attorneys. So whether there are  
 21 issues such as void ab initio, fraud, any of the other  
 22 issues that typically go to contracts, I would only  
 23 have had those discussions with counsel, so  
 24 consequently I can't speak to this.  
 25 BY MR. HACKNEY:

1 my understanding it would not have been concluded.  
 2 Q. Okay. So much like with the COPs, generally the  
 3 validity of the service contracts with the City is a  
 4 subject of ongoing investigation that has not yet  
 5 concluded.  
 6 A. It may be the subject of ongoing investigation which  
 7 has not yet concluded.  
 8 Q. Okay. If I asked you how either of those two  
 9 investigations, the one into the COPs validity or the  
 10 one into the service contracts validity, impacted your  
 11 decision to enter into the forbearance agreement, you  
 12 will decline to answer because it would tend to reveal  
 13 attorney-client communications?  
 14 A. For all the reasons we discussed today, the -- yes, I  
 15 would have to.  
 16 Q. Mr. Orr, let me ask you about under section 803 of the  
 17 service contracts --  
 18 A. Yeah.  
 19 Q. -- I'm going to save us both from having to go through  
 20 them --  
 21 A. Yeah.  
 22 Q. -- so I'll represent to you what it relates to and see  
 23 if you've heard of it.  
 24 A. Okay.  
 25 Q. Okay?

1 Under section 803 of the service contracts  
 2 payments by the City to the service corporations are  
 3 classified according to a waterfall.  
 4 A. Um-hm.  
 5 Q. Have you heard of this waterfall?  
 6 A. Yes.  
 7 Q. Okay. Did you evaluate whether there were any claims  
 8 that any parties to the structure might have against  
 9 one another if the forbearance agreement leads to the  
 10 payment of monies outside of the waterfall?  
 11 A. I assume you're alluding to prioritization or  
 12 subordination in claims along those regards, and the  
 13 answer: I think there probably was, but, here again,  
 14 I would -- I did not do it independently. It would  
 15 have been done by my counsel.  
 16 Q. Okay. So you can't tell me the fruits of the analysis  
 17 or the City's position on the likelihood of success on  
 18 the issue because it's protected by the  
 19 attorney-client --  
 20 A. That is --  
 21 Q. -- privilege?  
 22 A. -- correct.  
 23 Q. If I ask you how it impacted your decision to enter  
 24 into the forbearance agreement, you'd also not be able  
 25 to answer that on the basis of the attorney-client

1 A. Okay.  
 2 Q. Do you know generally what I mean when I say that?  
 3 A. Yes. The original documents by which the City  
 4 borrowed money, 1.4 billion, for the unfunded  
 5 actuarial liability --  
 6 COURT REPORTER: For the --  
 7 A. For the unfunded actuarial liability involve -- the  
 8 organic documents.  
 9 BY MR. HACKNEY:  
 10 Q. That is exactly correct. And, to name a few, there  
 11 are the service contracts, the contract administration  
 12 agreement, the trust agreement, and the master and --  
 13 and amended Swap agreements, correct?  
 14 A. Yes.  
 15 Q. You've heard of all of those?  
 16 A. Yes.  
 17 Q. And there are multiple versions of them?  
 18 A. There are multiple versions of them.  
 19 Q. For example, there are two service contracts --  
 20 A. That's right.  
 21 Q. -- because there are two service corporations.  
 22 A. That's right.  
 23 Q. Now, your understanding is that some of these  
 24 documents were amended in 2009 in connection with the  
 25 addition of the collateral agreement to the package,

1 privilege?  
 2 A. That is correct. In addition, that's part of the  
 3 deliberative process.  
 4 Q. Have you analyzed whether or not COP holders might  
 5 have claims against the Swap counterparties if the  
 6 City exercises the optional termination right?  
 7 A. There -- have we analyzed it? The answer is yes, I  
 8 believe so.  
 9 Q. Okay. What's the result of that analysis?  
 10 A. Here again, any discussion would have been caught up  
 11 in discussions I would have had with my counsel in  
 12 that regard, so I decline to answer the question.  
 13 Q. Okay. Have you analyzed whether those potential  
 14 claims may have an impact on whether the Swap  
 15 counterparties go forward with the optional  
 16 termination amount -- optional termination?  
 17 A. I don't recall if we did that specific analysis. I --  
 18 I think that was probably caught up in the whole  
 19 universe of analyses of potential claims, pros and  
 20 cons analyses, but I don't recall that one  
 21 specifically.  
 22 Q. We've just been talking now about the COPs. We've  
 23 talked about the Swaps a lot. I'm going to for a  
 24 moment reference the 2006 COPs Swap transaction  
 25 documents.

1 correct?  
 2 A. Yes. I'm going to take your meaning -- the amendment  
 3 to mean that's the -- yes, the net effect of what  
 4 happened in 2009.  
 5 Q. Okay. Did you know, for example, that the service  
 6 contracts were also literally amended --  
 7 A. Yes.  
 8 Q. -- as part of that?  
 9 A. Yes. We're talking generally about all the documents  
 10 without specifically going into each one.  
 11 Q. Although I did -- I did in that last one.  
 12 A. Yeah, you did, and so I'm following your lead on what  
 13 we're talking about.  
 14 Q. Okay.  
 15 A. Okay.  
 16 Q. The Swaps were also themselves amended in addition to  
 17 the collateral agreement being created?  
 18 A. I believe so.  
 19 Q. Now, you're aware that these contracts that form the  
 20 2006 COPs Swap transaction documents were contracts  
 21 that were entered into the same day back in 2006? I  
 22 know you weren't there.  
 23 A. Yeah, I wasn't there, and I have seen them. I just  
 24 don't recall sitting here today if they're the same  
 25 day. If you're representing to me that is a fact, I

1 have no reason to believe otherwise.  
 2 Q. I believe the City ordinance describes this as all one  
 3 transaction.  
 4 A. Right.  
 5 Q. Do you have a basis to dispute it?  
 6 MR. SHUMAKER: Objection, calls for  
 7 speculation --  
 8 A. Yeah.  
 9 MR. SHUMAKER: -- foundation.  
 10 A. Yeah, I have no basis to dispute it. Yeah.  
 11 BY MR. HACKNEY:  
 12 Q. You also know -- I know that you haven't familiarized  
 13 yourself with the documents.  
 14 A. Right.  
 15 Q. We talked about that earlier.  
 16 A. Right.  
 17 Q. You took a look at them. You know that they all refer  
 18 to one other and relate to one another.  
 19 MR. SHUMAKER: Objection to the extent it  
 20 calls for a legal conclusion.  
 21 MR. JURGENS: Object to form.  
 22 A. Yeah, if -- without drawing any legal meaning to the  
 23 concept that they all refer to one another, I believe  
 24 that they do.  
 25 BY MR. HACKNEY:

1 Q. Now, the forbearance agreement that you just signed on  
 2 July 15th, that also references the 2006 transaction  
 3 documents, correct?  
 4 A. I believe so.  
 5 Q. Okay. In fact, doesn't it borrow certain terms from  
 6 some of those documents?  
 7 A. Without -- yeah, without reviewing the 2005 and 2006  
 8 documents or spending time here today reading through  
 9 this agreement, I believe that's accurate.  
 10 Q. Okay. I will represent to you that I have reviewed it  
 11 and that it does --  
 12 A. Right.  
 13 Q. -- but I take your answer.  
 14 A. Right.  
 15 Q. The -- do you know that one of the things that the  
 16 City agreed to do under the forbearance agreement is  
 17 that during the optional termination period --  
 18 A. Right.  
 19 Q. -- the City won't try to seek to invalidate any of the  
 20 2006 transaction documents?  
 21 A. I believe that's true.  
 22 Q. Okay. That's one piece that's big enough that you're  
 23 familiar with?  
 24 A. Yeah, I believe that's true.  
 25 Q. So is it fair to say that the 2006 transaction

1 documents, the collateral agreement from 2009, and the  
 2 forbearance agreement are all documents that relate to  
 3 the same subject matter?  
 4 A. Without drawing a legal conclusion, I believe in a  
 5 broad sense it's fair to say that they relate to the  
 6 same subject matter, meaning the Swaps.  
 7 Q. Does the forbearance agreement amend any of the  
 8 provisions in the 2006 COPs or Swap transaction  
 9 documents?  
 10 MR. SHUMAKER: Objection, document speaks  
 11 for itself.  
 12 A. Yeah. I want to be very careful here. In addition to  
 13 the document speaks for itself, I don't want to draw a  
 14 relationship between the COPs document, which is  
 15 separate, to the Swaps document.  
 16 When I said they relate broadly to the  
 17 subject, to the extent COPs were money borrowed to try  
 18 to fund a pension obligation, and the Swaps were in  
 19 place as a hedge against the interest rate  
 20 fluctuations in those documents, and the collateral  
 21 agreement 2009 was a document that was meant to  
 22 address defaults that had occurred in relation to the  
 23 Swaps document, and this document was meant to address  
 24 the Swaps, they relate to that same subject area, but  
 25 I don't want to have my testimony suggest that there's

1 a legal relationship between the COPs and the Swaps  
 2 document as relates to this agreement, forbearance and  
 3 optional termination agreement.  
 4 BY MR. HACKNEY:  
 5 Q. So as you sit here today, is your answer that you  
 6 don't know if the forbearance agreement amends any of  
 7 the 2006 COPs Swap transaction documents? It may, it  
 8 may not, you don't know?  
 9 A. That is -- that is correct. I'm not going to draw a  
 10 legal conclusion.  
 11 Q. Yeah, and I'm not going to try to drive you to one.  
 12 A. Okay.  
 13 Q. I am asking questions as in your role as a layperson  
 14 who did execute the document.  
 15 A. Right.  
 16 Q. I understand the lawyers are going to do what they do,  
 17 okay, but there is as a aspect of this where it's --  
 18 your understanding as the guy who signs on it --  
 19 A. Right.  
 20 Q. -- can also be relevant?  
 21 A. That's right. My understanding is what this agreement  
 22 does -- it's a forbearance agreement, and to the  
 23 extent it has a provision in it that reverts back to  
 24 the status quo ante if -- if the deal's not done, I  
 25 don't want to draw any legal conclusion if there's an

1 amendment that exists after that process.  
 2 Q. Okay.  
 3 A. That's why I'm being hesitant.  
 4 Q. So you just don't know one way or the other as you sit  
 5 here today the impact the forbearance agreement has on  
 6 the other agreements?  
 7 A. With regard to an amendment, that's correct.  
 8 Q. Okay. Is it your understanding that the 2006 COPs  
 9 Swap transaction documents retain their vitality as  
 10 legal agreements to the -- of the parties thereto?  
 11 A. It's my understanding that they have whatever vitality  
 12 they have according to their terms.  
 13 Q. Okay. So all the rights that all the parties to the  
 14 COPs Swap transaction documents had before the  
 15 forbearance agreement, they still have today?  
 16 A. No. Here again, you're -- I just want to be careful.  
 17 It seems that you're trying to conflate COPs with  
 18 Swaps, and I want to be careful.  
 19 Q. Well, I want to say all of them, but if you say no,  
 20 it's different on these, some rights have changed, but  
 21 on these everyone's rights are preserved, that's okay.  
 22 A. Yeah, I want to be careful as far as saying what their  
 23 rights are because I do believe those are legal  
 24 questions, and in fact some of them are being  
 25 litigated in the various piece of litigation that are

1 A. I'll leave that to the attorneys.  
 2 Q. At the time that you entered into the forbearance  
 3 agreement, were you aware that the Swap insurers had  
 4 the right to consent to waivers, modifications or  
 5 amendments of the Swap agreement and the collateral  
 6 agreement?  
 7 MR. JURGENS: Objection to form.  
 8 A. I was aware that some of the Swap insurers had  
 9 asserted they had those rights. I had drawn no  
 10 independent legal conclusion as to whether or not they  
 11 did.  
 12 BY MR. HACKNEY:  
 13 Q. Okay. So you didn't know whether they were right or  
 14 they were wrong --  
 15 A. Correct.  
 16 Q. -- at the time you executed the agreement?  
 17 A. I had had discussions with my attorneys about whether  
 18 they were right or they were wrong, but I had no  
 19 independent conclusions.  
 20 Q. And you won't disclose the subject of your counsel's  
 21 communications?  
 22 A. I cannot disclose that subject because that's an  
 23 attorney-client communication.  
 24 Q. Did you evaluate when you entered into the forbearance  
 25 agreement, whether the act of entering into it would

1 going on.  
 2 Q. Hence this deposition?  
 3 A. Hence this deposition. So I want to be very careful  
 4 that I not give any testimony that would implicate a  
 5 legal conclusion with regard to those documents.  
 6 Q. And I'm not asking for a legal conclusion. I'm just  
 7 asking for your understanding as the signatory --  
 8 A. Right.  
 9 Q. -- as to whether the COPs Swap transaction documents,  
 10 whether all the parties preserved their rights under  
 11 those documents, notwithstanding the forbearance  
 12 agreement, or whether the forbearance agreement  
 13 changes the parties' rights under those documents.  
 14 A. And that's why I'm being careful because my  
 15 understanding of the forbearance agreement is that it  
 16 imposed upon the City, service corporations and the  
 17 counterparties certain obligations to forebear. I'm  
 18 not going to draw a legal conclusion as to whether or  
 19 not that amended any rights or changed any rights  
 20 under the original documents.  
 21 Q. It may have, it may not have?  
 22 A. It may. It may have not. I'll leave that to the  
 23 attorneys.  
 24 Q. It may constitute a waiver, it may not constitute a  
 25 waiver, you'll leave that to the attorneys?

1 multiply the amount of litigation that the City might  
 2 face?  
 3 A. I think it's fair to say that we considered whether it  
 4 might. Any time you're in a transaction I think you  
 5 consider whether it might suborn litigation, yes.  
 6 Q. And what were your conclusions on this subject?  
 7 A. Here again, any conclusions we would have had would  
 8 have been in this whole air of discussions with my  
 9 counsel. What I can say, without saying what my  
 10 conclusions specifically were of the probability that  
 11 it might create additional litigation, is I thought  
 12 that overall it was in the best interest of the City  
 13 to enter into agreement.  
 14 Q. But you won't disclose to me your communications with  
 15 your counsel about whether this might multiply the  
 16 amount of litigation?  
 17 A. That is correct. Multiply, increase, whatever.  
 18 Q. And have you -- did you evaluate whether performing  
 19 under the forbearance agreement, performing -- and by  
 20 that I mean exercising the option.  
 21 A. Right.  
 22 Q. Whether -- let me say it again.  
 23 Have you evaluated whether exercising the  
 24 option under the forbearance agreement might subject  
 25 the City to additional liability?

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1 A. Here again, all of these issues regarding potential of  
 2 contingent claims, additional litigation, the  
 3 advisability of entering into the agreement,  
 4 considering that we were in litigation, and as I said  
 5 before there may have been litigation threats made  
 6 additionally, were taken into consideration in  
 7 consultation with my counsel.  
 8 Q. But you can't disclose those communications?  
 9 A. They are attorney-client communications.  
 10 Q. All right. Let me ask you some questions about the  
 11 proposed order which I've marked.  
 12 A. Okay.  
 13 MR. HACKNEY: You know what? We've got a  
 14 five-minute tape coming up and maybe since we're about  
 15 to move to a new section, I'll propose a restroom  
 16 break.  
 17 THE WITNESS: Okay. That's fine.  
 18 VIDEO TECHNICIAN: The time is 11:35 a.m.  
 19 This marks the end of tape number 2. We are off the  
 20 record.  
 21 (Recess taken at 11:35 a.m.)  
 22 (Back on the record at 11:51 a.m.)  
 23 VIDEO TECHNICIAN: We are back on the  
 24 record at 11:51 a.m. This marks the beginning of tape  
 25 number 3.

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1 in a form that's satisfactory --  
 2 A. Yes.  
 3 Q. -- to the Swap counterparties --  
 4 A. I understand.  
 5 Q. Yeah.  
 6 A. I need to be clear. Obviously I've reviewed and read  
 7 and signed the forbearance agreement. I reviewed the  
 8 motion. I just don't recall whether or not I reviewed  
 9 the order.  
 10 Q. Okay.  
 11 A. I may have because it was probably attached to the  
 12 motion. I just don't have an independent recollection  
 13 of it.  
 14 Q. Let's try and make sure we understand the potential  
 15 significance of the order --  
 16 A. Sure.  
 17 Q. -- and then we're going to go through it --  
 18 A. Sure.  
 19 Q. -- even though you haven't read it.  
 20 Do you understand the Swap counterparties  
 21 and the City and the service corporations -- there's a  
 22 provision in the forbearance agreement that talks  
 23 about the fact that you need to get an order  
 24 entered --  
 25 A. Sixty days.

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1 MARKED FOR IDENTIFICATION:  
 2 DEPOSITION EXHIBIT 4  
 3 11:51 a.m.  
 4 BY MR. HACKNEY:  
 5 Q. Let me hand you what I've marked as Orr Exhibit 4.  
 6 MR. SHUMAKER: Are we going out of order?  
 7 MR. HACKNEY: Yes. These were pre-marked  
 8 and I must have dropped an exhibit here or there.  
 9 BY MR. HACKNEY:  
 10 Q. Do you have Orr Exhibit 4 in front of you, sir?  
 11 A. Yes, I do.  
 12 Q. So, Mr. Orr, I'll represent to you that this is the  
 13 proposed order that your counsel submitted along with  
 14 the motion.  
 15 MR. HACKNEY: Oh, sorry.  
 16 BY MR. HACKNEY:  
 17 Q. Do you understand that?  
 18 A. Yes. Yes, I do.  
 19 Q. Did you review this order prior to its being submitted  
 20 along with the motion?  
 21 A. I don't think I did.  
 22 Q. Okay. Let me tell you that this order is actually of  
 23 some importance to the forbearance agreement.  
 24 A. Um-hm.  
 25 Q. And that's because if you don't get an order that is

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1 Q. -- that's mutually agreeable.  
 2 A. Yes.  
 3 Q. And that was the 60-day time period.  
 4 A. Yes.  
 5 Q. And we can find the specific provision, but --  
 6 A. Yes.  
 7 Q. -- you know what I'm talking about.  
 8 A. Yes, I do.  
 9 Q. Okay. So the form of the order is important.  
 10 A. Um-hm.  
 11 Q. Is that a yes?  
 12 A. Yes.  
 13 Q. And it's important because if the order changes  
 14 materially, it might arguably give the Swap  
 15 counterparties the right to declare an end to the  
 16 termination period.  
 17 MR. SHUMAKER: Objection to the form, calls  
 18 for a legal conclusion.  
 19 A. Here again, without making a legal assessment, I  
 20 understand your meaning that we -- we have an  
 21 obligation in the City to make sure the order is in a  
 22 form that is mutually agreeable to the parties.  
 23 BY MR. HACKNEY:  
 24 Q. And this is it, right?  
 25 A. That is the proposed order.

1 Q. And this one, you know, is mutually agreeable to the  
 2 parties.  
 3 A. I believe that it is, yes.  
 4 Q. I mean, you may not have negotiated it --  
 5 A. Correct.  
 6 Q. -- personally, but it's your expectation that people  
 7 acting on your behalf then went to make sure that the  
 8 proposed order was mutually agreeable to the Swap  
 9 counterparties?  
 10 A. That is correct.  
 11 Q. Okay. Now, if the Court -- you understand that in  
 12 bankruptcy sometimes the Court enters an order that's  
 13 different from the one that was proposed.  
 14 A. Yes. I think the judge has done that on many  
 15 occasions in this case.  
 16 Q. Yes. And so you understand the judge is the one who  
 17 ultimately decides what the order says.  
 18 A. The judge wears the robe.  
 19 Q. That's right. Now, the judge, it's possible he may  
 20 materially change some of the provisions of this  
 21 order. Do you understand that?  
 22 A. Yes. It is possible that the judge may change the  
 23 order.  
 24 Q. And I'm not going to ask you to commit to a position  
 25 as to whether you would lose your rights, but it at

1 A. Yes. Here again, it's speculative, in my -- but I  
 2 don't anticipate that experience. In my experience  
 3 most judges are -- my experience is that many judges  
 4 are very careful not to undermine the underlying  
 5 agreement by the order that's entered.  
 6 BY MR. HACKNEY:  
 7 Q. So we can agree, though, that this order is an  
 8 important part of the forbearance agreement, correct?  
 9 A. Yes. I think the order is relevant to the forbearance  
 10 agreement.  
 11 MR. JURGENS: Objection, form.  
 12 BY MR. HACKNEY:  
 13 Q. And it's important to it?  
 14 MR. SHUMAKER: Objection to form.  
 15 A. I think it's a -- yes.  
 16 BY MR. HACKNEY:  
 17 Q. Let me ask you about some of the specific provisions  
 18 in the order.  
 19 A. Okay.  
 20 Q. Let me just say real quick, do you know who negotiated  
 21 this order with the Swap counterparties?  
 22 MR. JURGENS: Objection, form.  
 23 A. I assume it was my counsel. I don't know who in  
 24 particular.  
 25 BY MR. HACKNEY:

1 least raises the risk that if there's a material  
 2 change to the proposed order, the Swap counterparties  
 3 might be able to say that's not the order that we  
 4 mutually negotiated in advance of the motion so in my  
 5 view you haven't obtained the mutually negotiated  
 6 order.  
 7 MR. SHUMAKER: Objection, form, foundation.  
 8 BY MR. HACKNEY:  
 9 Q. That's a risk?  
 10 MR. SHUMAKER: Sorry. Objection to form,  
 11 foundation, calls for speculation.  
 12 A. Yeah. It is somewhat speculative, and I'd have to say  
 13 that risk has to be mitigated by the fact that I would  
 14 hope and anticipate that any proposed revisions to the  
 15 order would be discussed with the Court under the  
 16 guise of the obligations that the parties have to  
 17 reach a mutually agreeable order.  
 18 BY MR. HACKNEY:  
 19 Q. Okay. But if the Court enters an order that is not  
 20 mutually agreeable to the City and the Swap  
 21 counterparties, that could give the Swap  
 22 counterparties the right to terminate the optional  
 23 forbearance period?  
 24 MR. SHUMAKER: Objection, calls for  
 25 speculation.

1 Q. Did you -- but did -- did you approve the form of this  
 2 order before it was submitted for the City?  
 3 A. As I said, I looked at the motion and the order was  
 4 probably attached to the motion. I just don't  
 5 remember looking at the order specifically. What I  
 6 remember is, after we reached the agreement in  
 7 principle and signed the forbearance agreement, having  
 8 discussions without speaking to them, my counsel,  
 9 okay, was -- let's document the agreement and get the  
 10 motion filed.  
 11 Q. Do you know who -- do you know whether anyone  
 12 approached the service corporations to get their views  
 13 on the order?  
 14 A. I do not.  
 15 Q. You certainly didn't?  
 16 A. No.  
 17 Q. And let me just tie this up for a record because I was  
 18 asking it colloquially, but it's under section 1.3(j)  
 19 of the forbearance agreement. The City needs to  
 20 obtain a final and non-appealable order on its motion  
 21 before September 16th, 2013 or else the Swap  
 22 counterparties have the right to terminate the  
 23 forbearance agreement; isn't that correct?  
 24 A. Yeah.  
 25 MR. SHUMAKER: Objection to the summary.

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1 A. Yeah. The agreement speaks for itself and there are  
 2 other provisions in there, but the net effect is that  
 3 you have to do -- obtain the order within 60 days  
 4 and --  
 5 BY MR. HACKNEY:  
 6 Q. Yeah.  
 7 A. -- I believe that's -- if you represent that's the  
 8 correct date, then I have no reason to disagree.  
 9 Q. And there are actually two elements to this here. One  
 10 of them is that, whatever the order says, it has to be  
 11 final and unappealable by September 16, correct?  
 12 MR. SHUMAKER: Objection, document speaks  
 13 for itself.  
 14 A. I'll have to rely on the documents speaking to itself  
 15 because without going through the whole -- I do recall  
 16 that there was an obligation that the order be a final  
 17 order. I don't recall specifically the -- the  
 18 unappealable aspect of it. I do -- I do see in J that  
 19 there's a 60-day provision going forward.  
 20 BY MR. HACKNEY:  
 21 Q. And do you see it says final and unappealable in J?  
 22 A. I'm sorry, I'm looking through it.  
 23 Q. No, that's okay. You what, the court order  
 24 definition?  
 25 A. Yeah. It doesn't say it in J as defined in 2.1(d),

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1 and that's what I was looking. Unfortunately I -- I  
 2 remembered it was in 2. It's D. It's 2.1(d).  
 3 Q. And you --  
 4 A. It says obtain entry of a final and unappealable  
 5 order, yeah.  
 6 Q. Are you aware that that's actually not possible as we  
 7 stand here today under the rules of the bankruptcy  
 8 code?  
 9 MR. SHUMAKER: Objection, calls for  
 10 speculation and a legal conclusion.  
 11 A. Yeah, here again, since I'm not acting as an attorney,  
 12 I'm going to defer from asking (sic) that question. I  
 13 do understand that there are time frames involved  
 14 under the bankruptcy code and under the rules as to  
 15 whether or not they can occur.  
 16 BY MR. HACKNEY:  
 17 Q. So you don't know whether or not it's -- it's  
 18 potentially impossible for the City to comply with  
 19 this --  
 20 A. Yeah, I would --  
 21 MR. SHUMAKER: Same objection.  
 22 A. I would not opine as to whether or not it's possible.  
 23 BY MR. HACKNEY:  
 24 Q. Have you or your representatives had any  
 25 communications with the Swap counterparties regarding

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1 whether they will extend that 60-day deadline we were  
 2 just discussing?  
 3 A. I have not had any discussions. I am unaware as to  
 4 whether or not any of my representatives have.  
 5 Q. You haven't directed them to have any, correct?  
 6 A. No, not directly.  
 7 Q. It's correct that you have not directed them?  
 8 A. It is correct -- it is correct that I have not  
 9 directed them, but generally, just so we have an  
 10 understanding here, once the forbearance agreement was  
 11 reached, my counsel and representatives have all the  
 12 authority necessary to do what's required to get the  
 13 order entered.  
 14 Q. Okay. Well, let me ask it this way, which is, there  
 15 are a number of provisions that are in this order that  
 16 I -- I guess I'm maybe having the sense that you're  
 17 not intimately familiar with as you sit here today; is  
 18 that correct?  
 19 A. Yes, I know generally what the provisions of the order  
 20 are. I know that the motion speaks to both the  
 21 assumption and the 9019 agreement and their different  
 22 principles, but the specific inner workings of the  
 23 order, I will defer to my counsel on those.  
 24 Q. Let me ask you about some of them then. Look on the  
 25 page 3 at E which is entitled Consent to Use of Casino

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1 Revenues.  
 2 A. Um-hm. Um-hm.  
 3 Q. And it contains a finding that says, "Pursuant to  
 4 section 1.2 of the forbearance agreement, UBS AG and  
 5 MLCS consent to the City's use of the casino revenue  
 6 as set forth in the forbearance agreement."  
 7 Do you see that?  
 8 A. Yes, I do.  
 9 Q. And then it says, "The consent of the UBS AG and MLCS  
 10 will allow the City immediate access to its casino  
 11 revenue as set forth in forbearance agreement and no  
 12 other or further consents are required."  
 13 Do you see that?  
 14 A. Yes, I do.  
 15 Q. Okay. Is this an important part of the proposed  
 16 order?  
 17 MR. SHUMAKER: Objection to form.  
 18 A. Well, first, the document speaks for itself. Two --  
 19 BY MR. HACKNEY:  
 20 Q. It doesn't speak for itself in terms of whether it's  
 21 important.  
 22 A. Well, let me respond. Two, to the extent this is an  
 23 order into a motion, it -- as we had discussed earlier  
 24 today, it's important that we have unfettered access  
 25 to the casino revenue; and, three, I do think this is



1 a central aspect of the forbearance agreement.  
 2 Q. Okay. If the Court refuses to grant the relief  
 3 specified here, will the Swap counterparties have the  
 4 right to terminate the forbearance agreement in your  
 5 view?  
 6 MR. SHUMAKER: Objection, calls for a legal  
 7 conclusion.  
 8 You can answer.  
 9 A. Yeah, they'll have whatever rights they have under the  
 10 forbearance agreement which might include termination.  
 11 BY MR. HACKNEY:  
 12 Q. Take a look at paragraph G, arms' length agreement.  
 13 The forbearance agreement was negotiated at arms'  
 14 length and in good faith by all parties, and it goes  
 15 on to say, "UBS AG and MLCS are not insiders of the  
 16 City as that term is defined in bankruptcy code  
 17 section 10131?"  
 18 A. Um-hm.  
 19 Q. And this is the important part I want you focus on,  
 20 "The parties entry into and performance under the  
 21 forbearance agreement does not violate any law,  
 22 including the bankruptcy code, and does not give rise  
 23 to any claim or remedy against the parties thereto  
 24 except as may be expressly set forth in this order or  
 25 in such agreement."

1 provision does.  
 2 Q. Is this an important part of the order --  
 3 MR. SHUMAKER: Objection.  
 4 BY MR. HACKNEY:  
 5 Q. -- from the City's perspective?  
 6 MR. SHUMAKER: Objection, form.  
 7 A. Yes, without giving rise to the nomenclature  
 8 important. As I said before, it's important that we  
 9 have certainty and -- regarding the use of the casino  
 10 revenue, and this term certainly looks like it would  
 11 provide that.  
 12 BY MR. HACKNEY:  
 13 Q. Okay. And not only does it provide you the certainty  
 14 about the casino revenue, it provides you with the  
 15 certainty that you will not be -- the City will not be  
 16 subject to any liability as a result of performing  
 17 under the forbearance agreement, correct?  
 18 A. Yes, I believe so.  
 19 Q. And it does the same thing for the Swap  
 20 counterparties, correct?  
 21 A. Yes, I believe so.  
 22 Q. Take a look at paragraph 4 on the bottom of page 4.  
 23 A. Um-hm.  
 24 Q. It says, "The forbearance agreement is approved in its  
 25 entirety. The City is authorized to perform its

1 Do you see that?  
 2 A. Yes.  
 3 Q. Do you remember earlier we talked about whether if the  
 4 City performed under the forbearance agreement it  
 5 would be able to do so without the fear of liability  
 6 to other parties?  
 7 A. Yes.  
 8 Q. And your understanding was it could do so, correct?  
 9 A. Yes.  
 10 Q. And that so could the Swap counterparties, correct?  
 11 A. Yes.  
 12 Q. And isn't this provision one part of the basis for  
 13 your -- for that view?  
 14 A. Well, you know, as I said, this provision draws a  
 15 legal conclusion and I have not independently or as an  
 16 attorney done an analysis of what this provision will  
 17 provide, but that's my understanding, yes.  
 18 Q. Are you just reading this provision for the first  
 19 time?  
 20 A. No. I think I -- as I said, I think I saw the order  
 21 attached to the motion. I just didn't recall it  
 22 immediately or as terms by itself. I was more  
 23 familiar with the motion because I read that in  
 24 conjunction with my affidavit that was attached to the  
 25 motion, but I think that's the effect of what this

1 obligations that arise from the forbearance agreement  
 2 pursuant to Bankruptcy Rule 9019, and any actions  
 3 taken heretofore in furtherance of these obligations  
 4 are hereby ratified."  
 5 Do you see that?  
 6 A. Yes, I do.  
 7 Q. You understand that to be a provision by which the  
 8 Court provides a judicial authorization to the City  
 9 and the Swap counterparties to perform under the  
 10 forbearance agreement, correct?  
 11 MR. SHUMAKER: Objection, calls for a legal  
 12 conclusion.  
 13 MR. HACKNEY: I'm just asking for his  
 14 assumption.  
 15 A. My understanding --  
 16 MR. SHUMAKER: Just to make that clear.  
 17 A. My understanding is that is the practical effect of  
 18 this provision.  
 19 BY MR. HACKNEY:  
 20 Q. Okay. Is this an important part of this order?  
 21 MR. SHUMAKER: Objection to form.  
 22 A. I think approval of the forbearance agreement is an  
 23 important part of this order, yes.  
 24 BY MR. HACKNEY:  
 25 Q. But also the judicial authorization to perform.

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1 **A. Yes, I believe so.**  
 2 **Q. Let me -- let me cut through some of these provisions,**  
 3 **which is, what the parties really want the Court to do**  
 4 **here, both the City and Swap counterparties, is to**  
 5 **tell them you are allowed to perform this forbearance**  
 6 **agreement without fear of reprisal from any third**  
 7 **party, correct?**  
 8 **MR. JURGENS:** Objection to form.  
 9 **MR. SHUMAKER:** Objection to form.  
 10 **A. Yeah, and I also think it calls for a legal**  
 11 **conclusion, but let me see if I can answer the**  
 12 **question. The motion sets forth what I believe are**  
 13 **the conditions necessary for approval of the**  
 14 **forbearance agreement. This order seeks to approve**  
 15 **that motion, so to the extent it does that, yes, I**  
 16 **believe it authorizes the parties to perform and gives**  
 17 **them the authority to go forward to a motion according**  
 18 **to its terms which incorporates by definition the**  
 19 **forbearance agreement, so yeah.**  
 20 **BY MR. HACKNEY:**  
 21 **Q. And they can do so without fear of liability to third**  
 22 **parties.**  
 23 **A. You know, that -- that impacts upon -- I believe that**  
 24 **may impact upon the question is not atypical in some**  
 25 **orders as far as -- as we discussed earlier today,**

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1 **releases, third party liability, exculpation, those**  
 2 **are legal conclusions. My understanding is that the**  
 3 **way the order is -- is worded that, yes, it allows the**  
 4 **parties to go forward.**  
 5 **COURT REPORTER:** To --  
 6 **THE WITNESS:** To go forward.  
 7 **MR. HACKNEY:** Without liability to third  
 8 parties.  
 9 **BY MR. HACKNEY:**  
 10 **Q. I think we're going over ground we've gone over**  
 11 **before.**  
 12 **A. Yeah. I believe that's the intent of the order, yes.**  
 13 **Q. Okay. So one of the benefits of the order to the City**  
 14 **and the Swap counterparties is that to the extent**  
 15 **there are third party claims -- and I know you're not**  
 16 **conceding that there are any --**  
 17 **A. Right.**  
 18 **Q. -- it clears them away.**  
 19 **A. I believe that's accurate, which is one of the -- yes.**  
 20 **I believe that's accurate.**  
 21 **Q. And I take it the City is not willing to agree to an**  
 22 **order which ensures the protection of third party**  
 23 **claims?**  
 24 **MR. SHUMAKER:** Calls for speculation,  
 25 objection.

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1 **A. Yeah, that's -- you know, there are so many -- there**  
 2 **are -- there's a possibility there may be conditions**  
 3 **under which the City could agree, so I don't want to**  
 4 **be misleading in saying that there are no**  
 5 **circumstances when -- but generally speaking, this**  
 6 **order, the motion and forbearance agreement, are the**  
 7 **expectations of the parties.**  
 8 **Q. Are you aware of the possibility that if third party**  
 9 **claims are preserved, that that could be a**  
 10 **sufficiently material change in this order for the**  
 11 **Swap counterparties to be able to terminate?**  
 12 **A. It might be.**  
 13 **Q. Have you had any conversations with them about that**  
 14 **subject?**  
 15 **A. I have not personally had any conversations with them**  
 16 **about that subject.**  
 17 **Q. Have you directed folks that report to you to do so,**  
 18 **either advisors or personal --**  
 19 **A. As I've said earlier, I've given the authority to my**  
 20 **counsel and team to have all discussions that are**  
 21 **necessary to address any contingencies that could**  
 22 **arise, and they may well have had those discussions.**  
 23 **I'm just not aware of any with specificity.**  
 24 **Q. Okay. But you gave a general direction.**  
 25 **A. Right.**

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1 **Q. You didn't give someone a specific direction to hey,**  
 2 **go find out what the Swap counterparties think if**  
 3 **third party rights are preserved, what are they going**  
 4 **to do, do we have a problem? You never gave that**  
 5 **specific direction.**  
 6 **A. No, I didn't, and let's -- you know, let's make sure**  
 7 **we're clear on this. As I said, once we reached the**  
 8 **agreement, you know, my direction was okay, let's get**  
 9 **it done and let's document and do whatever's necessary**  
 10 **to do that, so I did not give a specific direction in**  
 11 **that regard.**  
 12 **Q. Let me ask you real quickly. One of the other**  
 13 **benefits of the forbearance agreement to the City is**  
 14 **that it resolves litigation that the City's currently**  
 15 **in with Syncora, correct?**  
 16 **A. I would like to think so. To the extent it draws a**  
 17 **legal conclusion, I'd have to defer to my counsel, but**  
 18 **I like to think it does that, yes.**  
 19 **Q. So you think that the Court's order that we're looking**  
 20 **at here will actually moot pending litigations**  
 21 **involving the City and Syncora?**  
 22 **A. Perhaps not. For instance, and I haven't -- you know,**  
 23 **I haven't drawn a legal conclusion on this, but there**  
 24 **may be claims by the City against Syncora that survive**  
 25 **this order. I just don't know.**

1 Q. Okay. As the City's litigation against Syncora stands  
 2 currently, will the Court's order moot out that  
 3 litigation?  
 4 **A. I don't know.**  
 5 **MR. SHUMAKER:** Objection, calls for a legal  
 6 conclusion.  
 7 **A. Yeah, I was going to say I don't know. That -- that**  
 8 **calls for a legal conclusion and I have not**  
 9 **independently done that analysis.**  
 10 **BY MR. HACKNEY:**  
 11 Q. Okay. So it may, it may not, you don't know?  
 12 **A. It may, it may not. I don't know.**  
 13 **Q. The -- I want to talk about the source of proceeds for**  
 14 **any potential termination payment down the road. This**  
 15 **is a subject I discussed with Mr. Buckfire yesterday.**  
 16 **A. Um-hm.**  
 17 Q. The optional termination amount fluctuates over time  
 18 and is ultimately pegged on the day that you exercise  
 19 the option; isn't that correct?  
 20 **A. Yes, I believe that's correct.**  
 21 **MR. JURGENS:** Objection to form.  
 22 **BY MR. HACKNEY:**  
 23 **Q. So when we talk about these amounts, Mr. Orr, it's a**  
 24 **little bit difficult because we don't -- I can't tell**  
 25 **you you're going to have X amount of money to exercise**

1 **BY MR. HACKNEY:**  
 2 **Q. Okay. Now, let's link up the potential sizeable**  
 3 **termination payment that the City may have to marshal**  
 4 **if it wants to exercise the option with the City's**  
 5 **current financial capabilities.**  
 6 **A. Yes.**  
 7 **Q. Okay. Isn't it true that the City does not currently**  
 8 **have enough cash on hand to be able to fund a**  
 9 **termination payment that was in the range of 200**  
 10 **million dollars?**  
 11 **A. That is true.**  
 12 Q. Okay. That's part of the problem that you're working  
 13 on as emergency manager, right?  
 14 **A. That is certainly true.**  
 15 **Q. Do you know how much cash the City has today?**  
 16 **A. On any given day, we fluctuate approximately in the**  
 17 **neighborhood of I want to say 30 to 40 million**  
 18 **dollars. Right now that number may be a little bit**  
 19 **higher because we just went through one of our tax**  
 20 **collection periods in August.**  
 21 Q. I'm going to guess and ask you do you stay in almost  
 22 daily contact with your -- with your cash flow  
 23 forecast?  
 24 **A. Almost daily, yeah.**  
 25 Q. Yeah. That's probably an important aspect of running

1 it, but you understand that there is a distinct  
 2 possibility that the amount of the optional  
 3 termination payment will be a very sizable sum.  
 4 **MR. JURGENS:** Objection to form.  
 5 **A. I think that it's fair to say that although the**  
 6 **interest rates may fluctuate, they are not going to**  
 7 **fluctuate so greatly that it will reduce the**  
 8 **probability that that will be a sizable sum. You're**  
 9 **not going to go from zero points or two points to**  
 10 **36 percent at the Fed discount window.**  
 11 Q. Hopefully not or something's horrible happened.  
 12 **A. Yeah, or we're all in trouble, yeah. So you may**  
 13 **fluctuate, but the range of fluctuation is generally**  
 14 **within a fairly finite bandwidth, we hope.**  
 15 **Q. And I'm going to give you some notional amounts that**  
 16 **are based on comments your counsel has made in court,**  
 17 **just to try and get general agreement.**  
 18 **A. Sure.**  
 19 Q. But it's very possible that the amount of the  
 20 termination payment could be between 180 and 220  
 21 million dollars?  
 22 **MR. JURGENS:** Objection to form.  
 23 **A. I think that's fair. We certainly hope it's on the**  
 24 **lower end or lower of that scale, but that depends**  
 25 **what the rates are at any given day.**

1 the City.  
 2 **A. It's an important aspect of the City.**  
 3 **Q. Do you still project that you're going to run out of**  
 4 **cash by the end of the year?**  
 5 **A. If we don't have this agreement, there's a very real**  
 6 **chance, yes, in a steady state, we will run out of**  
 7 **cash.**  
 8 Q. And by -- what do you mean by a steady state?  
 9 **A. If we don't do anything such as secure this casino**  
 10 **revenue, if we don't go to the capital markets and**  
 11 **borrow additional funds, which appears unlikely which**  
 12 **the City has done every other year since 2008 to make**  
 13 **up the difference, yes, the projections show that by**  
 14 **December of this year, we will run out of cash.**  
 15 Q. Are those the pre-bankruptcy projections?  
 16 **A. Yes. I believe so.**  
 17 Q. Those are the projections that we'll get into in a  
 18 moment that -- but that assumes that the City's paying  
 19 its legacy expenditures on a current basis, right?  
 20 **A. Yes. As we have -- as we have represented, we intend**  
 21 **to continue doing that throughout the year.**  
 22 Q. The legacy expenditures?  
 23 **A. Well, certainly with regard to healthcare and other**  
 24 **employees, if we get this agreement, that may change**  
 25 **our risk for the termination payment.**

1 Q. Your view of those legacy expenditures in the  
 2 bankruptcy is that they are unsecured claims, correct?  
 3 **A. Yes. Many of them are, yes. There are some**  
 4 **expenditures that are secured with regard to the water**  
 5 **department and parking and some miscellaneous, but the**  
 6 **roughly 11 and a half, 12 billion dollars that we put**  
 7 **out there we view as unsecured.**  
 8 **Q. So let's go back to sourcing this termination payment.**  
 9 **A. Yes.**  
 10 **Q. It was my understanding of his testimony that**  
 11 **Mr. Buckfire who, by the way, is the individual tasked**  
 12 **with obtaining the City's post petition financing,**  
 13 **correct?**  
 14 **A. Yes.**  
 15 **Q. And is presumably the individual that's most**  
 16 **knowledgeable about that effort?**  
 17 **A. Yes.**  
 18 **Q. It was -- I'll represent to you that his testimony was**  
 19 **that the proceeds for the optional termination payment**  
 20 **would likely come from the post -- the proceeds of the**  
 21 **post petition financing?**  
 22 **A. Yes.**  
 23 **MR. JURGENS:** Objection to form.  
 24 **BY MR. HACKNEY:**  
 25 **Q. Is that also your understanding?**

1 Q. Okay. So I think there -- if I'm not mistaken, your  
 2 father was an amen minister.  
 3 **A. Great grandfather, grandfather and father.**  
 4 Q. So maybe --  
 5 **A. Yeah, took me back to -- over in the corner with the**  
 6 **deacons, yeah, took me back.**  
 7 Q. Okay. I won't compare myself to your father,  
 8 grandfather and great grandfather, but I can aspire.  
 9 **A. Yeah.**  
 10 **Q. So I do want to talk about -- this is important.**  
 11 **Okay. This is -- isn't it true that one aspect of the**  
 12 **DIP -- I'm not going to get into the others -- is that**  
 13 **the casino revenues will be pledged or anticipated to**  
 14 **be pledged as collateral for the post petition**  
 15 **financing?**  
 16 **A. Let me say this. That is certainly under**  
 17 **consideration.**  
 18 **Q. Okay. Now, isn't it also true, though, that the**  
 19 **casino revenues have not currently been freed up on a**  
 20 **permanent basis because the City has not currently**  
 21 **exercised the option, correct?**  
 22 **A. The certainty that we hope to get out of the**  
 23 **forbearance agreement has not been approved yet,**  
 24 **correct.**  
 25 **Q. Well, even if it is approved by the Court, you still**

1 **A. Yes.**  
 2 Q. Okay. Now, isn't it also true that the City hopes to  
 3 pledge the casino revenues as part of the collateral  
 4 package for the post petition financing?  
 5 **MR. SHUMAKER:** I'm going to object here.  
 6 We're getting into an area where it is incredibly  
 7 commercially sensitive as to what sort of post  
 8 petition financing that the City is seeking.  
 9 **MR. HACKNEY:** Let me not be rude. I will  
 10 tell you I'm just going to ask him questions that  
 11 Buckfire asked yesterday -- answered. So I'm not  
 12 going to try and play the whole thing, but there were  
 13 absolutely areas where Buckfire answered. I think  
 14 there were a lot of other people in the room that were  
 15 there. I think any of your colleagues --  
 16 **MR. SHUMAKER:** Okay, that's fine.  
 17 **MR. HACKNEY:** Any of your colleagues.  
 18 **MR. SHUMAKER:** I just want to caution you.  
 19 **MR. HACKNEY:** I understand. I understand  
 20 the sensitivity. There were absolutely areas, though,  
 21 that Buckfire talked about. This was one of them. I  
 22 mean can I get an Amen or --  
 23 (Consensus Amen.)  
 24 **A. Okay.**  
 25 **BY MR. HACKNEY:**

1 won't have exercised the option.  
 2 **A. That is true with regard to the optional termination**  
 3 **payment.**  
 4 Q. Right.  
 5 **A. Yes.**  
 6 **Q. And you need to exercise the option to terminate the**  
 7 **hedge, right?**  
 8 **A. Yes.**  
 9 Q. You need to terminate the hedge to terminate the  
 10 collateral agreement.  
 11 **A. I think that's --**  
 12 **MR. SHUMAKER:** Object to form, to the  
 13 extent calls for a legal conclusion.  
 14 **A. Yeah, without getting into legal conclusions --**  
 15 **COURT REPORTER:** I'm sorry. This is --  
 16 **BY MR. HACKNEY:**  
 17 **Q. You think it's a fair characterization that you need**  
 18 **to get the hedge terminated to get the collateral**  
 19 **agreement terminated?**  
 20 **A. Yes.**  
 21 **Q. And the good part for the City, if those things**  
 22 **happen, is that now you have unchanneled access to the**  
 23 **casino revenues going into the future?**  
 24 **A. Yes, as we've said today, that certainty is one of the**  
 25 **motivations to enter into the agreement.**

1 Q. But do you also understand that you can't currently  
 2 pledge the casino revenues to a post petition lender  
 3 in a -- prior to having exercised the option under the  
 4 forbearance agreement?  
 5 A. Well, let's be careful without drawing legal  
 6 conclusions. You can always enter into agreements  
 7 that have contingencies attached to them and the  
 8 parties will wait for those contingencies to occur.  
 9 That certainly has happened with a number of different  
 10 negotiations, not just in this case, but happens all  
 11 the time.  
 12 Q. That's fair that you absolutely -- you make a pledge  
 13 that's contingent on something else. But isn't it  
 14 true that, as a general matter, post petition lenders  
 15 typically like to make sure that they have clean  
 16 collateral before they make a loan that's secured by  
 17 that collateral?  
 18 MR. SHUMAKER: Objection, calls for  
 19 speculation.  
 20 A. I think that's generally a fair characterization;  
 21 however, there have been cases that I've been involved  
 22 with outside of this one where post petition lenders  
 23 have been willing to make pledges or commitments  
 24 subject to certain contingencies.  
 25 BY MR. HACKNEY:

1 mislead you. It is my assumption that, while they're  
 2 commercially sensitive, that's not going to be  
 3 forthcoming.  
 4 Q. Oh, really?  
 5 A. Yes.  
 6 Q. So just to tie it up, you tried to get a -- whether  
 7 it's credit enhancement or liquidity from the State  
 8 and the Feds, and your expectation is that you won't  
 9 be able to?  
 10 A. My understanding at the State level is that there's  
 11 certain prohibitions of the State law on the ability  
 12 of the State to lend to the City, and at the Federal  
 13 level my understanding is that it's not going to be  
 14 forthcoming, direct aid.  
 15 Q. Interesting. And what about credit enhancement by the  
 16 State?  
 17 A. Here again, it's highly commercially insensitive --  
 18 sensitive. I don't want to say anything that  
 19 forecloses it, but we -- let me answer it this way.  
 20 We are operating on the assumption that that will not  
 21 come -- be forthcoming.  
 22 Q. The casino revenues are about 170 million dollars a  
 23 year; isn't that correct?  
 24 A. Yeah, 170, 180 somewhere in there.  
 25 Q. Yeah. In fact, that -- it's interesting because the

1 Q. Isn't it your expectation today, though -- is it -- is  
 2 it your expectation today that any post petition  
 3 lender will want clear -- a clear lien on the casino  
 4 revenues before it's willing to lend? Is that your  
 5 current expectation?  
 6 A. Well, my current expectation is it might well want  
 7 clear lien before it's willing to fund. I would think  
 8 in many of the bankruptcy cases that I've been  
 9 involved in, post petition lenders, for instance, are  
 10 willing to make commitments subject to the Court  
 11 approving their super priority liens, and then once  
 12 that approval is granted, they fund the loan, so  
 13 that's fairly common.  
 14 Q. I'm going to confirm for the record that conversations  
 15 with the State of Michigan about providing DIP  
 16 financing or with the federal government about  
 17 providing DIP financing are still questions that you  
 18 will refuse to answer on the grounds of commercial  
 19 sensitivity?  
 20 MR. SHUMAKER: I think you can ask Mr. Orr  
 21 those questions. I don't want to -- I don't want to  
 22 categorically exclude you from doing that.  
 23 BY MR. HACKNEY:  
 24 Q. Are they commercially sensitive?  
 25 A. They are commercially sensitive, but I don't want to

1 DIP proceeds you're seeking are up to 350; is that  
 2 correct?  
 3 A. Here again, those are commercially sensitive, but I  
 4 think that's fair. Yes, I think that's fair.  
 5 Q. Okay. And that's the equivalent of two years' worth  
 6 of casino revenues, correct?  
 7 A. Yes.  
 8 Q. Okay. And that's something that you think you may be  
 9 able to get without having to pledge a clear lien on  
 10 the casino revenues, right?  
 11 A. No. What I'm trying to say is you can certainly enter  
 12 into commitments. I'm drawing commitments different  
 13 from funding. You can certainly have a lender which  
 14 is quite common in bankruptcy cases to make a  
 15 commitment subject to approval of its security  
 16 interest or priorities to actually fund.  
 17 Q. Okay.  
 18 A. So that can occur.  
 19 Q. So the fact that that can occur means that there can  
 20 be uncertainty in connection with the casino revenues  
 21 and it won't hamstring your DIP process, correct?  
 22 A. Yeah, it's not so much -- well, to a degree what  
 23 you're saying is correct. It's not so much  
 24 uncertainty with casino revenues because that's math.  
 25 It may be some uncertainty with regard to the ability

1 of the City to pledge those revenues to pay off any  
 2 post petition lending, and, here again, a lender might  
 3 well be willing to enter into an agreement subject to  
 4 having that insecurity removed to fund that --  
 5 Q. The fact of the matter is the DIP process is just  
 6 getting off the ground, correct?  
 7 A. I think that's fair to say.  
 8 Q. I think it's literally in the last couple days, right?  
 9 A. I think that's fair.  
 10 Q. So you don't know as you sit here today, and you  
 11 probably wouldn't tell me if you did --  
 12 A. Right.  
 13 Q. -- what the current appetite of the lenders is for  
 14 uncertainty around the casino revenues, correct?  
 15 A. That -- that I think is part of the process. Yeah.  
 16 Q. Now, have you attempted to borrow money -- has the  
 17 City attempted to borrow money and secure those  
 18 borrowings with a lien on something other than the  
 19 casino revenues?  
 20 A. No.  
 21 Q. Is the -- is the City considering pledging art as  
 22 collateral?  
 23 MR. SHUMAKER: Again, I'm going to get into  
 24 now the -- this is a very commercially sensitive  
 25 subject.

1 A. Yeah.  
 2 MR. SHUMAKER: I'm going to say that's --  
 3 we're drawing a line. We're getting into specifics,  
 4 and I'm going to instruct him not to answer.  
 5 MR. HACKNEY: I -- okay. That's just all I  
 6 need to know for the record.  
 7 BY MR. HACKNEY:  
 8 Q. Okay. Now, I want to talk about revenue streams other  
 9 than casino revenues.  
 10 A. Right.  
 11 Q. The City does have other revenue streams; isn't that  
 12 correct?  
 13 A. Yes.  
 14 Q. In fact, on an annual basis, the City's revenues are  
 15 in the neighborhood of a billion to a billion 1,  
 16 correct?  
 17 A. Yes, I think that's fair.  
 18 Q. And on an annual basis, the casino revenues are in the  
 19 range of 170 to 180 million?  
 20 A. Yes.  
 21 Q. Roughly a little less than 20 percent of the City's  
 22 annual revenues.  
 23 A. 17 and a half, 18 percent.  
 24 Q. Now, there's somebody who studied. Okay.  
 25 So have you engaged the possibility of

1 MR. HACKNEY: I'm just asking the  
 2 questions. You guys got to decide --  
 3 MR. SHUMAKER: I'm just stating my  
 4 objection, and the fact of the matter is, as was  
 5 stated yesterday with -- with Mr. Buckfire, is that  
 6 when we get into the -- as you said, the RFP, the DIP  
 7 RFP process is just started. We're not going to go  
 8 into strategy or what the terms are or what the  
 9 specifics are, because we do not believe that this is  
 10 something that would be down to the City's benefit.  
 11 If it's negotiated, gets public, and bidders' --  
 12 MR. HACKNEY: Sure.  
 13 MR. SHUMAKER: -- identities are revealed  
 14 and all these things --  
 15 MR. HACKNEY: I don't mean to be rude, and  
 16 I totally respect the speech. I'm just interested in  
 17 time, and for me the upshot is are you going to let  
 18 him answer or not?  
 19 MR. SHUMAKER: Well, if will you repeat the  
 20 question, I'll tell you.  
 21 MR. HACKNEY: I can't remember the question  
 22 anymore.  
 23 A. Have you considered --  
 24 MR. HACKNEY: Are you going to pledge the  
 25 art --

1 pledging other revenue streams as security for the  
 2 DIP?  
 3 A. This is a commercially sensitive area. In addition,  
 4 there are potentially legal issues that must be  
 5 resolved. Suffice it to say we have examined a number  
 6 of different possibilities, looking at what options we  
 7 might have given the City's various ordinary revenue  
 8 streams.  
 9 Q. And are there other revenue streams that could be  
 10 pledged? I'm not going to ask you whether you are  
 11 going to pledge them, whether you will, whether you  
 12 plan to, but are there other revenue streams that  
 13 could be pledged?  
 14 A. There might be. There might be, but there's -- here  
 15 again, there's certain legal issues regarding any  
 16 revenue streams that have to be resolved.  
 17 Q. Let me ask you about the -- the use of the casino  
 18 revenues if you're able to obtain them.  
 19 A. Right.  
 20 Q. So just in terms of level setting --  
 21 A. Right.  
 22 Q. -- the casino revenues are approximately 15 million a  
 23 month.  
 24 A. Yes, I think that's fair.  
 25 Q. Net of the Swap payment which is still made on a

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1 monthly basis under the forbearance agreement --  
 2 A. Yes.  
 3 Q. -- you net about 11 million?  
 4 A. I think that's correct.  
 5 Q. Okay. Your claim is that these revenues are necessary  
 6 to the operation of the City. I think we discussed  
 7 that earlier.  
 8 A. Yes.  
 9 Q. And in fact it's your expectation that you will use  
 10 these revenues to fund the reinvestment program that  
 11 you have planned with respect to the 1.25 billion  
 12 dollars of reinvestment in the City over the next ten  
 13 years?  
 14 A. Yes, that's correct. An average of 125 million a year  
 15 which a big component of it is this revenue.  
 16 Q. Okay. So fair statement, you're going to take the  
 17 casino revenues and you're going to plow them into the  
 18 City, correct?  
 19 A. More -- I mean, money goes into a bathtub, but yes.  
 20 The casino -- we don't have the casino revenue. We  
 21 have no other source to make reinvestment in the City.  
 22 Q. And that's what you want to do?  
 23 A. Yes.  
 24 Q. And so as a creditor, I'm going to make the obvious  
 25 point that you don't plan to take the casino revenues

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1 A. Yes.  
 2 Q. -- effectively a pot of 2 billion dollars of bonds.  
 3 A. Correct.  
 4 Q. And I want to distinguish between two concepts and  
 5 make sure that we're on the same page because I think  
 6 that we are.  
 7 A. Right.  
 8 Q. The first point is that you do agree that you're not  
 9 going to take the casino revenues and put it on top of  
 10 the 2 billion pot to make a larger recovery for  
 11 creditors.  
 12 A. Yes, that's fair.  
 13 Q. But you are saying that there could be some value to  
 14 the creditors of a revitalized Detroit because that  
 15 Detroit will be more able to perform under the  
 16 2 billion dollars in bonds that you're going to give  
 17 them as part of your proposal?  
 18 A. That's correct.  
 19 Q. Okay. Did I summarize accurately the distinction you  
 20 were trying to draw there?  
 21 A. Yes. Yes. There's a broader concept about the need  
 22 to revitalize the City and grow beyond just the  
 23 interest of the creditors. It's also for the citizens  
 24 and residents and future of the City.  
 25 Q. Oh, absolutely. I understand that.

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1 and give them to the unsecured creditors, correct?  
 2 A. I think that's generally a fair characterization.  
 3 Q. So isn't it fair that other than perhaps certainly  
 4 benefitting the people of Detroit if you reinvested in  
 5 the City, the creditors themselves will not see their  
 6 recoveries enhanced by the fact that the City has  
 7 gained access to these casino revenues, correct?  
 8 MR. SHUMAKER: Objection, calls for  
 9 speculation.  
 10 A. Yeah, I'm going to be careful here because one of the  
 11 things we've offered in our proposal, June 14th  
 12 proposal, is a 2 billion dollar note that has some  
 13 capacity to fluctuate. Generally speaking, your  
 14 statement is true, but there's another concept that  
 15 without this reinvestment there's a very real chance  
 16 that the City will have no chance to stabilize and  
 17 grow and the creditors will see no opportunity for any  
 18 benefit because the City would have an inability of --  
 19 continue to decline, quality of life will continue to  
 20 decline, revenue from other streams will continue to  
 21 decline, and the City's ability to satisfy its  
 22 obligations to the creditors will continue to decline.  
 23 Q. Now, I understand that distinction, and we're talking  
 24 now about the proposal you've made to creditors that  
 25 you would give all of the unsecureds --

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1 A. But, yes, that's generally -- no direct benefit from  
 2 the casino revenue.  
 3 Q. Consistent with what we've just discussed then, you  
 4 haven't undertaken an analysis to show how much  
 5 creditor -- unsecured creditor recoveries will be  
 6 enhanced if the forbearance agreement is approved,  
 7 because you intend to use the money to reinvest in the  
 8 City.  
 9 A. No. I'm not sure that's true. I mean, that's why I  
 10 was saying before, part of it is enhancing the  
 11 stability of the City and its ability to meet or  
 12 actually to provide for that 2 billion dollar note.  
 13 It depends on large part on the ability to stabilize  
 14 the City.  
 15 Q. I understand that as a general concept, but I meant  
 16 have you undertaken actually any actual analysis of  
 17 the potential Delta 2 creditor recovery?  
 18 A. Oh, from the 120 -- from the casino revenue?  
 19 Q. Right.  
 20 A. Yes, I believe we have.  
 21 Q. And what does it show?  
 22 A. Here again, that's -- it's sensitive and, in addition,  
 23 I believe those discussions were caught up in  
 24 discussions I had with counsel, so I'm going to have  
 25 to decline.

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1 Q. Those are privileged communications?  
 2 A. I believe so.  
 3 Q. So the analysis of how my client Syncora, as an  
 4 unsecured creditor, would do if the assumption motion  
 5 is denied versus how it will do if its granted, that's  
 6 something that you cannot speak to?  
 7 A. Right, because it goes into the analysis, as we said  
 8 earlier today, what would happen if it were denied,  
 9 what the options would be to the City, what litigation  
 10 risk would happen, what would be caught up in the  
 11 existing litigation, all those issues.  
 12 Q. Let me hand you Orr Exhibit Number 3.  
 13 **MARKED FOR IDENTIFICATION:**  
 14 DEPOSITION EXHIBIT 3  
 15 12:30 p.m.  
 16 **BY MR. HACKNEY:**  
 17 Q. It's even in color. One large view for you. I don't  
 18 mean that di --  
 19 A. Okay.  
 20 Q. Sorry.  
 21 A. I know you didn't. Okay.  
 22 Q. Yeah, okay. Cringeworthy, awkward. I apologize.  
 23 **THE WITNESS:** Can we go off the record for  
 24 a second?  
 25 **MR. HACKNEY:** Yeah.

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1 June 14, 2013 meeting with creditors, correct?  
 2 A. Yes, I and my team put this together.  
 3 Q. And the best of your knowledge, this is a --  
 4 A. True and correct copy.  
 5 Q. -- true and correct copy?  
 6 A. Yes. I have no reason to believe this is not a true  
 7 and correct copy, in color.  
 8 Q. Great. Please don't --  
 9 A. Okay. This is --  
 10 Q. And obviously -- we haven't talked about this, but  
 11 Ernst & Young was retained to -- by the City to  
 12 undertake efforts to understand the City's cash flow  
 13 forecast, among other things, correct?  
 14 A. Yes, in addition -- yes.  
 15 Q. And I know that you're involved in all aspects of the  
 16 City's operation as emergency manager, but isn't it  
 17 true that Ernst & Young is the entity responsible for  
 18 preparing the City's cash flow forecasts?  
 19 A. Yes. I am not an account; they are. Yes.  
 20 Q. Okay. So while I'm certain that you have reviewed  
 21 their work product --  
 22 A. Yes.  
 23 Q. -- when it comes to actually compiling the forecast  
 24 itself, if I wanted to ask about how was this number  
 25 arrived at or this projection, I would have to ask

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1 **VIDEO TECHNICIAN:** The time is 12:30 p.m.  
 2 (Discussion off the record at 12:30 p.m.)  
 3 (Back on the record at 12:31 p.m.)  
 4 **VIDEO TECHNICIAN:** We are back on the  
 5 record the time is 12:32 p.m.  
 6 **BY MR. HACKNEY:**  
 7 Q. Mr. Orr, I am going to play it by the book --  
 8 A. Okay.  
 9 Q. -- from here on out, just to be safe.  
 10 A. Sure.  
 11 Q. And to the extent any of that was on the record, I do  
 12 want to offer a fulsome apology. That was an  
 13 inadvertent reference.  
 14 A. No apology necessary. To the extent anybody thinks  
 15 there was an apology necessary, it's not.  
 16 Q. Okay. Well, I appreciate that. Very gracious of you.  
 17 So in the motion to assume the forbearance  
 18 agreement, the City makes the claim that the City is  
 19 currently in a liquidity crisis; isn't that correct?  
 20 A. Yes.  
 21 Q. And that's something that you obviously agree with,  
 22 right?  
 23 A. Yes.  
 24 Q. Now, you prepared this proposal for creditors that  
 25 I've marked as Orr Exhibit 3 in anticipation of your

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1 Ernst & Young.  
 2 A. You would -- yes, they'd be the best evidence of how  
 3 that was done.  
 4 Q. Okay. You might have knowledge about one number here  
 5 one number there because someone specifically  
 6 discussed it with you, but you don't have  
 7 comprehensive knowledge of how all the numbers in the  
 8 cash flow forecast were arrived at.  
 9 A. No. Usually the process is the financial advisor and  
 10 the -- Ernst & Young, for instance, would do the deep  
 11 dive and then present me with a report and analyses,  
 12 but they would have the in-depth knowledge.  
 13 Q. Fair enough. Fair enough.  
 14 You see their work product and you go over  
 15 with it with them. You're not the one that compiles  
 16 their work product.  
 17 A. That is correct.  
 18 Q. Obviously, in compiling this report, you, Ernst &  
 19 Young, your other advisors endeavored to be as  
 20 accurate as you could in assembling the information  
 21 contained in this report?  
 22 A. Yes.  
 23 Q. And that also would apply to forecasts that you were  
 24 making. You tried to be as accurate as possible about  
 25 making forecasts.



1 A. Yes.  
 2 Q. So let me draw your attention, if I could, to page 38  
 3 of this report.  
 4 A. Yes.  
 5 Q. Now, this is -- this is titled A Look At the Future in  
 6 the Absence of Restructuring Initiatives. Do you see  
 7 that?  
 8 A. Yes.  
 9 Q. Okay. So what this table is doing is it's saying here  
 10 is where the City of Detroit is headed without any  
 11 increases in expenditures necessary to restore City  
 12 services to adequate levels; without additional  
 13 investments by the City and services assets or  
 14 infrastructure; and, last, without any changes to  
 15 legacy liabilities, correct?  
 16 A. Yes, that's correct.  
 17 Q. Now, we're going to talk about each of these three  
 18 things in a moment, but the fact of the matter is each  
 19 of those three things have changed during the  
 20 bankruptcy process in terms of what legacy liabilities  
 21 are getting paid or what reinvestments are being made,  
 22 correct?  
 23 A. To some degree they have and to some degree they  
 24 haven't. We are still in a steady state with, for  
 25 instance, salary, overtime, fringe, health benefits,

1 to June 30, right?  
 2 A. Yeah, July 1 to June 30.  
 3 Q. Right. Yeah. Okay.  
 4 And the years that are listed here, it's  
 5 your understanding these are the fiscal years,  
 6 correct?  
 7 A. 2008 to 2012 are fiscal year actuals. 2013 were  
 8 preliminary forecasts, at this time forward.  
 9 Q. That's right. This was back in June, so you had a  
 10 little -- there was a stub period on June 2013?  
 11 A. Yes.  
 12 Q. When I talked to Mr. Buckfire yesterday, he indicated  
 13 that it was his understanding that these years are  
 14 July 1, 2013 through June 30, 2014 --  
 15 A. That's correct.  
 16 Q. -- 2014 here?  
 17 A. That is correct.  
 18 Q. Now, the forecast that the City indicates when it  
 19 comes to total revenues for the fiscal year that we're  
 20 currently in is about 1,082,800,000 in total revenue,  
 21 correct?  
 22 A. That is correct. That's down about 30-some-odd  
 23 million dollars from the prior year.  
 24 Q. Right. And if you look at the operating expenditures,  
 25 that shows that you anticipate 685.7 million in

1 operating expenses, with regard to secure debt  
 2 service, pension contributions which remain  
 3 underfunded, health benefits are still in a steady  
 4 state. We are hopefully in a steady state on a  
 5 revenue side as well.  
 6 Q. I was just making --  
 7 A. But, yes.  
 8 Q. I was making a simpler point, which is, for example --  
 9 we'll go into this, but like you're not paying the  
 10 service payments related to the COPs during the  
 11 bankruptcy?  
 12 A. I believe that's correct.  
 13 Q. Okay. And I think you're deferring pension  
 14 contributions.  
 15 A. A portion of the pension contributions. For instance,  
 16 this year I think we had an obligation of  
 17 approximately 131 million dollars. I think we paid 31  
 18 million of it.  
 19 Q. Okay. So a portion.  
 20 A. But that is the steady state. The City regularly  
 21 defers pension contributions.  
 22 Q. True, true. We'll get into this in a moment here,  
 23 but --  
 24 A. Right.  
 25 Q. -- now, the fiscal year of the City runs from June 30

1 operating expenditures during that -- this fiscal year  
 2 that we're currently in, correct?  
 3 A. That is correct.  
 4 Q. Now, if you just viewed these things in isolation, you  
 5 are representing here a net operating surplus of just  
 6 under \$400,000,000, correct?  
 7 A. That's roughly, correct, yes.  
 8 Q. Now, the -- and the operating expenditures are the  
 9 amount of money that you forecast needing to operate  
 10 the City as you found it with its current level of  
 11 services when you were appointed, correct?  
 12 A. That is correct.  
 13 Q. Okay. So that's the point of the caveat at the top,  
 14 which is you have the aim of improving services in the  
 15 City, but when you compiled this expenditures  
 16 analysis, this was based on here is how we currently  
 17 do things in the City of Detroit, providing the level  
 18 of services we currently provide, and here is how much  
 19 it costs?  
 20 A. That is correct.  
 21 Q. Now, isn't it true that -- we've talked about the fact  
 22 that while the casino revenues fluctuate between 170  
 23 and 180 million, even if you took them out of this  
 24 forecast, you would still have a net operating surplus  
 25 of \$227,000,000, correct?

1 A. Well --  
 2 Q. Put aside --  
 3 A. Yeah, put aside --  
 4 Q. I understand.  
 5 A. -- debt service and pension contributions, healthcare,  
 6 but just looking at operating expenses, that would be  
 7 correct.  
 8 Q. And -- that's right. I'm emphatically doing that.  
 9 I'm referring to --  
 10 A. Right.  
 11 Q. -- this line. Okay?  
 12 A. Right.  
 13 MR. SHUMAKER: Which line, Steve?  
 14 MR. HACKNEY: The line that says net  
 15 operating surplus.  
 16 A. It's in bold. It's the 1, 2, 3, 4th line down.  
 17 BY MR. HACKNEY:  
 18 Q. And, I mean, can we agree it wasn't an accident that  
 19 whoever compiled this broke the legacy expenditures  
 20 down below the operating expenditures, correct?  
 21 A. Yes. I'm sure that was intentional.  
 22 Q. Right. And that's because, for example, while  
 23 payments to the COPs are likely very important to the  
 24 COP holders --  
 25 A. Right.

1 A. Yes. There's one caveat to that. It is front end  
 2 loaded that almost 500,000,000 of that will be spent  
 3 in the first six years going forward, but that's the  
 4 average over ten years.  
 5 Q. Okay. So if -- there's some element of lumpiness to  
 6 it.  
 7 A. Yes.  
 8 Q. It was 500,000,000 over the first --  
 9 A. Over the first six years.  
 10 Q. Oh, so that's less than 125 a year.  
 11 A. No, it's more. It's 500,000,000 over the first six  
 12 years -- I believe it's on page 47 -- maybe on page 47  
 13 or 48. If you look on page 47, not to go out of  
 14 sign -- but if you look at the second to the last bold  
 15 line, it says reinvestment in the City. Starting in  
 16 2014 you'll see, for instance, the total reinvestment  
 17 in the City will be \$188.5 million dollars.  
 18 Q. I'm sorry, I blanked on you. What page are you on?  
 19 A. Oh, I'm sorry. Page 47, the second to the last bold  
 20 line, you will see that in the first year of the  
 21 preliminary forecast -- this is in a steady state, so  
 22 we're comparing steady state to steady state --  
 23 without any adjustments that that reinvestment  
 24 expense, total reinvestment in the City will be 188.5  
 25 million dollars and --

1 Q. -- they're not something that you actually use to run  
 2 the City.  
 3 A. Well, yes, it's not an operating expense.  
 4 Q. Right.  
 5 A. It's a debt service.  
 6 Q. Right.  
 7 A payment to a police officer for their  
 8 time or for their benefits, that is an operating  
 9 expense?  
 10 A. Absolutely.  
 11 Q. And that's all covered in the operating expenditures.  
 12 A. Yeah. Salary over time and fringe benefits, yes.  
 13 Q. Okay. So if you follow along in my hypothetical and  
 14 we took out what we'll call a hundred -- we'll split  
 15 the difference. We'll say it's 175,000,000.  
 16 A. Sure.  
 17 Q. I'll tell you in here it's projected to be 170 -- why  
 18 don't we use the number here. If we took the 170 out,  
 19 you'll still have 227.2 million dollars to work with  
 20 from the standpoint of a net operating surplus,  
 21 correct?  
 22 A. Yes, roughly \$230,000,000.  
 23 Q. Okay. Your reinvestment plan I believe calls for a  
 24 billion and a quarter over ten years and it's commonly  
 25 described as being about \$125,000,000 a year.

1 Q. Oh, I see it. Okay.  
 2 A. Third line up from the bottom.  
 3 But if you wanted to average it, it would  
 4 be 125 over ten years.  
 5 Q. Oh, I see. And it drops off quite a bit in --  
 6 A. Right. After the six years, it drops off to \$32.8  
 7 million.  
 8 Q. And if I recall, what I had said to you earlier is  
 9 that even if we take out the casino revenues, you will  
 10 have \$227,000,000 in net operating surplus to work  
 11 with. That's where we were before we broke.  
 12 A. Right. Operating, but that still does not adjust for  
 13 other expenditures, legacy expenditures we call them.  
 14 Q. That's true. All of which -- the large majority of  
 15 which are unsecured claims in the bankruptcy, correct?  
 16 A. Well, if you look on page -- go back to page 38 where  
 17 it says net operating surplus, you'll see the first  
 18 line below net operating surplus is debt service and a  
 19 portion of that one -- portion of that 141.4 for year  
 20 2013 or 135.9 for year 2014 is secured debt service.  
 21 Q. Some portion of the gold bonds is secure?  
 22 A. Some portion is secured, roughly -- roughly  
 23 30,000,000.  
 24 Q. That's a very appropriate caveat. I will say with  
 25 that caveat and with the caveat of the Swaps, the

1 remainder of the claims under legacy expenditures are  
 2 ones that you consider unsecure.  
 3 **A. Yes. That's how we treated them in our proposal.**  
 4 **Q.** And by the way, even with respect to the Swaps, I've  
 5 been giving you full credit for the 170 of the casino  
 6 revenues, but you actually have to not -- you have to  
 7 net the swap payments out against it, at least until  
 8 you exercise the --  
 9 **A. Yes. Yes, that's correct.**  
 10 **Q.** So with respect to the 188, we can agree that the 227  
 11 net operating surplus you have, as a matter of math  
 12 and subject to your qualifications about certain  
 13 secured legacy obligations, is larger than 188?  
 14 **A. Yes. The surplus is assuming that we make no pension**  
 15 **contributions, we do not service -- you have to back**  
 16 **out of that -- you call it 227. I call it 230. You**  
 17 **have to back out of there approximately \$30,000,000 in**  
 18 **debt service under the LTGO and UTGO --**  
 19 **COURT REPORTER: I'm sorry, under the?**  
 20 **THE WITNESS: I'm sorry.**  
 21 **A. Under the LTGO and UTGO cat -- the bonds category debt**  
 22 **service, so that would leave you with a net of roughly**  
 23 **200,000,000, and then if you look on the 2014 column,**  
 24 **you would see that if -- if some portion of pension**  
 25 **contributions were made and some portion of healthcare**

1 **get the 230. If you take out the 30 million in**  
 2 **secured bonds, you'd have 200 million, there's so much**  
 3 **significant debt that it's not adjusted, we wouldn't**  
 4 **have that 200 million.**  
 5 **Q.** Let me ask you about something I read in the  
 6 newspapers.  
 7 **A. Okay.**  
 8 **Q.** So I want to ask whether it's true or not. Isn't it  
 9 true that two days before the City filed for  
 10 bankruptcy you held a meeting with community leaders?  
 11 **A. I had a public meeting with the public as well as**  
 12 **community leaders. The --**  
 13 **Q.** Did you have a closed door meeting with community  
 14 leaders two days before --  
 15 **A. I'm sorry.**  
 16 **Q.** -- the bankruptcy?  
 17 **A. Let me correct that. I'm sorry. I was thinking**  
 18 **about -- we're looking at this document, so I was**  
 19 **thinking about the meeting with creditors.**  
 20 **The bankruptcy was July 18th.**  
 21 **Q. Yes.**  
 22 **A. I believe I did have a meeting with leaders roughly**  
 23 **July 16th, is it?**  
 24 **Q.** And was it a closed door meeting?  
 25 **A. I don't recall, but it may been.**

1 **benefits were made, that would essentially wipe out**  
 2 **the 200,000,000, and that's not dealing with the COPs**  
 3 **or the Swaps payment.**  
 4 **Q.** It is however your expectation that substantial  
 5 portions of retiree health and benefits will be  
 6 deferred at a minimum?  
 7 **A. They essentially have to be because we won't have the**  
 8 **money.**  
 9 **Q.** That's right. And also pension contributions,  
 10 substantial parts of those are being deferred at a  
 11 minimum?  
 12 **A. This year we deferred some and we are anticipating**  
 13 **deferring more, and again -- but that creates a**  
 14 **deferred pension obligation. There are two things**  
 15 **that's missing from this analysis. One is we have a**  
 16 **general operating deficit going forth this year, about**  
 17 **\$387,000,000, for which there's no provision made in**  
 18 **the cash flow analysis, and we have an aggregate**  
 19 **deferred pension contribution number close to**  
 20 **200,000,000.**  
 21 **So while I under -- take your point that if**  
 22 **you were to take out from 1.1 billion, deduct the**  
 23 **roughly 700 million in operating expenses, would leave**  
 24 **you with a net of 400 million, if you were to back out**  
 25 **the 170 million or so in wagering expenditures, you**

1 **Q.** Now, it's been reported in the press that during that  
 2 meeting one of the things that you said to these  
 3 community leaders was that the first thing to be done  
 4 to help the City with the City's bankruptcy was to,  
 5 "Deal with these Huns on Wall Street."  
 6 Did you say that, Mr. Orr?  
 7 **A. I may have said that.**  
 8 **Q. Okay.**  
 9 **A. Some people make misstatements, as witnessed today.**  
 10 **So I may well have said that.**  
 11 **Q.** I will -- I will suggest to you, earlier, and I want  
 12 to reiterate that was truly unintentional.  
 13 **A. Steve, as I said, some people may make misstatements,**  
 14 **and as I said today it happens.**  
 15 **I may have said that.**  
 16 **Q.** When you said that about the Huns of Wall Street, I  
 17 take it wasn't like a slip of the tongue. Did you  
 18 mean to say hey, the first thing I mean to do is deal  
 19 with the Huns of Wall Street?  
 20 **A. No. Let me explain that. What I meant to say by that**  
 21 **is look, we've got to deal with adjusting our debt to**  
 22 **the creditors as well as our obligations to the**  
 23 **laborers, and I used -- I used I think the**  
 24 **nomenclature Huns. It was probably too colloquial,**  
 25 **too slip of the tongue.**

1 I wasn't meaning to impugn anyone's  
 2 character. That was an allusion to a statement that  
 3 I've seen used before, you've got to keep the Huns out  
 4 of the portals, and that's all I meant.  
 5 Q. When you talk about the Huns of Wall Street, you mean  
 6 banks, bond holders, bond insurers, Swap insurers,  
 7 Swap counterparties, etcetera, correct?  
 8 A. Whatever's on Wall Street, yes.  
 9 Q. Yeah.  
 10 A. Largely speaking.  
 11 Q. You mean the clients of the folks in this room, in the  
 12 main?  
 13 A. Well, some of whom were my ex-clients, who probably  
 14 will no longer be, but yeah.  
 15 Q. I understand. But wouldn't you agree, Mr. Orr, that  
 16 while the last, you know -- going back to 2006, when  
 17 they had that COPs transaction, I know that it's been  
 18 a challenging time in Detroit, but the Huns of Wall  
 19 Street were some of the people that kept the City's  
 20 lights on by providing credit to the City?  
 21 A. Let me say this, and I'm not going to use the word Hun  
 22 anymore.  
 23 Q. Okay.  
 24 A. I've since learned to be very careful with my words.  
 25 The capital markets have assisted the City in many,

1 speculative as far as what happened. In fact, before  
 2 I took this job, I read several articles that advised  
 3 the City to file bankruptcy in 2005. So I'm going to  
 4 be careful about what would have happened if the City  
 5 had not received that 1.4, because at that time, my  
 6 understanding -- I wasn't here, but from what I read  
 7 that was to supposed to secure the unfunded portion of  
 8 the pension liability at that time, and it didn't work  
 9 out so well, but there was provision of credit to the  
 10 City.  
 11 Q. In your mind, when you made the statement, were you  
 12 trying to convey to people that you view the  
 13 pensioners' claims or the retirees' claims or the  
 14 current employees' claims for pension benefits or --  
 15 or health benefits as more important than the claims  
 16 of unsecured creditors like Wall Street participants  
 17 such as my client?  
 18 A. No. I was not trying to make any value judgments  
 19 about the claims. What we had done -- here again, as  
 20 I said, it was a colloquialism that I made in a closed  
 21 door meeting, but I was not trying to convey to anyone  
 22 that we were treating any class of creditors --  
 23 unsecured creditors differently than the others. As  
 24 provided for in our proposal, we were treating them  
 25 all equally.

1 many ways over the years, and as I said before earlier  
 2 today, in addition to providing funding in 2008, 2010,  
 3 2012 when the City was in very dire straits, so I do  
 4 not mean to impugn in any way the help that the  
 5 capital markets have provided to the Cities -- to the  
 6 City.  
 7 What I do mean to say is given the dire  
 8 straits that the City is in, and the fact that under  
 9 any set of circumstances, it can no longer afford to  
 10 pay this debt, there has to be adjustment of this  
 11 debt, particularly the unsecured debt portion, and  
 12 that's both for the capital market community,  
 13 including banks, private equity, as well as for the  
 14 obligations we owe to our labor counterparts,  
 15 including health and pension funds.  
 16 Q. In fact, bond holders, the so-called COP holders, as  
 17 part of the 2006 transaction, they contributed a  
 18 billion four that ultimately went into the pension  
 19 funds, correct?  
 20 A. I believe that was the number, yes.  
 21 Q. And if that hadn't happened back then, all things  
 22 being equal you'd have an even larger unfunded pension  
 23 liability than you currently do, right?  
 24 A. Well, I'm going to be careful about what would have  
 25 happened because it may have -- you know, it's

1 Q. We're coming up on the one o'clock hour, which is  
 2 almost the end of my time, and I think I'm going to  
 3 just ask you a couple questions to tie up and then --  
 4 A. Sure.  
 5 Q. -- I'll allow you to go get a well-deserved lunch.  
 6 A. Thank you.  
 7 Q. I've asked you earlier about selling the art and I  
 8 asked you about it as considering it as a potential  
 9 backup plan to the negotiations with the Swap  
 10 counterparties.  
 11 A. Right.  
 12 Q. Do you remember that testimony?  
 13 A. Yes, I do.  
 14 Q. We went back and forth.  
 15 A. Yes.  
 16 Q. I'd like to bring it forward to the future, to the  
 17 present.  
 18 A. Yes.  
 19 Q. Which is, are you under active consideration now of  
 20 using the art to alleviate the liquidity crisis and to  
 21 do all of the things that you say you want to do in  
 22 this proposal?  
 23 A. No. There are no plans to use the art or any other  
 24 asset in particular to liquidate it to  
 25 relieve liquidity issues in the City. What I have

1 said when I first took this job, and continue to say,  
 2 all options are on the table. We are currently  
 3 beginning the process of appraising approximately  
 4 3,500 pieces of art in the City of the 66,000 that are  
 5 there at the DIA, and once we go through that process,  
 6 we will have to decide what, if anything, we need to  
 7 do, but I have no plans to use art to relieve the  
 8 liquidity crisis that the City is in now.  
 9 Q. So let me offer an observation for you to react to,  
 10 which is, earlier on when I was asking you questions,  
 11 you were telling me about the terrible things  
 12 happening in the City, people dying, being shot, the  
 13 seriousness of the problems with which you're  
 14 grappling.  
 15 A. Yes.  
 16 Q. You've also identified the assumption motion as  
 17 something that needs to be moved along quickly because  
 18 of its importance to the issues that we discussed,  
 19 right?  
 20 A. Right.  
 21 Q. Why isn't the art equally important to allowing you to  
 22 fix Detroit?  
 23 A. I haven't said that it's not important. What I've  
 24 said is there are no plans to liquidate it to address  
 25 those concerns. I think it is fair to say that there

1 process.  
 2 Q. Just a few more questions and I'll pass the baton.  
 3 A. Sure.  
 4 Q. I take it that when you were appointed as emergency  
 5 fin -- emergency manager, you familiarized yourself  
 6 with some of the prior negotiations that had gone on  
 7 around efforts to resolve the Swap that I believe were  
 8 referenced in the 2012 CAFR of the City of Detroit.  
 9 A. Consolidated report, yes.  
 10 Q. You at least made inquiry as to what happened last  
 11 year when you tried to work this out.  
 12 A. Yes.  
 13 Q. And it's also your understanding that the potential  
 14 right of the Swap counterparties to terminate the Swap  
 15 and demand a large termination payment goes back all  
 16 the way to March of 2012; isn't that correct?  
 17 A. At least, yes.  
 18 Q. Thinking that's consistent with your report here --  
 19 A. Yes.  
 20 Q. -- you say that.  
 21 A. Yes.  
 22 Q. So isn't it true that from March 2012 all the way to  
 23 June 4, when Mr. Buckfire went into the negotiating  
 24 room for the first time with the Swap counterparties,  
 25 during that entire time, the Swap counterparties had

1 has been much debate as to the value of art versus  
 2 alleviating a number of other concerns, and I've heard  
 3 that debate and I've listened to it, but our first  
 4 order of business is to assess what we're talking  
 5 about and then we'll decide what, if anything, we need  
 6 to do.  
 7 Q. Isn't it fair to say that you certainly haven't put  
 8 the art time line, in terms of your decision-making  
 9 process, you haven't given it the same sort of speed  
 10 you've given to the forbearance agreement time line?  
 11 MR. SHUMAKER: Object to the form.  
 12 A. Yeah. I think it's fair to say that in our proposal I  
 13 think we included roughly 15 buckets of assets, and  
 14 none of them have been given the same priority that we  
 15 deem the forbearance agreement principally because  
 16 we're not in default with regard to art. We're in  
 17 default with regard to the Swap agreement.  
 18 Q. Well, that was actually going to be my point, which  
 19 is, you own the art.  
 20 A. Yes.  
 21 Q. So you don't have to negotiate with anybody in order  
 22 to sell it, right?  
 23 A. No, but a prudent thing to do, and we've said this  
 24 before, is to find out what we're talking about first,  
 25 and that's why we're going through an appraisal

1 never trapped cash?  
 2 A. To the best of my knowledge, that's true.  
 3 Q. And they had never declared a termination event?  
 4 A. To the best of my knowledge -- to the best of my  
 5 knowledge, that's true.  
 6 MR. HACKNEY: Mr. Orr, I'd like to thank  
 7 you for your time. We have -- as I mentioned, we have  
 8 divided up our examination. There are a number of  
 9 different objectors here. I have attempted to  
 10 coordinate some of the common subjects so that we  
 11 could have --  
 12 THE WITNESS: Sure.  
 13 MR. HACKNEY: -- one 4-hour period that we  
 14 have come nearly to the end of, and I'm going to pass  
 15 the baton to my other objectors. I may review my  
 16 notes to see if I have follow-up.  
 17 THE WITNESS: Sure.  
 18 MR. HACKNEY: And so I'll reserve my time  
 19 technically, but I want to get out of the way of the  
 20 other folks so they can start asking questions. And  
 21 consistent with what we discussed earlier, I thought  
 22 we might take a short lunch break.  
 23 THE WITNESS: Sure.  
 24 MR. HACKNEY: Off the record.  
 25 VIDEO TECHNICIAN: The time is 12:57 p.m.

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1 this marks the end of tape Number 3. We are off the  
 2 record.  
 3 (Recess taken at 12:57 p.m.)  
 4 (Back on the record at 1:48 p.m.)  
 5 **VIDEO TECHNICIAN:** We are back on the  
 6 record at 1:49 p.m. This marks the beginning of tape  
 7 number 4.  
 8 **EXAMINATION**  
 9 **BY MS. DiBLASI:**  
 10 Q. Good afternoon, Mr. Orr. My name is Kelly DiBlasi.  
 11 I'm an attorney at Weil, Gotshal & Manges. We  
 12 represent Financial Guaranty Insurance Company, which  
 13 people generally refer to as FGIC.  
 14 A. FGIC.  
 15 Q. As I go through my questions with you this afternoon,  
 16 if you could please assume that the same ground rules  
 17 that Mr. Hackney discussed with you earlier today  
 18 still apply.  
 19 A. Yes.  
 20 Q. You spoke to Mr. Hackney earlier today about the Swap  
 21 contract and the fact that they hedge against the  
 22 interest rate risks that's associated with the series  
 23 2006-B COPs, correct?  
 24 A. Yes.  
 25 Q. And what is your understanding of how this hedge is

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1 yes, I did some -- I had some discussions and analyses  
 2 about why they were structured the way they are.  
 3 Depending upon how far back your question is asking  
 4 about that analyses, it may or may not be true.  
 5 Q. So -- so let's in particular go back to 2005 --  
 6 A. Right.  
 7 Q. -- which is really when the structure initially was  
 8 put in place, correct?  
 9 A. Yes, I believe so.  
 10 Q. And what is your understanding as to why in 2005 the  
 11 transaction was structured so that the COPs -- the  
 12 series 2005-B COPs had a variable interest rate hedged  
 13 with the Swap contracts?  
 14 **MR. SHUMAKER:** Objection to form,  
 15 foundation.  
 16 A. Yeah. Let me say I only know what I've read, and it  
 17 seemed to say that that was the nature of the  
 18 transaction based upon the certificates of  
 19 participation to lend the City ultimately the 1.4  
 20 billion dollars, and that I don't know the intent of  
 21 why they did not at that point provide for a fixed  
 22 rate, but I know that the Swap contract was entered  
 23 into the hedge against the variable rate that was in  
 24 the original document.  
 25 **BY MS. DiBLASI:**

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1 accomplished?  
 2 A. As we discussed earlier today, depending upon the  
 3 interest rate fluctuations, they're supposed to  
 4 convert the fix rate that was in the original  
 5 documents -- variable rates some people say -- to a  
 6 fixed rate based upon whether interest rates go up or  
 7 down. And since the parties have essentially bet  
 8 against each other, depending upon which way the rates  
 9 go, one party may owe an obligation to the other.  
 10 Q. So based on that understanding that you just  
 11 articulated, is it fair to say that from the City's  
 12 perspective, it's as if the series 2006-B COPs have a  
 13 fixed rate of interest?  
 14 A. That was the intent. That's my understanding.  
 15 Q. Have you ever heard of a structure like this being  
 16 referred to as creating a synthetic fixed rate of  
 17 interest?  
 18 A. Yes. I may have heard that. There are  
 19 other phrase -- I think I've read that somewhere.  
 20 Q. Prior to executing the forbearance agreement, did you  
 21 do anything to inform yourself about the structure of  
 22 the COPs and the Swap contracts and in particular why  
 23 they were structured the way that they were?  
 24 A. If I can address your question in two ways, yes, I did  
 25 something to inform myself about the structure, and

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1 Q. Would you answer the same if I asked you as to why it  
 2 was structured that way in 2006?  
 3 A. Yes.  
 4 **MR. SHUMAKER:** Same objection.  
 5 A. Yes. I don't know the intent behind the parties at  
 6 that time.  
 7 **BY MS. DiBLASI:**  
 8 Q. Do you know who designed the structure either in 2005  
 9 or 2006?  
 10 A. Other than the parties that appear on the documents,  
 11 no, I do not know who designed the structure. I don't  
 12 know if it was their counsel or the principals. No, I  
 13 don't know.  
 14 Q. Is there any benefit to the City from having  
 15 the 2000 -- series 2006-B COPs have a floating rate of  
 16 interest hedged by the Swap contract as opposed to  
 17 just issuing them with a fixed rate of interest?  
 18 A. I don't -- as I just said, I don't know what the  
 19 parties were thinking back in 2005 and 2006, as  
 20 opposed to -- as to why they wanted that structure,  
 21 and so any statement I would have would either be a  
 22 derivative based on what I read or speculative on what  
 23 I think was going on in the capital markets at that  
 24 time.  
 25 Q. Understood. Today can you -- are you aware of any

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1 benefit from that structure that I described?  
 2 **A. Well, the -- yes.**  
 3 **Q. What benefits are you aware of?**  
 4 **A. The benefit currently is, given the debt that was**  
 5 **taken out and the Swap contract, the interest rates**  
 6 **could actually make the optional termination payment**  
 7 **decrease.**  
 8 **Q. Are there any other benefits that you're aware of?**  
 9 **A. Not principally, no.**  
 10 **Q. Would the City have had to pay higher interest rates**  
 11 **if the COPs were issued with fixed rates?**  
 12 **A. I don't know.**  
 13 **Q. Would the City have agreed to a structure where the**  
 14 **2006-B COPs were issued with a floating interest rate**  
 15 **without having a Swap contract in place?**  
 16 **A. I don't know.**  
 17 **Q. And you're aware of the fact that FGIC and Syncora**  
 18 **each insured portions of the payment of principal and**  
 19 **interest to the series 2006-B COPs, correct?**  
 20 **A. That is my understanding.**  
 21 **Q. Are you aware of any benefit to FGIC and Syncora as**  
 22 **insurers of these variable rate certificates to having**  
 23 **the interest rate hedge in place?**  
 24 **MR. SHUMAKER: Objection to form.**  
 25 **A. None, other than the fact that they might be able to**

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1 **Q. Are you aware that when FGIC issued the policies in**  
 2 **2006 insuring the Swap contracts, FGIC did not charge**  
 3 **a premium in addition to the premium charged for the**  
 4 **2006 COPs policy?**  
 5 **A. No.**  
 6 **MR. SHUMAKER: Objection, form, foundation.**  
 7 **A. Yeah. No.**  
 8 **MARKED FOR IDENTIFICATION:**  
 9 **DEPOSITION EXHIBIT 5**  
 10 **1:56 p.m.**  
 11 **BY MS. DiBLASI:**  
 12 **Q. Mr. Orr, I'm going to hand you what I've marked as Orr**  
 13 **Exhibit 5.**  
 14 **A. Yes.**  
 15 **Q. The documentation is entitled Presentation to FGIC.**  
 16 **It's dated April 26, 2005. If you'd please take a**  
 17 **moment to look at it and tell me when you've had an**  
 18 **opportunity to do so.**  
 19 **A. Okay.**  
 20 **Q. Mr. Orr, have you seen this Exhibit Number 5 before?**  
 21 **A. I may have, but I don't recall doing so.**  
 22 **Q. What is your sense for what this document is?**  
 23 **A. I think the document speaks for itself, but it seems**  
 24 **to be a SlideDeck regarding -- Presentation to FGIC is**  
 25 **what it's titled regarding the series 2005**

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1 **benefit based upon interest rate fluctuations, but not**  
 2 **aware of any other benefit or what the intent of the**  
 3 **parties were.**  
 4 **BY MS. DiBLASI:**  
 5 **Q. Are you aware of any harm or risk that FGIC or Syncora**  
 6 **might insure if the Swap contracts are terminated?**  
 7 **A. I think there are some risks that they insured as a**  
 8 **basis of an insurer, yes.**  
 9 **Q. What risk might that be?**  
 10 **A. There -- in terms of the Swaps? There may be some**  
 11 **risk that a claim could be made to the extent payments**  
 12 **weren't made.**  
 13 **Q. And would there be any risk to FGIC and Syncora with**  
 14 **respect to the insurance policies on the COPs**  
 15 **themselves if the Swap contracts are terminated?**  
 16 **MR. SHUMAKER: Objection, calls for**  
 17 **speculation.**  
 18 **A. Yeah. I mean, you say there may be, but I'm -- I'm**  
 19 **not aware of any specific certain risks, no.**  
 20 **BY MS. DiBLASI:**  
 21 **Q. Are you aware of the fact that FGIC and Syncora -- and**  
 22 **I think you alluded to this just a minute ago -- that**  
 23 **FGIC and Syncora also insured the obligations to the**  
 24 **Swap counterparties under the Swap contracts, correct?**  
 25 **A. Yes.**

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1 **certificates of participation.**  
 2 **Q. In looking at it, does that refresh your recollection**  
 3 **of whether you may have seen it before?**  
 4 **A. No.**  
 5 **Q. Does it appear to you that this presentation was**  
 6 **prepared by the City of Detroit?**  
 7 **MR. SHUMAKER: Objection, foundation.**  
 8 **A. No. I can't say that. It has the City of Detroit**  
 9 **logo. It's a green giant on it, but that doesn't mean**  
 10 **it was prepared by the City of Detroit.**  
 11 **BY MS. DiBLASI:**  
 12 **Q. Let's turn now, Mr. Orr, to the topic of the consent**  
 13 **rights or -- of FGIC and Syncora topic that you were**  
 14 **discussing with Mr. Hackney earlier.**  
 15 **A. Yes.**  
 16 **Q. And actually, let's focus specifically on the**  
 17 **negotiations that the City engaged in with the Swap**  
 18 **counterparties leading up to the execution of the**  
 19 **forbearance agreement.**  
 20 **A. Okay.**  
 21 **Q. And when you were speaking with Mr. Hackney, you**  
 22 **testified that you yourself did not invite either FGIC**  
 23 **or Syncora to those negotiations, correct?**  
 24 **A. Yes. To the best of my knowledge, that's true.**  
 25 **Q. And I believe you said you also didn't suggest to**

1 anyone else that they should invite FGIC or Syncora to  
 2 those negotiations, correct?  
 3 **A. Yes. I believe I testified I did not instruct anybody**  
 4 **to invite them.**  
 5 Q. To your knowledge, did anyone else suggest inviting  
 6 either FGIC or Syncora to the negotiations?  
 7 **A. As I testified earlier today, there were a series of**  
 8 **letters that were exchanged, and at some point there**  
 9 **was some discussion about Syncora submitting a**  
 10 **proposal. That discussion was wrapped up into whether**  
 11 **or not it would sign a reciprocal nondisclosure**  
 12 **agreement. To the best of my knowledge, that never**  
 13 **happened.**  
 14 Q. But I think we established that the letter exchanged  
 15 with Syncora occurred at some point after June 11th,  
 16 when there had been an agreement in principle on the  
 17 economic terms of the forbearance agreement; is that  
 18 correct?  
 19 **A. Yes. I believe we -- we testified that June 11th we**  
 20 **reached agreement and principally documented,**  
 21 **June 14th we had the presentation for creditors, and**  
 22 **the letter I saw earlier today I think was dated**  
 23 **June 17th.**  
 24 Q. That's right. So prior to June 11th, did anyone else  
 25 to your knowledge suggest inviting either FGIC or

1 **negotiations would have to be determined.**  
 2 Q. So I think you said you -- you thought maybe it was  
 3 someone from your -- Jones Day who had initiated or  
 4 who had participated in -- in this discussion?  
 5 **A. Yes. I believe someone on the finance side at Jones**  
 6 **Day, yes. They may have. I seem to recall some**  
 7 **discussion about they had had discussions with FGIC.**  
 8 Q. Do you have any recollection as to when that took  
 9 place?  
 10 **A. I do not. It may be prior to the July -- June 11th**  
 11 **agreement in principle after, but I don't have a**  
 12 **specific recollection.**  
 13 Q. When you were speaking with Mr. Hackney about the  
 14 negotiations with the Swap counterparties that you  
 15 personally took part in, I believe you said that you  
 16 had participated in a number of conference calls; is  
 17 that correct?  
 18 **A. Yes.**  
 19 Q. Was FGIC or a representative of FGIC on any of those  
 20 conference calls?  
 21 **A. No. The conference calls I was referring were**  
 22 **conference calls between me and my attorneys. There**  
 23 **were conference calls that I had with Mr. Buckfire and**  
 24 **a principal on behalf of Syncora, but to the best of**  
 25 **my knowledge, there weren't FGIC representatives on**

1 Syncora to the negotiations?  
 2 **A. Not to my knowledge, no.**  
 3 Q. And you mentioned just a minute ago that there had  
 4 been some discussion with Syncora or representatives  
 5 of Syncora about an alternative proposal to the  
 6 forbearance agreement, and I think you said to  
 7 Mr. Hackney that there had been no negotiations with  
 8 FGIC about an alternative proposal; is that correct?  
 9 **MR. SHUMAKER: Objection to form.**  
 10 **A. Yeah, it's a compound question, but I think the way I**  
 11 **would answer it, yes, we would talk about whether or**  
 12 **not someone had been invited. And I think what I said**  
 13 **is to the best of my knowledge I did not invite FGIC**  
 14 **and I did not know if anybody else did.**  
 15 **BY MS. DiBLASI:**  
 16 Q. To your knowledge, was there any negotiations by the  
 17 City with FGIC about the forbearance agreement prior  
 18 to the City executing the forbearance agreement?  
 19 **A. There may have been. I seem to recall one of our**  
 20 **attorneys -- you used the word negotiation and, here**  
 21 **again, as I said earlier today, without getting caught**  
 22 **up in the nomenclature, I don't want to characterize**  
 23 **what was going on, but I think there was -- I remember**  
 24 **hearing something about some discussions with FGIC,**  
 25 **but I don't recall who. Whether or not there were**

1 **those calls.**  
 2 Q. So you were not on any conference calls with the Swap  
 3 counterparties negotiating the terms of the  
 4 forbearance agreement?  
 5 **A. Yes. Yeah, I -- let me correct myself.**  
 6 Q. Sure.  
 7 **A. I said -- I just said Syncora. I think I meant the**  
 8 **Swap counterparties.**  
 9 Q. Okay.  
 10 **A. There were no conference calls. There were letters**  
 11 **with Syncora, not conference calls with Syncora.**  
 12 Q. Just so I'm clear in my understanding, did you  
 13 participate in conference calls with the Swap  
 14 counterparties negotiating the terms of the  
 15 forbearance agreement?  
 16 **A. Yes.**  
 17 Q. Was FGIC or a representative of FGIC on any of those  
 18 conference calls?  
 19 **A. No. To the best of my knowledge, no.**  
 20 **MS. DiBLASI: Thank you for your time,**  
 21 **Mr. Orr. That's all I have.**  
 22 **THE WITNESS: Sure. Thank you very much,**  
 23 **Mrs. DiBlasi.**  
 24 **MR. HACKNEY: I was worried that I missed a**  
 25 **pretty significant area of inquiry there.**



1 THE WITNESS: I was looking at this letter  
 2 and Syncora popped into my head, so that's -- long  
 3 day.  
 4 EXAMINATION  
 5 BY MR. MARRIOTT:  
 6 Q. Good afternoon, Mr. Orr.  
 7 A. Good afternoon.  
 8 Q. I'm Vince Marriott. I'm with Ballard Spahr, and I  
 9 represent a holder of 152 million dollars in the 2006  
 10 COPs. We refer to it by agreement as EEPK, and I hope  
 11 we can stipulate that I will have to pronounce the  
 12 entire name for you.  
 13 MR. SHUMAKER: Stipulated.  
 14 A. Mr. Marriott, we will stipulate as such.  
 15 BY MR. MARRIOTT:  
 16 Q. Ironically enough it's German.  
 17 A. We wouldn't try.  
 18 Q. Mr. Hackney was very comprehensive and I don't have a  
 19 lot.  
 20 A. Okay. Yes, he was.  
 21 Q. One of the things you -- one of the things Mr. Hackney  
 22 asked you about was if in the course of the  
 23 negotiation of the forbearance agreement, you had what  
 24 he referred to as a plan B. Do --  
 25 A. Right.

1 need for the casino revenue, which was urgent and  
 2 critical and would not in our opinion at that point be  
 3 able to make a reinvestment of the City, what would  
 4 the City look like going forward.  
 5 Q. Let me ask you the question this way. Did you  
 6 consider what I'll describe -- and if you want me to  
 7 be more specific I can try to be.  
 8 A. Um-hm.  
 9 Q. Did you consider capital market alternatives to the  
 10 forbearance agreement?  
 11 A. We did, but to be perfectly honest with you, the City  
 12 had borrowed so much money from the capital markets  
 13 without the probability of being able to pay it back  
 14 on any reasonable or rational time frame that that  
 15 wasn't a serious consideration was taking on more  
 16 debt.  
 17 Q. Okay. So you didn't really believe that had you a  
 18 what we -- what I just described as a capital market  
 19 alternative to the forbearance agreement?  
 20 A. The City has no -- what I've said at the June 10th --  
 21 public meeting on June 14th we were addicted to debt  
 22 and we had no ability to take on additional debt.  
 23 Q. Okay. All right. And this may re-plow some ground  
 24 and I apologize to the extent it does, but in the  
 25 context of your negotiation of the forbearance

1 Q. -- you recall him asking that question?  
 2 A. Yes, I recall that discussion. Yes.  
 3 Q. And you responded by saying, without specifically  
 4 having a plan B, you had considered alternative to the  
 5 forbearance agreement structure, correct?  
 6 A. Correct.  
 7 Q. Can you tell me what alternatives to the forbearance  
 8 agreement you considered at the time?  
 9 A. Without getting into the discussions with my counsel  
 10 or with commercially sensitive information with the  
 11 investment banker and/or both, the alternatives  
 12 generally centered on the need for reinvestment in the  
 13 City and what we would do if we could not secure the  
 14 funds to have that reinvestment and what kind of  
 15 reinvestment proposal, if any, we could put together.  
 16 Q. And are you able to articulate more specifically  
 17 whether you consider -- or what specifically you  
 18 considered as alternative source of the funding for  
 19 reinvestment?  
 20 A. I think as I said with Mr. Hackney just before the  
 21 break, I have said fairly consistently since I've been  
 22 here that everything's on the table, but we had not  
 23 specifically looked at liquidation of any particular  
 24 bucket of assets in relation to this. All we had  
 25 considered was if we could not secure the critical

1 agreement, and by yours I mean the City's --  
 2 A. Yes.  
 3 Q. -- it was with the understanding that the Swap  
 4 counterparties asserted a lien in the casino revenues,  
 5 right?  
 6 A. Yes.  
 7 Q. Would the City have entered into the forbearance  
 8 agreement with the Swap counterparties if they did not  
 9 assert a lien in the casino revenues?  
 10 MR. SHUMAKER: Objection, calls for  
 11 speculation.  
 12 A. Yeah. I was going to say that's a hypothetical, and  
 13 it would depend on a number of different issues, so  
 14 I'm not quite sure I can answer you. All I can say is  
 15 that our need for that cash was so significant that we  
 16 might well have considered anything.  
 17 BY MR. MARRIOTT:  
 18 Q. All right. Let me ask the question this way then. Is  
 19 it fair to say that the optional termination amount of  
 20 pay will be paid by the City to obtain clear title to  
 21 the casino revenues?  
 22 MR. JURGENS: Objection to form.  
 23 MR. SHUMAKER: Objection, form and calls  
 24 for legal conclusion.  
 25 A. Without getting into the concept of title, what I will

1 say, and what I've said today, is the forbearance  
2 agreement is designed to remove uncertainty with  
3 regard to the City's access to the casino revenue  
4 which is essential.

5 BY MR. MARRIOTT:

6 Q. All right. Let me ask the question this way. Is it  
7 your understanding that the Swap counterparties will  
8 no longer assert a lien in the casino revenues if paid  
9 the optional termination amount?

10 MR. JURGENS: Objection --

11 A. Yes.

12 MR. JURGENS: -- to form.

13 A. It's my understanding that it's going to resolve all  
14 those issues, and as I said earlier today, including a  
15 release of liens to the extent they have any.

16 BY MR. MARRIOTT:

17 Q. Okay. Now, I understand your description of the  
18 City's current operational needs --

19 A. Right.

20 Q. -- for access to the casino revenues.

21 A. Yes.

22 Q. If those casino revenues were otherwise available to  
23 the City, for current operation's purposes, would  
24 removal of the lien be necessary -- or removal of the  
25 asserted lien be necessary?

1 A. Um-hm.

2 Q. -- necessary for the City to currently operate?

3 A. To currently operate?

4 Q. Yes.

5 MR. SHUMAKER: Object to the hypothetical.

6 Go ahead.

7 A. If you're drawing a distinction between currently  
8 operating and the reinvestment plan that we have, what  
9 I would say is we are currently operating in the  
10 status quo. So the answer to your question would be  
11 to the extent the Swap counterparties have a lien  
12 interest in the casino revenue, it would not be  
13 necessary because that's where we are now.

14 BY MR. MARRIOTT:

15 Q. Okay. And so what do you view release of the lien as  
16 necessary to?

17 A. The release of the lien is essential so that the City  
18 has certainty in terms of going forward so that we can  
19 plan, as is required both under Chapter 9, but more  
20 importantly, in my perspective, under Chapter -- under  
21 Public Act 436.

22 436 imposes an obligation on me within  
23 18 months to come up with a plan to put the City on a  
24 sustainable footing going forward before the  
25 expiration of my term, and even if you could come up

1 MR. SHUMAKER: Objection, calls for  
2 speculation.

3 A. Yeah, this again is a hypothetical question, but I  
4 believe you may be alluding to the discussion I had  
5 with Mr. Hackney regarding whether the stay would  
6 provide us unfettered access, and I think what I said  
7 there is that's something we'd have to examine, but  
8 the whole concept of the forbearance agreement was to  
9 deal with removing any uncertainty regarding our  
10 access to the casino revenues so that we could put in  
11 place a reinvestment plan.

12 BY MR. MARRIOTT:

13 Q. Okay. I wasn't clear, I don't think --

14 A. Okay.

15 Q. -- in what I'm trying to get at.

16 A. Sure.

17 Q. I'm not asking you whether or not there was an  
18 alternative to releasing -- I'm just asking whether  
19 you believe there was a legitimate alternative to  
20 release of the lien to get access to those funds.

21 What I'm asking you is that assuming you  
22 had access to those funds on some basis, without the  
23 need to release the lien --

24 A. Um-hm.

25 Q. -- is a release of the lien today --

1 with a plan without release of those liens, that would  
2 leave some uncertainty and would be, in my opinion, a  
3 violation of my duty as emergency manager to provide  
4 that certainty for the City to move forward in a  
5 sustainable fashion.

6 Q. Okay. So and if I'm paraphrasing your answer  
7 incorrectly --

8 A. Right.

9 Q. -- tell me.

10 Release of the lien is necessary to a  
11 viable exit strategy from the Chapter 9 proceeding?

12 A. That's part of it. Not just the Chapter 9 proceeding.  
13 As I said, I think what's missing in some of the  
14 discussion is the fact that I have an independent duty  
15 under Public Act 436 to put the City on a sustainable  
16 footing. That is my obligation. And leaving liens in  
17 place in a City that has defaulted, as we discussed  
18 earlier today, under multiple different factors would  
19 be irresponsible.

20 Q. One of the other things that Mr. Hackney and you  
21 discussed was whether or not the Swaps and the COPs  
22 and the insurance associated with the Swaps and the  
23 cops --

24 A. Right.

25 Q. -- were what Mr. Hackney described as an integrated

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1 transaction.  
 2 A. Um-hm.  
 3 Q. Do you recall that discussion?  
 4 A. Yes, I do recall that discussion.  
 5 Q. Your counsel in a hearing on August 21st -- and I'll  
 6 represent this to you --  
 7 A. Okay.  
 8 Q. -- whether you're aware of it or not. It described  
 9 the 2009 transaction with respect to the COPs and the  
 10 Swaps as severing the tie --  
 11 A. Um-hm.  
 12 Q. -- Between the COPs and the Swaps. Do you have an  
 13 understanding of what that means?  
 14 MR. SHUMAKER: Objection to form.  
 15 A. I have not consulted with my counsel regarding what  
 16 was meant by that statement, so I'm going to qualify  
 17 my answer by saying to the extent it calls for a legal  
 18 conclusion or an analysis, that this is my  
 19 understanding in a layman's sense.  
 20 But what I think -- and your question began  
 21 with the concept of the insurance for the COPs and  
 22 Swaps, so I also want to say my understanding there  
 23 may be different insurance obligations related to the  
 24 COPs that in our view are unrelated to the obligations  
 25 under the Swaps. I don't want to conflate the two.

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1 Q. Yeah. So I'm from Arent Fox?  
 2 A. Okay.  
 3 Q. And this time I reco -- I represent Ambac.  
 4 A. Okay.  
 5 Q. Okay?  
 6 A. Okay.  
 7 Q. I'm going to apologize in advance in advance if I jump  
 8 around a little bit or seem to jump around because I'm  
 9 going to try to plug some holes from your earlier four  
 10 and a half hours of testimony that you've given  
 11 already.  
 12 A. Thank you.  
 13 Q. Okay. Same rules apply, right?  
 14 A. Yes.  
 15 Q. Okay. This is a small question. Earlier in response  
 16 to Mr. Hackney, his questioning, he asked you a  
 17 question about the collateral agreement and your  
 18 response was which collateral agreement.  
 19 A. Um-hm.  
 20 Q. I want to make sure. Is there any other collateral  
 21 agreement other than the 2009 collateral agreement  
 22 we've spoken about?  
 23 A. No. I just think that was earlier on in my deposition  
 24 by Mr. Hackney, and I just wanted to make sure we were  
 25 being specific about the terms. I wasn't meaning to

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1 And further, anything I can say in that  
 2 regard, because I have not talked to my counsel, would  
 3 be speculative as far as what they meant. Okay? But  
 4 what my understanding is, is that that would relieve  
 5 us under the agreement, forbearance agreement, of any  
 6 of the obligations that are necessary under the Swaps.  
 7 I sincerely don't know what that statement means with  
 8 regard to the COPs.  
 9 BY MR. MARRIOTT: That's all I have. Thank  
 10 you.  
 11 THE WITNESS: Thank you, sir.  
 12 EXAMINATION  
 13 BY MS. ENGLISH:  
 14 Q. Hi, there.  
 15 A. Hi. How are you?  
 16 Q. Good. How are you?  
 17 A. I am well. Thank you.  
 18 Q. I'm Caroline English.  
 19 A. Hi, Caroline.  
 20 Q. We met before in the Chrysler case and I don't know if  
 21 you recall.  
 22 A. Oh, you know --  
 23 Q. We can talk later. It's all right.  
 24 A. Yeah. We will talk later. I was going to say I  
 25 recognized you over there.

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1 allude to another collateral agreement.  
 2 Q. That's fine. I just wanted to make sure I --  
 3 A. Sure.  
 4 Q. -- didn't miss a large transactional document here.  
 5 Okay?  
 6 A. Sure.  
 7 Q. Mr. Hackney also asked you some questions about the  
 8 service corporations and about whether there were any  
 9 negotiations on behalf of the City with the service.  
 10 Corporations?  
 11 A. Yes.  
 12 Q. Okay. I believe you answered that negotiating with  
 13 service corporations would not have been your job. It  
 14 would have been Ken Buckfire's or someone else's job  
 15 to do that.  
 16 A. Yes. I believe that's right.  
 17 Q. Okay. If it wasn't Ken Buckfire's job, who else's job  
 18 would it have been?  
 19 A. It might have been someone else on his team or at  
 20 Miller Buckfire or someone else on behalf of the other  
 21 counsel for the emergency manager or the City.  
 22 Q. Someone else in your office you mean?  
 23 A. No. No. Other consultants and attorneys on behalf of  
 24 the City.  
 25 Q. Okay. But am I correct that no one has reported to

1 you that they had negotiations with the service  
 2 corporations; is that correct?  
 3 A. Yeah, reported. I'm going to be careful. My  
 4 understanding was we had an agreement, I signed it,  
 5 and it was sent to the service corporations. I  
 6 personally had no negotiations with them, but my  
 7 understanding, based upon the fact it was executed,  
 8 that whoever needed to procure and secure those  
 9 signatures did so.  
 10 Q. You don't know who got those signatures from the  
 11 service corporations?  
 12 A. No. Sitting here today I do not.  
 13 Q. You also testified earlier -- Mr. Hackney's helping me  
 14 out here.  
 15 Do you -- are you assuming then that there  
 16 were some negotiations between the City and the  
 17 service corporations?  
 18 A. Yeah. Here again, I'm going to say whenever you -- as  
 19 I said to Mr. Hackney, whenever you talk about  
 20 negotiations, you know, so we don't get bogged down in  
 21 nomenclature, I'm assuming that something happened  
 22 that had the service corporations aware of the  
 23 agreement, that they agreed to and they signed off on  
 24 it. So if those constitute negotiations, that's what  
 25 I'm assuming, but I'm saying to you that I had no

1 Q. Let me back you up to the start of your answer, which  
 2 was that my predicate you did not believe to be true.  
 3 A. Yes.  
 4 Q. So let me ask you a question. To your knowledge was  
 5 any request of any kind ever made to the State for  
 6 aid?  
 7 A. Here's -- I'm not trying to be evasive, but here's the  
 8 issue I'm having with your question. It's not so much  
 9 if there was ever a request. As I said earlier today,  
 10 I have regular discussions with the governor and other  
 11 officers on behalf of the State, and it became clear  
 12 to us in terms of whether or not it was made -- a  
 13 request seems to suggest that we asked the State for  
 14 money and they said no, and what I'm saying to you is  
 15 we had a discussion that even if that was an  
 16 alternative in some fashion, me or a representatives  
 17 on my behalf -- I don't remember -- that the State  
 18 couldn't do that in any event, so I'm not sure there  
 19 was a request made. What I'm trying to say is that it  
 20 became clear that that was not an option.  
 21 Q. In other words, it became clear to you that making any  
 22 such requests would have been futile.  
 23 A. Yeah, I'm staying away from request. It just became  
 24 clear that the State couldn't do that, yes, one way or  
 25 the other.

1 independent negotiations and I don't know who did  
 2 that.  
 3 Q. And you don't have any idea sitting here today about  
 4 what those negotiations would have involved, how they  
 5 happened, when they happened, how long they took,  
 6 anything like that; is that right?  
 7 A. That's right.  
 8 Q. You testified earlier about state aid and federal aid,  
 9 the possibilities of getting aid from other government  
 10 sources.  
 11 A. Yes.  
 12 Q. With respect to state aid, when did the City make a  
 13 request of any kind to the State for aid?  
 14 MR. SHUMAKER: Objection, foundation.  
 15 A. Assuming the predicate that some request was made,  
 16 which I don't think is true, what became clear from  
 17 various discussions with the State was that this was a  
 18 hole that the City had dug for itself and it needed to  
 19 find its way out of it on its own.  
 20 I think at some point we were also informed  
 21 that there are State prohibitions against the State  
 22 lending money to the City, either state ordinances --  
 23 State statutes or constitutional prohibitions, so that  
 24 would not have been a possibility in any event.  
 25 BY MS. ENGLISH:

1 Q. All right. I have the same questions about federal  
 2 aid, and let me start again with the predicate. Was a  
 3 request ever made of any kind for federal government  
 4 aid?  
 5 A. Not by me. Not for -- well, let me correct that. Not  
 6 for direct federal government aid in the terms of  
 7 either a loan or a grant, meaning money. I did have a  
 8 meeting with Senator Levin where he informed me and  
 9 actually gave me a list of a number of different grant  
 10 programs, ordinary grant programs, that are available  
 11 to the City, as well as other cities, by which we  
 12 could apply for additional grants and we're reviewing  
 13 those now.  
 14 So I want to be clear when people say  
 15 federal aid, it became clear to us that no one was  
 16 going to give us, for lack of a better word -- people  
 17 use the word bailout, which I don't like -- but a  
 18 direct grant of money, but there are other programs  
 19 that the City can apply for to get federal assistance.  
 20 Q. Okay. With respect to the federal grant programs you  
 21 just mentioned, at this point in time, have any  
 22 applications been submitted for any of these grant  
 23 programs?  
 24 A. At this point in time, there may -- there may be. We  
 25 received that a couple weeks ago and I know two things

1 as has been reported. We're currently doing an  
 2 analysis of our grants administration and application  
 3 process to make it better, and I think we're also  
 4 reviewing it for making specific grant requests, I  
 5 think some specifically related to public safety.  
 6 So I don't know if -- sitting here today if  
 7 actual documents have been submitted, but I know we  
 8 are mining the federal programs with an eye toward  
 9 making applications and some have been made or some  
 10 are near to being made.  
 11 Q. Are there specific grants you're targeting in this  
 12 application process?  
 13 A. That's handled by the folks in the City bureaucracy  
 14 and consultants, so I -- as I said, health, safety and  
 15 welfare, meaning police, fire, EMT, City grants  
 16 meaning blight, HUD grants and others, yes, but  
 17 sitting here today, I don't know which specific ones  
 18 have been submitted.  
 19 Q. And who was handling that process?  
 20 A. Ultimately, in my office, it would be a combination of  
 21 the existing -- hopefully in the City as well --  
 22 existing grant procurers, you know, whether they're at  
 23 different departments in planning and development,  
 24 police and fire. It would be at that level, at a line  
 25 level, would be applying for grants.

1 A. You asked me if there were any new ones going in.  
 2 Q. Okay.  
 3 A. We -- the City has received, in past years and  
 4 currently, almost 300 million dollars in federal  
 5 grants.  
 6 Q. Okay.  
 7 A. Okay. We hoped -- and they're being administered  
 8 through 71 different programs in the City. I think  
 9 that's been publicly discussed before. We hope to  
 10 apply for even more grants. So I can be clear, what  
 11 we are trying to do is to get some assistance so that  
 12 we can get better at this process, this administration  
 13 application process, so we would be eligible for more  
 14 federal assistance that's already existing.  
 15 Q. And how much do you estimate that more federal  
 16 assistance to be?  
 17 A. I have no idea. Whatever -- whatever we can get. If  
 18 it's several millions more, if it's several hundreds  
 19 millions more, we're going to apply for it.  
 20 Q. Do you think it's a possibility it could be hundreds  
 21 of millions more?  
 22 A. Possibility it could be.  
 23 Q. Earlier in your testimony you were asked a lot of  
 24 questions about legal analyses or legal claims that  
 25 might have been made, and on those questions you

1 Q. Is that going to happen under your supervision?  
 2 A. I certainly hope so, yes.  
 3 Q. Do you have any idea of how much money in grant  
 4 programs might be available to the City?  
 5 A. Well, the City has already applied of somewhere in the  
 6 neighborhood of 300 million in 71 programs. We have  
 7 been told that none of those 71 programs are in  
 8 compliance. Some of those programs we're receiving  
 9 technical assistance from HUD --  
 10 COURT REPORTER: I need you to slow down.  
 11 THE WITNESS: I'm sorry.  
 12 A. Some of those programs we're receiving technical  
 13 assistance, for instance, from HUD, and our intent is  
 14 to get our grants administration and application  
 15 process more up to date and streamlined so we can  
 16 apply for as many grants as we can possibly get our  
 17 hands on.  
 18 BY MS. ENGLISH:  
 19 Q. Okay. You confused me there for a minute because  
 20 you've said you've got a bunch of grant applications  
 21 already in with respect to programs that are  
 22 noncompliant, but I thought you said earlier you don't  
 23 have any grant applications in.  
 24 A. No, no, no.  
 25 Q. Okay.

1 claimed attorney-client privilege --  
 2 A. Yes.  
 3 Q. -- and said that you didn't have an independent view  
 4 that didn't come from attorney-client communications.  
 5 A. Yes.  
 6 Q. Okay. I want to ask, without divulging what the  
 7 advice was of your counsel, can you just list for me  
 8 what the topics were on which you got advice, or would  
 9 you claim the privilege as to just the topics as well?  
 10 A. Maybe I can do it this way. I think I've said before  
 11 that in this case, for instance, your client has filed  
 12 an objection.  
 13 Q. Yes, it has.  
 14 A. And in this case many objections have been filed and  
 15 many of the topics listed in those objections, and I  
 16 think I said with Mr. Hackney, whether it was  
 17 subordination, prioritization, equitable estoppel,  
 18 tort, invalidation of liens ab initio, whatever they  
 19 were, none of those analyses or claims came as a  
 20 surprise to me and that in some fashion -- without  
 21 divulging what I had spoken with to my counsel, in  
 22 some fashion issues such as those had been discussed  
 23 and analyzed with my counsel, attorneys and advisors.  
 24 Q. So, for example, if -- as you know, Ambac filed an  
 25 objection, and --

1 A. Yes.  
 2 Q. -- one of the arguments raised was whether the Swap  
 3 obligations themselves were void ab initio because  
 4 they did not comply with Act 34.  
 5 A. Yes.  
 6 Q. You're familiar with that argument that we raised?  
 7 A. Yeah.  
 8 Q. Can you -- and again without asking -- I'm not asking  
 9 you to divulge what the advice was or what the  
 10 analysis was you got from your counsel, but can you  
 11 tell me what issues, just by naming the topics, you  
 12 sought advice on with respect to that argument?  
 13 MR. SHUMAKER: Well, the seeking of advice  
 14 somewhat implicates communications. If you were to  
 15 look at topics perhaps as to whether he regarding your  
 16 objection whether he -- they were raised, without  
 17 going into the communications, I think he could  
 18 respond to that.  
 19 BY MS. ENGLISH:  
 20 Q. That's exactly what I'm asking.  
 21 A. Okay. Well, for instance, whether or not arguments  
 22 such as that would erase the obligation in toto or  
 23 subordinate it to a lower level, whether or not an  
 24 obligation like that would raise defenses on behalf of  
 25 the obligor of equitable estoppel to the City, whether

1 prepared, analyses, I can't give you a compendium or  
 2 an exhaustive list of things that were considered, so  
 3 I don't want to leave you with the misimpression that  
 4 somehow the analysis wasn't complete or we didn't  
 5 consider more issues than the one I did. We did.  
 6 Those are just the ones that came, sitting here  
 7 today -- you asked me a question -- off the top of my  
 8 head that I remembered for instance.  
 9 Q. Did you have legal analysis done on whether the Swaps  
 10 transactions complied with Act 34?  
 11 A. As I said, without getting into discussions with my  
 12 counsel, a whole panoply of issues, some of which are  
 13 contained in the objections filed, including those  
 14 filed by your client, were examined.  
 15 Q. Okay. Now can you answer my question? Did you have  
 16 legal analysis done on whether the Swap transactions  
 17 complied with Act 34?  
 18 A. As I said --  
 19 MR. SHUMAKER: Objection, asked and  
 20 answered.  
 21 A. As I said --  
 22 MR. SHUMAKER: If you want to share with  
 23 him the argument, that might help.  
 24 A. There are a whole panoply of issues, some of them  
 25 contained in the objections such as the one filed by

1 or not there are facts surrounding those documents and  
 2 liens that would equitably raise issues as far as  
 3 their validity beyond void ab initio, whether or not  
 4 the law in the district and the circuit supported a  
 5 clean remedy that could be easily obtained, and  
 6 whether or not it would be expensive and extensive  
 7 litigation and appeals over a period of time, things  
 8 such as those were discussed and examined.  
 9 Q. When you say whether there were equitable issues, what  
 10 do you mean by that?  
 11 A. Here again, without going into discussion, any of the  
 12 concern -- equity is -- implicates action such as  
 13 clean hands. Whether there were issues surrounding  
 14 the City's conduct and issues along those lines, that  
 15 would be factually intensive and lead to, for  
 16 instance, increased litigation costs which I think is  
 17 mentioned in our motion or some of the papers we  
 18 filed, things along those lines, general equitable  
 19 concerns.  
 20 Q. When you just listed for me the types of concerns and  
 21 topics you were exploring with counsel, you didn't  
 22 mention Act 34.  
 23 A. Well, as I said, I said for instance. I didn't mean  
 24 for it to be an exhaustive list, and that's why  
 25 without sitting here today, counsel, memos that were

1 your client which were examined and reviewed.  
 2 BY MS. ENGLISH:  
 3 Q. Was Act 34 one of them?  
 4 A. More than likely, yes.  
 5 Q. More than likely? You don't know?  
 6 A. No. Sitting here today, I just said to you, for  
 7 instance, that many of the issues, without being a  
 8 compendium or being exhaustive, were examined. Act 34  
 9 was probably one of them. I did not mean for my  
 10 testimony to be exhaustive because I don't have the  
 11 analyses or the benefit of discussing them with my  
 12 client prior to your question today.  
 13 Q. I do understand the answers that you're giving me.  
 14 They're just not quite answers to the questions I'm  
 15 asking.  
 16 A. Okay.  
 17 Q. So let me -- in your answer right now when I was  
 18 trying to hone in on was Act 34 --  
 19 A. Um-hm.  
 20 Q. -- examined, right?  
 21 A. Yes.  
 22 Q. You said probably.  
 23 A. Yes.  
 24 Q. So you're not sure?  
 25 A. No. I said --

1 MR. SHUMAKER: Objection, asked and  
 2 answered.  
 3 A. I'll say it again. Probably means that it was, but I  
 4 don't want my answer to represent to you that it was a  
 5 compendium. If you want to keep asking me about Act  
 6 34, that's fine, but I said more likely than not it  
 7 was examined. I -- just sitting here right now, I  
 8 don't have an independent recollection of all the  
 9 things we examined. Act 34 was more than likely one  
 10 of them.  
 11 BY MS. ENGLISH:  
 12 Q. Okay. But sitting here today you don't have an  
 13 independent recollection for sure that Act 34 was  
 14 looked at; is that correct?  
 15 A. I just said --  
 16 MR. SHUMAKER: Objection, asked and  
 17 answered.  
 18 A. I just said it's more likely than not.  
 19 BY MS. ENGLISH:  
 20 Q. Sitting here today do you have a recollection as to  
 21 whether there was legal analysis done as to the  
 22 validity of the pledge of casino revenues under the  
 23 gaming act?  
 24 A. I thought you just asked -- well, suffice it to say I  
 25 believe so.

1 counterparties?  
 2 A. Not without the advice of counsel, no.  
 3 Q. Why didn't the City just sue the Swap counterparties  
 4 and then negotiate from there?  
 5 A. You know, one of the things that we have, both in  
 6 bankruptcy and in Public Act 436, is that in the  
 7 deliberative process the emergency manager has  
 8 discretion to make decisions, business judgment  
 9 decisions, within that discretion, irrespective of  
 10 third parties, the decisions as to how that should  
 11 have occurred.  
 12 We made a decision in consultation with  
 13 counsel that this was the best way to proceed.  
 14 Commencing litigation might well have created a  
 15 cascade of other events such as the very event we are  
 16 trying to avoid which is trapping the casino revenue  
 17 for time and a number of months and/or years which  
 18 would have made the probability of me completing my  
 19 mission within the time frame of the statute  
 20 difficult.  
 21 Q. If the City couldn't get a deal such as the  
 22 forbearance agreement, was the City prepared to sue  
 23 the Swap counterparties then?  
 24 MR. SHUMAKER: Objection to the extent that  
 25 question is asking for attorney-client privileged

1 Q. You believe so?  
 2 A. Yes.  
 3 Q. Are you sure?  
 4 A. I believe so.  
 5 Q. Are you sure?  
 6 A. I believe so.  
 7 MR. SHUMAKER: Objection, asked and  
 8 answered.  
 9 BY MS. ENGLISH:  
 10 Q. Do you recall seeing a legal analysis or memo that was  
 11 prepared with respect to the validity of the pledge of  
 12 casino revenues under the gaming act?  
 13 A. Ms. English, I see -- I see a lot of memos. As I said  
 14 before this line of questioning, it's more likely than  
 15 not that I did, but sitting here today, in an effort  
 16 to be accurate, I don't specifically recall all of the  
 17 issues we examined. More likely than not, it included  
 18 Act 34, it included validity of liens.  
 19 COURT REPORTER: It included validity --  
 20 THE WITNESS: Validity of liens.  
 21 COURT REPORTER: Thank you.  
 22 BY MS. ENGLISH:  
 23 Q. Did you make an independent assessment apart from  
 24 advice of counsel as to the strengths -- strengths or  
 25 weaknesses of the City's claims against the Swap

1 communication. I'll object.  
 2 If you have some independent understanding,  
 3 you can answer.  
 4 A. Mrs. English, I'll say this. Without getting into  
 5 communications with my counsel, we examined all  
 6 alternatives, and as I said earlier with Mr. Hackney,  
 7 including potential litigation.  
 8 BY MS. ENGLISH:  
 9 Q. If you hadn't gotten a deal, were you prepared to sue  
 10 them then?  
 11 MR. SHUMAKER: Objection, calls for  
 12 speculation.  
 13 A. Yeah, I was going to say. I don't know. We'd have to  
 14 examine the situation on the ground at that time.  
 15 BY MS. ENGLISH:  
 16 Q. Okay. Let me ask you this. If the forbearance  
 17 agreement is not approved by the bankruptcy court,  
 18 will the City then sue the Swap counterparties?  
 19 MR. SHUMAKER: Objection, calls for  
 20 speculation.  
 21 A. Here again, it's a different version of the prior  
 22 question which it calls me to speculate as to what we  
 23 would do if the Court does not approve the agreement.  
 24 BY MS. ENGLISH:  
 25 Q. If there were to be litigation with the Swap

1 counterparties, do you have some sense as to what  
 2 claims might be asserted against the Swap  
 3 counterparties?  
 4 **MR. SHUMAKER:** Objection, asked and  
 5 answered.  
 6 **A.** Yeah, as we said before, those are discussions that  
 7 I've had with my counsel. I would consult with them  
 8 as to our possible -- I can't tell you in direct  
 9 response to your question and this line of questioning  
 10 what we would do. What I can tell you is that we  
 11 would engage in a process of examining what our  
 12 alternatives were and try to make an informed and  
 13 reasonable decision based upon the information we had  
 14 at that time.  
 15 **BY MS. ENGLISH:**  
 16 **Q.** Okay. So sitting here today you are not able to tell  
 17 me even a single claim that the City might assert  
 18 against the Swap counterparties?  
 19 **A.** There are a number of claims that the City might  
 20 assert. As I said earlier today, some of them might  
 21 be framed in some of the objections. Whether or not  
 22 we would ultimately assert those, depends upon a  
 23 number of different factors that we would have to  
 24 examine at that point.  
 25 **Q.** Well, in the forbearance agreement, the City is giving

1 would say that, as I said before this afternoon, there  
 2 was analysis of the potential claims, strengths and  
 3 weaknesses and options available to the City.  
 4 Those -- some of those were prepared in writing, yes.  
 5 **Q.** You just mentioned a draft complaint. Was there ever  
 6 a draft complaint prepared?  
 7 **MR. SHUMAKER:** I think you mischaracterized  
 8 what he said. That's my objection.  
 9 **A.** Yeah, as I said, some of those types of things could  
 10 include a draft complaint. I don't recall seeing a  
 11 draft complaint.  
 12 **BY MS. ENGLISH:**  
 13 **Q.** Do you recall seeing a memo that outlined strengths  
 14 and weaknesses of claims that could be asserted in a  
 15 complaint?  
 16 **A.** As I said before, I think there were memorandum and  
 17 advice that was given regarding the various claims,  
 18 defenses and alternatives available to the City which  
 19 could have included a memorandum of the nature you're  
 20 talking about.  
 21 **Q.** It could have included it --  
 22 **A.** It could.  
 23 **Q.** -- but you're not sure whether it did or not?  
 24 **A.** Sitting here today I don't specifically remember all  
 25 the memos that would fit the description that you're

1 up the right to assert claims against the Swap  
 2 counterparties, correct?  
 3 **A.** If the forbearance agreement is approved and we  
 4 ultimately execute on the agreement, then yes, the  
 5 parties would forebear and would not sue each other.  
 6 **Q.** Right. So all I'm asking is give me one example of  
 7 one claim you're giving up in the forbearance  
 8 agreement.  
 9 **A.** I suppose any of the claims that have been implicated  
 10 in some of the objections that have been filed and, as  
 11 I said earlier today, some of those claims which is  
 12 the ones we discussed a few minutes ago, such as  
 13 estoppel, ab initio and those others.  
 14 **Q.** Did any of your legal counsel ever prepare a memo or a  
 15 written analysis for the City that outlined a  
 16 litigation strategy against the Swap counterparties?  
 17 I'm not asking what would have been in it, if there  
 18 was one. I just want to know if there was any written  
 19 analysis ever prepared that outlined a litigation  
 20 strategy.  
 21 **A.** Well, without, here again, drawing into the  
 22 nomenclature of a litigation strategy, because that  
 23 can mean a number of different things, including up --  
 24 up to and through attaching a proposed complaint, for  
 25 instance, without getting into the nomenclature, I

1 making. There were memos discussing the various  
 2 strengths and weaknesses of the positions.  
 3 **Q.** Did you have any analysis done as to the cost of a  
 4 litigation with the Swap counterparties?  
 5 **A.** No. I don't recall if any of the documents included  
 6 costs. We -- there were discussions about the  
 7 potential costs and the timing, but I don't recall if  
 8 any of the documents did.  
 9 **Q.** Okay. What was your best estimate as to how much a  
 10 litigation with Swap counterparties would cost the  
 11 City?  
 12 **A.** I don't -- I don't remember what the best estimates  
 13 were. They -- they ranged from --  
 14 **MR. SHUMAKER:** Object. I just want to make  
 15 sure you're not going to be revealing any  
 16 attorney-client communications with your answer.  
 17 **THE WITNESS:** Okay.  
 18 **MR. SHUMAKER:** I'll interject that. I'll  
 19 let you answer the question as to whether that was  
 20 addressed. I don't want you to go --  
 21 **THE WITNESS:** Okay.  
 22 **MR. SHUMAKER:** -- into anything --  
 23 **THE WITNESS:** Okay.  
 24 **MR. SHUMAKER:** -- beyond that.  
 25 **A.** It was addressed, and suffice it to say I think it's



1 fair to assume that in litigation in the nature you're  
 2 discussing that it could go into millions of dollars.  
 3 **BY MS. ENGLISH:**  
 4 Q. How about the time it would take to litigate the Swap  
 5 counterparties? Did you estimate how long it would  
 6 take?  
 7 **MR. SHUMAKER:** Same admonition.  
 8 A. Let's -- let's do it this way. I think it's fair to  
 9 say that there were discussions regarding the time for  
 10 litigation and/or appeals and the costs that were  
 11 involved if that tack was taken.  
 12 **BY MS. ENGLISH:**  
 13 Q. How long did you estimate it would take to litigate  
 14 with Swap counterparties?  
 15 A. I'm not sure the predicate is there that I estimated  
 16 the length of time.  
 17 Q. Okay. If you didn't estimate the length of time,  
 18 that's an okay answer to give.  
 19 A. Yeah. I'm trying to be as clear as I can for you and  
 20 say that there were discussions, but there's nothing  
 21 as specific as the lodestar method of analysis which  
 22 you understand is time times hours billed, so on and  
 23 so forth. There were discussions and there were  
 24 analyses about what it could be.  
 25 Q. Now, I have to unpack that a little bit because you

1 Q. Did you have a lodestar analysis performed with  
 2 respect to a litigation with the Swap counterparties?  
 3 **MR. SHUMAKER:** Again, I'm going to object.  
 4 I believe that that question asks the -- asks Mr. Orr  
 5 to reveal privileged attorney-client communications  
 6 when you get into specific lodestar analysis.  
 7 **BY MS. ENGLISH:**  
 8 Q. I don't want the analysis. I just want to know  
 9 whether had you one done because you mentioned it.  
 10 A. I did mention it, but, here again, I think my response  
 11 was that there was an analysis that was done. I'm not  
 12 sure. I don't recall if it was as specific as the  
 13 type of lodestar analysis to give you an example, and  
 14 without going into conversation between me and my  
 15 counsel, I say again, we did an analysis and had  
 16 discussions regarding potential claims and defenses  
 17 that could be asserted, the potential length of time  
 18 it would take and the significant cost that might be  
 19 incurred by the City.  
 20 Q. I'm going to move on.  
 21 A. Okay. Sure.  
 22 Q. Did the City obtain approval from the Michigan  
 23 Department of Treasury for the COPs or the Swap  
 24 obligations, do you know?  
 25 A. You mean initially?

1 mentioned the lodestar analysis, one of my favorite  
 2 friends. Did you have a lodestar analysis done for  
 3 litigation with the Swap counterparties?  
 4 **MR. SHUMAKER:** Objection, this is getting  
 5 into the -- the specific communications between  
 6 Mr. Orr and his counsel when you start to go through  
 7 what -- what are the particulars of the advice that  
 8 was being given. I allowed you to go forward with  
 9 whether he considered the length of litigation in his  
 10 answer, but I don't want him to go into the specifics  
 11 of any sort of analysis that was done by counsel.  
 12 With that admonition, you can answer.  
 13 A. Again, without going to the specifics of discussion  
 14 I've had with counsel, there were discussions about  
 15 potential length of litigation and appeals and the  
 16 potential cost. Those discussions included time that  
 17 may have impaired my ability to complete my obligation  
 18 within the time frame provided by Public Act 436, as  
 19 well as significant costs, litigation cost being  
 20 incurred by the City.  
 21 **BY MS. ENGLISH:**  
 22 Q. Okay. Here is my question again, because in your  
 23 answer you mentioned lodestar analysis, so I'm just  
 24 asking -- it's a yes or no question.  
 25 A. Um-hm.

1 Q. Yeah.  
 2 A. I don't know. Well, wait a minute. Wait a minute.  
 3 I recall seeing a letter some time ago on  
 4 official Michigan State letterhead -- well, I recall  
 5 seeing a letter. It may have been some form related  
 6 to the COPs. I just don't remember specifically, but  
 7 I do recall seeing a letter on Michigan letterhead  
 8 related to the transaction.  
 9 Q. Okay. So I'm going to put in a request to your  
 10 counsel.  
 11 **MS. ENGLISH:** If there is an approval or a  
 12 letter from the Michigan Department of Treasury with  
 13 respect to the COPs or the Swaps, we'd like to request  
 14 a copy of that.  
 15 **MR. SHUMAKER:** We'll look into it.  
 16 **MS. ENGLISH:** Thanks.  
 17 **BY MS. ENGLISH:**  
 18 Q. Here's another one I don't know if you know the answer  
 19 to this.  
 20 A. Right.  
 21 Q. Do you know if the City approved the offering circular  
 22 that went out with respect to the COPs?  
 23 A. I do not.  
 24 Q. You mentioned earlier that you were on conference  
 25 calls with Ken Buckfire and the principals of the Swap

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1 counterparties?  
 2 **A. Yes.**  
 3 Q. Did you -- on any of those calls, did you ever take  
 4 the position that the Swaps were invalid or void?  
 5 **A. I don't recall if we had any discussions of that**  
 6 **nature on any of those calls.**  
 7 Q. Do you recall whether you ever took the position that  
 8 the liens were invalid or not secured?  
 9 **A. Likewise, I don't recall if we had discussions of that**  
 10 **nature on those calls.**  
 11 **Q. Do you recall whether you ever discussed with any of**  
 12 **the Swap counterparties the City's potential legal**  
 13 **arguments as against the Swap counterparties?**  
 14 **A. Did I?**  
 15 **Q. Yeah.**  
 16 (Whereupon Robert Hertzberg left the  
 17 deposition at 2:49 p.m.)  
 18 **A. No, I don't think I had though those discussions. No.**  
 19 **BY MS. ENGLISH:**  
 20 **Q. Did you ever debate the validity of the Swap**  
 21 **counterparties secured position with anyone from the**  
 22 **Swap counterparties?**  
 23 **A. Did I personally?**  
 24 **Q. Yes.**  
 25 **A. No.**

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1 Q. I want to show you a document you're very familiar  
 2 with.  
 3 **A. Um-hm.**  
 4 Q. So what exhibit are we up to now? Exhibit 6?  
 5 **A. Yeah.**  
 6 Q. Orr 6?  
 7 **A. Yes.**  
 8 **MS. ENGLISH:** Lally, can you pass me my  
 9 binder?  
 10 **MARKED FOR IDENTIFICATION:**  
 11 **DEPOSITION EXHIBIT 6**  
 12 **2:50 p.m.**  
 13 **BY MS. ENGLISH:**  
 14 Q. Okay. You recognize this document, don't you,  
 15 Mr. Orr?  
 16 **A. Yes. I assume it's an accurate representation of my**  
 17 **June 14th proposal to creditors.**  
 18 Q. Okay. And this is a document that you put together  
 19 largely, with help I'm sure, but you were responsible  
 20 for putting this together, right?  
 21 **A. This is a document that I and my team put together.**  
 22 Q. Okay. I'd like you to turn to pages 97 and 98 of the  
 23 document.  
 24 **A. Yes.**  
 25 Q. Okay. These are -- there's two forecast tables here

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1 which is really just one table on two pages, right?  
 2 **A. Right.**  
 3 Q. And --  
 4 **A. Well, let me make sure. Yes.**  
 5 Q. You know what, so there's ECF numbers at the bottom --  
 6 **A. Yes.**  
 7 Q. -- but there's also numbers in the -- that were part  
 8 of the original document and it's the original numbers  
 9 that I'm looking for, page 97 and 98.  
 10 **A. Okay.**  
 11 Q. On the top it says restructuring scenario.  
 12 **A. Okay. I'm sorry, I was looking at the electronic case**  
 13 **number. -**  
 14 Q. Yeah, my bad.  
 15 **A. 97 and 98. Here we go. Okay.**  
 16 Q. Okay. Now, if I understand this table that spans  
 17 pages 97 and 98 correctly, this is the City's  
 18 restructuring proposal, if you will; is that correct?  
 19 **A. Yes.**  
 20 **(Whereupon Robert Hertzberg entered the**  
 21 **deposition at 2:51 p.m.)**  
 22 **BY MS. ENGLISH:**  
 23 Q. Okay. And if we just look down say the column for  
 24 2014, we've got total revenues, net operating surplus,  
 25 readjustment expenses. And then if you go to page 98,

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1 we get down to a list of secured claims of the City.  
 2 **A. Yes.**  
 3 Q. Okay.  
 4 (Whereupon Kelly DiBlasi left the  
 5 deposition at 2:52 p.m.)  
 6 **BY MS. ENGLISH:**  
 7 Q. And there's a line item there for POC Swaps. Do you  
 8 see that?  
 9 **A. Yes.**  
 10 Q. And that line item is actually the Swaps we're talking  
 11 about today that you proposed to settle through the  
 12 forbearance agreement, correct?  
 13 **A. Yes.**  
 14 Q. Okay. And that line item, if you go right straight  
 15 across, shows roughly 50 million dollars a year being  
 16 paid; is that right?  
 17 **A. Yes.**  
 18 **Q. So this restructuring proposal, if I'm reading this**  
 19 **correctly, is assuming that the City is going to**  
 20 **continue to pay its monthly Swap payments; is that**  
 21 **correct?**  
 22 **A. Yes. I think there's a footnote there at the top that**  
 23 **says -- at the bottom, it says, "Assumes continued**  
 24 **payments as scheduled. Treatment to be determined."**  
 25 Q. Okay. So this restructuring proposal then -- well,

1 let me stay with this for just one more minute.  
 2 **A. Um-hm.**  
 3 **Q.** Then fur -- further down you've got an estimate of  
 4 total unsecured claims of the City, about 11 and a  
 5 half billion dollars, correct?  
 6 **A. Yes.**  
 7 **Q.** All right. Now, flip to page 106. I'm sorry, 105.  
 8 There again, we've got secured -- a section on secured  
 9 payments, and we're showing the City's still making  
 10 the Swap payments, correct?  
 11 **A. Um-hm.**  
 12 **Q.** All right. And then we flip to 107. We've got your  
 13 proposal for the 2 billion dollar note that's going to  
 14 go to pay unsecured.  
 15 **A. Yes.**  
 16 **Q.** Have I read all that correctly?  
 17 **A. Yes. I think --**  
 18 **Q. Okay.**  
 19 **A. -- the document speaks for itself.**  
 20 **Q.** So if I've understood this correctly, then your -- the  
 21 City's restructuring proposal is based on the notion  
 22 that the Swaps payments will continue, correct?  
 23 **A. Yes, for some period of time.**  
 24 **Q.** And in fact, this proposal does not show the -- any  
 25 effect of the forbearance agreement or indicate the

1 **But when you look at the note on page 107,**  
 2 **that -- the 2 billion dollar note -- that assumes that**  
 3 **the Swaps are -- the forbearance agreement is going to**  
 4 **include that all this unsecured debt is somehow paid**  
 5 **out of this note. Now, I understand what you're**  
 6 **trying to say is that the cash flow forecast here**  
 7 **doesn't take into account the Swap payment. I don't**  
 8 **know what he was saying in that regard.**  
 9 **Q.** Well, I guess all I'm trying to figure out is --  
 10 the -- the 2 billion dollar note that's in your  
 11 plan --  
 12 **A. Yes.**  
 13 **Q.** -- as evidenced in this document, seems to me to be  
 14 based on continuing to pay the Swap payments because  
 15 that's what's listed here, both on page 105 and on  
 16 page 98.  
 17 **A. Right.**  
 18 **Q.** Are you telling me that that's not correct, that the 2  
 19 billion dollars was formulated based on the assumption  
 20 that you'd get the forbearance agreement?  
 21 **A. What I'm telling you is that at the time this report**  
 22 **went out -- well, I'm telling you two things. One, at**  
 23 **the time this report went out, we did not have the**  
 24 **forbearance agreement, but we were having discussions**  
 25 **about it; and, two, what I'm telling you it's probably**

1 forbearance agreement coming into play here at all,  
 2 correct?  
 3 **A. That is correct.**  
 4 **Q.** All right. So if I were to tell you that Mr. Buckfire  
 5 yesterday testified that the City's restructuring plan  
 6 was based on an assumption that the forbearance  
 7 agreement was approved, that would be incorrect,  
 8 correct?  
 9 **A. No, not necessarily. I think the footnote at 1,**  
 10 **"assumes payments as scheduled. Treatment to be**  
 11 **determined," suggests that we're going to assume it.**  
 12 **I think what you're trying to say is based upon these**  
 13 **numbers, that at some point they should be taking**  
 14 **(sic) out because we would assume that the payments**  
 15 **would cease to the Swap counterparties, is what I**  
 16 **think you're saying.**  
 17 **I think what Mr. Buckfire was saying is**  
 18 **that at some point, based upon these notes, whether**  
 19 **it's this data or others -- I don't know what he was**  
 20 **saying, but my interpretation would be based upon**  
 21 **estimated unsecured claims that they would be -- and I**  
 22 **don't -- I don't want to mischaracterize his testimony**  
 23 **and I don't know the context in which it was taken, so**  
 24 **I don't want to misstate my understanding of what his**  
 25 **testimony was.**

1 **the best thing to do is ask Mr. Buckfire what he meant**  
 2 **by his testimony 'cause -- rather than trying to use**  
 3 **me to somehow contradict his testimony regarding the**  
 4 **Swap payment cash flow that's shown at page 98, you**  
 5 **should ask him what he meant.**  
 6 **Q.** Well, let me ask you this. Has -- based on this  
 7 document, the City's plan is to allocate a 2 billion  
 8 dollar note to the unsecureds, and this plan is -- it  
 9 has a line item for continuing to pay the Swaps?  
 10 **A. Yes.**  
 11 **Q.** Does the 2 billion dollar number change if the Swap  
 12 payments change?  
 13 **A. To the best of my knowledge, no. I don't assume that.**  
 14 **MS. ENGLISH:** I don't think I have anything  
 15 else.  
 16 **A. Okay.**  
 17 **MS. ENGLISH:** Thank you for your patience.  
 18 **THE WITNESS:** No, thank you. Sure.  
 19 **MR. SHUMAKER:** Take a quick five-minute  
 20 break and then we'll switch.  
 21 **VIDEO TECHNICIAN:** Okay. The time is  
 22 2:57 p.m. This marks the end of tape number 4. We  
 23 are off the record.  
 24 (Recess taken at 2:57 p.m.)  
 25 (Back on the record at 3:06 p.m.)

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1 **VIDEO TECHNICIAN:** We are back on the  
 2 record at 3:06 p.m. This marks the beginning of tape  
 3 number 5.  
 4 **EXAMINATION**  
 5 **BY MS. GREEN:**  
 6 Q. Good afternoon, Mr. Orr.  
 7 A. Good afternoon.  
 8 Q. I'm Jennifer Green.  
 9 A. Hi, Jennifer.  
 10 Q. I'm from Clark Hill and I represent the Police and  
 11 Fire Retirement System and the General Retirement  
 12 System.  
 13 A. Um-hm.  
 14 Q. If I refer to the 2009 collateral agreement -- we've  
 15 been doing it all day, but it has not yet been marked  
 16 as an exhibit -- you know what I'm referring to,  
 17 though, correct?  
 18 A. Yes.  
 19 Q. It's attached as Exhibit B to your assumption motion?  
 20 A. Yes.  
 21 Q. You know, are you familiar with the attachments to the  
 22 collateral agreement?  
 23 A. Yes. I'm somewhat familiar with them, yes.  
 24 Q. I have an extra copy here.  
 25 A. Okay.

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1 Q. I will give them to you if you want to follow along.  
 2 A. Okay.  
 3 Q. If you can flip to page 186. At the bottom it's  
 4 listed. It's the first yellow tab.  
 5 (Sneezing.)  
 6 **THE WITNESS:** Bless you. Gesundheit.  
 7 **BY MS. GREEN:**  
 8 Q. Do you recognize that letter?  
 9 A. I've seen it before, but obviously I have no  
 10 contemporaneous recollection when it was written.  
 11 Q. And that's the letter from the City to the Motor City  
 12 Casino, correct?  
 13 A. Yes.  
 14 Q. It's dated June 23rd, 2009?  
 15 A. Yes.  
 16 Q. It's attached to the collateral agreement?  
 17 A. Yes.  
 18 Q. If I can direct your attention to paragraphs 4 and  
 19 5 --  
 20 A. Um-hm.  
 21 Q. -- that letter appears to instruct the casino, the  
 22 Motor City Casino, to direct certain payments to U.S.  
 23 Bank?  
 24 A. Yes. Paragraph 4 seems to mention payment  
 25 instructions and paragraph 5 seems to discuss who they

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1 are to be made to.  
 2 Q. Okay. Then the following letter appears to be a  
 3 written receipt from the Motor City Casino back to the  
 4 City simply acknowledging receipt of the instructional  
 5 letter?  
 6 A. Well, I -- the following letter is a June 23rd, 2009  
 7 letter from the City of Detroit back to Greektown  
 8 Casino.  
 9 Q. Is it a letter acknowledging that they received, I'm  
 10 sorry, the instructional letter?  
 11 **MR. SHUMAKER:** What page are you on,  
 12 Counsel?  
 13 **MS. GREEN:** It's the page he was --  
 14 **THE WITNESS:** 190 of 247?  
 15 **MS. GREEN:** Um-hm.  
 16 A. Yeah, what it -- the document speaks for itself, but  
 17 your first letter at page 186 is from Motor City  
 18 Casino appearing to go -- it's from the City of  
 19 Detroit to Motor City Casino; the second letter is  
 20 from the City of Detroit to Greektown Casino.  
 21 **BY MS. GREEN:**  
 22 Q. Is that 191?  
 23 A. That's 191.  
 24 Q. Okay.  
 25 A. Okay. 191.

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1 Q. Okay.  
 2 A. Okay.  
 3 Q. And so that's another instructional letter, correct,  
 4 kind of doing the same thing, just laying out that  
 5 certain payments are supposed to be made?  
 6 **MR. SHUMAKER:** Just for clarification, when  
 7 you say that, are you talking about the irrevocable  
 8 instructions on page 191 through 193?  
 9 **MS. GREEN:** Yes, exactly what he's looking  
 10 at right now.  
 11 A. Okay. So I -- in order to expedite this, I assume you  
 12 will represent to me the letters are essentially  
 13 similar and the first one was to Motor City and the  
 14 second was to Greektown Casino.  
 15 **BY MS. GREEN:**  
 16 Q. Exactly.  
 17 A. Is that correct?  
 18 Yes.  
 19 Q. And if you keep going there's another one I believe to  
 20 MGM.  
 21 A. I would assume there's a similar letter from Norma  
 22 White, following up with a receipt, following up with  
 23 a similar -- what appears to have been -- maybe have  
 24 been a cover letter, and then there's a  
 25 June 23rd, 2009 letter to MGM Grand.

1 Q. So you'd agree with me, there's a series of  
 2 instructional letters from the City to the casinos,  
 3 and then each of those are followed by a letter from  
 4 the casino back to the City acknowledging receipt.  
 5 I'm just summarizing what you just said.  
 6 **A. Yes. I don't -- I don't mean to be difficult. I**  
 7 **don't know if this receipt regarding irrevocable**  
 8 **instructions was a letter or was attached to the**  
 9 **document, but there appear to be those that are**  
 10 **comparable to the three letters you discussed from**  
 11 **each of the hotels back to Norma White.**  
 12 Q. Okay. Earlier when you were being examined by  
 13 Ms. English, you referenced that you relied on a  
 14 formal approval letter from the Michigan Gaming  
 15 Control Board?  
 16 **MR. SHUMAKER: Objection, mischaracterizes**  
 17 **his testimony.**  
 18 **A. Yeah, my testimony was I thought I had seen a letter**  
 19 **from the -- from the State on State letterhead which**  
 20 **might have qualified for the question of Ms. English**  
 21 **as to whether or not I'd seen anything approving the**  
 22 **agreement.**  
 23 **BY MS. GREEN:**  
 24 Q. Okay.  
 25 **A. Okay.**

1 **counsel.**  
 2 **There were a number of analyses and**  
 3 **memoranda that were prepared regarding potential**  
 4 **strengths and weaknesses and a proposal for the deal,**  
 5 **and -- and the reason I recall this letter is because,**  
 6 **yes, I believe that this was one of the documents that**  
 7 **I may have reviewed in that process.**  
 8 Q. Do you know if anyone else on your team at the City  
 9 would have reviewed and analyzed this letter in  
 10 connection with evaluating the validity of the lien?  
 11 **A. I believe my -- my team, including my counsel -- I**  
 12 **don't know if they're at the City. It may have been**  
 13 **my restructuring and outside counsel.**  
 14 Q. And just for the record, we're referring to a letter  
 15 dated June 18th, 2009. The letterhead is from the  
 16 Michigan Gaming Control Board and it does say State of  
 17 Michigan.  
 18 **A. Yes, page 200 of 247.**  
 19 Q. If you read the first paragraph of the letter --  
 20 **A. Yes.**  
 21 Q. -- and if you need to reacquaint yourself with it now,  
 22 that's fine.  
 23 **A. I did. Here again, these documents are legacy**  
 24 **documents that occurred in 2009, well before I was**  
 25 **here, so I've only seen them. I have no**

1 Q. From the State of Michigan or from the Michigan Gaming  
 2 Control Board?  
 3 **A. I thought from the -- I think I said on State**  
 4 **letterhead. I don't recall if I said Michigan Gaming**  
 5 **Control Board, but I said State I believe.**  
 6 Q. Okay. What was your understanding of this approval  
 7 letter?  
 8 **A. Well, you call it an approval letter.**  
 9 Q. I was using your language, I thought.  
 10 **A. Yeah, I said -- what I said was -- the question was**  
 11 **had you seen an approval letter, and what I said I**  
 12 **don't know. I said at first, no. I said wait a**  
 13 **minute. I seem to have recalled seeing a letter on**  
 14 **State letterhead related to this issue, and I couldn't**  
 15 **recall whether or not it was a formal, quote, unquote,**  
 16 **approval.**  
 17 Q. Do you recall if you relied upon this letter in  
 18 evaluating the validity of the lien on the casino  
 19 revenue?  
 20 **A. I recall having seen this letter, and this I think is**  
 21 **the letter that I recall having seen. Your question**  
 22 **is did I rely on it -- in evaluating potential claims,**  
 23 **did I personally rely on it. My response to you is I**  
 24 **made no independent analysis, as I said to**  
 25 **Ms. English, outside of discussions that I had with**

1 **contemporaneous recollection.**  
 2 Q. I understand.  
 3 **A. The document speak for themselves, but I'd be**  
 4 **certainly happy to read it and give you my**  
 5 **understanding.**  
 6 **Okay. I've read the letter.**  
 7 Q. This letter acknowledges that the three Detroit-based  
 8 casinos have been directed to, quote, electronically  
 9 transfer a portion of the City's money that would be  
 10 due under the gaming act to U.S. Bank, correct?  
 11 **A. Yes.**  
 12 Q. And after that it acknowledges that there was a  
 13 letter, quote, advising the board that the City  
 14 Council of the City of Detroit has enacted an  
 15 ordinance and taken all related action necessary to  
 16 direct the three licensed Detroit casinos to make the  
 17 transfer to the account.  
 18 **MR. SHUMAKER: Objection, the document**  
 19 **speaks for itself.**  
 20 **A. Yes.**  
 21 **BY MS. GREEN:**  
 22 Q. Did I -- did I correctly relate the letter on the  
 23 record?  
 24 **A. Well, the document speaks for itself, but romanette II**  
 25 **says that, yes.**

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1 Q. Okay. Thank you.  
 2 So this letter at the bottom, page -- of  
 3 the same page --  
 4 **A. Right.**  
 5 Q. -- paragraph 2 --  
 6 **A. Yes.**  
 7 Q. -- there is some sort of analysis as to this  
 8 electronic transfer, correct?  
 9 **MR. SHUMAKER:** Object to the form.  
 10 **A. Yeah, I don't know if I'd call it an analysis, but --**  
 11 **BY MS. GREEN:**  
 12 Q. A reference?  
 13 **A. Yeah, the paragraph speaks for itself. The single**  
 14 **sentence paragraph speaks for itself.**  
 15 Q. And it's referring to the transfer of the funds  
 16 that -- mentioned in paragraph 1, correct?  
 17 **A. Yes.**  
 18 Q. Okay. So fair to say this letter is really just  
 19 confirming that the Michigan Gaming Board received a  
 20 letter directing it to transfer those funds, and this  
 21 letter is relating to the mere transfer of those  
 22 funds, correct?  
 23 **MR. SHUMAKER:** Object to the form, document  
 24 speaks for itself.  
 25 **A. Yeah, the document speaks for itself, and I'm -- your**

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1 **question seems to suggest that the prior letters we**  
 2 **looked at were to the gaming control board directing**  
 3 **them to transfer funds. As I read this letter, it**  
 4 **says that the gaming control board has seen the**  
 5 **letters, that they're giving -- advising the board of**  
 6 **certain irrevocable instructions, not instructing them**  
 7 **to do it, for certain the three licensed Detroit**  
 8 **casinos, and it goes on to speak for itself.**  
 9 **And then it says at the end, upon review of**  
 10 **this matter, I do not find --**  
 11 **COURT REPORTER:** I'm sorry. You're going  
 12 to have to slow down.  
 13 **THE WITNESS:** Okay. I'm sorry.  
 14 **COURT REPORTER:** Speaks for itself and it  
 15 goes on.  
 16 **A. Speaks for itself, and goes on to say, "Upon review of**  
 17 **this matter, I do not find any compliance issues at**  
 18 **this time, and since no goods or service are being**  
 19 **provided to the casino, no licensing is required."**  
 20 **BY MS. GREEN:**  
 21 Q. That's a fair point. As we said before, the letter  
 22 was reflecting on the fact that certain instructional  
 23 letters had been sent --  
 24 **A. Yes.**  
 25 Q. -- to the casinos and signing off on that process

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1 under which certain funds would be transferred to U.S.  
 2 Bank.  
 3 **A. Right. The letter, here again, speaks for itself, but**  
 4 **it appears to be the State gaming commission saying**  
 5 **there are no compliance issues and you don't need any**  
 6 **licensing.**  
 7 Q. Well, let's do it this way. The Michigan Gaming Board  
 8 in this letter has not said that it has reviewed the  
 9 validity of the City's pledge of certain casino  
 10 revenues for purposes of securing its financial  
 11 obligations under the 2009 collateral agreement under  
 12 the Swap contracts, right?  
 13 **A. Yes.**  
 14 Q. It doesn't say that?  
 15 **A. Yes.**  
 16 Q. And it does not say that it hereby authorizes the City  
 17 to pledge the casino revenues under the Michigan  
 18 Gaming Act, correct?  
 19 **A. That is correct.**  
 20 Q. And it does not confirm the transaction or say that  
 21 the transaction fully complies with the Michigan  
 22 Gaming Act, does it?  
 23 **A. No. The letter speaks for itself, but I don't see**  
 24 **that anywhere in the letter.**  
 25 Q. And nowhere in this letter does it mention that the

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1 transaction is approved under section 12 of the  
 2 Michigan Gaming Act, right?  
 3 **A. That is not -- that is not in the letter.**  
 4 Q. Okay. And speaking of the lien on the casino revenue,  
 5 what is your understanding of how the lien on casino  
 6 revenue arose? It arose from the agreement that we  
 7 just looked at, correct?  
 8 **MR. JURGENS:** Objection to form.  
 9 **MR. SHUMAKER:** Objection to form.  
 10 **A. My understanding is that the 2009 collateral agreement**  
 11 **was entered into to address a default under the 2005**  
 12 **and 2006 Swaps, and that as a consequence of that,**  
 13 **there were allegedly liens based upon the casino**  
 14 **revenue.**  
 15 **BY MS. GREEN:**  
 16 Q. Okay. But was there a lien prior to the collateral  
 17 agreement that was entered into in 2009?  
 18 **MR. JURGENS:** Objection to form.  
 19 **MR. SHUMAKER:** Objection to foundation.  
 20 **A. Without getting into legal conclusion as to whether or**  
 21 **not there was a lien, to the best of my knowledge, the**  
 22 **answer is no.**  
 23 **BY MS. GREEN:**  
 24 Q. Okay. So suffice it to say that the lien would not  
 25 exist but for the 2009 collateral agreement that was

1 entered into, correct?  
 2 **MR. JURGENS:** Objection to form.  
 3 **MR. SHUMAKER:** Objection, form.  
 4 **A.** Here again, as I've said a couple of times today, I'm  
 5 going to stay away from legal conclusions as to  
 6 whether or not a lien would or would not have existed.  
 7 There are equitable liens that arise ex contractu  
 8 outside of law. There are other issues, but suffice  
 9 it to say this agreement seemed to impose a lien as a  
 10 matter of the agreement on the casino revenue.  
 11 **BY MS. GREEN:**  
 12 Q. Okay. You're not claiming any equitable lien?  
 13 **MR. JURGENS:** Objection.  
 14 **A.** We're not claiming a lien. We've done an analysis,  
 15 and there have been several memos that have gone back  
 16 and forth from counsel analyzing a number of different  
 17 issues at law and at equity. We -- there's -- me,  
 18 personally, under our agreement, there's no -- been no  
 19 assertion of an equitable lien.  
 20 **MS. GREEN:** I have nothing further then.  
 21 **THE WITNESS:** Sure.  
 22 Do you need -- you need this, don't you?  
 23 Is this -- did you -- excuse me. Did you mark this?  
 24 **MS. GREEN:** We can mark it as an exhibit.  
 25 I don't know that anyone has marked it yet. We can

1 left the deposition at 3:21 p.m.)  
 2 (Back on the record at 3:22 p.m.)  
 3 **VIDEO TECHNICIAN:** We are back on the  
 4 record at 3:22 p.m.  
 5 **EXAMINATION**  
 6 **BY MR. GOLDBERG:**  
 7 Q. How are you doing, Mr. Orr?  
 8 **A.** Hello, Mr. Goldberg. How are you?  
 9 Q. We met before. I'm Jerome Goldberg. I represent  
 10 David Sole, who's an interested party, he's a retiree,  
 11 along with his wife, who's also a retiree.  
 12 **MR. GOLDBERG:** First of all, I want to just  
 13 go on the record and thank Kirkland & Ellis and the  
 14 other attorneys for their patience and their working  
 15 with other attorneys in this case, and especially  
 16 someone like me who represents a very different point  
 17 of view and that they were objective and fair their --  
 18 in accommodating all the objectives here.  
 19 **BY MR. GOLDBERG:**  
 20 Q. Let me begin by asking just a few questions just so we  
 21 can put some of this into perspective. I want to call  
 22 your attention to Exhibit 3.  
 23 **A.** Yes. Okay.  
 24 Q. On page 34 of Exhibit 3, there's a chart here that  
 25 references expenditures from the years 2008 to 2012?

1 mark it as Exhibit 7.  
 2 **MARKED FOR IDENTIFICATION:**  
 3 DEPOSITION EXHIBIT 7  
 4 3:20 p.m.  
 5 (Discussion off the record at 3:20 p.m.)  
 6 (Back on the record at 3:20 p.m.)  
 7 **MS. GREEN:** I thought maybe it was earlier  
 8 and I just didn't know.  
 9 **THE WITNESS:** No, I don't think it was.  
 10 **MS. GREEN:** It's hard to hear down there.  
 11 **THE WITNESS:** We talked about the  
 12 collateral agreement.  
 13 **MS. GREEN:** We did. Okay.  
 14 **VIDEO TECHNICIAN:** Do we need to go off the  
 15 record for the second or are we staying on? Are you  
 16 asking questions?  
 17 **MS. GREEN:** Oh, were we on?  
 18 **THE WITNESS:** We can shut up.  
 19 **MR. SHUMAKER:** Why don't we go off for one  
 20 minute to get ourselves together.  
 21 **VIDEO TECHNICIAN:** All right. Thank you.  
 22 The time is 3:20 p.m. We are off the  
 23 record.  
 24 (Recess taken at 3:20 p.m.)  
 25 (Whereupon Lally Gartel and Stephen Hackney

1 **A.** Yes.  
 2 Q. And it indicates -- first of all, I just had a  
 3 question. Under the POCs, it has POC Swap GF, I  
 4 assume that means general fund?  
 5 **MR. SHUMAKER:** Counsel, I think you may be  
 6 pointing to a different page than the witness has in  
 7 front of him.  
 8 **BY MR. GOLDBERG:**  
 9 Q. It's page 34 in mine. Which one did I give you? I'm  
 10 talking about the June 14th, 2013.  
 11 **MR. SHUMAKER:** Yeah, there's an executive  
 12 summary and then there's a bigger one. Are you  
 13 looking at the bigger one?  
 14 **MR. GOLDBERG:** I have copies of what I'm  
 15 looking at.  
 16 **A.** These are the executive summaries.  
 17 **MR. GOLDBERG:** Why don't I mark these and  
 18 that will make it easier.  
 19 **THE WITNESS:** And the larger one is this  
 20 one.  
 21 **MR. SHUMAKER:** The larger one is Orr  
 22 Number 6. Take a look at that.  
 23 **MR. GOLDBERG:** Sure. Yeah, this is the one  
 24 I'm looking at.  
 25 **THE WITNESS:** That's the one, the larger

1 one.

2 **BY MR. GOLDBERG:**

3 Q. Okay. So Exhibit Number 6.

4 **A. Okay. Mr. Goldberg, which page were you at?**

5 Q. Page 34.

6 **A. Of the original document?**

7 Q. Yes.

8 **A. Okay.**

9 Q. Here we go, that chart, 34. And it's a chart that

10 says study that -- lists for fiscal years ended actual

11 expenditures for 2008 to 2012; is that correct?

12 **A. Yes.**

13 Q. I just want to be clear. It has under POC Swaps GF.

14 That means general fund?

15 **A. Yes.**

16 Q. EF, is that enterprise fund?

17 **A. Enterprise fund excluding department of**

18 **transportation.**

19 Q. And I'm trying to understand, does that mean that part

20 of the POC Swaps are paid -- a small part is paid from

21 the enterprise fund?

22 **A. Yes. You'll see the corresponding numbers show for**

23 **those categories.**

24 Q. Okay. And I totaled up the years from 2008, 2012. It

25 appears that \$247.5 million was paid on for the POC

1 to pay the Swap counterparties, correct?

2 **A. Yes --**

3 **MR. SHUMAKER: Objection to form.**

4 **A. -- as we discussed earlier today.**

5 **BY MR. GOLDBERG:**

6 Q. Just so I'm clear, the -- what we're talking about

7 with the optional termination event. The exhibit --

8 the same exhibit you're referencing -- let's just get

9 this -- I want to call your attention to page 28.

10 **A. Of the same exhibit?**

11 Q. Same exhibit.

12 **A. Okay.**

13 Q. Am I correct in the -- that that reflects that as of

14 May 31, 2013, according to your proposal for

15 creditors, the negative fair value of the Swaps was

16 \$343.6 million?

17 **A. That's what it says. Recent valuations established**

18 **the negative fair value --**

19 **COURT REPORTER: I'm sorry. You're reading**

20 **way too fast.**

21 **THE WITNESS: I'm sorry.**

22 **A. Recent valuations established. The negative fair**

23 **value of the Swaps at approximately 343.6 million as**

24 **of May 31st.**

25 **BY MR. GOLDBERG:**

1 Swaps during those years.

2 **A. I don't have that total in front of me, but I'm going**

3 **to take it that that's the accurate number.**

4 Q. It appears that it's usually about between 45 to 50

5 million a year.

6 **A. Right, if you average 5, 10, 15, 20.**

7 Q. Just so we're clear, I mean, that 247 million, none of

8 that went to turn on any lights in the City of

9 Detroit, did it?

10 **MR. SHUMAKER: Object to the form.**

11 **A. It was legacy expenditures, debt service.**

12 **BY MR. GOLDBERG:**

13 Q. It basically went to UBS and to Bank of America. It

14 was their reward for betting correctly on a hedge bet,

15 right?

16 **MR. JURGENS: Objection to form.**

17 **MR. SHUMAKER: Objection to form.**

18 **A. Yeah, I'm going to stay away from characterizing it as**

19 **a reward. There were payments made pursuant to**

20 **existing certificates of participation at that time.**

21 **BY MR. GOLDBERG:**

22 Q. And it was based on, as we talked about before, that

23 the difference between the interest rate on the

24 floating rate Swaps -- on the floating rate COPs and

25 the fixed rate that the -- that the City was obligated

1 Q. So in the optional termination policy that's part of

2 the forbearance agreement, if the City was to pay the

3 initial payment, the City would still owe 264 -- we'd

4 be paying 264 million approximately on the Swaps?

5 **MR. SHUMAKER: Objection to form.**

6 **BY MR. GOLDBERG:**

7 Q. We'd be paying 75 percent of whatever the termination

8 amount is at that point?

9 **A. Well, it's 75 percent of termination amount at that**

10 **point, which I believe has since declined from**

11 **May 31st.**

12 Q. Why do you say it's declined?

13 **A. Because interest rates have shifted, and so at any**

14 **given time we'd have to value the interest rate**

15 **formula at the time you choose to exercise the**

16 **optional termination provision of the forbearance**

17 **agreement.**

18 Q. The interest rate that we're talking about on the Swap

19 is linked to the LIBOR; isn't that correct?

20 **A. Yes.**

21 Q. The three-month LIBOR?

22 **A. Yes. I believe so.**

23 Q. I pulled the three-month LIBOR historical index. It

24 indicated that as of -- might as well as mark this as

25 an exhibit.



1 **MR. GOLDBERG:** Can you mark this as an  
 2 exhibit?  
 3 **MARKED FOR IDENTIFICATION:**  
 4 **DEPOSITION EXHIBIT 8**  
 5 3:29 p.m.  
 6 **BY MR. GOLDBERG:**  
 7 Q. It appears that as of August of 2013, the three-month  
 8 LIBOR rate was .2655 percent?  
 9 **MR. SHUMAKER:** Objection, foundation.  
 10 **A. Is there -- if you're talking about --**  
 11 **BY MR. GOLDBERG:**  
 12 Q. Under 2013.  
 13 **A. 2013, a specific category in August which reads**  
 14 **0.26550.**  
 15 Q. Right. So it's actually gone down since July of 2013  
 16 according to this chart.  
 17 **A. Yes. Did I say up before?**  
 18 Q. You had indicated that the interest rates -- right,  
 19 that the -- I mean, if it goes down, the City owes  
 20 more; isn't that correct?  
 21 **A. Right.**  
 22 Q. Just so we're clear again, that 200 -- whatever --  
 23 whether the figure is 247 million or 200 million, the  
 24 optional termination payment is not going to be -- the  
 25 City gets no direct benefit from that payment?

1 yesterday due to an illness of my wife, but --  
 2 **A. Oh, I'm sorry.**  
 3 Q. -- they were talking about a \$350 million bond of some  
 4 kind that is being looked into being floated, correct?  
 5 **A. Here again, I want to be careful. It's unclear**  
 6 **whether or not it is a bond.**  
 7 Q. Okay.  
 8 **A. What is clear is there's some post petition financing**  
 9 **proposal which are quite sensitive, but that number is**  
 10 **not an unreasonable number and it has been mentioned**  
 11 **about in the press.**  
 12 Q. And is it reasonable to say that that 2 -- 350 million  
 13 is not going to come free to the City?  
 14 **A. No. The City will have to finance it in some fashion.**  
 15 Q. I mean, I did a little research myself and looked up a  
 16 bond in Ann Arbor that was recently financed for  
 17 340 million at 4 percent which is, I would think we  
 18 both agree, was a good interest rate --  
 19 **A. Um-hm.**  
 20 Q. -- and the -- Ann Arbor would be paying 230 million in  
 21 interest on that bond over a 25-year period.  
 22 **A. Here again, Mr. Goldberg, I want to be very careful.**  
 23 **Without representing or agreeing that the post**  
 24 **petition financing that's being discussed will take**  
 25 **the characteristic of a bond.**

1 **MR. JURGENS:** Objection.  
 2 **MR. SHUMAKER:** Objection to form.  
 3 **A. Well --**  
 4 **BY MR. HACKNEY:**  
 5 Q. Let me be -- strike that question.  
 6 No lights get turned on from that money.  
 7 That's money that comes out of the City budget.  
 8 **MR. SHUMAKER:** Same objection.  
 9 **A. Well, it's money -- yeah, I would say that it's money**  
 10 **that the City is obligated to pay in some fashion, but**  
 11 **to the extent we get a discount, the City benefits.**  
 12 **BY MR. GOLDBERG:**  
 13 Q. I heard before the testimony, and I think it's pretty  
 14 obvious, that the City does not have the money on hand  
 15 to pay that termination amount, correct?  
 16 **MR. JURGENS:** Objection to form.  
 17 **A. Yes, I'm told that is correct.**  
 18 **BY MR. GOLDBERG:**  
 19 Q. And to do so it's going to have to float another bond  
 20 or some kind of loan?  
 21 **A. Well, it would have to in some fashion derive some**  
 22 **funding from the capital markets, yes.**  
 23 Q. Okay. I read something, and I heard the same figures  
 24 floated here. I read an article in the Detroit News  
 25 and I heard the same -- I wasn't able to come

1 Q. No problem. But either way, we are in agreement that  
 2 that financing -- we don't have -- the City does not  
 3 have a source for -- it doesn't have a relationship  
 4 with the Fed that the banks have where it gets a zero  
 5 qualitative easing and zero percent loans, does it?  
 6 **A. The City does not -- is not a qualified financial**  
 7 **institution to go to the Fed discount window nor does**  
 8 **it have an extra several hundred million dollars in**  
 9 **its funds.**  
 10 Q. Let me ask another question. I want to call your  
 11 attention to the forbearance agreement.  
 12 **A. Yes.**  
 13 Q. Which exhibit is that?  
 14 **A. That's Exhibit 2.**  
 15 Q. Let me call your attention to page 14.  
 16 **A. Yes.**  
 17 Q. And it indicates under mid-market amount --  
 18 **A. Yes.**  
 19 Q. -- am I reading it correctly to say that the -- when  
 20 the optional termination goes into effect, assuming it  
 21 goes into effect, that the calculation on what's owed  
 22 on the Swap that's the basis for the termination is  
 23 based on the ISDA fix 3?  
 24 **MR. SHUMAKER:** Objection to form. The  
 25 document speaks for itself.

1 **BY MR. GOLDBERG:**  
 2 Q. Okay.  
 3 **A. Yeah, here again, the document speaks to itself and it**  
 4 **says methodology that is agreed to by the City and**  
 5 **based upon the present value as it speaks to the rest**  
 6 **of the document, yes.**  
 7 Q. Have you looked into the fact that there's a lot of  
 8 literature out now that's exposing a pretty large  
 9 scandal with reg -- regard to the ISDA fix that  
 10 involves and implicates both Bank of America and UBS?  
 11 **MR. JURGENS:** Object to form.  
 12 **A. Without characterizing the nature of the literature, I**  
 13 **think it's safe to say that I am aware of some issues**  
 14 **that have been discussed regarding ISDA, fixed.**  
 15 **BY MR. GOLDBERG:**  
 16 Q. Are you aware also of issues that have come out with  
 17 regard to the LIBOR, specifically with regard to UBS  
 18 and Bank of America in the setting of using the LIBOR  
 19 as a standard?  
 20 **MR. JURGENS:** Objection to form.  
 21 **A. I am aware that in the past years there have been some**  
 22 **questions raised regarding the LIBOR for certain**  
 23 **financial institutions, yes.**  
 24 **BY MR. GOLDBERG:**  
 25 Q. Has that affected your analysis of how to deal with

1 **A. I had heard that. I have not read the final judgment.**  
 2 Q. Well, I'd be glad to pass you down a copy.  
 3 **MR. GOLDBERG:** Why don't we mark this.  
 4 **MARKED FOR IDENTIFICATION:**  
 5 DEPOSITION EXHIBIT 9  
 6 3:36 p.m.  
 7 **BY MR. GOLDBERG:**  
 8 Q. Are you also aware that Bank of America has been  
 9 investigated for potential rigging with regard to the  
 10 municipal bond market?  
 11 **MR. JURGENS:** Objection to form.  
 12 **A. I am aware that Bank of America has been investigated.**  
 13 **The exact specifics of the investigation I am not**  
 14 **aware of.**  
 15 **BY MR. GOLDBERG:**  
 16 Q. In light of these investigations that deal with  
 17 rigging of the municipal bond market, was that taken  
 18 into consideration by the City in how to approach the  
 19 question of this forbearance agreement and potential  
 20 action on these Swaps?  
 21 **A. Perhaps you could be more specific in what way you're**  
 22 **asking whether that was taken into consideration.**  
 23 Q. I mean, if there, in fact, was fraud -- based on the  
 24 fact there's at least an indication of fraudulent  
 25 activity by both Bank of America and UBS within the

1 the Swap counterparties in terms of the -- the  
 2 forbearance agreement?  
 3 **A. No.**  
 4 Q. The fact that it's potential fraud was involved in the  
 5 setting of these --  
 6 **MR. JURGENS:** Objection to form.  
 7 **MR. SHUMAKER:** Objection to form.  
 8 **A. Mr. Goldberg, I'm going to defer from accepting the**  
 9 **characterization of potential fraud. It is -- it is**  
 10 **as reported.**  
 11 **BY MR. GOLDBERG:**  
 12 Q. Okay. That's fine.  
 13 Are you also aware that the -- that UBS  
 14 was -- let me find that.  
 15 Are you aware that UBS has been sued by the  
 16 Securities and Exchange Commission for rigging in  
 17 regard to municipal bonds?  
 18 **A. In past years?**  
 19 Q. That there was a final judgment -- yes, in past years.  
 20 **A. Yes.**  
 21 Q. Are you aware of the final judgment that was -- there  
 22 was a final judgment on a case that was filed on --  
 23 it's 112539 -- that -- and that one of the bonds that  
 24 actually was involved in that case was the Detroit  
 25 water and sewage bond case?

1 municipal bond market, has there been any  
 2 investigation as to whether or not that was the case  
 3 with -- with regard to the Swaps associated with the  
 4 POCs?  
 5 **MR. JURGENS:** Objection to form.  
 6 **MR. SHUMAKER:** Objection to form,  
 7 foundation.  
 8 **A. Yeah, first, it's not clear that there was fraud with**  
 9 **respect to POCs. I think your prior question**  
 10 **concerning Bank of America concerned bonds at DWSD**  
 11 **that as my understanding are not implicated by this**  
 12 **process, meaning the forbearance agreement, but have**  
 13 **we calculated and analyzed the possibility that there**  
 14 **may be issues surrounding potential concerns in**  
 15 **connection with the Swap agreement, the answer is yes.**  
 16 **BY MR. GOLDBERG:**  
 17 Q. And who was -- who were those discussions with in  
 18 terms of whether or not to pursue that?  
 19 **A. I would have had discussions with my counsel.**  
 20 Q. When you say your counsel, who do you mean?  
 21 **A. My attorneys.**  
 22 Q. Jones Day, is that --  
 23 **A. Well, Jones Day. We also have local counsel that's**  
 24 **involved that's sitting here, Pepper Hamilton, and**  
 25 **others.**

1 Q. I mean, isn't Jones Day -- doesn't Jones Day represent  
 2 this Bank of America as one of its clients on its Web  
 3 site?  
 4 A. Yes, Jones Day does represent Bank of America.  
 5 Q. How could Jones Day investigate one of its own clients  
 6 for potential fraud?  
 7 MR. SHUMAKER: Objection, form.  
 8 MR. JURGENS: Objection, form.  
 9 A. I am today, Mr. Goldberg, a client of Jones Day. The  
 10 specific practices of Jones Day regarding its  
 11 investigations, I would suggest that you refer to  
 12 them.  
 13 BY MR. GOLDBERG:  
 14 Q. Okay. I'm just saying you utilize them --  
 15 A. Yes, I do.  
 16 Q. -- for their -- for their advice on whether or not to  
 17 conduct such an investigation. I'm trying to ask you  
 18 as your -- in your independent position as emergency  
 19 manager, wouldn't you think that a law firm that  
 20 represents the precise person you're asking to  
 21 investigate for fraud could not give you an  
 22 objective appraisal?  
 23 A. No.  
 24 MR. JURGENS: Objection to form.  
 25 MR. SHUMAKER: Objection to form.

1 financial crisis in Detroit?  
 2 A. Yes. To be clear, under 436 I have no independent  
 3 prosecutorial authority, but I do have the authority  
 4 to make criminal referrals to appropriate  
 5 prosecutorial authorities.  
 6 Q. In light of the cost to the City of the Swaps and the  
 7 continuing costs, which we all acknowledge will be  
 8 substantial even in light of the forbearance  
 9 agreement, have you made any referral to at least do  
 10 a -- conduct an investigation based on the evidence  
 11 that, that -- I'm not accusing them of criminal  
 12 activity in these activities. I have no basis for  
 13 doing that, but on the other hand that fact that  
 14 their -- some of their top executives in this area  
 15 have been convicted would at least lead me to want to  
 16 take a look at that in light of Detroit's situation.  
 17 MR. JURGENS: Objection to form.  
 18 MR. SHUMAKER: Objection, form.  
 19 A. Yeah, it is a run-on question, Mr. Goldberg, but let  
 20 me say this. We are -- we have an -- analyzed to the  
 21 degree and looked at everything significantly related  
 22 to this transaction. Any --  
 23 BY MR. GOLDBERG:  
 24 Q. Have or have not? I'm sorry.  
 25 A. We have. We have.

1 A. No. In my experience, having worked now at three  
 2 different law firms, I have seen situations where law  
 3 firms are fully capable of investigating clients, yes.  
 4 BY MR. GOLDBERG:  
 5 Q. Are you aware that three executives of UBS were in --  
 6 recently jailed that -- who were involved in municipal  
 7 bond division were recently jailed?  
 8 A. I'm aware that there were prosecutions related to UBS.  
 9 I wasn't aware of the exact number or who they are.  
 10 Q. Okay. I do have -- now, I'm not privy to much on that  
 11 either, but I do have articles that do cite that.  
 12 A. Okay.  
 13 Q. And they cited three people who were just convicted in  
 14 July of this year.  
 15 A. Okay.  
 16 Q. Are you aware that Bank of -- an executive of Bank of  
 17 America in its municipal bond division was indicted in  
 18 2012?  
 19 A. I don't recall if I was aware of that.  
 20 Q. Okay. Let me just ask under -- pursuant to the Public  
 21 Act 436 section 13 -- section 16, aren't you mandated  
 22 to conduct a criminal investigation, or at least to  
 23 refer potential suspicion of criminal investigation to  
 24 the Attorney General in connection with -- if there's  
 25 any kind of criminal activity associated with the

1 Q. Okay.  
 2 A. If there appears to be a basis for making a criminal  
 3 referral of any kind related to anything that falls  
 4 under my purview of 436, I will do that.  
 5 Q. But at this point nothing -- there hasn't even been a  
 6 request for such an investigation?  
 7 A. I would be careful about -- I -- I have asked -- there  
 8 are matters that are under investigation that may or  
 9 may not implicate the subject matters you're talking  
 10 about. I'm going to defer to speak about them  
 11 further.  
 12 Q. Okay. Are you familiar with the circumstances that  
 13 led to the 2005 Swap?  
 14 A. I'm familiar with what I've read. I wasn't here in  
 15 the City at the time.  
 16 Q. Do you know why Moody's -- not Moody's -- Fitch and  
 17 Standard & Poor's would have been at the table along  
 18 with UBS when this -- when this was discussed?  
 19 A. First, I don't know that they were at the table and,  
 20 secondly, if they were, I do not know why they would  
 21 have been.  
 22 Q. Well, I do have a photograph of them at the table  
 23 which I'd be glad to share with you --  
 24 A. Okay.  
 25 Q. -- from the Michigan Citizen. It was taken at that

1 time. Let me see if I can find that.  
 2 **MR. GOLDBERG:** Here, I can mark this.  
 3 **MARKED FOR IDENTIFICATION:**  
 4 **DEPOSITION EXHIBIT 10**  
 5 3:43 p.m.  
 6 **BY MR. GOLDBERG:**  
 7 Q. This is a photograph taken by the -- it was in the  
 8 Michigan Citizen July 31st, 2005, it reflects a  
 9 picture of Sha -- Sean Werdlow, Stephen Murphy of  
 10 Standard & Poor -- Poor's, Joe Keefe -- Joe O'Keefe of  
 11 Fitch, the Deputy Mayor, Anthony Adams, and the -- and  
 12 the -- and -- and the representative of SBS at the  
 13 table.  
 14 **MR. SHUMAKER:** Is there a question?  
 15 **BY MR. GOLDBERG:**  
 16 Q. Sure. I was asking why would Moody -- why would  
 17 Standard & Poor and Fitch be at the table?  
 18 **MR. SHUMAKER:** Objection, foundation, form,  
 19 document speaks for itself.  
 20 **A. Yeah, Mr. Goldberg, this purports to be a document**  
 21 **showing some of these members at counsel table. I**  
 22 **have no idea -- I wasn't here, and I have no idea what**  
 23 **the discussions were and whether or not it's**  
 24 **accurately represented to be something related to**  
 25 **this. This document speaks for itself.**

1 **MR. SHUMAKER:** Object to form, foundation.  
 2 **A. I wasn't here in the City at the time. I have no**  
 3 **idea.**  
 4 **BY MR. GOLDBERG:**  
 5 Q. Okay. That's fine.  
 6 Have you approached the Securities and  
 7 Exchange Commission to conduct any kind of  
 8 investigation of the Swaps in light of their extensive  
 9 investigations of UBS and Bank of America?  
 10 **MR. JURGENS:** Objection to form.  
 11 **A. Yeah, here again, any -- your question is have I? I**  
 12 **think I can answer your question. I think the answer**  
 13 **is no.**  
 14 **BY MR. GOLDBERG:**  
 15 Q. Okay. And you haven't approached them to intervene in  
 16 the bankruptcy which they have a right to do as we  
 17 both know under the bankruptcy code?  
 18 **A. I would hazard a guess that the Security and Exchange**  
 19 **Commission is aware of Detroit's bankruptcy.**  
 20 Q. But you have not approached them to aid you in doing a  
 21 proper investigation of the Swaps?  
 22 **A. No. I -- I think they're fully capable of determining**  
 23 **what they should do within their mission.**  
 24 Q. Have you looked into the mortgage practices of Bank of  
 25 America that -- in light of the financial crisis of

1 **BY MR. GOLDBERG:**  
 2 Q. So you haven't done really any substantive  
 3 investigation on what the circumstances were that --  
 4 that why -- that put the City into the pension  
 5 obligations with certificates and Swap --  
 6 **MR. SHUMAKER:** Objection to form.  
 7 **BY MR. GOLDBERG:**  
 8 Q. -- when they first were initiated in 2005?  
 9 **A. Yeah, all I can say is this -- this picture appears to**  
 10 **be what it purports to be and speaks for itself. I**  
 11 **don't know if it's accurate or not.**  
 12 Q. Let me just ask one quick -- that I was kind of  
 13 curious about, personally. It appears that there  
 14 was -- the first COP and Swap was in 2005. Then they  
 15 were terminated and a new one -- new COPs and Swaps  
 16 were placed in 2006. Is that your understanding?  
 17 **A. I don't know if that's my understanding. I know there**  
 18 **were -- there were two series that went on. I'm going**  
 19 **to be careful with the question of replacing them, but**  
 20 **let's go with your question.**  
 21 Q. Okay. I guess my curiosity is why the banks would pay  
 22 a termination fee of 2.7 million, according to those  
 23 documents, to the City to then have them  
 24 renegotiate -- replaced?  
 25 **A. Mr. Goldberg --**

1 Detroit?  
 2 **MR. JURGENS:** Objection to form.  
 3 **MR. SHUMAKER:** Objection to form.  
 4 **MR. ESSAD:** Objection to relevance.  
 5 **A. I don't think my duties under 436 would specify to**  
 6 **look into the mortgage crisis, so the answer is no.**  
 7 **BY MR. GOLDBERG:**  
 8 Q. But you would agree with me that the mortgage crisis  
 9 and the subprime lending crisis is a major contributor  
 10 to Detroit's financial crisis, would you not?  
 11 **MR. SHUMAKER:** Objection to form,  
 12 foundation.  
 13 **A. Mr. Goldberg, I don't know if it was or wasn't.**  
 14 **BY MR. GOLDBERG:**  
 15 Q. You don't know if it was or it wasn't?  
 16 **A. No. I've -- I've heard reports that there was**  
 17 **disproportionate mortgage foreclosures and so on and**  
 18 **so forth, but I've made no conclusion as to whether or**  
 19 **not that was a major contributor to Detroit's**  
 20 **financial crisis.**  
 21 Q. I've got you. Well, let me -- let me run this --  
 22 (Whereupon Vincent Marriott and Matthew  
 23 Summers left the Deposition at 3:47 p.m.)  
 24 **MS. ENGLISH:** Can we go off the record for  
 25 one second, please?

1 **VIDEO TECHNICIAN:** We are off the record.  
 2 The time is 3:47.  
 3 (Recess taken at 3:47 p.m.)  
 4 (Back on the record at 3:48 p.m.)  
 5 **VIDEO TECHNICIAN:** Back on the record at  
 6 3:48 p.m.  
 7 **BY MR. GOLDBERG:**  
 8 Q. I'm sorry, I didn't bring that report with me.  
 9 So your public -- your statement to me is  
 10 you're not clear whether the subprime mortgage crisis  
 11 in Detroit was a factor in Detroit's financial crisis?  
 12 **A. No. My statement --**  
 13 **MR. SHUMAKER:** Objection to form.  
 14 **A. My statement to you -- I believe your question was,**  
 15 **was it a major factor, and I said I understand there**  
 16 **have been reports, allegations, and stories that there**  
 17 **was disproportionate mortgage foreclosure in the City**  
 18 **of Detroit. I don't know if that was a major factor**  
 19 **in its financial crisis.**  
 20 **BY MR. GOLDBERG:**  
 21 Q. And you haven't looked into that issue independently?  
 22 **A. No, I've not looked into it independently.**  
 23 Q. Even though the banks -- the same banks that are  
 24 claiming all these Swaps were directly involved in the  
 25 subprime mortgage crisis?

1 **overcharges or obligations that it has to other --**  
 2 **other organizations and entities.**  
 3 Q. Are you aware that chargebacks specifically deal with  
 4 chargebacks to the County that the County buys -- pays  
 5 the City for foreclosed tax -- foreclosed properties,  
 6 then sells them, and the City is responsible for the  
 7 difference between what they're sold for and what  
 8 the -- what originally was paid to the City?  
 9 **A. Yes, as I said --**  
 10 **MR. SHUMAKER:** Objection, form, foundation.  
 11 **A. As I said, it's a process by which the City has**  
 12 **obligations to other organizations and entities.**  
 13 **BY MR. GOLDBERG:**  
 14 Q. Are you aware that the state has hundreds of -- at  
 15 least 200 million dollars available in the Hardest --  
 16 Helping Hardest Hit funds that could be used to pay  
 17 off delinquent property taxes?  
 18 **A. I've heard that representation before in terms of the**  
 19 **Hardest Hit funds. What I am aware of is that the**  
 20 **City is entitled to get 52 million dollars of the**  
 21 **late -- latest one hundred million dollar transfer of**  
 22 **the Hardest Hit funds for blight remediation.**  
 23 Q. That's true. Which affects -- affects your general  
 24 proposal in terms of the cost of blight, correct?  
 25 **A. Well, it helps us in terms of getting at the cost of**

1 **MR. JURGENS:** Objection to form.  
 2 **A. Here again, your characterization was directly**  
 3 **involved. My mission in this forbearance agreement is**  
 4 **look at whether or not this is in the best interest of**  
 5 **the City at the time.**  
 6 **BY MR. GOLDBERG:**  
 7 Q. Sure.  
 8 **A. It seems to be as you and I have discussed before,**  
 9 **several times now, that you have expressed concerns**  
 10 **about a broader issue regarding banks involvement with**  
 11 **the mortgage foreclosure crisis in the City of**  
 12 **Detroit. In my opinion, that's not directly related**  
 13 **to the issue that we have at hand in the forbearance**  
 14 **agreement.**  
 15 Q. Let me just ask you one other question. We've been  
 16 talking about alternative sources of financing.  
 17 You're familiar with the last CAFR?  
 18 **A. Yes.**  
 19 Q. Are you familiar with the -- what the 82 million in  
 20 chargebacks means in this CAFR that the City is  
 21 paying?  
 22 **A. Yes, I think I have some understanding.**  
 23 Q. What is your understanding of it, sir?  
 24 **A. That there's a certain obligation on the City to pay**  
 25 **some money out based upon an analysis of either**

1 **blight as quickly as possible.**  
 2 Q. But my question was a little different on that.  
 3 **A. Um-hm.**  
 4 Q. Have you intervened with Governor Snyder who you --  
 5 who you're -- your appointor --  
 6 **A. Right.**  
 7 Q. -- to secure the release of these Hardest Hit funds to  
 8 pay off property taxes which would both stabilize  
 9 communities to keep people in their homes and  
 10 stabilize the City budget by avoiding the need to pay  
 11 80 million in chargebacks?  
 12 **MR. SHUMAKER:** Objection, foundation.  
 13 **A. It is not -- it is not -- it has been made clear to me**  
 14 **that it is not clear to me that, one, we'd have access**  
 15 **to those funds and that those funds can be**  
 16 **appropriately used for that purpose.**  
 17 **BY MR. GOLDBERG:**  
 18 Q. It's not?  
 19 **A. It's -- it's not clear. That's --**  
 20 Q. Well, I'll send you some literature on that so you can  
 21 clarify that.  
 22 **A. Okay.**  
 23 **MR. GOLDBERG:** Okay. Okay. Thank you very  
 24 much.  
 25 **THE WITNESS:** Thank you very much.

1 VIDEO TECHNICIAN: All set?  
 2 THE WITNESS: All done? Okay. Thank you  
 3 very much.  
 4 VIDEO TECHNICIAN: This concludes today's  
 5 deposition. The time is 3:52 p.m. We are off the  
 6 record.  
 7 (The deposition was concluded at 3:52 p.m.  
 8 Signature of the witness was not requested by  
 9 counsel for the respective parties hereto.)  
 10  
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 25

1 CERTIFICATE OF NOTARY  
 2 STATE OF MICHIGAN )  
 3 ) SS  
 4 COUNTY OF OAKLAND)  
 5  
 6 I, CYNTHIA C. MENDENHALL, certify that this  
 7 deposition was taken before me on the date  
 8 hereinbefore set forth; that the foregoing questions  
 9 and answers were recorded by me stenographically and  
 10 reduced to computer transcription; that this is a  
 11 true, full and correct transcript of my stenographic  
 12 notes so taken; and that I am not related to, nor of  
 13 counsel to, either party nor interested in the event  
 14 of this cause.  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22 CYNTHIA C. MENDENHALL, CSR 5220  
 23 Notary Public,  
 24 Oakland County, Michigan.  
 25 My Commission expires: April 5, 2017



**EXHIBIT 6**

*Deposition Transcript of Kenneth Buckfire from August 29, 2013.*

*(Objectors' designations highlighted in yellow;  
City's counter-designations highlighted in blue)*

**In The Matter Of:**

*City of Detroit*

---

*Kenneth Buckfire*

*August 29, 2013*

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**Bingham Farms/Southfield • Grand Rapids**  
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*Original File BUCKFIRE\_KENNETH.txt*  
*Min-U-Script® with Word Index*



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1 UNITED STATES BANKRUPTCY COURT  
 2 FOR THE EASTERN DISTRICT OF MICHIGAN  
 3 SOUTHERN DIVISION  
 4  
 5 In Re:  
 6  
 7 CITY OF DETROIT, MICHIGAN Chapter 9  
 8 Case No.13-53846  
 9 Debtor. Hon. Steven Rhodes  
 10 /  
 11  
 12  
 13 The Video Deposition of KENNETH BUCKFIRE,  
 14 Taken at 1114 Washington Boulevard,  
 15 Detroit, Michigan,  
 16 Commencing at 9:31 a.m.,  
 17 Thursday, August 29, 2013,  
 18 Before Nora Morrissy, RMR, CRR, CSR-2642.  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

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 24 **ALSO PRESENT:**  
 25 Bailey Wellman, Video Technician

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 2 DEPOSITION EXHIBIT 2 21  
 3 DEPOSITION EXHIBIT 3 43  
 4 DEPOSITION EXHIBIT 4 80  
 5 DEPOSITION EXHIBIT 5 170  
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 11 **BY MS. DIBLASI: 165**  
 12 **EXAMINATION**  
 13 **BY MS. ENGLISH: 171**  
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 19 **BY MS. NEWBURY: 204**  
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 23 Exhibit Page  
 24 (Exhibits retained by counsel.)  
 25

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1 Detroit, Michigan  
 2 Thursday, August 29, 2013  
 3 9:31 a.m.  
 4  
 5 **MARKED FOR IDENTIFICATION:**  
 6 DEPOSITION EXHIBIT 1  
 7 9:21 a.m.  
 8 **VIDEO TECHNICIAN:** We are now on the  
 9 record. This is the videotaped deposition of Kenneth  
 10 Buckfire being taken on Thursday, August 29th, 2013.  
 11 The time is now 9:31 a.m. We are located at 1114  
 12 Washington Boulevard, Detroit, Michigan.  
 13 We are here in the matter of In Re: City of  
 14 Detroit, Michigan case number 13-53846 in the United  
 15 States Bankruptcy Court, Eastern District of Michigan.  
 16 My name is Bailey Wellman, video  
 17 technician. Will the court reporter please swear in  
 18 the witness.  
 19 KENNETH BUCKFIRE,  
 20 was thereupon called as a witness herein, and after  
 21 having first been duly sworn to testify to the truth,  
 22 the whole truth and nothing but the truth, was  
 23 examined and testified as follows:  
 24 **MR. SUMMERS:** Good morning.  
 25 **EXAMINATION**

1 **BY MR. SUMMERS:**

2 Q. Mr. Buckfire, would you please state your name and  
3 business address for the record?

4 A. Kenneth Buckfire. 601 Lexington Avenue, New York, New  
5 York.

6 Q. For the record my name is Matthew Summers. I'm an  
7 attorney at Ballard Spahr in Wilmington, Delaware and  
8 we represent the entity that's caused people a little  
9 trouble with the name but we've been referring to it  
10 as EEPK.

11 Mr. Buckfire, you understand the way a  
12 deposition process works, correct?

13 A. I believe so.

14 Q. And you've been deposed on numerous occasions  
15 previously, correct?

16 A. Yes.

17 Q. Because of that experience I just provide a few basic  
18 ground rules that I will ask you to abide by today.  
19 First if the question that I ask is not clear, please  
20 let me know and I will attempt to rephrase it and if I  
21 ask a question and you don't understand it but answer  
22 it anyway, I would ask you not to do that but to ask  
23 me to clarify and if you give me an answer, I will  
24 assume you understood the question.

25 Second, because we are on the record and

1 City. Prepared to testify to the general condition of  
2 the City's financials leading up to the execution of  
3 the forbearance agreement.

4 Q. Are there any other topics that you intend to testify  
5 at the hearing concerning the forbearance agreement?

6 A. I'll testify at that point to the status of the DIP  
7 form process that will provide the financing to  
8 execute the City's option under the forbearance  
9 agreement to retire the Swaps.

10 Q. Are there any other topics that you have not mentioned  
11 in your answers that you intend to testify about?

12 A. I'm sure there will be other things but I can't recall  
13 at this time what they might be.

14 Q. Mr. Buckfire, what is your position with Miller  
15 Buckfire?

16 A. Co-founder and co-president of Miller  
17 Buckfire & Company.

18 Q. Miller Buckfire currently is employed as the financial  
19 advisor to the City of Detroit, correct?

20 A. As the investment banker to the City, that's correct.

21 Q. And when was Miller Buckfire first engaged by the City  
22 as investment banker?

23 A. We were first engaged in July of 2012 for a 60-day  
24 review of the City's financial condition. We were  
25 re-engaged on January 8th of this year to continue to

1 sometimes you will anticipate probably where I'm going  
2 with the question or think that you anticipate, I  
3 would ask that you to make the transcript clearer, I  
4 will ask that you wait until I complete the question  
5 before you begin your answer.

6 A. Thank you.

7 Q. Before you is what's been premarked as Deposition  
8 Exhibit 1, and I assume you have seen this document  
9 before, is that correct?

10 A. No.

11 Q. No. Okay. And it is the notice of deposition that  
12 was issued that we are proceeding under today. I'd  
13 like to discuss initially with you the topics about  
14 which you plan to testify at the hearing on the motion  
15 to assume the forbearance and optional termination  
16 agreement and prove the settlement therein.

17 Do you have in mind the topics that you  
18 intend to testify at the hearing?

19 A. Yes.

20 Q. And can you provide those to me?

21 A. The reason and purpose of the negotiation with the  
22 Swap counterparties and the results thereof as  
23 determined in the forbearance agreement itself, the  
24 financial condition of the City that led us to believe  
25 that this agreement was necessary to rehabilitate the

1 advise the City on its financial condition and  
2 financial alternatives. Both were -- were hired  
3 pursuant to an RFP process to which we submitted a  
4 proposal.

5 Q. When you were hired in July 2012, can you describe the  
6 scope of services that Miller Buckfire was engaged to  
7 provide?

8 A. As I mentioned earlier, we were engaged to do a  
9 general financial review of the City's financial  
10 condition particularly with respect to its ability to  
11 service its debt obligations.

12 Q. Were there specific tasks that you were asked to  
13 perform in connection with doing a general financial  
14 review of the debt obligations?

15 A. No, we were engaged to do a general financial review  
16 and advise the mayor and the chief financial officer  
17 as to what those financial conditions implied for the  
18 City's ability to operate in the ordinary course.

19 Q. That engagement began in July 2012 is what you  
20 testified to, is that correct?

21 A. Correct, and ended on August 31st.

22 Q. Very good. I would point out that I would ask you to  
23 wait until I ask the question, though.

24 Miller Buckfire was then re-engaged on  
25 January 8th of 2013, is that correct?

1 **A. Yes.**  
 2 Q. Okay. And can you give a list of the specific items  
 3 that you were asked or specific actions you were asked  
 4 to undertake for the City when you were re-engaged on  
 5 January 8th?  
 6 **A. Well, it was a general financial advisory assignment**  
 7 **in some way similar to the assignment we had already**  
 8 **been hired for the previous year.**  
 9 **The scope was expanded at the mayor's**  
 10 **request and at the request of the CFO to review its**  
 11 **liquidity position in greater detail particularly**  
 12 **because of the continuation of the defaults the City**  
 13 **suffered under the Swap collateral agreement which put**  
 14 **the City's liquidity at risk if the Swap**  
 15 **counterparties were to exercise their remedies. They**  
 16 **were very concerned about that and asked us to take**  
 17 **that into account.**  
 18 Q. Were you at the time of your engagement expected to be  
 19 negotiating with creditors of the City?  
 20 **A. Not at that time.**  
 21 Q. Was there a time after January 2013 where the scope of  
 22 your engagement changed?  
 23 **A. Yes.**  
 24 Q. And at what time did the scope of engagement change?  
 25 **A. Early May.**

1 **That initial forecast was presented to us**  
 2 **and to the City I believe on May the 2nd or 3rd of**  
 3 **this year. Upon receipt of that forecast it was clear**  
 4 **that the financial condition of the City was more dire**  
 5 **than I had expected and that, therefore, was**  
 6 **immediately necessary to begin planning for the**  
 7 **preservation of the City's cash flow given the**  
 8 **incredible risk the City was running during this year**  
 9 **of 2013. And the forecast is what triggered the**  
 10 **expansion of the scope of our assignment.**  
 11 Q. And did the scope of your assignment expand to include  
 12 negotiations with creditors of the City?  
 13 **A. At that time it did but we did not initially engage in**  
 14 **negotiations with creditors at that time but it was**  
 15 **clearly anticipated given the results of the forecast**  
 16 **that attempting to achieve stability with our key**  
 17 **creditors and particularly Swap counterparties was**  
 18 **going to be a crucial element to the City's ability to**  
 19 **continue to operate in the ordinary course.**  
 20 Q. And is it a fair statement that the scope of  
 21 engagement has expanded to include developing a plan  
 22 of adjustment for the City of Detroit?  
 23 **A. Well, it did after that point, yes.**  
 24 Q. And are you -- is Miller Buckfire engaged at this  
 25 point to work on developing or analyzing the potential

1 Q. And who directed that the scope of the engagement  
 2 change?  
 3 **A. The emergency manager, Mr. Orr.**  
 4 Q. And can you explain how the scope of the engagement by  
 5 the City of Detroit changed?  
 6 **A. Immediately after our re-retention by the City we**  
 7 **advised the mayor that in order to properly assess the**  
 8 **condition of the City and its options in order to deal**  
 9 **with that balance sheet, the City should engage other**  
 10 **professionals that could assist in developing a**  
 11 **reliable and long-term cash flow and financial**  
 12 **forecast.**  
 13 **Upon a recommendation E & Y, Ernst & Young,**  
 14 **which in working with the City in other activities for**  
 15 **several years was requested to begin developing that**  
 16 **forecast.**  
 17 **At the same time the City engaged the firm**  
 18 **of Conway MacKenzie, not at exactly that time, to**  
 19 **assist with operational analysis.**  
 20 **Ernst & Young was tasked with the**  
 21 **responsibility of developing a relatively short-term**  
 22 **cash flow forecast and a long-term ten-year forecast**  
 23 **that would allow us to have the evidence and the facts**  
 24 **on which to advise the City as to what its financial**  
 25 **options would be.**

1 for asset sales by the City?  
 2 **A. Yes.**  
 3 Q. And is Miller Buckfire also engaged at this point to  
 4 analyze financing options for the City?  
 5 **A. Yes.**  
 6 Q. When you were -- when Miller Buckfire was initially  
 7 retained in January of 2013, second time, who was  
 8 Miller Buckfire principally reporting to at the City?  
 9 **A. Initially it was to Jack Martin, chief financial**  
 10 **officer, and Mayor Bing.**  
 11 Q. And when Miller Buckfire was engaged in July of 2012,  
 12 who was Miller Buckfire principally reporting to?  
 13 **A. Chris Anders (phonetic) and Mayor Bing.**  
 14 Q. What is Mr. Anders position?  
 15 **A. I believe he was chief of staff.**  
 16 Q. Chief of staff --  
 17 **A. Chief restructuring officer.**  
 18 Q. Chief restructuring officer?  
 19 **A. I believe that was his title.**  
 20 Q. And did he work directly -- strike that.  
 21 Did he report directly to the mayor?  
 22 **A. That's my understanding.**  
 23 Q. Who in addition to you at Miller Buckfire is  
 24 performing services for the City?  
 25 **A. Well, we have a very large team. So, if you don't**

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1 mind I'll restrict myself to the senior members --  
 2 Q. The senior members at Miller Buckfire?  
 3 A. Yes, there's a long list. Norma Corio, co-president  
 4 of Miller Buckfire, C O R I O; James Doak, D O A K;  
 5 Kevin Haggard, H A double G A R D; and Kyle Herman.  
 6 Q. Is anyone other than those four individuals and  
 7 yourself employed by Miller Buckfire and engaging or  
 8 providing services to the City?  
 9 A. Yes.  
 10 MR. CULLEN: Objection. He just --  
 11 A. I just told you.  
 12 BY MR. SUMMERS:  
 13 Q. That that is the complete list?  
 14 A. No, those are the senior members --  
 15 Q. Those are the senior members. Approximately how many  
 16 other persons at Miller Buckfire are working on the  
 17 engagement for the City, if you can just give me a  
 18 number?  
 19 A. Probably between six and eight.  
 20 Q. What is Mr. Herman primarily responsible for in the  
 21 engagement with the City?  
 22 A. Mr. Herman is responsible for overall management of  
 23 the -- what I would call the plan of adjustment  
 24 process and analyzing the financial forecasts,  
 25 determining what the implications of those forecasts

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1 are for the sustainable balance sheet of the City.  
 2 Q. Is Mr. Herman primarily responsible for doing any  
 3 other work for the engagement by the City?  
 4 A. He's involved in almost every aspect of this  
 5 engagement.  
 6 Q. What is Mr. Haggard's principal responsibility in the  
 7 engagement of Miller Buckfire by the City?  
 8 A. He's engaged on both the financing elements and the  
 9 asset sale alternative evaluation elements of this  
 10 assignment.  
 11 Q. Same question for Mr. Doak, what is his principal  
 12 responsibility in the engagement for the City?  
 13 A. Overall management of the engagement.  
 14 Q. And what does overall -- what task does overall  
 15 management of the engagement include?  
 16 A. Everything I don't have time for.  
 17 Q. Can you give an example?  
 18 A. Discussions with potential parties to buy individual  
 19 assets, discussions with other consultants involved  
 20 with the process, discussions with potential parties  
 21 involving financing.  
 22 Q. How much of Mr. Doak's time is devoted to the  
 23 engagement by the City of Detroit?  
 24 A. Well, it's impossible to give a precise answer because  
 25 we don't keep time records, and the involvement

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1 someone has varies from day to day and week to week.  
 2 I would say at the moment our team is  
 3 almost entirely committed to Detroit but we have other  
 4 assignments.  
 5 Q. And then the other individual that you mentioned I  
 6 believe was Mr. McCore, is that correct?  
 7 A. No, Norma Corio, she's co-president of Miller  
 8 Buckfire.  
 9 Q. And what are her responsibilities in the engagement  
 10 with the City?  
 11 A. Managing the financing process for the City.  
 12 Q. And by managing the financing process, does that mean  
 13 looking for or attempting to find DIP financing?  
 14 A. Yes.  
 15 Q. Does it involve any other tasks?  
 16 A. Not at the moment.  
 17 Q. How much of your time is devoted to the engagement by  
 18 the City?  
 19 A. It's impossible to give a precise answer. I would say  
 20 going back to January it's been 60 to 70 percent of my  
 21 time.  
 22 Q. Now, is it fair to say that you have principal  
 23 responsibility for the engagement of the City and the  
 24 work that's being performed by the members of your  
 25 team?

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1 A. Yes.  
 2 Q. And so all the individuals we just discussed report  
 3 directly to you, is that correct?  
 4 A. Yes.  
 5 Q. And you at this point report directly to Mr. Orr, is  
 6 that correct?  
 7 A. Our firm is responsible to Mr. Orr for the tasks that  
 8 we've been hired to perform.  
 9 Q. How often do you speak with Mr. Orr?  
 10 A. On average once or twice a day.  
 11 Q. Has the frequency of communications with Mr. Orr  
 12 changed over the life of the engagement since Mr. Orr  
 13 was appointed?  
 14 A. Depending on the topic it can be more or less.  
 15 Q. When Miller Buckfire was engaged in 2012, what steps  
 16 did Miller Buckfire undertake to become familiar with  
 17 the City and its financial affairs?  
 18 A. We reviewed all publicly available financial  
 19 information. We did interviews with certain members  
 20 of the finance staff to make sure we understood the  
 21 financial condition of the City.  
 22 Q. In 2012 did you do anything else to become familiar  
 23 with the City and its financial status?  
 24 A. No.  
 25 Q. When Miller Buckfire was re-engaged in January 2013,

1 what steps did you undertake with respect to the City,  
 2 its financial status and your engagement?  
 3 **A. As I testified earlier we recommended the City**  
 4 **immediately expand Ernst & Young's engagement to do a**  
 5 **full and thoughtful review of the City's financial**  
 6 **condition for the purpose of developing a short-term**  
 7 **cash flow forecast and a ten-year financial forecast**  
 8 **because we needed better information on which to base**  
 9 **our financial recommendations to the mayor and later**  
 10 **to the emergency manager.**  
 11 **MR. SUMMERS: If we could mark this as**  
 12 **Deposition Exhibit 2, please.**  
 13 **MARKED FOR IDENTIFICATION:**  
 14 DEPOSITION EXHIBIT 2  
 15 9:48 a.m.  
 16 **BY MR. SUMMERS:**  
 17 **Q. Mr. Buckfire, do you recognize this document?**  
 18 **A. I do.**  
 19 **Q. And it is the forbearance and optional termination**  
 20 **agreement that was executed by Mr. Orr among others on**  
 21 **or about July 15th, 2013, is that correct?**  
 22 **A. Yes.**  
 23 **Q. And this is the agreement that's the subject of the**  
 24 **pending motion in the bankruptcy court which brings us**  
 25 **here today, correct?**

1 **A. Yes.**  
 2 **Q. Okay. And was the City's decision to enter into the**  
 3 **forbearance agreement made by Mr. Orr?**  
 4 **A. Yes, it was.**  
 5 **Q. When did Mr. Orr make the decision to enter into the**  
 6 **forbearance agreement?**  
 7 **A. On July 15, 2013.**  
 8 **Q. So, up until July 15th, 2013 Mr. Orr was -- had not**  
 9 **made up his mind whether to execute this document?**  
 10 **MR. CULLEN: Objection. Foundation. Form.**  
 11 **A. It was being negotiated.**  
 12 **BY MR. SUMMERS:**  
 13 **Q. What role did you have in the negotiation of the**  
 14 **forbearance agreement?**  
 15 **A. On behalf of the City of Detroit I had responsibility**  
 16 **for negotiating the business terms of this agreement.**  
 17 **Q. And what specific tasks were included in the -- that**  
 18 **responsibility?**  
 19 **A. Well, leading up to the decision to commence**  
 20 **negotiations, as I mentioned earlier, once we received**  
 21 **the early projections from Ernst & Young as to the**  
 22 **true condition of the City in early May, it became**  
 23 **clear to us as the City's bankers and to the other**  
 24 **financial advisors to the City that the City was**  
 25 **bearing an increasingly high level of risk that if the**

1 **Swap counterparties were to exercise their rights and**  
 2 **stop access to the gaming revenues going into the**  
 3 **collateral accounts, that the City's ability to**  
 4 **operate would be in severe jeopardy and it became a**  
 5 **life or death issue for the City.**  
 6 **We began therefore in early May determining**  
 7 **what our best course of action would be to protect the**  
 8 **City's access to this cash, and by the end of May it**  
 9 **became clear to the advisors including Miller Buckfire**  
 10 **that to enter into a negotiation with the Swap**  
 11 **counterparties was in the City's best interest.**  
 12 **My responsibility was to initiate those**  
 13 **discussions with the business people of the Swap**  
 14 **counterparties and try to arrange an understanding**  
 15 **with them that would ensure the City had continued**  
 16 **access to cash and that we had an overall resolution**  
 17 **of the Swap including the right to terminate it and**  
 18 **buy it out, that was advantageous to do so.**  
 19 **Q. Did Miller Buckfire perform any analysis in connection**  
 20 **with the decision to enter into negotiations?**  
 21 **MR. CULLEN: Other than he's already**  
 22 **stated, Counsel?**  
 23 **MR. SUMMERS: I think --**  
 24 **BY MR. SUMMERS:**  
 25 **Q. Was the analysis that you just described performed by**

1 Miller Buckfire or was it performed by Ernst & Young  
 2 or someone else?  
 3 **MR. CULLEN: Objection. Foundation. Form.**  
 4 You can address it if you can unpack it.  
 5 **A. We understood the implications of their using their**  
 6 **rights to stop the cash from the City's ability to**  
 7 **operate, that we understood.**  
 8 **BY MR. SUMMERS:**  
 9 **Q. And how did you come to understand that?**  
 10 **A. By analyzing the projections that was produced by**  
 11 **Ernst & Young.**  
 12 **Q. Is that the only -- were the projections produced by**  
 13 **Ernst & Young the only item you analyzed?**  
 14 **MR. CULLEN: Objection. Foundation. Form.**  
 15 **A. Well, it's a cash flow issue. The City was expected**  
 16 **to receive 175 to 185 million of year of gaming**  
 17 **revenues which had been pledged to the Swap**  
 18 **counterparties pursuant to the amendment of 2009.**  
 19 **Of that 175 million the City was obligated**  
 20 **to pay them 50 million dollars as long as they did not**  
 21 **exercise their rights. So, we needed the other money**  
 22 **to operate the City. If they were to block our access**  
 23 **to that cash, it would be a devastating consequence to**  
 24 **the City leading to a reduction in public services and**  
 25 **that was unacceptable. So, that's our analysis.**

1 **BY MR. SUMMERS:**  
 2 Q. How was the decision made as to who would participate  
 3 in the negotiations about the Swap agreements and  
 4 access to casino revenues?  
 5 **A. I don't understand that question.**  
 6 Q. Were you involved in the decision as to the entities  
 7 the City would approach about negotiations?  
 8 **MR. CULLEN:** Objection. Foundation. Form.  
 9 **A. Yes, I was.**  
 10 **BY MR. SUMMERS:**  
 11 Q. And how did you decide who to bring -- who you wanted  
 12 at the negotiating table?  
 13 **A. Together with counsel I made a recommendation to**  
 14 **Mr. Orr on how we should handle the negotiations.**  
 15 Q. And what was that recommendation?  
 16 **A. That as the City's investment banker together with the**  
 17 **City's lead restructuring counsel Jones Day we contact**  
 18 **the Swap counterparties, invite them to a meeting**  
 19 **which was held on June 4th at which time we also had**  
 20 **Mr. Jack Martin, CFO of the City and Mr. Tom Saxton,**  
 21 **chief deputy treasurer of the State of Michigan in**  
 22 **attendance.**  
 23 Q. And did you review any documents other than the  
 24 Ernst & Young cash flow analysis in determining what  
 25 advice to give Mr. Orr?

1 Q. And who communicated to the Swap counterparties that  
 2 the City wanted or was interested in buying back the  
 3 Swaps at a significant discount?  
 4 **A. I did.**  
 5 Q. Mr. Orr was aware prior to the June 4th meeting that  
 6 you were going to make that sort of proposal to the  
 7 Swap counterparties?  
 8 **A. He had authorized it.**  
 9 Q. And what was the reaction at the meeting of the Swap  
 10 counterparties?  
 11 **A. Well, they were expecting us to pay them. They were**  
 12 **very unhappy. It was a very tense and difficult**  
 13 **meeting. They were -- expressed high confidence in**  
 14 **their position with respect to their collateral. They**  
 15 **were not willing to consider at least initially any**  
 16 **arrangement in which we had the right to buy back**  
 17 **their position at a discount and they highlighted for**  
 18 **my benefit several times that we didn't even have the**  
 19 **money to do it so why did I care about the option.**  
 20 Q. How did you respond to that last part that the City  
 21 did not have the money to buy back the Swaps?  
 22 **A. I told them that we were highly confident that if we**  
 23 **had an enforceable termination agreement with them,**  
 24 **that I would be able to find the money.**  
 25 Q. Did you give them any specifics at that time as to how

1 **MR. CULLEN:** Objection. Foundation. Form.  
 2 **A. I read the collateral amendment that had been executed**  
 3 **by the City in 2009.**  
 4 **BY MR. SUMMERS:**  
 5 Q. Did you read anything else?  
 6 **A. No.**  
 7 Q. Was Mr. Orr present at the meeting on June 4th, 2013?  
 8 **A. No.**  
 9 Q. But you were present, correct?  
 10 **A. Yes.**  
 11 Q. What transpired at the June 4th meeting?  
 12 **A. Well, we began by explaining to the banks, Bank**  
 13 **America Merrill Lynch and UBS that the City's**  
 14 **financial condition was dire, that we were very**  
 15 **concerned about the City's ability to operate without**  
 16 **liquidity and even though they had been to that point**  
 17 **standing fast on their rights to seize the City's**  
 18 **cash, that would be in everyone's best interest to**  
 19 **arrive at a permanent solution to this problem.**  
 20 **I explained to them that we were**  
 21 **economically motivated to do so but recognizing that**  
 22 **there at least were some arguments, that their**  
 23 **position was not a strong one legally, we would expect**  
 24 **them to allow us to buy back their Swaps at a**  
 25 **significant discount.**

1 you thought you would be able to obtain the money?  
 2 **A. No.**  
 3 Q. What did you have in mind at that point as to how you  
 4 would obtain the money to buy back the Swaps?  
 5 **A. Well, at the time we thought we might be able to use**  
 6 **the same gaming revenues to secure new debt which of**  
 7 **course was the basis of the collateral agreement**  
 8 **itself. We also took notice of the fact the City had**  
 9 **other potential assets that could be pledged to raise**  
 10 **capital but we also recognized that it was meant to be**  
 11 **and is still intended to be an option so that even if**  
 12 **the City cannot take care of the Swap, we still have**  
 13 **achieved our primary objective which is preserving our**  
 14 **access to gaming revenues.**  
 15 Q. It's preserving access to gaming revenues until June  
 16 2014, is that correct?  
 17 **A. That's correct.**  
 18 Q. And if the City is unable to pay the termination,  
 19 discounted termination by that time --  
 20 **A. We'll renegotiate. At the time we negotiated this,**  
 21 **bankruptcy was not inevitable or really contemplated**  
 22 **as an inevitable factor. We did the best we could**  
 23 **getting the best deal we could at the time with the**  
 24 **Swap counterparties.**  
 25 **I actually originally asked until the end**

1 of next year, 12-31-2014, but it was rejected. It was  
 2 a very, very difficult negotiation.  
 3 Q. What individuals were present at the June 4th meeting?  
 4 A. Well, the business people present were Ed Curland and  
 5 James Nacos from Bank of America Merrill Lynch and  
 6 Bill Chandler from UBS. Their counsels were there and  
 7 I apologize if I can't recall all their names.  
 8 MR. CULLEN: Lawyers tend to run together.  
 9 MR. JURGENS: They all appear to be the  
 10 same.  
 11 THE WITNESS: I would never say that.  
 12 BY MR. SUMMERS:  
 13 Q. Do you recall any of the attorneys that were present?  
 14 A. Larry Larose is the only one I can really recall being  
 15 particularly chatty.  
 16 Q. Which firm is Mr. Larose at?  
 17 A. Cadwalader.  
 18 Q. Approximately how long did the June 4th meeting last?  
 19 A. Lasted about an hour and a half. As I said it was a  
 20 very difficult meeting. They were extremely  
 21 aggressive toward the City. They brought up several  
 22 times the fact that the City had been in default since  
 23 2012, that we continue to add defaults to our pile of  
 24 defaults, most recently the appointment of Mr. Orr as  
 25 an emergency manager was in and of itself a default

1 under the collateral agreement and they made it very  
 2 clear to me at least and to the other members  
 3 representing the City that their patience was wearing  
 4 thin, that they wanted a resolution and there were  
 5 many attempts to get us to sign another standstill  
 6 agreement beforehand from their point in view had been  
 7 done, made in good faith.  
 8 They were unhappy that the City had  
 9 rejected those overtures and they were putting us on  
 10 notice from a business point of view that patience was  
 11 not infinite.  
 12 Q. Was there a particular individual that took the lead  
 13 for the Swap counterparties at the June 4th meeting?  
 14 A. Mr. Curland, C U R L A N D.  
 15 Q. How did you -- when the June 4th meeting concluded,  
 16 was there an agreement to meet again at some point?  
 17 A. Not specifically, but I had to agree with Mr. Curland  
 18 that we would chat again in a few days to attempt to  
 19 find a middle ground.  
 20 Q. And what in your mind when the June 4th meeting  
 21 concluded did you think would be the next step?  
 22 A. Well, as soon as the meeting concluded, we discussed  
 23 amongst ourselves the appropriate next step. One of  
 24 the things that made them particularly upset was our  
 25 original bid to terminate the Swaps was 50 cents on

1 the dollar.  
 2 As I mentioned earlier we had asked for a  
 3 forbearance period that would go through the end of  
 4 2014, and that we wanted to have that 50 cent option,  
 5 you know, really to the end of the forbearance period.  
 6 They viewed that as very aggressive, but I  
 7 spoke with Mr. Curland a few days later and at that  
 8 point we agreed to meet again which we did. I believe  
 9 it was on the 8th, and at that meeting Bank America  
 10 Merrill Lynch indicated that although they were not  
 11 conceding at all, that their collateral position was  
 12 in any jeopardy, that they recognized they had a book  
 13 reserve issue against their Swaps, not an economic  
 14 loss but a book loss caused by Dodd-Frank rules that  
 15 led them to perhaps consider a termination payment of  
 16 85.  
 17 I viewed that as progress and in response I  
 18 was told, Ed, that the City was willing to move our  
 19 initial option payments up to 72. He laughed at me  
 20 and told me that was still too low and that frankly  
 21 over the next couple of days and I can't recall  
 22 exactly when we had other meetings and other phone  
 23 calls where we ended up with the structure now  
 24 embodied in the forbearance agreement which was an  
 25 attempt to bridge the gap.

1 One might ask the question why did we have  
 2 a progressively higher option termination payment  
 3 scheduled built in, and the answer is we agreed that  
 4 we would have the benefit of the lowest possible price  
 5 but have the least amount of time to exercise it and  
 6 that they would have the benefit of their higher price  
 7 at the end of that period through the end of the  
 8 forbearance period, and that's how we ended up with a  
 9 price of 75, 77 and then 82.  
 10 Q. How did you describe the negotiations that led to the  
 11 discounted termination availability ending in March of  
 12 2014?  
 13 A. Well, as I mentioned our original request was  
 14 termination right at a discount through December 31 of  
 15 2014. They wouldn't grant us that.  
 16 So, we agreed that if the final date was in  
 17 June, then the outside date would be March 15th which  
 18 happens to be the date on which they received their  
 19 quarterly Swap payments anyway so it was a convenience  
 20 factor to say March 15th or March 14th.  
 21 Likewise that's how we arrived at the  
 22 November 15th date at which the price was 77 and then  
 23 the inside date was the shortest one, 75. Originally  
 24 we agreed to September 15th but eventually during the  
 25 next month because this all happened before June 11th



1 I believe, we were able to extend that to October 31  
 2 which is how we got from September 15th to October 31.  
 3 We did not move the other dates.  
 4 Q. You said all this happened before June 11th, 2013?  
 5 A. Yes, the reason for that it was clear to us in early  
 6 June as a result of the forecasting E & Y had done  
 7 that the City's financial condition was frankly even  
 8 worse than we had feared, and, therefore, it might  
 9 become necessary to not make the payment to the COPs  
 10 bond holders on I believe it was June the 15th and  
 11 once that occurred, we would bear a very high risk of  
 12 the Swap counterparties despite their purported  
 13 patience with the City might have no choice but to  
 14 exercise their remedies, and therefore we felt  
 15 compelled to complete a business agreement with them  
 16 prior to that date in order to protect the City at all  
 17 costs, and the primary motivation for that, of course,  
 18 was the Swap counterparties needed to send a letter to  
 19 US Bank, I believe it was on June 11th instructing  
 20 them to release the City's share of gaming revenues in  
 21 the ordinary course and we felt imperative to have  
 22 that protection in hand so the City could make a  
 23 decision about whether or not to make the payment on  
 24 the COPs bonds on June 15th.  
 25 Q. At any point -- well, let's stick with the time line.

1 What's been marked as Exhibit 2, when was the first  
 2 time you saw a draft of this forbearance agreement?  
 3 A. I believe it was after June 15th.  
 4 Q. Do you recall which party to these negotiations  
 5 provided the initial draft of the forbearance  
 6 agreement?  
 7 A. I don't.  
 8 Q. Is it fair -- let's draw down in detail a little bit  
 9 on the June 8th meeting. Who was -- what individuals  
 10 were present at the June 8th meeting?  
 11 A. It was the same attendees as at the June 4th meeting  
 12 except that Mr. Saxton and Mr. Martin did not attend.  
 13 Q. Were the service corporations present at the June 8th  
 14 meeting?  
 15 A. Not to my recollection.  
 16 Q. Were the service corporations present at the June 4th  
 17 meeting?  
 18 A. No.  
 19 Q. What point was information about the proposed  
 20 forbearance agreement communicated to the service  
 21 corporations?  
 22 A. I don't know.  
 23 Q. Do you know who was communicating with the service  
 24 corporations?  
 25 A. No.

1 Q. Was anybody communicating with the service  
 2 corporations?  
 3 A. I don't know.  
 4 Q. Did Mr. Orr know?  
 5 MR. CULLEN: Objection. Foundation.  
 6 A. I don't know.  
 7 BY MR. SUMMERS:  
 8 Q. But you never spoke with a representative of a service  
 9 corporation about the forbearance agreement?  
 10 MR. CULLEN: Objection. Foundation. Form.  
 11 A. I already testified to that.  
 12 BY MR. SUMMERS:  
 13 Q. At any point during the negotiation of the forbearance  
 14 agreement did the Swap counterparties threaten to  
 15 terminate?  
 16 A. I've already testified that our June 4th meeting they  
 17 made it very clear that their patience was running out  
 18 with the City's unwillingness to sign a standstill  
 19 agreement in the form of which they had previously  
 20 been trying to get the City to sign it. You may call  
 21 it a threat. I would interpret it as a threat. It  
 22 was a direct risk on the City's survival which in my  
 23 judgment and I advised Mr. Orr was unacceptable for  
 24 the City to continue to bear.  
 25 Q. Did the Swap counterparties ever say to the City that

1 if a resolution is not reached by a certain date, they  
 2 will terminate?  
 3 A. Not to my knowledge.  
 4 Q. And you said that the first defaults occurred in your  
 5 view in March 2012, is that correct?  
 6 A. There was a credit rating downgrade which triggered  
 7 termination event under the collateral agreement which  
 8 had not been cured, and then after that the City  
 9 emergency manager was appointed, that in itself was an  
 10 event of default under the agreement. So, we had  
 11 several defaults.  
 12 Q. At any point from the current -- first default in  
 13 March 2012 until the date just prior to the time, just  
 14 prior to the June 4th meeting, did any of the Swap  
 15 counterparties threaten the City that they would  
 16 terminate the Swap contracts?  
 17 MR. CULLEN: Objection. Foundation.  
 18 A. I've already testified that they were making numerous  
 19 attempts to get the City to sign a standstill  
 20 agreement and they were letting everyone know  
 21 including myself that their patience was running out.  
 22 BY MR. SUMMERS:  
 23 Q. Do you recall what specifically they said that made  
 24 you think their patience was running out?  
 25 A. They said so.

1 Q. What do you believe to be the benefits to the City of  
 2 entering into the forbearance agreement?  
 3 A. Well, there are three. Most important is continued  
 4 and reliable access to the City's net share of the  
 5 gaming revenues. By that I mean the amount remaining  
 6 after paying off the fixed Swap payments. That's a  
 7 critical element to the City's ability to operate in  
 8 the ordinary course and invest in its reinvestment  
 9 program.  
 10 Second, obviously the opportunity to  
 11 terminate the Swaps and eliminate this class of  
 12 creditors from a plan of adjustment at a discount  
 13 particularly since it's a secured party is of economic  
 14 value to the City, it saves real cash.  
 15 Lastly, by freeing up the gaming revenues,  
 16 it will give the City financing options as part of the  
 17 plan of adjustment that it otherwise might not have.  
 18 Q. With respect to -- with respect to freeing up the  
 19 gaming revenues, how in your view does the forbearance  
 20 agreement provide the City with better access to those  
 21 revenues?  
 22 A. Well, by the action of the collateral agreement today  
 23 the City receives the net revenues after paying the  
 24 Swap payments on a monthly basis.  
 25 Q. The City -- the City today has access to the casino

1 So we certainly would not want to be  
 2 entertaining objections from the Swap counterparties.  
 3 I think that seems reasonable.  
 4 MR. JURGENS: Well, I think we disagree  
 5 with that. We didn't consider ourselves to be the  
 6 public as described by the court yesterday.  
 7 As you know the forbearance agreement that  
 8 is the subject of this deposition and the subject of  
 9 the motion is something that we are a party to or at  
 10 least Cadwalader's client Merrill Lynch Capital  
 11 serves as a party to. I'm happy to continue to object  
 12 and you can reserve on whether or not the objections  
 13 are appropriate at some point if it's necessary, you  
 14 can bring that to the attention to the judge down the  
 15 road but at this point I don't think it makes sense  
 16 for us to belabor the point.  
 17 MR. HACKNEY: Let's go off the record for a  
 18 second if we could.  
 19 VIDEO TECHNICIAN: The time is 10:16 a.m.  
 20 We are off the record.  
 21 (Discussion held off the record at  
 22 10:16 a.m.)  
 23 (Back on the record at 10:19 a.m.)  
 24 VIDEO TECHNICIAN: We are back on the  
 25 record at 10:19 a.m.

1 revenues, is that correct?  
 2 A. Pursuant to the forbearance agreement, yes.  
 3 Q. So, the forbearance agreement has not been approved by  
 4 the court?  
 5 A. That's correct.  
 6 Q. But you believe the Swap counterparties are refraining  
 7 from terminating because of the forbearance agreement?  
 8 A. Until the court rules, they are.  
 9 Q. Under the forbearance agreement the City will have the  
 10 ability to direct the termination of the Swap  
 11 agreements, is that correct?  
 12 MR. JURGENS: Objection to form.  
 13 A. I'm not quite sure I understand that question.  
 14 BY MR. SUMMERS:  
 15 Q. Under the forbearance agreement the City obtains the  
 16 right to determine if and when the Swap contracts will  
 17 be terminated?  
 18 MR. CULLEN: Objection. Foundation. Form.  
 19 MR. HACKNEY: I'd like to put something on  
 20 the record which is that the Swap counterparties'  
 21 counsel are not parties to the deposition nor are they  
 22 objectors or movements to the motion and under the  
 23 court's order, a strict instruction of the court's  
 24 order I think there's a question as to whether they  
 25 are even supposed to be in the room.

1 BY MR. SUMMERS:  
 2 Q. Mr. Buckfire, the forbearance agreement in the City's  
 3 view allows the City to direct the termination of the  
 4 Swap agreements, is that correct?  
 5 MR. CULLEN: Objection. Foundation. Form.  
 6 BY MR. SUMMERS:  
 7 Q. You may answer.  
 8 A. Well, we negotiated for the right to do so if we can  
 9 deliver the Swap termination payment.  
 10 Q. Is that a right that the City currently possesses  
 11 under any other agreement?  
 12 A. This is the only agreement of which I'm aware.  
 13 Q. And it is the City's view that under the forbearance  
 14 agreement the City is able to direct the termination  
 15 of the Swap agreements without the consent of any  
 16 other party, is that correct?  
 17 MR. CULLEN: Objection. Foundation. Form.  
 18 Mischaracterizes his answer.  
 19 BY MR. SUMMERS:  
 20 Q. You may answer.  
 21 A. Can you repeat your question?  
 22 Q. Sure. Under the forbearance agreement the City is  
 23 able to direct the termination of the Swap agreements  
 24 without the consent of any other party, is that  
 25 correct?

1 **MR. CULLEN:** Objection. Foundation. Form.  
 2 Mischaracterizes his answer.  
 3 **A. I don't know what I'm supposed to answer to. It's our**  
 4 **view that this is an agreement the City can perform it**  
 5 **has rights under.**  
 6 **BY MR. SUMMERS:**  
 7 Q. What are the down sides of the forbearance agreement  
 8 to the City?  
 9 **A. That's catchy. Financially, none.**  
 10 Q. What about other than financially are there down sides  
 11 to the forbearance agreement?  
 12 **A. Yes, it would be clearly another claim that would have**  
 13 **to be disputed in front of the judge. It would**  
 14 **require -- could be a delay factor. It exposes the**  
 15 **City to increased cost of litigation, uncertainties as**  
 16 **to access to cash which is a critical element of its**  
 17 **ability to survive. Those are the financial down**  
 18 **sides.**  
 19 Q. The financial down sides of having entered into the  
 20 forbearance agreement?  
 21 **A. No, not having the forbearance agreement.**  
 22 Q. Those are the financial -- what I am asking is what  
 23 are the financial -- what are the down sides, if any,  
 24 to the City of having entered into the forbearance  
 25 agreement?

1 **counterparties from their obligations.**  
 2 Q. In the settlement motion that the City has filed, the  
 3 City asserts that the City is currently in a liquidity  
 4 crisis, is that correct?  
 5 **A. Yes.**  
 6 Q. And you agree that the City is in a liquidity crisis,  
 7 correct?  
 8 **A. Yes.**  
 9 **MR. SUMMERS:** Let me have this marked as  
 10 Exhibit 3.  
 11 **MARKED FOR IDENTIFICATION:**  
 12 DEPOSITION EXHIBIT 3  
 13 10:24 a.m.  
 14 **MR. CULLEN:** At one point, Counsel, just as  
 15 we go through these depositions are we going to mark  
 16 them sequentially for each witness or are we going to  
 17 mark them sequentially throughout? If we don't end up  
 18 double tracking that will be hard. So, I don't care  
 19 --  
 20 **MR. HACKNEY:** We'll do our best.  
 21 **MR. CULLEN:** Let's just for today on the  
 22 record let's just call these Buckfire 3 just in case  
 23 we go the other way because we can be cumulative if we  
 24 want to but it will be hard to disinter Buckfire 2, 3,  
 25 4, 5 and 7 if we just have them by numbers that will

1 **A. There aren't any.**  
 2 Q. None. Did the City consider alternatives to the  
 3 forbearance agreement in paying a discounted  
 4 termination fee?  
 5 **A. We reviewed all possible alternatives and there really**  
 6 **weren't any.**  
 7 Q. What possible alternatives did you review?  
 8 **A. We reviewed novation, possibly getting some other Swap**  
 9 **party to come in and provide the same Swap to the 2006**  
 10 **COPs payments and not have a collateral contract to**  
 11 **protect it. We did consider that, we looked at it, we**  
 12 **talked to a few people. There was no interest**  
 13 **whatsoever in the idea. There was no appetite on**  
 14 **anybody's part to provide unsecured credit to the City**  
 15 **at that juncture which I remind you was May of this**  
 16 **year.**  
 17 Q. Who did you talk to about what you described as the  
 18 novation?  
 19 **A. We talked to the state which has a lot of expertise in**  
 20 **this area. We spoke with people inside other banks**  
 21 **who are not involved here just to get their general**  
 22 **views on how this might be done. Can't recall exactly**  
 23 **who it was but it was clear that without security**  
 24 **there was no interest in providing any kind of credit**  
 25 **to the City that would release the current Swap**

1 be the same as Orrs.  
 2 **MR. SUMMERS:** I think the reporter has been  
 3 marking them as Buckfire 3.  
 4 **MR. CULLEN:** All right.  
 5 **BY MR. SUMMERS:**  
 6 **Q. This document has been marked as Exhibit Number 3 is**  
 7 **the proposal to creditors, executive summary of the**  
 8 **proposal to creditors that was made on June 14th,**  
 9 **2013, is that correct?**  
 10 **A. Yes.**  
 11 **Q. And this was prepared in connection with a meeting**  
 12 **with creditors that was held at the Detroit Airport**  
 13 **Westin on June 14th, 2013, is that correct?**  
 14 **A. That's correct.**  
 15 **Q. And did you participate in creating this executive**  
 16 **summary?**  
 17 **A. I did.**  
 18 **Q. And you participated in the information that is --**  
 19 **gathering the information that is disclosed in this**  
 20 **executive summary, is that right?**  
 21 **A. Well, I reviewed drafts of it to make sure that it**  
 22 **made sense, that it was consistent, that it was**  
 23 **accurate, but I did not prepare the information**  
 24 **myself.**  
 25 **Q. You prepared -- leave it there. You're familiar with**



1 Q. So, for example, the City does not actually project  
 2 paying pension -- making pension contributions for  
 3 fiscal year 2014, isn't that true?  
 4 MR. CULLEN: Objection. Foundation. Form.  
 5 BY MR. SUMMERS:  
 6 Q. You may answer.  
 7 A. That's correct.  
 8 Q. And the City does not currently plan to pay the health  
 9 benefits for retirees in fiscal year 2014, correct?  
 10 MR. CULLEN: Objection. Foundation. Form.  
 11 BY MR. SUMMERS:  
 12 Q. You may answer.  
 13 A. Can you repeat the question, please?  
 14 Q. The City does not currently intend to pay the line  
 15 item for health benefits for retirees in fiscal year  
 16 2014?  
 17 A. That's correct.  
 18 Q. And the City does I guess intend to continue paying  
 19 the monthly payment to the Swaps, is that correct,  
 20 which is represented by the 50.6 million?  
 21 A. Yes, but again you have to look at the caption of this  
 22 page. This is not the City's plan.  
 23 Q. This is the City's projection, however?  
 24 A. This is the City's projection in the absence of the  
 25 reinvestment plan that the City manager has already

1 said he is going to put in place and is putting in  
 2 place.  
 3 So, this is interesting but not relevant to  
 4 this discussion because it does not include as the  
 5 caption indicates clearly at the top the increased in  
 6 expenditures necessary to restore services to adequate  
 7 levels for the residents.  
 8 Q. But if you look at this -- and the revenues for fiscal  
 9 year 2014 include 170 million in wage earning  
 10 revenues, is that correct?  
 11 A. Yes.  
 12 Q. So, if the City is operating, understanding your  
 13 qualification, but if the City is under this  
 14 projection showing a 397.2 million dollar surplus, if  
 15 it did not have access to the casino revenues during  
 16 fiscal year 2014, there still would be a surplus, is  
 17 that correct?  
 18 A. But it's not the City's plan. This is academic.  
 19 Q. Whether it's academic or not, that's what this  
 20 indicates, is that correct?  
 21 MR. CULLEN: Objection. Foundation. Form.  
 22 A. Yes.  
 23 MR. CULLEN: And asked and answered.  
 24 BY MR. SUMMERS:  
 25 Q. And in fact if the City pays the termination fee, it's

1 no longer going to be paying the Swaps' monthly  
 2 payment, correct?  
 3 A. Yes, but this is not the City's plan.  
 4 Q. If the City did not have access to casino revenues  
 5 from now until December 2013, does the City believe  
 6 there will be any point where it would run out of  
 7 cash?  
 8 A. You have to look at Page 8. It answers that question.  
 9 On Page 8 which is clearly presented to the creditors  
 10 on June the 8th -- June 14th rather, and also on Page  
 11 9 which forecasts out to June of '14 we clearly show  
 12 on a monthly basis what we believe the City's cash  
 13 position to be in the absence of any transaction and  
 14 you can see that business as usual results in the City  
 15 having 14 million of cash by the end of June of '13 in  
 16 the absence of any intermediary action and that that  
 17 number would not incorporate any cash being spent on  
 18 the reinvestment program because it hasn't started  
 19 yet. This indicates quite clearly the dire position  
 20 the City would be in if we lost access to the 170  
 21 million of gaming revenue because that would  
 22 immediately translate into a net cash loss of 160  
 23 million on this page alone.  
 24 Q. This cash flow page on Page 8 indicates or assumes the  
 25 City will be making certain legacy payments that it is

1 in fact not currently making, is that correct?  
 2 A. Yes, it does.  
 3 Q. For example, it assumes that the City will make  
 4 pension contributions, correct?  
 5 A. No, I think we are assuming here we continue to defer  
 6 those pension contributions and that's why if you look  
 7 at the bottom and you see accumulated deferrals, you  
 8 see the number grows every month, that's the pension  
 9 contribution we weren't making.  
 10 Q. If you look at -- this assumes that the City will  
 11 continue to payments on general obligation bonds?  
 12 A. That's right. This is the status quo. In the absence  
 13 of any restructuring or preservation of cash plan or  
 14 reinvestment of the City, this will be the financial  
 15 condition of the City in the absence of any action.  
 16 Q. Right. But as a result in part of filing the Chapter  
 17 9 bankruptcy proceeding, there are significant legacy  
 18 obligations that are not being paid?  
 19 A. This clearly shows if you look at the far right column  
 20 June of '13 that trying to operate a City of this  
 21 scale with 14 million of cash bearing in mind that  
 22 that could be zero or negative on any given day  
 23 depending on collections made it almost impossible to  
 24 prudently operate the City and that was the proximate  
 25 reason why it became necessary to defer the payment on



1 **A. I don't know.**  
 2 **BY MR. SUMMERS:**  
 3 **Q.** Have you ever analyzed whether these service  
 4 corporations may have claims against the City?  
 5 **A. No.**  
 6 **Q.** Have you analyzed whether or evaluated -- strike that.  
 7 Let me start again.  
 8 Have you evaluated whether the City has  
 9 claims against the Swap counterparties?  
 10 **MR. CULLEN:** Has he personally?  
 11 **BY MR. SUMMERS:**  
 12 **Q.** Has Miller Buckfire evaluated whether the City has  
 13 claims against the Swap counterparties?  
 14 **A. No.**  
 15 **Q.** Has anyone else working for the City analyzed whether  
 16 the City has claims against the Swap counterparties?  
 17 **MR. CULLEN:** Answer yes or no if you can.  
 18 **A. No.**  
 19 **BY MR. SUMMERS:**  
 20 **Q.** No, you don't know --  
 21 **A. I don't know.**  
 22 **Q.** So, Miller Buckfire performed no investigation into  
 23 whether the City has claims against the Swap  
 24 counterparties in connection with this forbearance  
 25 agreement, correct?

1 **MR. CULLEN:** Objection. Foundation. Form.  
 2 **A. No.**  
 3 **BY MR. SUMMERS:**  
 4 **Q.** The forbearance -- you testified earlier that you  
 5 believe the forbearance agreement is a release of  
 6 claims, correct?  
 7 **MR. CULLEN:** Objection. Foundation. Form.  
 8 I don't believe he testified to that.  
 9 **BY MR. SUMMERS:**  
 10 **Q.** Do you have a view as to what claims the forbearance  
 11 agreement releases?  
 12 **A. No. The answer was no at end of the table. I'll**  
 13 **speak up. I apologize.**  
 14 **Q.** Does the forbearance agreement operate to release any  
 15 claims that might be held against the City?  
 16 **MR. CULLEN:** Objection. Foundation. Form.  
 17 **A. I don't know.**  
 18 **BY MR. SUMMERS:**  
 19 **Q.** Do you have an understanding of how interest rate  
 20 movements may affect the termination payment that  
 21 would become due under the Swap agreements?  
 22 **A. Yes.**  
 23 **MR. JURGENS:** Objection to form.  
 24 **BY MR. SUMMERS:**  
 25 **Q.** And what is that understanding?

1 **A. Well, as interest rates come down, the Swap**  
 2 **termination liability goes up.**  
 3 **Q.** And if interest rates go up, what happens to the Swap  
 4 termination liability?  
 5 **A. Comes down.**  
 6 **Q.** And there would come a point if interest rates  
 7 increased enough where the City could actually become  
 8 in the money on the Swaps, is that correct?  
 9 **A. It would except that the Swap counterparties in 2009**  
 10 **negotiated for the right to terminate the Swaps so**  
 11 **they would never actually be in a net liability**  
 12 **position against the City if that were to occur.**  
 13 **Q.** What is your basis for stating that the Swap  
 14 counterparties negotiated the right to terminate the  
 15 Swaps in 2009?  
 16 **A. Well, I've already testified that I reviewed the**  
 17 **collateral amendment entered into in 2009 and**  
 18 **discussed it with counsel to the City. In their**  
 19 **review of the contract, and I can't remember exactly**  
 20 **the provision now but that was their interpretation of**  
 21 **the contract right.**  
 22 **Q.** Have you reviewed any of the other 2009 documents  
 23 related to the Swaps?  
 24 **A. No.**  
 25 **Q.** Has the City undertaken any analysis to evaluate

1 future interest rate moves?  
 2 **A. We have reviewed the forward LIBOR curve.**  
 3 **Q.** And who performed that review?  
 4 **A. That review was performed by Mr. Sanjay Marken, one of**  
 5 **our associates. M A R K E N, first name S A N J A Y.**  
 6 **Q.** And when did he perform that review?  
 7 **A. The most recent one was performed a few days ago.**  
 8 **Q.** What did that review show?  
 9 **A. It showed that the current forward LIBOR curve does**  
 10 **not show that the interest rate that's relevant to**  
 11 **this Swap would ever rise above six-and-three-quarters**  
 12 **percent which is the fixed rate on the Swap, and,**  
 13 **therefore, the market is telling us that the**  
 14 **probability of the Swap ever going in the money for**  
 15 **the benefit of the City is very low.**  
 16 **Q.** Does the analysis address whether interest rates are  
 17 generally rising or decreasing?  
 18 **A. The LIBOR curve is an observable market fact. I'm not**  
 19 **going to speculate on when rates are going up or down.**  
 20 **They will fluctuate.**  
 21 **Q.** Have interest rates increased since the forbearance  
 22 agreement was executed?  
 23 **A. Yes.**  
 24 **Q.** And what effect has that increase on -- in interest  
 25 rates had on the estimated termination payment under

1 the forbearance agreement?  
 2 **MR. JURGENS:** Objection.  
 3 **A. Well, the assumption in June of this year when we**  
 4 **began to negotiate with the Swap counterparties was**  
 5 **the termination payment was around four hundred**  
 6 **million dollars. The rise in rates since that time**  
 7 **and it's now almost August probably has reduced that**  
 8 **termination payment to around three hundred million**  
 9 **dollars or even lower.**  
 10 **So, yes, the rise in rates has resulted in**  
 11 **a reduction of the termination payment.**  
 12 **Q. And is that analysis of the reduction to the**  
 13 **termination payment something that Miller Buckfire has**  
 14 **prepared?**  
 15 **MR. JURGENS:** Objection.  
 16 **A. Well, there is a procedure embodied in the collateral**  
 17 **agreement that lets you determine the termination**  
 18 **payment if one is to occur. We've simply analyzed the**  
 19 **net value of the assumed LIBOR payments and Swap**  
 20 **payments and come up with our own estimate.**  
 21 **BY MR. SUMMERS:**  
 22 **Q. And that analysis was performed by Mr. Marken?**  
 23 **A. That's right.**  
 24 **Q. If interest rates continue to rise, and the**  
 25 **termination payment that would have to be made**

1 continues to decrease, that has the net effect of  
 2 reducing the value of the forbearance agreement to the  
 3 City?  
 4 **MR. CULLEN:** Objection. Foundation. Form.  
 5 **BY MR. SUMMERS:**  
 6 **Q. Do you agree?**  
 7 **A. No.**  
 8 **Q. And why not?**  
 9 **A. I already testified to the three principal benefits**  
 10 **that we attempted to achieve in this forbearance**  
 11 **agreement. The ability to terminate the Swap at a**  
 12 **discount is only one of the elements of the**  
 13 **forbearance agreement and its value to the City.**  
 14 **MR. SUMMERS:** The reporter has said we have  
 15 about five minutes left on the tape. Do we want to  
 16 take a break now and change that?  
 17 **MR. CULLEN:** Seems sensible.  
 18 **MR. SUMMERS:** I think that makes sense.  
 19 **VIDEO TECHNICIAN:** The time is 10:53 a.m.  
 20 This marks the end of tape number one. We are off the  
 21 record.  
 22 (Recess taken at 10:53 a.m.)  
 23 (Back on the record at 11:05 a.m.)  
 24 **VIDEO TECHNICIAN:** We are back on the  
 25 record at 11:05 a.m. This marks the beginning of tape

1 number two.  
 2 **BY MR. SUMMERS:**  
 3 **Q. Mr. Buckfire, did Mr. Marken perform any analysis**  
 4 **related to the interest rates' effect on the Swaps**  
 5 **prior to the analysis he performed a few days ago?**  
 6 **A. No.**  
 7 **Q. At the June 4th meeting the Swap counterparties, were**  
 8 **there specific arguments that the City articulated to**  
 9 **the Swap counterparties concerning why it would be in**  
 10 **their interest to settle?**  
 11 **A. I made the general point to them several times that we**  
 12 **were willing to litigate aggressively to protect the**  
 13 **City's access to cash. That any attempt by them to**  
 14 **exercise their rights and terminate our access to**  
 15 **gaming revenues would be vigorously rejected. We**  
 16 **would marshal every argument we could to protect the**  
 17 **City's cash flow and that we would not accept any**  
 18 **action by them as a fete accompli.**  
 19 **Q. Did you describe what claims you would litigate**  
 20 **aggressively to the Swap counterparties?**  
 21 **A. No.**  
 22 **Q. Did you make any assertions to the Swap counterparties**  
 23 **concerning the validity of their liens at the June 4th**  
 24 **meeting?**  
 25 **A. No.**

1 **Q. Was the potential of the City challenging the liens**  
 2 **held by the Swap counterparties ever a matter**  
 3 **discussed during the negotiation of the forbearance**  
 4 **agreement?**  
 5 **MR. CULLEN:** Discussed between --  
 6 **BY MR. SUMMERS:**  
 7 **Q. Discussed with the Swap counterparties.**  
 8 **A. Yes.**  
 9 **Q. When was that discussed?**  
 10 **A. It was a very hectic period. I did really almost**  
 11 **nothing between June 4th and the 11th but try to**  
 12 **negotiate this deal. I know at several points in my**  
 13 **conversations with the business people I let them know**  
 14 **that if there were issues with the collateral, we**  
 15 **would raise them if necessary to protect the City.**  
 16 **Q. Did you articulate what those issues might be?**  
 17 **A. No.**  
 18 **Q. What did you understand those issues to be?**  
 19 **A. Well, there were some concerns that the original**  
 20 **granting of the collateral was not appropriate which**  
 21 **would seem odd because in the collateral agreement**  
 22 **there's a letter attached to the Michigan Gaming**  
 23 **Control Board saying that it was fine, but I was**  
 24 **trying to cut a deal and I was looking for any**  
 25 **leverage I had over the Swap counterparties to get**



1 them to a deal.  
 2 The reality is that if they were to  
 3 exercise their rights, we would have vigorously  
 4 litigated that and tried to get a stay of their  
 5 getting the cash and that was all I was concerned  
 6 about. I wasn't particularly concerned about the  
 7 merits of those claims.  
 8 Q. So, you never performed an analysis of the merits of  
 9 those claims?  
 10 A. No.  
 11 Q. Did the Swap counterparties have a reaction to your  
 12 assertion that you may aggressively litigate against  
 13 them?  
 14 A. Well, it got a little heated at one point and they  
 15 said well, if you want to litigate, we'll respond  
 16 aggressively as well, but let's try and avoid that  
 17 unnecessary expense and cut a deal which is what we  
 18 did.  
 19 Q. Did you assert any arguments or potential litigation  
 20 claims other than the issues surrounding the granting  
 21 of the liens in your negotiations with the Swap  
 22 counterparties?  
 23 A. No.  
 24 Q. Did you articulate to the Swap counterparties why in  
 25 the City's view the liens may or may not be valid?

1 A. Not directly, no.  
 2 Q. And did you consider asserting any other claims or  
 3 potential claims of the City to help you get leverage  
 4 in the negotiations with the Swap counterparties?  
 5 A. I'm not sure I understand that question.  
 6 Q. Other than the granting of the liens and the issues  
 7 surrounding them, did you consider asserting any other  
 8 types of claims in the negotiations to help you get  
 9 leverage with the Swap counterparties?  
 10 MR. CULLEN: Objection. Foundation. Form.  
 11 A. I was at all times just trying to make them understand  
 12 that the City would be as aggressive as possible to  
 13 defend its access to gaming revenues including  
 14 litigation whatever that turned out to be.  
 15 BY MR. SUMMERS:  
 16 Q. You met with the Swap counterparties or at least  
 17 negotiations on June 11th, is that correct?  
 18 A. No, we reached a final agreement with them on the  
 19 economic terms by June 11th.  
 20 Q. So, there was no meeting on June 11th?  
 21 A. Not that I recall but it's possible I'm mistaken. We  
 22 were very busy during that period.  
 23 Q. Were there any meetings with the Swap counterparties,  
 24 in-person meetings with the Swap counterparties other  
 25 than the June 4th meeting?

1 A. Yes.  
 2 Q. And when were those?  
 3 A. I believe there was one on June the 8th which I've  
 4 already testified to earlier and I believe we had  
 5 another one but I can't recall the exact date.  
 6 Q. Do you remember whether that other meeting was in June  
 7 or July?  
 8 A. No, they were all in June, prior to June 11th.  
 9 Q. Did you communicate with Mr. Orr between the June 4th  
 10 and June 8th meeting?  
 11 A. Yes.  
 12 Q. And what did you communicate?  
 13 A. The status of our negotiations.  
 14 Q. And what specifically did you report to him about the  
 15 negotiations?  
 16 A. What we had offered, what they had responded, what we  
 17 should do as our next move with respect to the Swap  
 18 counterparties.  
 19 Q. Between the June 4th and the June 8th meeting how  
 20 frequently were you in contact with Mr. Orr concerning  
 21 the forbearance agreement negotiations?  
 22 A. Every day. It was a matter of life or death for the  
 23 City.  
 24 Q. Multiple times a day?  
 25 A. Some days probably.

1 Q. And then between June 8th, the June 8th meeting and  
 2 reaching an agreement sometime prior to June 11th, how  
 3 frequently were you in contact with Mr. Orr?  
 4 A. Probably every day.  
 5 Q. Now, you testified earlier that Ernst & Young has  
 6 performed an analysis of the City's cash flow without  
 7 access to the casino revenues. Is that analysis  
 8 something that's been posted to the data room?  
 9 A. I don't know, but if you took the company's  
 10 projections even the ones on June 14th and simply  
 11 whited out the gaming revenues, you'll get the cash  
 12 flows. It's not hard to do.  
 13 Q. Miller Buckfire is in charge of what gets posted to  
 14 the data room, correct?  
 15 MR. CULLEN: Objection. Foundation. Form.  
 16 BY MR. SUMMERS:  
 17 Q. Miller Buckfire maintains the data room?  
 18 A. I believe so.  
 19 Q. So, who at Miller Buckfire would know whether the  
 20 Ernst & Young analysis without casino revenues has  
 21 been posted to the data room?  
 22 A. Mr. Kyle Herman.  
 23 Q. If something has not been posted to the data room,  
 24 would the City be willing to provide that to us?  
 25 MR. CULLEN: Don't see any reason why not.

1 **A. I would recommend it.**  
 2 **BY MR. SUMMERS:**  
 3 Q. Okay.  
 4 **MR. SUMMERS:** Let's mark that for follow-up  
 5 after the deposition.  
 6 **BY MR. SUMMERS:**  
 7 Q. You testified that as of the last analysis your  
 8 understanding is the estimated amount of the  
 9 termination payment that would be due is roughly three  
 10 hundred million dollars, is that correct?  
 11 **A. Well, it clearly moves around as the interest rate**  
 12 **curve moves around. I think the most recent number is**  
 13 **somewhere reaching 275 and 300 million dollars.**  
 14 **That's before the application of the applicable**  
 15 **discount that we had provided for in the termination**  
 16 **agreement.**  
 17 Q. And that last analysis, when was that performed?  
 18 **A. A few days ago.**  
 19 Q. How does the City plan to get the cash necessary to  
 20 make the termination payment?  
 21 **MR. CULLEN:** Objection. Foundation. Form.  
 22 **BY MR. SUMMERS:**  
 23 Q. Does the City have a plan at this point for how it  
 24 will obtain the cash necessary to pay the termination  
 25 payment?

1 nondisclosure agreements?  
 2 **A. That's the universe I'm discussing, approximately 30**  
 3 **or more.**  
 4 Q. So, everybody you've talked to signed?  
 5 **A. No, some people didn't want to participate. I can't**  
 6 **tell you how many we called. I can tell you how many**  
 7 **we sent NDAs to which have been returned to us, it's**  
 8 **in excess of 30.**  
 9 Q. Are some of the people or some of the potential  
 10 sources of financing that Miller Buckfire have spoken  
 11 to said no, we're not interested?  
 12 **A. Yes.**  
 13 Q. And approximately how many have said no?  
 14 **A. Hasn't been that many, maybe ten. Would your client**  
 15 **like one?**  
 16 Q. And do you know who those ten entities are that have  
 17 said they are not interested?  
 18 **A. I do, yes.**  
 19 Q. And who are they?  
 20 **A. I'm not going to tell you that.**  
 21 Q. On what basis?  
 22 **A. It's commercially sensitive information.**  
 23 **MR. CULLEN:** Counsel, maybe it will help,  
 24 and I don't know whether you want this on the record  
 25 or not, but the position we are going to take with

1 **MR. CULLEN:** Objection, foundation, form,  
 2 but you can address the question.  
 3 **A. Yes, the City has a plan.**  
 4 **BY MR. SUMMERS:**  
 5 Q. And what is that plan?  
 6 **A. The City intends to secure a debtor in possession**  
 7 **financing of sufficient proceeds to fund the**  
 8 **termination payment as well as provide sufficient cash**  
 9 **for the City to execute on its reinvestment program**  
 10 **during the bankruptcy.**  
 11 Q. And what is -- what actions, if any, has the City  
 12 taken toward obtaining debtor in possession financing?  
 13 **A. We have contacted a large universe of potentially**  
 14 **interested investors, many of whom have signed**  
 15 **nondisclosure agreements, NDAs, pursuant to which they**  
 16 **have received the request for proposal, the RFP which**  
 17 **went out yesterday.**  
 18 Q. And is Miller Buckfire leading the effort to obtain  
 19 debtor in possession financing?  
 20 **A. Yes.**  
 21 Q. And when you say a large universe of potential  
 22 investors, do you know approximately how many have  
 23 been talked to?  
 24 **A. At the moment it's in excess of 30.**  
 25 Q. And how many have -- how many have signed

1 respect to this is that this is a competitive process  
 2 and the best result in that process is achieved by us  
 3 being able to negotiate with the individual parties  
 4 who are out there, and not to litigate the negotiating  
 5 strategy before we have something to bring back to the  
 6 court to approve.  
 7 So, we're not going to answer questions  
 8 about individual parties, we're not going to answer  
 9 questions about the strategy of negotiating with those  
 10 parties and we're not at liberty to give out the  
 11 information with respect to the people who responded  
 12 to the NDAs because they understandably don't want to  
 13 be shopped, don't want to take up a lot of your time.  
 14 We can fight this through a lot of objections and so  
 15 forth, and if we want to fight about that at some  
 16 later time, perfectly fine.  
 17 You can ask about his general strategy on  
 18 this, you can ask about the basis for his confidence  
 19 or nonconfidence in it. You can go through those  
 20 general items, but the actual strategy, the terms of  
 21 arrangements with individual parties I'm not going to  
 22 have him go into now. Hopefully by the time we get to  
 23 the hearing, we'll have an agreement that you will be  
 24 on a --  
 25 **MR. SUMMERS:** Let's go -- I think let's

1 go -- move through the questions and see how we do.  
 2 **MR. CULLEN:** Okay.  
 3 **MR. SUMMERS:** I understand the City's  
 4 position on it.  
 5 **MR. CULLEN:** Okay.  
 6 **BY MR. SUMMERS:**  
 7 Q. You said an RFP went out yesterday?  
 8 **A. Correct.**  
 9 Q. Approximately how many people was the RPF sent to  
 10 yesterday?  
 11 **A. The 30 plus people who signed the NDA.**  
 12 Q. How much debtor-in-possession financing does the City  
 13 hope to obtain?  
 14 **A. Three hundred fifty million dollars, up to three**  
 15 **hundred fifty million dollars.**  
 16 Q. And does the City have a goal on the interest rate?  
 17 **A. The lowest possible interest rate.**  
 18 Q. Does the RFP attempt to define what that lowest  
 19 possible interest rate is?  
 20 **A. No.**  
 21 Q. Does it define whether the interest rate needs to be  
 22 fixed or variable?  
 23 **A. No.**  
 24 Q. What covenants, if any, are included in the RFP as  
 25 being acceptable or not acceptable?

1 **is submitting a proposal?**  
 2 Q. Is the City offering art work as collateral?  
 3 **A. I'm not going to discuss the terms of the term sheet,**  
 4 **sorry.**  
 5 Q. Well, we kind of picked and choose what terms in the  
 6 RFP we are discussing and not discussing.  
 7 **MR. CULLEN:** We have in the attempt to  
 8 accommodate your desire for information and to  
 9 maintain control of the integrity of this process  
 10 which we believe is best negotiated as a negotiation  
 11 and not a litigation.  
 12 **MR. SUMMERS:** I guess I struggle with  
 13 understanding why the collateral that's offered in the  
 14 RPF that's been sent out when we know the interest  
 15 rate, the amount of the financing the debtor seeks,  
 16 why that puts the City at a competitive disadvantage.  
 17 **MR. CULLEN:** We didn't say the interest  
 18 rate.  
 19 **MR. SUMMERS:** The lowest possible.  
 20 **MR. CULLEN:** This is the beginning of a  
 21 negotiation. It's the beginning of a negotiation that  
 22 isn't at an end yet, that hasn't had any response to  
 23 the RFPs yet, it's an initial offer, and that's what  
 24 it is, and he's discussing it as such and willing to  
 25 testify about it as such, but I'm not going to read

1 **A. I'm not going to discuss that. It's commercially**  
 2 **sensitive.**  
 3 Q. How long of maturity on the DIP financing is the City  
 4 looking to obtain?  
 5 **A. Through the pendency of the end of the case.**  
 6 Q. And is the City offering a lien on casino revenues in  
 7 connection with the DIP financing?  
 8 **A. In part.**  
 9 Q. I assume the City does not expect to obtain unsecured  
 10 financing?  
 11 **A. I would take it if it was offered.**  
 12 Q. No doubt. What other collateral is the City offering  
 13 to secure the DIP financing loan?  
 14 **A. I'm not going to answer that question.**  
 15 Q. Does the RFP define what collateral would be  
 16 available?  
 17 **A. Yes, it does.**  
 18 Q. And that's been sent out to potential investors?  
 19 **A. Who have signed nondisclosure agreements.**  
 20 Q. If somebody new came and said I would be interested in  
 21 providing DIP financing, you would have them sign an  
 22 NDA and then provide them the RFP?  
 23 **A. If they wanted to make an unsolicited proposal without**  
 24 **the benefit of the RPF, we would be happy to accept**  
 25 **it. Are you suggesting your client is interested in**

1 the terms of the RFP in the newspaper and our bidders  
 2 are not going to read the terms of the RFP in the  
 3 newspaper because that would hamper the process and  
 4 hamper our ability to get best value.  
 5 **MR. SUMMERS:** But we already have in the  
 6 record that the casino revenues are part of the  
 7 collateral that's being offered, so, what's wrong with  
 8 finding out what the rest of the collateral that's  
 9 being offered?  
 10 **MR. CULLEN:** Not going to argue with you,  
 11 Counsel. I'm telling you what the position is. I've  
 12 tried to be accommodating. It's as far as I am going  
 13 to go.  
 14 BY MR. SUMMERS  
 15 Q. Has the City had discussions with the State of  
 16 Michigan about providing financing?  
 17 **A. I'm not going to discuss that.**  
 18 Q. What is the City's view about what has to happen in  
 19 order to be able to obtain debtor-in-possession  
 20 financing -- let me put a finer point.  
 21 **Are there certain events that the City**  
 22 **believes has to happen in the case for it to be able**  
 23 **to realistically obtain debtor-in-possession**  
 24 **financing?**  
 25 **A. Yes, there are events in the case.**

1 Q. And what is that deal?  
 2 MR. CULLEN: Objection to the extent it  
 3 calls for a legal conclusion.  
 4 A. Well, we have to find a willing lender, that's number  
 5 one. Number two, we have to have a court order  
 6 approving the form of the DIP financing, and, number  
 7 three, we believe we need to have approval of the  
 8 forbearance and termination agreements we get the  
 9 benefit of the elimination of the collateral pledge  
 10 and the benefit of the discount.  
 11 BY MR. SUMMERS:  
 12 Q. Do you need a determination on eligibility as well?  
 13 A. Probably as a condition to closing but not as a  
 14 condition to getting a loan commitment.  
 15 Q. And what time line does the City hope to secure  
 16 debtor-in-possession financing?  
 17 A. Well, it's a large group of potential lenders, and,  
 18 therefore, we have requested preliminary indications  
 19 of interest by September the 6th, next Friday. We  
 20 want to determine who really has a serious interest  
 21 and therefore encourage their ability to do due  
 22 diligence in a rational way because they will all have  
 23 due diligence requirements.  
 24 We simply can't handle all 30. If they all  
 25 decide they want to put in proposals, we'll do the

1 A. Depends on how many proposals I get back.  
 2 Q. If you get 15 back, do you have a view of how long  
 3 it's likely to take?  
 4 A. We should be so lucky. I think that will take several  
 5 weeks, probably two weeks to come up with a winning  
 6 bid as it were.  
 7 Q. And then the intent would be to as quickly as possible  
 8 present that to the bankruptcy court, is that correct?  
 9 A. Yes.  
 10 Q. And if the City obtains a debtor-in-possession  
 11 financing, what's the intended use of the financing?  
 12 MR. CULLEN: Asked and answered but you can  
 13 address it again.  
 14 A. I've already answered it.  
 15 BY MR. SUMMERS:  
 16 Q. Why don't you go ahead, say it again.  
 17 A. We'll use proceeds to terminate the Swaps at the  
 18 discount provided for in the forbearance agreement and  
 19 the balance of the DIP loan will be retained by the  
 20 City as working capital and to support its  
 21 reinvestment program.  
 22 Q. Are there any other intended uses to the DIP financing  
 23 other than the two you just said?  
 24 A. Not that I'm aware of.  
 25 Q. And the amount of the casino revenues that are

1 best we can, but I'm assuming a smaller number when  
 2 they see the RFP will want to proceed to the second  
 3 stage which is to propose actual terms in response to  
 4 our RFP. The date for that I believe is September the  
 5 16th.  
 6 Q. Has a time line for the DIP financing because the view  
 7 of what the time line should be for the DIP financing  
 8 beyond the September 16th deadline?  
 9 A. Well, we will receive I hope on the 16th multiple  
 10 serious indications of interest back by term sheets.  
 11 At that point we will look at how many we have and  
 12 we'll determine whether there's one that is so  
 13 superior to the others that we'll negotiate with that  
 14 party exclusively.  
 15 If we have a lot that are very competitive,  
 16 we may decide to negotiate with several of them at the  
 17 same time.  
 18 So, I don't have a clear view at this time  
 19 what date we'll actually select our lender, but it  
 20 will clearly be something we'll focus on after the  
 21 16th of September. The goal will be to do it as soon  
 22 as possible.  
 23 Q. Based on your experience in other cases do you have a  
 24 view as to what -- how long the selection of the  
 25 lender is likely to take?

1 generated currently are is it correct that it's net  
 2 the City currently is about 15 million dollars?  
 3 MR. CULLEN: Objection. Foundation. Form.  
 4 A. Well, there's 175 million annually of projected casino  
 5 gaming revenues. That's what the City has on its  
 6 income statement.  
 7 MR. SUMMERS: Mark this as Deposition  
 8 Exhibit 4.  
 9 MARKED FOR IDENTIFICATION:  
 10 DEPOSITION EXHIBIT 4  
 11 11:31 a.m.  
 12 BY MR. SUMMERS:  
 13 Q. What's been marked as Deposition Exhibit 4 is a copy  
 14 of the proposed order that the City has submitted with  
 15 the settlement motion, correct?  
 16 A. Well, I haven't seen it before you handed it to me but  
 17 I'll so stipulate.  
 18 Q. Was the proposed order or the form of the proposed  
 19 order something that was negotiated with the Swap  
 20 counterparties?  
 21 MR. CULLEN: Objection. Foundation.  
 22 A. I believe so.  
 23 BY MR. SUMMERS:  
 24 Q. Did Miller Buckfire participate in the negotiation of  
 25 the proposed form of order?

1 **A. No.**  
 2 Q. Who participated in the negotiation of the proposed  
 3 form of order on behalf of the City?  
 4 **MR. CULLEN:** If you know.  
 5 **A. Counsel from Jones Day.**  
 6 **BY MR. SUMMERS:**  
 7 Q. Prior to today you've never looked at the proposed  
 8 order, is that correct?  
 9 **A. Correct.**  
 10 Q. Do you have a view as to the whether the proposed  
 11 order is a -- the form of proposed order is an  
 12 important term to the Swap counterparties?  
 13 **MR. CULLEN:** Objection. Foundation. Form.  
 14 **A. I just told you I haven't seen it before you handed it**  
 15 **to me.**  
 16 **BY MR. SUMMERS:**  
 17 Q. That's not what I asked.  
 18 **A. Well, what did you ask?**  
 19 Q. Do you have a view as to whether the form of the  
 20 proposed order is important to the Swap  
 21 counterparties?  
 22 **MR. CULLEN:** Same objection.  
 23 **A. No.**  
 24 **BY MR. SUMMERS:**  
 25 Q. Have the Swap counterparties ever indicated to the

1 City that the form of the proposed order is important?  
 2 **A. I don't know.**  
 3 Q. If the court refuses to enter an order in the form  
 4 that was submitted, have the Swap counterparties ever  
 5 indicated to you that they would have the right to  
 6 terminate the forbearance agreement?  
 7 **MR. CULLEN:** Objection. Foundation. Form.  
 8 We've been through this, Counsel. He hasn't seen the  
 9 document.  
 10 **MR. SUMMERS:** I'm asking what, if anything,  
 11 the Swap counterparties have said to him.  
 12 **MR. CULLEN:** About this document.  
 13 **MR. SUMMERS:** About this document.  
 14 **A. I've never seen it before.**  
 15 **BY MR. SUMMERS:**  
 16 Q. I know you've never seen it before. Have they ever  
 17 told you, have the Swap counterparties ever said to  
 18 you that the form of the proposed order is an  
 19 important aspect of the settlement to them?  
 20 **A. No.**  
 21 Q. Do you have a view as to the effect, if any, of the  
 22 documents that were executed in 2009, collateral  
 23 agreement and others, as to the effect that that had  
 24 on the relationship, if any, between the COPs and the  
 25 Swap transaction?

1 **MR. CULLEN:** Objection. Foundation. Form.  
 2 Asks for a legal conclusion.  
 3 **A. No.**  
 4 **BY MR. SUMMERS:**  
 5 Q. Are you aware that on August 21 counsel for the City  
 6 suggested that the 2009 documents, quote, severed the  
 7 tie between the COPs and the Swaps?  
 8 **A. No.**  
 9 Q. What is your understanding of the effect of the  
 10 execution delivery of the collateral agreement in 2009  
 11 on the Swaps?  
 12 **MR. CULLEN:** Objection. Foundation.  
 13 **A. Well, economically it eliminated the benefit of the**  
 14 **Swaps to the point of the City because it was a net**  
 15 **liability to the City at that point, but the amendment**  
 16 **allowed the bank to terminate if it went into being an**  
 17 **asset for the City.**  
 18 **So, it eliminated much of the benefit to**  
 19 **the City of the original Swap agreements entered into**  
 20 **in 2006.**  
 21 **BY MR. SUMMERS:**  
 22 Q. And, so, in your view prior to the execution of the  
 23 2009 collateral agreement the Swap counterparties did  
 24 not have the right to terminate?  
 25 **MR. CULLEN:** Objection. Foundation. Form.

1 **A. I didn't say that.**  
 2 **BY MR. SUMMERS:**  
 3 Q. Prior to the execution of the 2009 documents, in order  
 4 for the Swap counterparties to consent -- to  
 5 terminate, was the consent of the insurers required?  
 6 **MR. CULLEN:** Objection. Foundation. Form.  
 7 Calls for -- you're asking the witness to legally  
 8 resurrect dead documents here. I don't think it's  
 9 appropriate.  
 10 **MR. SUMMERS:** Well, he's testified that he  
 11 has a view that the 2009 amendments gave the Swap  
 12 parties the right to terminate and I'm trying to  
 13 understand what the basis for that is.  
 14 **A. If there isn't an event of default, they have the**  
 15 **right to terminate.**  
 16 **BY MR. SUMMERS:**  
 17 Q. What's the basis for that view?  
 18 **A. It's in the collateral agreement.**  
 19 Q. And is that different than what existed before the  
 20 2009 documents were executed?  
 21 **A. I don't know.**  
 22 Q. Did you review the 2006 documents in connection with  
 23 your engagement with the City?  
 24 **A. Only to understand the financial terms.**  
 25 Q. And what financial terms were you seeking to

1 understand?

2 **A. The fixed rate, the terminal amount, the -- I'm sorry.**

3 **The notional amount of the Swaps, the fixed rate**

4 **pursuant to the Swap contract and the base rate**

5 **calculation.**

6 **Q. Go back to the negotiations that occurred in 2013.**

7 **Did you invite Syncora to participate in those**

8 **negotiations?**

9 **A. No.**

10 **Q. Why not?**

11 **A. They weren't a party to the collateral agreement.**

12 **Q. Did you consult with Mr. Orr as to whether Syncora**

13 **should be invited to the negotiations?**

14 **A. No.**

15 **Q. Did you invite Financial Guaranty Insurance Company to**

16 **participate in the negotiations concerning the**

17 **forbearance agreement?**

18 **A. No.**

19 **Q. Did you consult with Mr. Orr with respect to the**

20 **decision whether Financial Guaranty Insurance Company**

21 **should be invited to those negotiations?**

22 **A. No.**

23 **Q. So, you made that decision -- how did you come to the**

24 **decision not to invite -- we'll call it FGIC?**

25 **A. It never came up. They weren't a party to the**

1 Q. And what was your advice?

2 **A. My advice was that the discussion should be led by**

3 **Miller Buckfire as the City's investment banker**

4 **assisted by Jones Day, primary restructuring counsel**

5 **to the City and that and we should include the chief**

6 **financial officer of the City, Mr. Jack Martin, and**

7 **also to make sure the Swap counterparties understood**

8 **how seriously we were taking it, we invited the chief**

9 **deputy treasurer of the State of Michigan, Mr. Tom**

10 **Saxton.**

11 **Q. Did you ever advise Mr. Orr that you thought Syncora**

12 **should be a party to the negotiations?**

13 **A. No.**

14 Q. Did Mr. Orr prior to receiving your advice express a

15 view as to who should participate in the negotiations?

16 **A. We had a short discussion about whether or not we**

17 **should include the state. It wasn't required, they're**

18 **not a party to it but we felt unbalanced because the**

19 **state's overall support for the restructuring was**

20 **important that including the chief deputy treasurer**

21 **would be a good idea, so we invited him.**

22 Q. But he did not attend, is that correct?

23 **A. He did.**

24 Q. Oh, he did attend. Did you ever seek input from the

25 Swap counterparties as to who should be present at the

1 **agreement.**

2 **Q. Did you invite US Bank to participate in the**

3 **negotiations concerning the forbearance agreement?**

4 **A. No.**

5 **Q. Why not?**

6 **A. Not a party to the agreement.**

7 **Q. To the collateral agreement?**

8 **A. Correct.**

9 **Q. And to your knowledge no one else invited Syncora,**

10 **FGIC or US Bank to participate in the negotiations on**

11 **the forbearance agreement?**

12 **A. Correct.**

13 Q. Did you and Mr. Orr ever discuss who should

14 participate in the negotiations?

15 **A. Yes.**

16 Q. And when did that discussion occur?

17 **A. I can't recall the exact day. It was sometime in late**

18 **May when we recognized the seriousness of the**

19 **situation and the need to protect the City's access to**

20 **cash at all costs. It was then we began to formulate**

21 **our negotiating position including who should attend**

22 **the first meeting.**

23 Q. And did you provide Mr. Orr with advice as to who

24 should attend the first meeting?

25 **A. Yes.**

1 negotiations?

2 **A. No.**

3 Q. Did the Swap counterparties ever volunteer their view

4 as to whether there should be other parties involved

5 in the negotiations?

6 **A. Not to me.**

7 Q. Did they do so to someone else?

8 **A. I don't know.**

9 Q. Not to your knowledge?

10 **A. Not to my knowledge.**

11 **Q. At any time during the negotiations in 2013 did the**

12 **Swap counterparties send a notice of an event of**

13 **default?**

14 **A. I don't recall if we ever received an official notice**

15 **but we certainly were aware of the fact they could**

16 **send one at any time.**

17 **Q. And at any time during the negotiations in 2013 did**

18 **the Swap counterparties formally designate an early**

19 **termination date?**

20 **A. No.**

21 Q. Did the Swap counterparties at any point propose,

22 formally propose to the City a structure that would

23 not involve an early termination of the Swaps?

24 **MR. JURGENS: Objection.**

25 **MR. CULLEN: Objection. Foundation. Form.**

1 **A. Not after we began our discussions on June 4th, no.**  
 2 **BY MR. SUMMERS:**  
 3 **Q. Now, you've indicated there was I guess an agreement**  
 4 **-- is it fair to say there was an agreement at least**  
 5 **in principle on the terms of the forbearance agreement**  
 6 **on or before June 11th, is that correct?**  
 7 **MR. CULLEN: Objection. Foundation.**  
 8 **A. There was an economic understanding, yes.**  
 9 **BY MR. SUMMERS:**  
 10 **Q. What happened after June 11th with respect to the**  
 11 **negotiations?**  
 12 **A. Well, the attorneys for the City and for the Swap**  
 13 **counterparties began to negotiate the forbearance**  
 14 **agreement. I was not directly involved in that**  
 15 **because it was primarily in fact solely with respect**  
 16 **to the nonfinancial terms of it.**  
 17 **That took several weeks of very intensive**  
 18 **work amongst the lawyers for all the parties to arrive**  
 19 **at an agreement that could be executed which it turned**  
 20 **out not before July 15th.**  
 21 **So, it took about a month to complete the**  
 22 **negotiations for the agreement, so --**  
 23 **Q. Other than attorneys working to document I guess the**  
 24 **legal terms -- well, document the whole thing, was**  
 25 **there anything else that caused a month, approximately**

1 **a month to elapse between agreement on the financial**  
 2 **terms and execution of the forbearance agreement?**  
 3 **A. No, it was a very, very active negotiation amongst the**  
 4 **parties to the arrive at the final document.**  
 5 **Q. Let's turn to the 2012 negotiations, turn to 2012. Is**  
 6 **it correct that in March 2012 the City suffered a**  
 7 **ratings downgrade with respect to its general**  
 8 **obligation bonds?**  
 9 **A. Well, that is a fact, yes.**  
 10 **Q. Okay. And that downgrade could have constituted an**  
 11 **event of default under the Swap agreements at that**  
 12 **point, correct?**  
 13 **A. Correct.**  
 14 **Q. As a result of the downgrade, did the City in 2012**  
 15 **commence any negotiations with the Swap counterparties**  
 16 **to resolve the potentially event of default?**  
 17 **MR. CULLEN: Objection. Foundation.**  
 18 **A. I believe they did but we were not involved in it, we**  
 19 **weren't retained to do so.**  
 20 **BY MR. SUMMERS:**  
 21 **Q. So, Miller Buckfire had no involvement in any**  
 22 **negotiations that happened in 2012?**  
 23 **A. That's correct, we were only engaged in July for a**  
 24 **two-month period to do a financial review.**  
 25 **Q. Have you as part of your diligence and in connection**

1 with the forbearance agreement that's ultimately been  
 2 executed, have you reviewed or familiarized yourself  
 3 with what happened during the 2012 negotiations?  
 4 **A. Yes.**  
 5 **Q. Who participated for the City in the negotiations with**  
 6 **the Swap counterparties in 2012?**  
 7 **A. I believe it was Jack Martin, to some extent the prior**  
 8 **CFO whose name is Chris Brown. Those negotiations**  
 9 **were inconclusive.**  
 10 **Q. Was the City represented by counsel during the 2012**  
 11 **negotiations?**  
 12 **A. I'm sure they were, but I can't tell you who it was.**  
 13 **Q. Did the City have a financial advisor in connection**  
 14 **with the 2012 negotiations?**  
 15 **A. Not retained as far as I know.**  
 16 **Q. And do you know who participated in the 2012**  
 17 **negotiations for the Swap counterparties?**  
 18 **A. No.**  
 19 **Q. And do you know who the counterparties' lawyers were**  
 20 **in the 2012 negotiations?**  
 21 **A. No.**  
 22 **Q. Do you know how long the negotiations in 2012 lasted?**  
 23 **A. No.**  
 24 **Q. Do you know whether the service corporations**  
 25 **participated in the 2012 negotiations?**

1 **A. I don't know.**  
 2 **Q. And at the time you were engaged the second time, what**  
 3 **was your understanding of the status of the**  
 4 **negotiations with the Swap counterparties that had**  
 5 **started in 2012?**  
 6 **A. My understanding was that they were inconclusive and**  
 7 **that they were at the moment of our retention on**  
 8 **January 8th in suspension that there were no**  
 9 **discussions ongoing.**  
 10 **Q. Do you know if the City had ever made a proposal to**  
 11 **the Swap counterparties in connection with the 2012**  
 12 **negotiations?**  
 13 **A. I don't know.**  
 14 **Q. Do you know if the Swap counterparties had ever made a**  
 15 **proposal to the City during the 2012 negotiations?**  
 16 **A. No, I testified to that earlier, they had proposed a**  
 17 **standstill agreement which would require the City to I**  
 18 **guess give up some rights or some litigation positions**  
 19 **in exchange for the Swap counterparties agreeing to**  
 20 **not exercise their remedies but that it could be**  
 21 **terminated at any time. I believe that was their**  
 22 **proposal.**  
 23 **Q. And to your knowledge is that the only proposal that**  
 24 **the Swap counterparties made?**  
 25 **A. Yes.**

1 Q. Is that proposed standstill agreement a document  
2 that's available in the data room?  
3 **A. I don't know.**  
4 Q. Is that a document the City would make available if  
5 it's not in the data room?  
6 **MR. CULLEN:** No reason why not.  
7 **BY MR. SUMMERS:**  
8 **Q. To your knowledge at no point in 2012 did the Swap**  
9 **counterparties send a notice of an event of default to**  
10 **the City?**  
11 **MR. CULLEN:** Objection. Asked and  
12 answered.  
13 **A. Not to my knowledge.**  
14 **BY MR. SUMMERS:**  
15 Q. During the June 2013 negotiations, if the Swap  
16 counterparties had sent a notice of termination to the  
17 City, would the City have had any way to pay the  
18 termination amount?  
19 **MR. CULLEN:** Objection. Calls for  
20 speculation, but you can address it.  
21 **A. Well, the City had no cash. And it would have**  
22 **potentially been a four hundred million dollar claim**  
23 **would have had to be paid in order to retain access to**  
24 **gaming revenues. I don't see how we could have done**  
25 **that.**

1 **Q. And what is that understanding?**  
2 **A. They were created for the purpose of the City**  
3 **borrowing 1.4 billion dollars in 2005 and 2006 and**  
4 **making a contributions of the like amount to the**  
5 **pension funds.**  
6 **Q. Do you understand the service corporations to be**  
7 **controlled by the City?**  
8 **A. Yes.**  
9 **Q. And do you understand the service corporations to be**  
10 **controlled by the emergency manager?**  
11 **A. I assume that's the case but I don't know for a fact.**  
12 **Q. And the service corporations are in fact parties to**  
13 **the forbearance agreement, correct?**  
14 **A. Yes, they are.**  
15 **Q. Who acted on behalf of the service corporations in**  
16 **connection with the forbearance agreement?**  
17 **A. The City did.**  
18 **Q. And by the City can you identify the individuals that**  
19 **you are referring to when you say the City?**  
20 **A. Mr. Orr.**  
21 **Q. To your knowledge did any members of the Board of**  
22 **Directors of the service corporations consult with**  
23 **Mr. Orr about the forbearance agreement?**  
24 **A. I don't know.**  
25 **Q. Did Mr. Orr -- let's ask it the other way. Did**

1 **BY MR. SUMMERS:**  
2 **Q. So, did you consider it likely that they would send a**  
3 **termination notice rather than negotiate in light of**  
4 **the City's lack of cash to pay the termination fee?**  
5 **A. We weren't prepared to gamble with the survival of the**  
6 **City by taking that risk.**  
7 **Q. And can you explain why you viewed it as a gamble for**  
8 **the City?**  
9 **A. To assume the City would have continued access to**  
10 **gaming revenues in the face of increasing levels of**  
11 **default and assuming that the Swap counterparties**  
12 **would continue to forbear exercising their remedies**  
13 **and depending on their good will and intentions, when**  
14 **they have their own fiduciary duties would be an**  
15 **unacceptable risk. I so recommended to Mr. Orr that**  
16 **we not take that risk.**  
17 **Q. You're familiar with the Detroit General Retirement**  
18 **System Service Corporation and the Detroit Police and**  
19 **Fire Retirement System Service Corporation?**  
20 **A. I know they exist.**  
21 **Q. Do you have an understanding -- just for the record**  
22 **I'll refer to them as the service corporations, do you**  
23 **have an understanding what the service corporations**  
24 **are?**  
25 **A. Yes.**

1 **Mr. Orr consult with any members of the Board of**  
2 **Directors of the service corporations in connection**  
3 **with the forbearance agreement?**  
4 **A. I don't know.**  
5 **Q. Did anyone at Miller Buckfire have any contact with**  
6 **anyone, any -- any member of the Board of Directors of**  
7 **the service corporations in connection with the**  
8 **negotiations?**  
9 **A. I don't think so.**  
10 **Q. And do you know who presented the forbearance**  
11 **agreement to the service corporations for execution?**  
12 **A. No.**  
13 **Q. Would Mr. Orr know that?**  
14 **A. I don't know.**  
15 **Q. Do you know who would know that?**  
16 **A. I don't know.**  
17 **Q. The person who signed the forbearance agreement on**  
18 **behalf of the service corporations, a woman named**  
19 **Cheryl Johnson, is that correct?**  
20 **A. Yes.**  
21 **Q. Do you know Miss Johnson?**  
22 **A. No.**  
23 **Q. Do you know what position Miss Johnson holds, if any,**  
24 **on the service corporations?**  
25 **A. Well, the signature page indicates that she's the**



1 **president.**  
 2 Q. You've never spoken to Miss Johnson about the  
 3 forbearance agreement?  
 4 A. No.  
 5 Q. Have you ever spoken with Portia Roberson about the  
 6 forbearance agreement?  
 7 A. No.  
 8 Q. Do you know Miss Roberson?  
 9 A. No.  
 10 Q. Has anyone from Miller Buckfire ever spoken with  
 11 Miss Roberson?  
 12 A. I don't know.  
 13 Q. Are you aware that the insurers contend that the Swap  
 14 agreements cannot be terminated without their consent?  
 15 A. Yes.  
 16 Q. And when did you first become aware of that  
 17 contention?  
 18 A. Well, last week in court I heard Mr. Hackney describe  
 19 those arguments to the judge.  
 20 Q. Have you taken any steps to evaluate whether the City  
 21 agrees with the insurer's construction of the  
 22 operative documents on this point?  
 23 A. No.  
 24 Q. Do you know whether the City agrees with the insurer's  
 25 interpretation of the operative documents on this

1 right to control essentially all actions to be taken  
 2 by the Swap counterparties in connection with the Swap  
 3 agreements?  
 4 MR. CULLEN: Objection. Foundation. Form.  
 5 A. Yes, I am.  
 6 BY MR. SUMMERS:  
 7 Q. And when did you develop that awareness?  
 8 A. When I was in court last week listening to  
 9 Mr. Hackney's description of those issues to the  
 10 judge.  
 11 Q. And have you taken any steps to evaluate whether the  
 12 City concurs with the insurer's construction of the  
 13 documents on this point?  
 14 A. No.  
 15 Q. Are you aware the City states in its motion to approve  
 16 the forbearance agreement that it is not required to  
 17 seek judicial approval under bankruptcy Rule 9019?  
 18 MR. CULLEN: Objection. Foundation. Form,  
 19 but you can address it.  
 20 A. I'm not aware --  
 21 BY MR. SUMMERS:  
 22 Q. I'm asking if you're aware.  
 23 A. I'm not aware.  
 24 Q. If the court does not approve the forbearance  
 25 agreement, will the City still consider the

1 point?  
 2 A. I don't know. Hackney, H A C K N E Y. That's him.  
 3 MR. HACKNEY: Mr. Buckfire is looking out  
 4 for me.  
 5 THE WITNESS: Only where I can.  
 6 BY MR. SUMMERS:  
 7 Q. Do you agree that if the insurers can block a  
 8 termination, that this would be important for the City  
 9 to assess whether it is in danger -- whether it was in  
 10 danger in June 2013 of owing the termination payment?  
 11 MR. CULLEN: Objection. Foundation. Form.  
 12 A. I'm sorry. I don't understand the question.  
 13 BY MR. SUMMERS:  
 14 Q. If the insurers are correct that they contend they can  
 15 block the termination, would that have been important  
 16 to assess whether the City was in real danger in June  
 17 2013 of owing a termination payment under the Swaps?  
 18 MR. JURGENS: Objection to form.  
 19 A. The issue for the City primarily is maintaining  
 20 uninterrupted access to its gaming revenues. Any  
 21 litigation by any party which would threaten that  
 22 access would be a very serious problem for the City of  
 23 Detroit.  
 24 BY MR. SUMMERS:  
 25 Q. Are you aware that the insurers contend they have the

1 forbearance agreement a valid contract?  
 2 MR. CULLEN: Objection. Asks for a legal  
 3 conclusion.  
 4 A. I can't answer that. It calls for a legal conclusion.  
 5 BY MR. SUMMERS:  
 6 Q. If the court doesn't approve the forbearance  
 7 agreement, will the City still attempt to perform  
 8 under the forbearance agreement?  
 9 MR. CULLEN: Objection. Calls for  
 10 speculation.  
 11 A. I can't answer that question. I don't understand it.  
 12 BY MR. SUMMERS:  
 13 Q. Have you ever discussed with Mr. Orr what the City  
 14 will do with respect to the Swaps if the forbearance  
 15 agreement is not approved?  
 16 A. The financial consequences of not having the  
 17 forbearance agreement approved would be very dire for  
 18 the City of Detroit. We could no longer count on our  
 19 access to gaming revenues, we would no longer be able  
 20 to execute on the reinvestment plan which has been  
 21 described to the public and to the creditors on June  
 22 14th. We might be required to in fact reduce existing  
 23 City services in order to live within our cash  
 24 resources. I'm only identifying some of the concerns  
 25 we would immediately have to review in order to come

1 up with a new plan.  
 2 Q. That presumes that the City would not continue to view  
 3 the forbearance agreement as binding?  
 4 A. I'm only speaking to the question of access to gaming  
 5 revenues. If the forbearance agreement is not  
 6 approved and we don't have access to gaming revenues,  
 7 the consequences to the City are extremely serious.  
 8 Q. In determining whether to enter into the settlement  
 9 agreement, did the City consider whether the casino  
 10 revenues constituted special revenues under the  
 11 bankruptcy code?  
 12 MR. CULLEN: Objection. Calls for a legal  
 13 conclusion.  
 14 MR. SUMMERS: It doesn't. I'm asking  
 15 whether the City considered it.  
 16 A. No.  
 17 BY MR. SUMMERS:  
 18 Q. So, you didn't consider it or you don't know?  
 19 A. I said we didn't consider it.  
 20 Q. In entering into the forbearance agreement, did the  
 21 City consider whether or not the automatic stay  
 22 applied to prevent the casino revenue from being  
 23 trapped under the collateral agreement?  
 24 A. Well, we hoped it would, but again it's pursuant to a  
 25 Swap agreement and there are special provisions in the

1 creditor recoveries?  
 2 A. We've considered that, yes.  
 3 Q. And what is the City's view as to the impact of the  
 4 forbearance agreement on unsecured creditor  
 5 recoveries?  
 6 A. Well, the elimination of litigation risk, the  
 7 preservation of the City's ability to operate in the  
 8 ordinary course and reinvest in the City pursuant to  
 9 access to gaming revenues would provide the City the  
 10 ability to enhance its overall credit and solvency  
 11 which would lead in theory to a higher recovery for  
 12 our unsecured creditors.  
 13 Q. If the court refuses to approve the forbearance  
 14 agreement, what is your view of the impact that will  
 15 have on unsecured creditors?  
 16 A. I think it will reduce their chance of recovery to a  
 17 very low number.  
 18 Q. And why do you think that?  
 19 A. Because the City will not be able to execute its  
 20 reinvestment plan, will not be able to emerge from  
 21 bankruptcy on the schedule that we have promised the  
 22 court. We would not be able to deliver the two  
 23 billion dollar limited recourse participation note to  
 24 our unsecured creditors.  
 25 Q. Why do you think you will not be able to do that?

1 code that give Swap parties special rights.  
 2 Q. And, so, how was that consideration relevant to the  
 3 decision of the City to enter into the forbearance  
 4 agreement?  
 5 A. Well, having been involved in other situations where  
 6 we had Swaps and Swap counterparties, we are able to  
 7 take their collateral, even after a bankruptcy filing  
 8 was created, again it was an element of risk we were  
 9 not willing to accept on the City's behalf that the  
 10 Swap counterparties even after a bankruptcy filing  
 11 might be able to take advantage of those rights and  
 12 seize gaming revenues against their termination  
 13 amounts.  
 14 Q. In connection with the decision to enter into the  
 15 forbearance agreement, did the City consider whether  
 16 the casino revenues are property of the estate?  
 17 MR. CULLEN: Objection. Calls for a legal  
 18 conclusion.  
 19 A. They are property of the City.  
 20 BY MR. SUMMERS:  
 21 Q. So, the City took the view when these negotiations  
 22 that they are property of the estate, correct?  
 23 A. Yes.  
 24 Q. Has the City undertaken any analysis as to what impact  
 25 the forbearance agreement may have on unsecured

1 A. Our June 14th plan and proposal to creditors pursuant  
 2 to which we proposed a two billion dollar note be  
 3 given out to all of our unsecured creditors assumes  
 4 that the City is able to execute its reinvestment  
 5 program over the next ten years which assumes that we  
 6 have access to the cash flows embodied in that plan  
 7 including the gaming revenues.  
 8 Q. It's not -- it's access to the gaming revenues to  
 9 grant a lien on them again?  
 10 A. Not necessarily. But the point is if we don't have  
 11 the gaming revenues because the actions of the Swap  
 12 counterparties, we can't even start the reinvestment  
 13 plan.  
 14 Q. The City intends, correct me if I'm wrong, but I  
 15 thought that the City intends to enter into DIP  
 16 financing and grant a lien on the casino revenues as  
 17 the next step after approval of the forbearance  
 18 agreement?  
 19 MR. CULLEN: Objection. Foundation.  
 20 Form.  
 21 A. If we have no forbearance agreement and we have to  
 22 live with the current Swap termination rights and the  
 23 Swap counterparties were to terminate officially and  
 24 require the City to pay three hundred million dollars  
 25 to them, by action of the agreement they would seize

1 all of the gaming revenues until that claim has been  
 2 fully satisfied.  
 3 Now, simple math will tell you if we have  
 4 170 million of gaming revenues and we have a three  
 5 hundred million dollar termination payment and we have  
 6 an implied interest rate on that termination payment  
 7 it will probably take somewhere between two and three  
 8 years to pay it off in full.  
 9 Q. That presumes that the lien held by the Swap  
 10 counterparties against the casino revenues is a valid  
 11 and enforceable lien, correct?  
 12 A. That's what the agreement specifies.  
 13 Q. Well --  
 14 A. The 2009 agreement specifies.  
 15 Q. Right, but --  
 16 A. That's the agreement the City is bound by if the  
 17 forbearance agreement is not approved.  
 18 Q. Unless there's a litigation claim that exists that  
 19 might invalidate the liens?  
 20 A. In which case who knows what the Swap counterparties  
 21 might do and what we might have access to in terms of  
 22 gaming revenue.  
 23 Q. So, the legal analysis is important to informing --  
 24 A. Any risk the City is being asked to take that doesn't  
 25 have access to gaming revenues is an unacceptable risk

1 A. Yes, by the end of October 2013.  
 2 Q. What is the City's intention with respect to analyzing  
 3 the appraisal and making a determination as to the art  
 4 work once it receives the appraisal?  
 5 MR. CULLEN: Objection. Foundation. Form.  
 6 A. I can't even speculate as to what we'll do until we  
 7 have some facts as to what value we're dealing with.  
 8 That's why they were retained.  
 9 BY MR. SUMMERS:  
 10 Q. Has the City considered selling or leasing Belle Isle?  
 11 A. Not to my knowledge.  
 12 Q. Has the City looked into possible sources of funding  
 13 from the State of Michigan?  
 14 A. I'm not going to discuss that.  
 15 Q. Has the City looked into possible sources of funding  
 16 from the federal government?  
 17 A. I'm not going to discuss that either.  
 18 Q. On what basis?  
 19 A. Commercially sensitive information.  
 20 MR. SUMMERS: I'm going to propose we take  
 21 maybe -- why don't we stop the tape for a minute.  
 22 VIDEO TECHNICIAN: The time is 12:18 p.m.  
 23 we are off the record.  
 24 (Recess taken at 12:18 p.m.)  
 25 (Back on the record at 1:21 p.m.)

1 from the point of view of the City's ability to  
 2 rehabilitate itself.  
 3 Q. Have you evaluated noncore assets as a source of funds  
 4 for the City?  
 5 MR. CULLEN: Objection. Foundation. Form.  
 6 A. Yes.  
 7 BY MR. SUMMERS:  
 8 Q. And what evaluation have you performed?  
 9 A. As we've identified in the June 14th plan we did  
 10 identify for the benefit of the public and the  
 11 creditors all potential noncore assets that might have  
 12 value that could be used pursuant to the plan of  
 13 adjustment.  
 14 Q. And on August 5th you announced the City had hired  
 15 Christie's to appraise the collection at the Detroit  
 16 Institute of Art, correct?  
 17 A. I didn't announce that.  
 18 Q. The City announced it.  
 19 A. The City announced it.  
 20 Q. That they hired Christie's, correct? Do you have an  
 21 understanding of the approximate value of the City's  
 22 art collection?  
 23 A. No.  
 24 Q. Do you have an understanding as to when the City  
 25 expects to receive the appraisal from Christie's?

1 VIDEO TECHNICIAN: We are back on the  
 2 record at 1:21 p.m. This marks the beginning of tape  
 3 number three.  
 4 EXAMINATION  
 5 BY MR. HACKNEY:  
 6 Q. Mr. Buckfire, good afternoon. My name is Steve  
 7 Hackney. I'm an attorney at Kirkland & Ellis, and I  
 8 represent Syncora Capital Assurance and Syncora  
 9 Guaranty. Nice to meet you.  
 10 A. Likewise.  
 11 Q. I think we had a brief conversation which you  
 12 suggested there might have been something you'd like  
 13 to correct with respect to a name from the morning's  
 14 testimony.  
 15 A. Yes, thank you, Mr. Hackney. I incorrectly identified  
 16 the attorney from Cadwalader who was present at the  
 17 June 4th meeting. His correct name is Larry  
 18 Stromfeld, S T R O M F E L D. That's his correct name  
 19 and that's who attended the meeting.  
 20 Q. If you think of any other corrections, don't hesitate  
 21 to stop me and let me know and we'll give you an  
 22 opportunity to make them.  
 23 A. Thank you.  
 24 Q. So, I've been listening to your testimony. It's not  
 25 my intention to re-ask you all the questions that were

1 asked today. I am just here principally to follow up  
 2 on certain items and ask about certain other areas  
 3 that may be germane to Syncora.  
 4 So, as I understood your testimony, you  
 5 were the lead negotiator for the City when it came to  
 6 negotiating the business deal, is that correct?  
 7 **A. Yes.**  
 8 Q. Other people were going to paper the business deal in  
 9 terms of the legal terms that would embody it,  
 10 correct?  
 11 **A. Yes.**  
 12 Q. Let me ask you a question. The kickoff of the  
 13 negotiations that led to the forbearance agreement I  
 14 understood you to say began on June 4th, correct?  
 15 **A. Yes.**  
 16 Q. Who called that meeting?  
 17 **A. Counsel to Jones Day called counsel for BAML and**  
 18 **invited them to the meeting.**  
 19 Q. Fair to say that the meeting was held at the behest of  
 20 the City of Detroit?  
 21 **A. Yes.**  
 22 Q. Did you take legal advice, you personally as the lead  
 23 negotiator for the City, did you take legal advice  
 24 from Jones Day in advance of the June 4 meeting?  
 25 **A. Yes.**

1 are negotiating?  
 2 **A. Yes.**  
 3 Q. You also have to have at least some understanding of  
 4 the legal framework in order to negotiate effectively,  
 5 correct?  
 6 **A. Yes.**  
 7 Q. You don't have to go to law school, right, but you do  
 8 have to understand some of the ins and outs of the  
 9 various legal documents that you're negotiating over,  
 10 correct?  
 11 **A. As well as any layman can be expected to do so.**  
 12 Q. Now, I'd like to get a level set as to where you were  
 13 on June 4th, 2013 as you're going into this meeting  
 14 with BAML.  
 15 **A. And UBS.**  
 16 Q. And UBS. So, they were there too?  
 17 **A. Yes.**  
 18 Q. Okay. I want to make sure I have a level set under  
 19 the operating assumptions that you had in your mind as  
 20 you were going into the meeting to negotiate with the  
 21 Swap counterparties, okay?  
 22 One of your operating assumptions was that  
 23 there were termination events existing under the  
 24 Swaps, correct?  
 25 **A. There were events of default existing under the Swaps,**

1 Q. Would you disclose to me the legal advice you obtained  
 2 from them?  
 3 **MR. CULLEN:** I'll instruct him not to  
 4 answer.  
 5 **MR. HACKNEY:** So, if I ask questions about  
 6 the legal advice you had been given about the COPs  
 7 Swap structure or various parties' rights thereunder,  
 8 you would instruct the witness not to answer those  
 9 questions?  
 10 **MR. CULLEN:** Right.  
 11 **MR. HACKNEY:** And I take it, Mr. Cullen,  
 12 that instruction would remain true both from -- at any  
 13 time?  
 14 **MR. CULLEN:** Right.  
 15 **MR. HACKNEY:** Not just with respect to the  
 16 June 4 meeting?  
 17 **MR. CULLEN:** Precisely.  
 18 **BY MR. HACKNEY:**  
 19 Q. Okay. Let me ask you, Mr. Buckfire, I'm going to  
 20 speculate, perhaps not wildly, that you've negotiated  
 21 a few deals in your lifetime.  
 22 **A. Yes.**  
 23 Q. Isn't it fair to say as a negotiator, you have to have  
 24 an understanding of the financial needs and desires of  
 25 your client as well as the counterparty with whom you

1 **the collateral agreement.**  
 2 Q. Okay. So, let's take a step back and let me be more  
 3 precise.  
 4 **A. Okay.**  
 5 Q. So, there is a Swap agreement that the Swap  
 6 counterparties are parties to with the service  
 7 corporations?  
 8 **A. Correct.**  
 9 Q. You are aware of that?  
 10 **A. I am.**  
 11 Q. You are also aware that there is a collateral  
 12 agreement that is between among other parties the  
 13 City, the service corporations and the Swap  
 14 counterparties, correct?  
 15 **A. Yes.**  
 16 Q. Now, at the time you're going into the June 4 meeting,  
 17 one of your operating assumptions was that there were  
 18 termination events under the Swap that would give the  
 19 Swap counterparties the right to terminate?  
 20 **MR. CULLEN:** Objection. Foundation. I  
 21 think he said default events.  
 22 **MR. HACKNEY:** He said default events under  
 23 the collateral agreement. I'm trying to be precise  
 24 about --  
 25 **A. No, I was focused on the cash issue that would be at**

1 **risk under the collateral agreement.**  
 2 **BY MR. HACKNEY:**  
 3 Q. And let me tie it up a little bit to see if this jogs  
 4 your memory. The collateral agreement certainly  
 5 relates to the Swaps that was entered into in 2009,  
 6 correct?  
 7 **A. Correct.**  
 8 Q. The collateral agreement cash trap arguably slams shut  
 9 upon the occurrence of termination events or events of  
 10 default under the Swap, is that your understanding?  
 11 **MR. CULLEN: Objection. Foundation. Form.**  
 12 You can address the question if you understand it.  
 13 **A. I don't understand the question. I'm sorry.**  
 14 **BY MR. HACKNEY:**  
 15 Q. Okay.  
 16 **A. Want to try again.**  
 17 Q. Did you understand that the collateral agreement and  
 18 the cash trapping were securitizing the City's  
 19 obligations to the service corporations and the  
 20 service corporations' obligations to the Swap  
 21 counterparties under the Swap?  
 22 **A. No.**  
 23 Q. Did you understand that the collateral agreement what  
 24 it was ultimately securing was the termination payment  
 25 that might be made under the Swaps?

1 Q. If they chose to do so.  
 2 **A. Correct.**  
 3 Q. And you also -- let me make sure I get this right.  
 4 You also believed that they would be able to declare  
 5 termination event and potentially be paid four hundred  
 6 million dollars, correct?  
 7 **A. Yes.**  
 8 Q. And that was also one of your operating assumptions as  
 9 you're going into the negotiation, correct?  
 10 **A. Yes.**  
 11 Q. And your understanding that they could do so was that  
 12 they could do so unilaterally, correct?  
 13 **A. Correct.**  
 14 Q. And your understanding with both with respect to  
 15 declaring termination of the Swaps and getting a  
 16 termination payment and trapping cash was that there  
 17 was no other party that could direct their actions,  
 18 correct?  
 19 **A. That's correct.**  
 20 Q. And your understanding of these operating assumptions  
 21 remain consistent between June 4 and June 11 when you  
 22 struck the agreement in principle, correct?  
 23 **A. Correct.**  
 24 Q. And in fact it remained consistent for you all the way  
 25 through the execution on July 15th of the forbearance

1 **MR. CULLEN: Objection. Foundation. Form.**  
 2 **A. No.**  
 3 **BY MR. HACKNEY:**  
 4 Q. Did you believe that the collateral agreement had  
 5 created like a new obligation by the City to pay the  
 6 Swap counterparties?  
 7 **A. It created a collateralized obligation to pay the Swap**  
 8 **counterparties.**  
 9 Q. Okay. So, going back to the June 4 meeting, let me  
 10 put it in vernacular that I hope is more correct about  
 11 what you were assuming. Okay?  
 12 You were assuming that there had been  
 13 events of default under the collateral agreement that  
 14 would allow the Swap counterparties to trap cash,  
 15 correct?  
 16 **A. I wasn't assuming anything. I knew there were two**  
 17 **events of default.**  
 18 Q. Let me --  
 19 **A. But they had not been asserted by the Swap**  
 20 **counterparties but they existed.**  
 21 Q. Let me restate it. As of June 4 you knew that there  
 22 were events of default under the collateral agreement  
 23 that would allow the Swap counterparties to trap cash,  
 24 fair statement?  
 25 **A. If they chose to do so, yes.**

1 agreement, correct?  
 2 **A. Correct.**  
 3 Q. And the forbearance agreement itself did not  
 4 materially change the business terms of the deal that  
 5 you had struck on June 11th, correct?  
 6 **A. No, except for the small negotiation we had around the**  
 7 **date of the first option. It was the only material**  
 8 **business term that changed.**  
 9 Q. Okay. So, there was some changes of timing in terms  
 10 of when the percentages stepped up?  
 11 **A. Yes, because the agreement took a long time to**  
 12 **negotiate. We had originally assumed we would**  
 13 **complete a forbearance in June. It took until July so**  
 14 **we asked for and were granted an additional month on**  
 15 **the first option payment.**  
 16 Q. Fair point. Thank you for that correction. Other  
 17 than that change to what I'll describe as the business  
 18 terms that you negotiated on June 11th, there were no  
 19 other material changes to the deal that you struck,  
 20 correct?  
 21 **A. No.**  
 22 Q. It was just legal beagles doing what they do, correct?  
 23 **A. I would never call them legal beagles, but yes, the**  
 24 **lawyers were doing what they were supposed to do.**  
 25 Q. Okay. All right. Now, I want to clarify at the June

1 4 meeting other than saying that the City would  
 2 vigorously litigate attempts to trap cash, you did not  
 3 express the City's views on the merits of that  
 4 litigation, correct?  
 5 **A. Correct.**  
 6 Q. You just said we're going to fight like hell to stop  
 7 you from trapping cash or words to that effect?  
 8 **A. That's correct.**  
 9 Q. And you didn't say by the way here's why we are going  
 10 to win because we have this great argument and you're  
 11 going to lose, right?  
 12 **A. I never said that.**  
 13 Q. Never said words to that effect, correct?  
 14 **A. No.**  
 15 Q. Never attempted to argue the merits of why the Swap  
 16 counterparties wouldn't be able to trap cash, fair  
 17 statement?  
 18 **A. Correct.**  
 19 Q. And no one else on the City side did either, correct?  
 20 **MR. JURGENS:** Objection to form.  
 21 **A. Not to my recollection.**  
 22 **BY MR. HACKNEY:**  
 23 Q. And you never attempted to argue the merits of the  
 24 City's case to the Swap counterparties at any time  
 25 between June 4 and June 11 when you reached the

1 spent either on the phone with a Swap counterparty  
 2 principal or lawyer or whomever you were dealing with  
 3 this or in a meeting with them talking turkey about  
 4 the deal?  
 5 **A. Oh, hours.**  
 6 Q. Okay. So, the first one was an hour and a half on  
 7 June 4.  
 8 **A. Introductory meeting.**  
 9 Q. Okay. Let me go -- I'll go by meetings. Okay. How  
 10 long was June 8?  
 11 **A. That was about three hours.**  
 12 Q. Okay. That was a three-hour negotiation?  
 13 **A. Yeah.**  
 14 Q. And did you meet again on June 11th?  
 15 **A. I think we did.**  
 16 Q. Okay.  
 17 **A. For perhaps two hours.**  
 18 Q. So, June 11 two hours. And did you do any negotiating  
 19 over the phone in between June 4 and June 8 or June 8  
 20 and June 11?  
 21 **A. Yes.**  
 22 Q. And can you estimate the amount of time on the phone?  
 23 **A. I can't. We were on the phone a lot.**  
 24 Q. Okay. You know, I have six-and-a-half hours of  
 25 in-person negotiation. Can you ballpark it in

1 agreement in principle, correct?  
 2 **A. Correct.**  
 3 Q. And you never witnessed anyone else do so on behalf of  
 4 the City either, correct?  
 5 **A. Not that I recall.**  
 6 Q. You said that the June 4 meeting was about an hour and  
 7 a half long, is that right?  
 8 **A. Approximately.**  
 9 Q. How much additional time did you spend in actual  
 10 negotiation with the Swap counterparties between the  
 11 end of that June 4 meeting and the reaching agreement  
 12 in principle on June 11?  
 13 **A. It's hard to put an hour on that. I only can tell you**  
 14 **that from the 4th until the 11th it was my exclusive**  
 15 **focus because it was a do-or-die issue for the City we**  
 16 **knew we had to get an agreement with them by the 11th**  
 17 **otherwise the consequences would be unbearable.**  
 18 **So, I would have to say that for my team**  
 19 **and myself it was a 24-hour dedication and I think for**  
 20 **the banks as well on their side it was probably**  
 21 **equally intense.**  
 22 Q. Absolutely understand that can understand that there  
 23 was a lot of work going on behind the scenes and in  
 24 anticipation of meetings, so on and so forth, but my  
 25 question is driving on, how much time you actually

1 reference to that, were you doing more than that on  
 2 the phone?  
 3 **A. It was probably an equal amount.**  
 4 Q. Okay.  
 5 **A. But that was just the negotiations that I was involved**  
 6 **in. I'm sure that counsel was having separate**  
 7 **conversations on their issues.**  
 8 Q. Yeah, and I'm not trying to address the -- any  
 9 wrangling about the legal terms that I understand was  
 10 not in your bailiwick. You were the guy cutting the  
 11 business deal, correct?  
 12 **A. Right.**  
 13 **Q. Now, at the time of the June 4 meeting you were aware**  
 14 **that a bankruptcy filing for the City of Detroit was**  
 15 **at least a possibility, correct?**  
 16 **A. Yes.**  
 17 **Q. Had you reached the view at that time that it was a**  
 18 **likelihood?**  
 19 **A. It was a possibility.**  
 20 Q. But you can't say more than that that it was a  
 21 likelihood?  
 22 **A. No.**  
 23 Q. As of June 4?  
 24 **A. Correct.**  
 25 Q. And you also understood that the automatic stay is

1 part of any bankruptcy proceeding as a restructuring  
 2 professional, isn't that correct?  
 3 **A. Correct.**  
 4 **Q.** And if I ask you at the time -- well, let me ask a  
 5 general question. I'm not asking you to disclose the  
 6 subject of communication -- the communications  
 7 themselves, but I want to ask whether you had taken  
 8 legal advice on the subject of the automatic stay.  
 9 Don't tell me what the legal advice was.  
 10 Had you taken legal advice on the subject  
 11 of the automatic stay at any time between June 4 and  
 12 June 11?  
 13 **MR. CULLEN:** You can answer that.  
 14 **A. Yes, I did.**  
 15 **BY MR. HACKNEY:**  
 16 **Q.** So, you had taken legal advice from Jones Day, is that  
 17 correct?  
 18 **A. Correct.**  
 19 **Q.** But if I ask you what the advice was, you'll follow  
 20 your counsel's instruction and not answer, correct?  
 21 **A. Correct.**  
 22 **Q.** You were asked questions about interest rates and  
 23 LIBOR and the questions I think focused on a gentleman  
 24 at your firm who has done some analysis whose name I  
 25 can't recall --

1 **A. I don't know.**  
 2 **Q.** Is it a you definitely don't recall one being executed  
 3 but you don't know whether someone else might have or  
 4 you just can't remember?  
 5 **A. I just don't remember.**  
 6 **Q.** You were asked a lot of questions about the service  
 7 corporations. I think we established that you don't  
 8 know their directors and haven't met them, but I want  
 9 to make a point clear about the negotiations which is  
 10 you never engaged in arm's length negotiations with  
 11 the service corporations, correct?  
 12 **A. Correct.**  
 13 **Q.** And you never witnessed anyone else do so either,  
 14 correct?  
 15 **A. Correct.**  
 16 **Q.** And it's your understanding that Mr. Orr directed the  
 17 service corporations to execute the agreement and they  
 18 did, correct?  
 19 **A. Correct.**  
 20 **Q.** Now, you referenced a standstill agreement that was  
 21 something that had been proposed by the Swap  
 22 counterparties prior to June 4, 2013.  
 23 Do you recall that testimony?  
 24 **A. I do.**  
 25 **Q.** Your understanding of the standstill agreement, I

1 **A. Mr. Marken.**  
 2 **Q.** Mr. Marken.  
 3 **A. M A R K E N .**  
 4 **Q.** I have a broader question which is at any time prior  
 5 to June 11th did you or anyone else at Miller Buckfire  
 6 to your knowledge perform an analysis of what interest  
 7 rates were likely to do in the future?  
 8 **A. No.**  
 9 **Q.** Did anyone study any LIBOR curves prior to June 11?  
 10 **A. I don't recall.**  
 11 **Q.** You certainly didn't?  
 12 **A. I did not.**  
 13 **Q.** Okay. When you testified about Mr. Marken, you  
 14 testified about something I think he had done a couple  
 15 days ago and we're in August. So, I'm going to ask  
 16 the same question now about July 15th which is the  
 17 execution date.  
 18 As of the execution date of the forbearance  
 19 agreement, had you or anyone else at Miller Buckfire  
 20 undertaken an assessment of what interest rates were  
 21 likely to do?  
 22 **A. No.**  
 23 **Q.** Prior to engaging in these negotiations between June 4  
 24 and June 11, did the City and the Swap counterparties  
 25 to your knowledge execute a nondisclosure agreement?

1 understand we are going to get it but we don't have it  
 2 today so I have to tell you what I understand from  
 3 your testimony.  
 4 Your understanding of it was that it  
 5 allowed the cash to flow out of the -- it allowed the  
 6 casino revenues to flow in exchange for the City  
 7 agreeing to waive arguments about the invalidity of  
 8 the Swaps but was terminable at any time?  
 9 **A. By the Swap counterparties.**  
 10 **Q.** By the Swap counterparties, correct?  
 11 **A. Correct.**  
 12 **Q.** And that was unacceptable because that meant at any  
 13 time they could change their mind and trap the cash,  
 14 correct?  
 15 **A. By those terms, yes.**  
 16 **Q.** Now, under the forbearance agreement I understand that  
 17 you're not an attorney but you are a sophisticated  
 18 businessman who deals with legal documents on a  
 19 regular basis, true statement?  
 20 **A. Regrettably.**  
 21 **Q.** More than he wants to? But under the forbearance  
 22 agreement isn't it true that your understanding is  
 23 that the City has agreed during the forbearance period  
 24 that it won't seek to declare the Swaps invalid,  
 25 correct?

1 **A. Correct.**  
 2 **Q. And during the forbearance period the Swap**  
 3 **counterparties are allowing the cash to flow through**  
 4 **the collateral account, right?**  
 5 **A. Yes.**  
 6 **Q. So, they waive their argument to trap the cash in**  
 7 **exchange for other things that they got, correct?**  
 8 **A. Correct.**  
 9 Q. Now -- so, there are other elements of the forbearance  
 10 agreement, I understand that including the discount  
 11 and so on and so forth, but at least these two  
 12 elements bear some similarity to elements that were in  
 13 the standstill agreement, right?  
 14 **A. Yes.**  
 15 Q. The big difference is that the standstill agreement  
 16 which was terminable solely by the Swap counterparties  
 17 is different from the forbearance agreement because  
 18 the forbearance agreement creates a window of time for  
 19 the City to evaluate what it wants to do, correct?  
 20 **MR. CULLEN:** Objection. Foundation. Form.  
 21 You can answer if you can unpack it.  
 22 **A. Would you -- would you mind asking me again.**  
 23 **BY MR. HACKNEY:**  
 24 Q. I don't mind at all. One of the big differences about  
 25 the forbearance agreement that makes it acceptable to

1 something, you would undertake some efforts to find  
 2 out what had transpired while you were gone, correct?  
 3 **A. Correct.**  
 4 Q. Kind of catch up on the state of play?  
 5 **A. Yes.**  
 6 **Q. Isn't it true that between March 12th of -- between**  
 7 **March of 2012 and June 4th, 2013, the Swap**  
 8 **counterparties had never terminated the Swaps,**  
 9 **correct?**  
 10 **A. That's true.**  
 11 **Q. Despite the fact that in your view they had the right**  
 12 **to do so, right?**  
 13 **A. That's correct.**  
 14 **Q. And during that entire time period which is 14 months**  
 15 **they had never demanded that cash be trapped, correct?**  
 16 **A. No, they hadn't.**  
 17 Q. And your understanding of the state of play as you  
 18 came into the negotiations on June 4 was that the  
 19 prior negotiations were dormant and had been  
 20 unproductive, correct?  
 21 **A. True, but recall that the Swap counterparties were**  
 22 **through the various channels letting the City know**  
 23 **they were getting increasingly impatient. Their**  
 24 **impatience was not permanent. That we had had other**  
 25 **events of default that were causing them increasing**

1 you in comparison to the standstill agreement is the  
 2 forbearance agreement is not terminable at any time by  
 3 the Swap counterparties, correct?  
 4 **A. It's one element, yes.**  
 5 **Q. Did you ever see whether you could attempt to cut a**  
 6 **more limited deal with the Swap counterparties that**  
 7 **was along the lines of the standstill agreement but**  
 8 **which simply extended a period of time in which the**  
 9 **City could have some assurance that the agreement**  
 10 **wouldn't be terminated?**  
 11 **A. We considered all possibilities, but the proposal we**  
 12 **made to the banks on the 4th was the one that we made**  
 13 **because it was the one that was in the best interest**  
 14 **of the City.**  
 15 **Q. You never proposed what I'll call a smaller deal that**  
 16 **would have attempted to maintain the status quo for**  
 17 **some period of time without trying to achieve a**  
 18 **potential termination of a Swap at a discount so on**  
 19 **and so forth, true statement?**  
 20 **A. True.**  
 21 Q. Now, I know that you weren't engaged with the City at  
 22 every time between March 2012 and today. I know your  
 23 retention was 60 days in 2012?  
 24 **A. It was very limited scope.**  
 25 Q. I take it that when you would re-engage with

1 **concern and they really wanted to sit down with us as**  
 2 **soon as possible to cut a deal.**  
 3 Q. Okay. So, that's an important thing that --  
 4 **A. Which I did testify to in the morning.**  
 5 Q. I may have just missed it. I heard you say that in  
 6 the meetings that they expressed their wearing  
 7 thinness of their patience.  
 8 **A. Yes.**  
 9 Q. I didn't understand that they had -- that they had  
 10 expressed that prior to June 4.  
 11 **A. Yes.**  
 12 Q. So, I may have misheard. If I did, I apologize.  
 13 Can you tell me more about what precisely  
 14 you understood prior to when you set up the June 4  
 15 meeting you're downloading information from people  
 16 about what these Swap counterparties are saying to the  
 17 City, what download are you getting?  
 18 **A. We were re-engaged on January the 8th. Of course we**  
 19 **did go back and bring ourselves up to speed on all the**  
 20 **relevant issues including the state of play on the**  
 21 **Swap termination issue.**  
 22 **We heard from people in the City, we heard**  
 23 **from counsel, we heard from others that they were**  
 24 **unhappy with the fact there was no deal. They really**  
 25 **wanted to sit down with us and discuss something, and**



1 it was a very calculated risk on our part to hold them  
 2 off until we really knew what our true financial  
 3 position was, and, therefore, and particularly after  
 4 Mr. Orr became the emergency manager in March which  
 5 was another event of default, we recognized we didn't  
 6 have a lot of time to engage with them.  
 7 We asked them indirectly through counsel to  
 8 be patient, that we recognize we would get to them  
 9 soon, but we didn't want to proceed on a piecemeal  
 10 basis with our creditors. We needed to understand the  
 11 true financial of the City before we decided what to  
 12 do.  
 13 Q. Understood. That's very helpful. So, let me try and  
 14 summarize it which is when you re-engaged in January  
 15 of 2013, you were made aware of a -- of the general  
 16 desire of the Swap counterparties to for lack of a  
 17 better term figure out what the City and the Swap  
 18 counterparties were going to do about the Swap,  
 19 correct?  
 20 A. Yes.  
 21 Q. And you then held them off between that time and June  
 22 4 as you tried to buy time for Ernst & Young to get  
 23 its arms around the financial position of the City,  
 24 correct?  
 25 A. Yes, and our other advisors.

1 A. And that was the first time that the public and the  
 2 capital markets really became aware of the true  
 3 financial condition of Detroit.  
 4 Q. So, in April Mr. Orr made a disclosure that basically  
 5 said if I could summarize that things are not well in  
 6 Detroit, correct?  
 7 A. That's accurate.  
 8 Q. But despite that disclosure and subsequent to the  
 9 report in April and May, Swap counterparties didn't  
 10 demand cash be trapped, correct?  
 11 A. Correct.  
 12 Q. They didn't terminate the Swap, correct?  
 13 A. Correct.  
 14 Q. After June 11, after you've cut the business deal and  
 15 here come the lawyers to write it down, fair to say  
 16 that you're on the sidelines now as the lawyers work  
 17 out the legal language, but you're still monitoring  
 18 the course of the legal negotiations given the  
 19 importance of what's at stake?  
 20 MR. CULLEN: Objection. Foundation. Form.  
 21 You can address it.  
 22 A. I was generally aware of what was going on.  
 23 BY MR. HACKNEY:  
 24 Q. I'm trying to get on the idea that you're not on the  
 25 phone with all these lawyers like directly

1 Q. And your other advisors, absolutely. And it was only  
 2 after you had gotten that analysis done that you felt  
 3 you were now ready to initiate a meeting with the Swap  
 4 counterparties to speak meaningfully about what should  
 5 be done with the Swap?  
 6 A. In the context of an overall recommendation to Mr. Orr  
 7 about how to protect the City and its liquidity.  
 8 Q. And so during that time period which was from January  
 9 of 2013 to June of 2013, despite these growing signs  
 10 of impatience by the Swap counterparties, they still  
 11 didn't trap cash, did they?  
 12 A. They were being paid in the ordinary course. There  
 13 was no economic consequence that they had to worry  
 14 about. They didn't know the financial condition of  
 15 the City. There was no economic reason for them to do  
 16 anything, but clearly as the condition of the City  
 17 became more desperate and everyone became more aware  
 18 of it, the risk they would do something became  
 19 greater.  
 20 Q. I see. So, it was the disclosure of information by  
 21 Mr. Orr on June 14th, was that a factor that drove you  
 22 to negotiate in advance of that?  
 23 A. No. Recall that his earlier disclosure was I believe  
 24 in April.  
 25 Q. Oh, that's right.

1 participating and listening to the negotiations of the  
 2 forbearance agreement itself but you're keeping tabs  
 3 on how it's progressing and when it's hoped to be  
 4 executed, correct?  
 5 A. Correct.  
 6 Q. Put another way, you are aware of the legal  
 7 negotiation process as it goes along even though  
 8 you're not personally involved in it, correct?  
 9 A. Correct.  
 10 Q. And that's because this was such an important  
 11 agreement that you as an important advisor to the City  
 12 needed to be up to speed on what was going on with the  
 13 forbearance agreement?  
 14 A. Correct, but recall that on June 11th the Swap  
 15 counterparties did issue a letter to US Bank  
 16 authorizing them to release the tranche of cash due to  
 17 us on June 15th and therefore we knew we had until  
 18 July 15th to get to the next tranche.  
 19 So, from a financial perspective I was  
 20 comfortable with where we were with the Swap  
 21 counterparties.  
 22 Q. Because after that discharge of cash, then it goes  
 23 back to just slowly building up, you get it for the  
 24 rest of the month and then it slowly builds up in the  
 25 first part of July?

1 **A. Correct.**  
 2 Q. So, you felt like we had some time to negotiate?  
 3 **A. That's correct.**  
 4 Q. Yeah. Your understanding is that the legal  
 5 negotiations of the forbearance agreement were  
 6 complicated but that they proceeded uninterrupted from  
 7 June 11th to July 15th, correct?  
 8 **A. Correct.**  
 9 Q. And if there had been a serious interruption in these  
 10 negotiations, you would have likely known about this  
 11 as an important advisor to the City, correct?  
 12 **A. Yes.**  
 13 Q. And you are aware of no serious interruption, correct?  
 14 **A. No.**  
 15 Q. That's not correct?  
 16 **A. I'm not aware of any serious interruptions.**  
 17 Q. In late June of 2013 you learned that Syncora wanted  
 18 to make a proposal to the City, isn't that correct?  
 19 **A. Yes.**  
 20 Q. And you had a conversation with Todd Snyder on the  
 21 subject of Syncora's potential proposal on Saturday,  
 22 June 29th, isn't that correct?  
 23 **A. That's correct.**  
 24 Q. Mr. Snyder you understood is a banker at Rothschild's,  
 25 correct?

1 **that would be of benefit to the City in resolving the**  
 2 **Swap matter. I told him that we were always willing**  
 3 **to listen to anything anyone had to say and I asked**  
 4 **him to tell me what he had in mind. He never did.**  
 5 Q. Have you told me everything you can recall about that  
 6 conversation?  
 7 **A. Yes.**  
 8 Q. During that conversation didn't Mr. Snyder describe  
 9 the general structure of a proposal Syncora wanted to  
 10 make?  
 11 **A. No.**  
 12 Q. So, if Mr. Snyder says he did, he's lying or mistaken?  
 13 **A. He never made a specific proposal to me.**  
 14 Q. I'm not saying a specific proposal, I'm saying a  
 15 general structure of a proposal, that's what he  
 16 testified to in his affidavit.  
 17 Did he provide to you the general structure  
 18 of a proposal that Syncora wanted to make?  
 19 **A. Not that I recall.**  
 20 Q. Possible he did, possible he didn't, you just can't  
 21 remember?  
 22 **A. I can't remember.**  
 23 Q. Did he tell you that we'd be able to put specifics  
 24 into the general structure of the proposal if we could  
 25 execute an NDA that would allow us to learn about the

1 **A. Correct.**  
 2 Q. And you also understood that he was representing  
 3 Syncora, correct?  
 4 **A. Yes.**  
 5 Q. And you also understood that at the time that he was  
 6 calling you, that there had been previous  
 7 communications between counsel to Syncora and counsel  
 8 to the City, correct?  
 9 **A. I had heard about it but I wasn't aware of the**  
 10 **specifics.**  
 11 Q. Okay. So, you knew Jones Day and Kirkland and maybe  
 12 others had met and talked about something but you  
 13 didn't know what it was?  
 14 **A. I knew they were talking about the issues raised by**  
 15 **Syncora.**  
 16 Q. Okay. Now, tell me -- so, in terms of Syncora's  
 17 potential proposal, your first percipient knowledge of  
 18 it as a witness happens on that Saturday when you have  
 19 your conversation with Mr. Snyder, is that a fair  
 20 statement?  
 21 **A. Correct.**  
 22 Q. Tell me everything you can recall about that  
 23 conversation.  
 24 **A. It was quite brief. Todd told me he had been retained**  
 25 **by Syncora and that they wanted to propose something**

1 negotiations with the Swap counterparties?  
 2 **A. Yes, he did.**  
 3 Q. What did you tell him in response to that?  
 4 **A. I said he should send us an NDA and we'll take a look**  
 5 **at it.**  
 6 Q. And you understood that at least as he expressed to  
 7 you that he wanted an NDA as a precursor in order to  
 8 make a specific proposal, correct?  
 9 **A. Correct.**  
 10 Q. Isn't it true that after that time you understood that  
 11 an NDA was proposed to the City, correct?  
 12 **A. Yes.**  
 13 Q. And the City refused to execute that NDA, isn't that  
 14 correct?  
 15 **A. That's correct.**  
 16 Q. Do you have information about why the City refused to  
 17 execute it?  
 18 **A. Well, as I recall the NDA was not with the City, it**  
 19 **was meant to be with Miller Buckfire and Jones Day and**  
 20 **we would not be able to disclose whatever they told us**  
 21 **to the City which made no sense, and that was the**  
 22 **reason we couldn't sign that NDA and that's why I**  
 23 **testified earlier he didn't really tell me a proposal,**  
 24 **he said I'd like to make a proposal. He said I'll**  
 25 **tell you the proposal if you sign the NDA. So we**

1 never got a proposal.

2 Q. I want to make that clear that's subject to you saying

3 you don't remember whether he provided the general

4 outlines of the structure or not, correct?

5 A. No.

6 MR. CULLEN: Objection. Foundation. I

7 don't know what general --

8 MR. HACKNEY: Foundation?

9 MR. CULLEN: Yeah, general outline is my

10 problem.

11 A. I can't recall him telling me anything about what he

12 was going to propose and certainly wasn't specific.

13 If he had been specific, I probably would remember it.

14 BY MR. HACKNEY:

15 Q. And that's because -- but you do remember him telling

16 you the specifics would come after we sign an NDA?

17 A. I do.

18 Q. Yeah. And then your understanding is that there was a

19 problem with the NDA that you couldn't discuss the

20 proposal with the EFM?

21 A. That's correct.

22 Q. And that was something that the parties couldn't get

23 over?

24 A. I asked Jones Day to go back to Kirkland Ellis and try

25 to fix the problems we had in the NDA and then I moved

1 A. Sometimes.

2 Q. Isn't that something that you'll do in the DIP

3 financing which is you'll get all these offers in and

4 then you'll make these guys compete with each other in

5 order to drive best possible deal for the City,

6 correct?

7 A. Only if you assume a level playing field which this

8 negotiation was not.

9 Q. I'm just asking generally about the idea of trying to

10 drive the best deal possible through competition

11 amongst different negotiating parties. Can be

12 valuable, right?

13 A. Can be under the right circumstances. This was not

14 one of them.

15 Q. And what was wrong about the circumstances?

16 A. Because we had only two parties to the table, the Swap

17 counterparties who had signed the collateral

18 agreement. There was nobody else to negotiate with.

19 Q. That's right, that's right, because your understanding

20 was that Syncora had no rights whatsoever under the

21 collateral agreement, correct?

22 A. Correct.

23 Q. And your understanding was they had no ability to

24 direct the actions of the Swap counterparties,

25 correct?

1 on to other issues.

2 Q. And your understanding was that to the extent those

3 problems didn't get fixed it was because Kirkland

4 Ellis was being obstinate with respect to the terms of

5 NDA?

6 A. I don't know why we never resolved it.

7 Q. So, to this day you don't know whether or not an NDA

8 could have been struck that would have allowed Syncora

9 to make a rival proposal, correct?

10 A. All I can tell you is that no NDA was entered into

11 because the terms were unacceptable.

12 Q. And you don't know why one wasn't entered into

13 ultimately after that?

14 A. I don't think we could ever resolve the issues.

15 Q. And this was in advance of your having executed the

16 forbearance agreement, correct?

17 A. Yes.

18 Q. As a negotiator, don't you agree that it's nice

19 whenever you can play two parties off against each

20 other?

21 A. I didn't have two parties, I had one party. I had the

22 Swap counterparties.

23 Q. And I'm not asking about in this case, I'm asking

24 about as a general principle, isn't it nice when you

25 can play two parties off against each other?

1 A. I testified earlier that my understanding, I was

2 advised, the only parties of interest here are the

3 Swap counterparties.

4 Q. And it was also your understanding that Syncora didn't

5 have any rights under the Swaps that would be

6 terminated, correct?

7 A. Only talking about the collateral agreement.

8 Q. We talked about the fact that there might be a

9 termination event for four hundred million dollars.

10 That's not under the collateral agreement, right?

11 A. True.

12 Q. So, we are talking about the Swaps, right?

13 A. Yes.

14 Q. Now, let's put aside what you've been told about who

15 the relevant parties were. You did know that Syncora

16 was a Swap insurer, right?

17 A. Yes.

18 Q. And you understood as a layperson but a sophisticated

19 one that if an insurer makes a payment to the insured

20 it becomes subrogated to the rights of the insured

21 with respect to that payment, correct?

22 A. Yes.

23 Q. And isn't it true that if the Swap counterparties had

24 terminated, they wouldn't have waited around for two

25 years to collect the casino revenues, right, they

1 would have demanded Syncora made good on its Swap  
 2 insurance and let Syncora try and stick around and  
 3 collect the casino revenues, correct?  
 4 **MR. CULLEN:** Objection. Foundation. Form.  
 5 Calls for speculation.  
 6 **A. It wasn't an issue for the City.**  
 7 **BY MR. HACKNEY:**  
 8 **Q.** I'm asking whether you thought that was a possibility  
 9 back at the time you were negotiating the forbearance  
 10 agreement?  
 11 **A. It wasn't an issue for the City. Had no impact on the**  
 12 **City's access to cash.**  
 13 **Q.** But if Syncora was a party that might come in in lieu  
 14 of the Swap counterparties, didn't you want to find  
 15 out whether you might be able to cut a better deal  
 16 with Syncora?  
 17 **MR. CULLEN:** Objection. Foundation. Form.  
 18 Calls for speculation.  
 19 **A. I can't speculate to that.**  
 20 **BY MR. HACKNEY:**  
 21 **Q.** All you can say is that you never did, correct?  
 22 **A. Correct.**  
 23 **Q.** And in fact between June 29th when you spoke to  
 24 Mr. Snyder and today, there have never been  
 25 substantive negotiations between the City and Syncora

1 or do you mean casino revenues projecting into the  
 2 future?  
 3 **A. It's commercially sensitive so I'm going to decline to**  
 4 **answer it.**  
 5 **MR. HACKNEY:** Okay. I'll just reserve on  
 6 that. I obviously don't think there's a bunch of  
 7 value we have going back and forth. I understand your  
 8 position about this. On some of the other ones, we  
 9 may come to those briefly and talk about it, but I get  
 10 the DIP one.  
 11 **BY MR. HACKNEY:**  
 12 **Q.** You agree that the goal of the forbearance agreement  
 13 is to get the collateral agreement to terminate so  
 14 that the City can get access to the casino revenues,  
 15 correct?  
 16 **MR. CULLEN:** Objection. Foundation. Form.  
 17 **A. That is one of the goals.**  
 18 **BY MR. HACKNEY:**  
 19 **Q.** That is one of the goals. And isn't it true that your  
 20 current expectation is that you need the postpetition  
 21 financing, the DIP loan to close in order to be able  
 22 to exercise the option under the forbearance  
 23 agreement, correct?  
 24 **A. Correct.**  
 25 **Q.** And there was testimony on that today because you

1 to your knowledge, isn't that correct?  
 2 **A. Not on this, no.**  
 3 **Q.** I wanted to clarify something that you said about the  
 4 DIP earlier and it was mainly that -- you used the  
 5 phrase I didn't understand with respect to the casino  
 6 revenues, you said -- you either said that the casino  
 7 revenues would be a part of the collateral package or  
 8 that part of the casino revenues would be in the  
 9 collateral package, and I wanted to clarify that.  
 10 **MR. CULLEN:** Objection. Foundation. Form.  
 11 I don't think he said either.  
 12 **A. I didn't.**  
 13 **BY MR. HACKNEY:**  
 14 **Q.** Oh, okay. Well, I thought for sure you had said one  
 15 of those two, but let me understand what you  
 16 anticipate -- this is subject to counsel's concern,  
 17 but I think there has been testimony about the casino  
 18 revenues as part of the collateral package.  
 19 As the banker who is leading the DIP,  
 20 what's your understanding of the role the casino  
 21 revenues will play in the collateral package offered  
 22 in connection with the DIP?  
 23 **A. They will be part of the collateral package.**  
 24 **Q.** So, they will be part, and when you say they, do you  
 25 mean a specific period of time of the casino revenues

1 don't have the money otherwise, right, Mr. Buckfire?  
 2 **A. That is part of the collateral package, yes.**  
 3 **Q.** I'm talking about the use of proceeds of the DIP just  
 4 so we're clear. Part of the use of proceeds of the  
 5 DIP will be to exercise the option under the  
 6 forbearance agreement, correct?  
 7 **A. Correct.**  
 8 **Q.** You understand that you won't have unfettered access  
 9 to the casino revenues until you exercise the option  
 10 that leads to the termination of a Swap in the  
 11 collateral agreement, correct?  
 12 **A. Yes.**  
 13 **Q.** Isn't this a bit circular?  
 14 **A. Regrettably.**  
 15 **Q.** How did you factor that consideration into the  
 16 determination as to whether to engage in the  
 17 forbearance agreement?  
 18 **A. Well, this is why the Swap collateral agreement is**  
 19 **such a problem for the City. Unless we can eliminate**  
 20 **the collateral and regain control over gaming revenues**  
 21 **without risk of loss because of defaults that would**  
 22 **trap it, we need to rationalize and clean this up in**  
 23 **order to put the City on a sound financial basis.**  
 24 **Q.** So, there are two parts -- there are -- there may be  
 25 many parts but two of the important parts of the

1 forbearance agreement are getting the Swap  
 2 counterparties to waive their right to trap cash and  
 3 then taking out the Swap at a discounted value,  
 4 correct?  
 5 **A. Well, if we take out the Swap at a discounted value**  
 6 **and we pay off the Swap, then there is no need for the**  
 7 **collateral agreement.**  
 8 **Q. That's true but that may be something that happens**  
 9 **down the road. So, in the interim between then it's**  
 10 **the waiver of the cash trapping rights and the**  
 11 **discounted potential value of the termination,**  
 12 **correct?**  
 13 **A. Which is a short-term agreement. It only goes to next**  
 14 **June. There are termination events along the way and**  
 15 **in any case as I am aware as a sophisticated layman,**  
 16 **there is risk under the bankruptcy code that the Swap**  
 17 **counterparties could avail themselves of relief under**  
 18 **the provisions for Swaps and irrespective of the**  
 19 **automatic state, still take the money.**  
 20 **Q. Okay. But they've waived those rights under the**  
 21 **forbearance agreement?**  
 22 **A. So long as the forbearance agreement exists.**  
 23 **Q. And they waive their rights under the collateral**  
 24 **agreement to trap crash, correct?**  
 25 **A. For now.**

1 can?  
 2 **A. That's correct.**  
 3 **Q. But do you also understand that if the court grants**  
 4 **the assumption motion and enters an order that's**  
 5 **significantly different from the one that's been**  
 6 **proposed, that the Swap counterparties have the**  
 7 **arguable right to terminate the forbearance period, do**  
 8 **you know that?**  
 9 **MR. CULLEN: Objection. Foundation. Form.**  
 10 **A. I don't know that.**  
 11 **BY MR. HACKNEY:**  
 12 **Q. So, I'd like to ask you about the concept of what I**  
 13 **call a clean closing, okay, and a clean closing is one**  
 14 **where you engage in a transaction with someone and**  
 15 **both parties walk away from the transaction with an**  
 16 **expectation that neither of them will have liability**  
 17 **arising from the closing. That's what I mean when I**  
 18 **say a clean closing.**  
 19 **Isn't it true that it's your understanding**  
 20 **that it is important to the Swap counterparties that**  
 21 **they get a clean closing with the City if the City**  
 22 **exercises its option?**  
 23 **A. Yes.**  
 24 **Q. And isn't it a fact that as large banks if there is**  
 25 **substantial risk that they will be sued by Syncora or**

1 **Q. I'd like to ask you about the court's approval of the**  
 2 **forbearance agreement. You've testified earlier that**  
 3 **if the court does not approve the forbearance**  
 4 **agreement, that will be of dire consequence to the**  
 5 **City of Detroit, correct?**  
 6 **A. If it leads to the consequence that we do not have**  
 7 **access to gaming revenues, correct.**  
 8 **Q. Okay. Now, conversely you testified earlier that if**  
 9 **the court approves the forbearance agreement, I'll say**  
 10 **this to you, you can decide whether you agree, you**  
 11 **almost testified that that was synonymous with then**  
 12 **there being a closing under the option?**  
 13 **A. One is a condition that allows for the other.**  
 14 **Q. That's right. So, you understand that the court**  
 15 **granting the assumption agreement does not mean that**  
 16 **the City will exercise the option, correct?**  
 17 **A. You're assuming the Swap counterparties would allow us**  
 18 **to have one without the other.**  
 19 **Q. No, I'm actually saying the granting of the assumption**  
 20 **motion in your view is absolutely a necessary**  
 21 **precondition to the City even being able to exercise**  
 22 **the option, correct?**  
 23 **A. Yes.**  
 24 **Q. It doesn't mean that it will if the court grants the**  
 25 **assumption motion, it just means that it potentially**

1 the COPs holders or FGIC or others surrounding the  
 2 City's exercise of the optional termination payment,  
 3 they may not close?  
 4 **A. I don't know --**  
 5 **MR. CULLEN: Objection. Foundation. Form.**  
 6 **Speculation.**  
 7 **A. I don't know that.**  
 8 **BY MR. HACKNEY:**  
 9 **Q. And I'm not asking -- I should have rephrased. I'm**  
 10 **asking about your expectation of what they'll do if**  
 11 **there is substantial risk of litigation.**  
 12 **A. I think they'll honor the terms of the agreement and**  
 13 **close.**  
 14 **Q. Obviously as you sit here today I think you've had the**  
 15 **pleasure of being in court from time to time and**  
 16 **watching the festivities?**  
 17 **A. I saw you last week.**  
 18 **Q. Yes, that was an exciting time for me as I think**  
 19 **you've probably read in the newspapers.**  
 20 **Are you aware that -- I think it's safe to**  
 21 **say that you are aware now that there are parties like**  
 22 **Syncora and others that say that they will have claims**  
 23 **against the Swap counterparties because of the**  
 24 **forbearance agreement, isn't that true?**  
 25 **A. I've heard you say that.**

1 Q. Okay. If the court in granting its order about the  
 2 assumption agreement preserves those claims, do you  
 3 have a view as a banker as to whether the Swap  
 4 counterparties will close over those claims?  
 5 **MR. CULLEN:** Objection. Foundation. Form.  
 6 Asked and answered.  
 7 **A. No.**  
 8 **BY MR. HACKNEY:**  
 9 Q. You don't have a view?  
 10 **A. No.**  
 11 Q. Mr. Buckfire, you've been around a lot of deals,  
 12 right, nobody buys a lawsuit, right?  
 13 **MR. CULLEN:** Objection. Foundation.  
 14 **A. I don't have a view on this one.**  
 15 **BY MR. HACKNEY:**  
 16 Q. All right. Do you remember we talked about -- do you  
 17 remember that you talked about the concept that the  
 18 Swap counterparties could walk away from the Swaps if  
 19 interest rates ever look like they were going into  
 20 territory that was positive for the service  
 21 corporations?  
 22 **A. Yes.**  
 23 Q. And that was a right that you understood they had  
 24 received as part of the 2009 restructuring that led to  
 25 the collateral agreement, correct?

1 **A. Not as long as you're being paid on time.**  
 2 Q. And also why would you terminate a Swap on an optional  
 3 early basis and be paid nothing when it is worth by  
 4 your testimony approximately three hundred million  
 5 dollars, correct?  
 6 **MR. CULLEN:** Objection. Foundation. Form.  
 7 **A. It wouldn't be economically rational.**  
 8 **BY MR. HACKNEY:**  
 9 Q. That would not be economically rational. And your  
 10 understanding under the forbearance agreement is  
 11 what's happening is that in exchange for all the  
 12 consideration, the Swap counterparties' termination  
 13 rights are being discounted to somewhere between 75  
 14 and 82 percent, correct?  
 15 **A. Correct.**  
 16 Q. We talked a lot about cash flow forecasts earlier.  
 17 The cash flow forecasts that are contained in the  
 18 proposal that you discussed with Mr. Summers, do you  
 19 remember those?  
 20 **A. Yes, uh-huh.**  
 21 Q. E & Y prepared those, correct?  
 22 **A. Yes.**  
 23 Q. And you have certainly reviewed them and familiarized  
 24 yourself with them, correct?  
 25 **A. Yes.**

1 **A. Yes.**  
 2 Q. Do you understand that that's called an optional early  
 3 termination?  
 4 **A. Yes.**  
 5 Q. And you understand that under -- when they exercise an  
 6 optional early termination, the Swap counterparties  
 7 take nothing from the service corporations, correct?  
 8 **A. That's correct.**  
 9 Q. That's the point of the walkaway which is they get to  
 10 walk away but they don't get paid anything?  
 11 **A. That's because the Swaps not in the money anymore.**  
 12 Q. Well, even if it is or is it isn't, right?  
 13 **A. Right.**  
 14 Q. In fact today the Swaps are very much in the money,  
 15 correct?  
 16 **A. Correct.**  
 17 Q. And obviously the Swap counterparties have never  
 18 threatened to exercise an optional early termination,  
 19 correct?  
 20 **MR. JURGENS:** Objection to form.  
 21 **MR. CULLEN:** Objection to form.  
 22 **BY MR. HACKNEY:**  
 23 Q. To you?  
 24 **A. No.**  
 25 Q. That wouldn't make sense, would it?

1 Q. But you are not someone who can answer specific  
 2 questions about how they were created, correct?  
 3 **A. No, that's correct.**  
 4 Q. If I wanted to ask about any particular line item how  
 5 did they get this number, the person to ask that would  
 6 be Ernst & Young?  
 7 **A. Correct.**  
 8 Q. I'd like to go back and talk briefly about the art and  
 9 I don't want to talk about the art as part of the DIP  
 10 or anything like that or what you're going to do with  
 11 it.  
 12 I want to go back to June 4 and ask as of  
 13 June 4, had you made an assessment of the value of the  
 14 City's art collection?  
 15 **A. No.**  
 16 Q. Have you made even a rough approximation of its worth?  
 17 **A. No.**  
 18 Q. And why hadn't you done that?  
 19 **A. We're not qualified to do so.**  
 20 Q. Why hadn't you retained someone, gosh, back in  
 21 January, February that was qualified to do so to come  
 22 in and see whether these assets were valuable?  
 23 **A. We identified early on as an issue. We got to it as**  
 24 **we could, but it was not a significant crisis for the**  
 25 **City because we were focused on cash and preserving**

1 **cash.**  
 2 Q. Well, sometimes art can be turned into cash I think,  
 3 isn't that right?  
 4 **A. Some people would think so.**  
 5 Q. In fact there are art sales of significant amount  
 6 every year in this country, isn't that right?  
 7 **A. So I'm told.**  
 8 Q. And you've read about them in the paper from time to  
 9 time when you read the Wall Street Journal, correct?  
 10 **A. Yes.**  
 11 Q. And this is art that the City owns, right?  
 12 **MR. CULLEN: Objection. Foundation. Form.**  
 13 **BY MR. HACKNEY:**  
 14 Q. Correct?  
 15 **A. That's correct.**  
 16 Q. But you understood took no effort to see whether the  
 17 City could obtain cash out of assets that were hanging  
 18 in the Detroit Art Institute as a substitute for going  
 19 in and engaging in this negotiation with the Swap  
 20 counterparties, correct?  
 21 **A. Correct.**  
 22 Q. We talked earlier about creditor recoveries and I want  
 23 to make sure that I understood your testimony on that  
 24 point.  
 25 You understand that Mr. Orr made a proposal

1 **which is the base case recovery we presented on June**  
 2 **14th.**  
 3 Q. Right. So, if the court grants the motion and you get  
 4 access to it, that will be consistent with the base  
 5 case which is consistent with the two billion dollar  
 6 offer, right?  
 7 **A. Correct.**  
 8 Q. So, it won't go up if the court grants you the access  
 9 that you're assuming you'll get?  
 10 **A. But it will go down if the court does not.**  
 11 Q. That's a different question. I'll get to that in a  
 12 moment.  
 13 It won't go up if the court grants the  
 14 motion, correct?  
 15 **A. Correct.**  
 16 Q. Your argument if I understood it was that the  
 17 casino revenues will be used to invest in the City,  
 18 correct?  
 19 **A. Revenues of the City are fungible. All I'm saying if**  
 20 **you don't have access to those revenues, then you**  
 21 **don't have the billion dollar plus of revenues that**  
 22 **you thought you had which is supporting not only**  
 23 **current operations but the reinvestment plan.**  
 24 Q. And I will say that I had understood you earlier to  
 25 say if you didn't have access to casino revenues, that

1 to creditors that's called proposal for creditors back  
 2 in June of 2013, correct?  
 3 **A. Correct.**  
 4 Q. You helped him formulate that proposal, isn't that  
 5 right?  
 6 **A. Yes.**  
 7 Q. The proposal -- I'm going to summarize it but you  
 8 should feel free to correct me as somebody who knows  
 9 it better and can say it better than I, but basically  
 10 put the proposal suggests that unsecured creditors  
 11 will share in two billion dollars of bonds that are  
 12 issued by the City upon emergence, correct?  
 13 **A. Correct.**  
 14 Q. And the proposal assumes that the City will have  
 15 unfettered access to casino revenues because that's  
 16 what its projections show, correct?  
 17 **A. Yes.**  
 18 Q. So, even if the City has unfettered access to the  
 19 casino revenues, its current proposal is still that  
 20 the unsecured creditors will just share in this two  
 21 billion dollar pot, correct?  
 22 **A. That's correct.**  
 23 Q. So, is it fair to say that getting access to this  
 24 money will not by itself increase creditor recoveries?  
 25 **A. No, it's part of the base case plan that we presented**

1 City services would suffer?  
 2 **A. In the short-term, yes.**  
 3 Q. Yeah. But it's fair to say that you're not proposing  
 4 to obtain the casino revenues, access to them and  
 5 throw them on to the pot of the two billion dollars  
 6 that's already being proposed to unsecured creditors,  
 7 correct?  
 8 **MR. CULLEN: Objection. Foundation. Form.**  
 9 **If you can make any sense of that question, you can**  
 10 **answer it.**  
 11 **A. I've already testified that the access to gaming**  
 12 **revenues is part of the plan which supports the two**  
 13 **billion dollar anticipated issuance of notes.**  
 14 **BY MR. HACKNEY:**  
 15 Q. And you mean that from a feasibility standpoint,  
 16 right?  
 17 **A. Yes.**  
 18 Q. You mean it will strengthen the City and that will  
 19 make the City more able to perform under the notes and  
 20 that will make the notes more valuable to the  
 21 creditors, right?  
 22 **A. That would be one result.**  
 23 Q. Let me ask you by how much will creditor recoveries go  
 24 down if the court declines to approve the forbearance  
 25 agreement?





1 City's plan is are the investments that Mr. Orr wants  
 2 to make, right?  
 3 **A. Right.**  
 4 Q. And the cost reductions he wants to make, right?  
 5 **A. And the increase in staffing levels across services to**  
 6 **provide higher level services to the City.**  
 7 Q. But that's in the reinvestment, right?  
 8 **A. No, it's actually hard to break out that way because a**  
 9 **lot of it is actually in the salaries line and the HR**  
 10 **lines.**  
 11 **So, you have to go back to the numbers and**  
 12 **ask me a lot of those questions.**  
 13 Q. The proposed investments that he wants to make, that  
 14 he proposes to make that I'm so ruthlessly omitting,  
 15 they are in this document, right?  
 16 **A. Not in this projection.**  
 17 Q. They're not in this projection, but they are in this  
 18 proposal?  
 19 **A. That's right.**  
 20 Q. He laid them all out in gory detail?  
 21 **A. Yes, he did.**  
 22 Q. He also lays out a number of cost cutting initiatives,  
 23 isn't that correct?  
 24 **A. Yes, he does.**  
 25 Q. And one of his goals is also to make the City more

1 Q. And why aren't you going to tell me about that?  
 2 **A. It's commercially sensitive information.**  
 3 Q. Why?  
 4 **A. That's my answer.**  
 5 Q. Well, I can understand why if you are seeking estate  
 6 guarantee of a DIP or other things today, I get that,  
 7 and I'm not going to ask you about that, but I am  
 8 going to say that I think I deserve an answer on what  
 9 happened prior to June 4 in terms of finding  
 10 alternative ways to address the City's liquidity  
 11 crisis because after all what's been presented to us  
 12 was if we didn't do this deal, the City would die, and  
 13 I do think we are entitled to ask well, what had you  
 14 tried to do with other actors, so, can we get over it  
 15 or --  
 16 **MR. CULLEN:** You could certainly ask if he  
 17 had received any assurance of the availability of any  
 18 other funding from any other source during that time  
 19 period.  
 20 **MR. HACKNEY:** Well, I do appreciate that  
 21 but I often tend to ask my own questions. Let me  
 22 try and ask it in a way that hopefully serves your  
 23 concerns.  
 24 **BY MR. HACKNEY:**  
 25 Q. And let me first ask you, Mr. Buckfire, had your firm,

1 efficient, correct?  
 2 **A. Yes.**  
 3 Q. At the same time he also wants to make it operate  
 4 better, correct?  
 5 **A. Correct.**  
 6 Q. Those two things from a net operating standpoint work  
 7 in tension with one another, right?  
 8 **A. They do over time, but you have to consider the**  
 9 **timetable and when these things are done.**  
 10 Q. I want to ask you a question about state and federal  
 11 aid but I don't want to mix it up into the DIP which I  
 12 understand -- which I took to mean earlier was one of  
 13 the sensitivities there. I want to go back to June 4,  
 14 2011.  
 15 Prior to June 4, 2011 had you undertaken  
 16 any effort to evaluate whether there was either state  
 17 aid or federal aid that you could use in lieu of  
 18 having to negotiate this deal with the Swap  
 19 counterparties?  
 20 **A. We are assuming there is no aid available to the City.**  
 21 Q. You were assuming that there was none, but had you  
 22 undertaken an effort to determine whether there could  
 23 be some?  
 24 **A. I've already testified that I'm not going to discuss**  
 25 **that.**

1 you or your firm undertaken any analysis of this  
 2 question? You don't have to tell me what it was.  
 3 Let's go in stages.  
 4 Had you analyzed the problem?  
 5 **A. Yes, we did.**  
 6 Q. You had analyzed the problem. And is it your  
 7 testimony that divulging the results of that analysis  
 8 would be commercially sensitive?  
 9 **A. Yes.**  
 10 Q. Is part of the reason for that because of the way any  
 11 potential aid from the City or from the state or the  
 12 feds might interplay with the DIP process, is it the  
 13 way they knit up, is that the problem?  
 14 **A. Yes.**  
 15 Q. All right.  
 16 **MR. HACKNEY:** Let me suggest a short break.  
 17 I think that it may be time for me to pass the baton.  
 18 **MR. CULLEN:** Okay.  
 19 **VIDEO TECHNICIAN:** The time is 2:19 p.m.  
 20 This marks the end of tape number three. We are off  
 21 the record.  
 22 (Recess taken at 2:19 p.m.)  
 23 (Back on the record at 2:30 p.m.)  
 24 **VIDEO TECHNICIAN:** We are back on the  
 25 record at 2:30 p.m. This marks the beginning of tape

1 number four.  
 2 **EXAMINATION**  
 3 **BY MS. DIBLASI:**  
 4 Q. Good afternoon, Mr. Buckfire, my name is Kelly  
 5 DiBlasi. I'm an attorney at Weil, Gotshal & Manges.  
 6 We represent Financial Guaranty Insurance Company  
 7 which others have referred to and I will refer to as  
 8 FGIC or FGIC.  
 9 I'm going to ask you a few questions about  
 10 some of the topics that have been addressed today. I  
 11 will do my best not to repeat any questions.  
 12 I would ask that you assume that the ground  
 13 rules that Mr. Hackney and Mr. Summers previously  
 14 discussed with you still apply in terms of if you  
 15 don't understand a question that I've asked, ask me to  
 16 repeat it, etcetera.  
 17 **A. Thank you.**  
 18 Q. Is it your understanding that the Series 2006-B COPs  
 19 were issued with a floating interest rate?  
 20 **A. Yes.**  
 21 Q. And is it your understanding that the Swap contracts  
 22 were entered into to hedge against the interest rate  
 23 risk associated with the Series 2006-B COPs?  
 24 **A. Yes.**  
 25 Q. And the Swap contracts accomplish this hedge by

1 to as a synthetic fixed rate of interest?  
 2 **A. Yes.**  
 3 Q. Is it fair to say that from the perspective of the  
 4 City, the issuance of the 2006-B COPs and the  
 5 execution of the Swap contracts were part of an  
 6 integrated transaction?  
 7 **MR. CULLEN:** Objection. Asks for a legal  
 8 conclusion.  
 9 **A. No.**  
 10 **BY MS. DIBLASI:**  
 11 Q. Were they executed at the same time?  
 12 **A. I don't know.**  
 13 Q. Why was the transaction structured with a Series  
 14 2006-B COPs having a floating interest rate hedged by  
 15 the Swap contracts as opposed to merely issuing the  
 16 2006-B COPs with a fixed rate?  
 17 **MR. CULLEN:** Objection. Foundation. Form.  
 18 **A. I don't know.**  
 19 **BY MS. DIBLASI:**  
 20 Q. Do you know who designed this structure?  
 21 **A. No.**  
 22 Q. Is there any benefit to the City from having this  
 23 structure with the 2006-B COPs having a floating rate  
 24 hedged by the Swap contracts as opposed to merely  
 25 issuing those COPs with a traditional fixed rate?

1 effectively limiting the City's payment obligations  
 2 under the service contracts with respect to the Series  
 3 2006-B COPs to the fixed rate that's set forth in the  
 4 Swap contracts, is that correct?  
 5 **A. Correct, which was amended in 2009.**  
 6 Q. What was amended?  
 7 **A. The original fixed rate was lower in 2006 and it was**  
 8 **increased slightly in 2009 as part of the amendment.**  
 9 Q. The Swap contracts were amended in 2009 --  
 10 **A. The rate, the rate was.**  
 11 Q. The rate on the Series 2006-B --  
 12 **A. That's my understanding.**  
 13 Q. Okay. And with the amendment in 2009 the Swap  
 14 contracts still remained in place, correct?  
 15 **A. That's my understanding.**  
 16 Q. And those Swap contracts are still in place today and,  
 17 therefore, still hedging the interest rate risk today?  
 18 **MR. CULLEN:** Objection. Foundation. Form.  
 19 **A. Except as modified by the 2009 amendment.**  
 20 **BY MS. DIBLASI:**  
 21 Q. So, do you agree that from the perspective of the City  
 22 with the Swap contracts in place it's as if the  
 23 Series 2006-B COPs have a fixed interest rate?  
 24 **A. Yes.**  
 25 Q. Have you heard of structures like this being referred

1 **MR. CULLEN:** Objection. Foundation. Form.  
 2 **A. All their debt is now fixed. I mean they are not**  
 3 **taking any interest rate risk as a result of the Swap**  
 4 **that was put on top of the floating rate COPs. That**  
 5 **is the benefit to the City.**  
 6 **BY MS. DIBLASI:**  
 7 Q. The benefit to the City from the structure is that  
 8 it's a comparable interest rate risk exposure for the  
 9 City?  
 10 **A. They have eliminated the floating rate exposure and**  
 11 **now they have a fixed rate on this debt similar to the**  
 12 **rate exposure they have on the 2005 COPs which are**  
 13 **fixed rate. So, it's all fixed now.**  
 14 Q. So, why not just issue it with fixed to begin with?  
 15 **MR. CULLEN:** Objection. Foundation. Form.  
 16 **A. I don't know why they did it this way.**  
 17 **BY MS. DIBLASI:**  
 18 Q. Would the City have had to pay higher interest rates  
 19 if the COPs were all issued with fixed rates?  
 20 **MR. CULLEN:** Objection. Foundation. Form.  
 21 **A. It was 2006. I don't know.**  
 22 **BY MS. DIBLASI:**  
 23 Q. Would the City have agreed to restructure where the  
 24 2006-B COPs were issued with a floating rate of  
 25 interest without having an interest rate hedge in

1 place?  
 2 **MR. CULLEN:** Objection. Foundation. Form.  
 3 **A. I don't know.**  
 4 **BY MS. DIBLASI:**  
 5 Q. You stated previously that the City benefits from  
 6 having the hedge that's created by the Swap contracts  
 7 in place.  
 8 Do you have a view as to whether FGIC and  
 9 Syncora who insured the Series 2006-B COPs also  
 10 benefit from this hedge?  
 11 **MR. CULLEN:** Objection. Foundation and  
 12 form.  
 13 **A. Well, the Swap was -- in general interest rate Swaps**  
 14 **are done for the benefit of the borrower to eliminate**  
 15 **exposure to higher interest rates. That's the benefit**  
 16 **of a Swap contract.**  
 17 **BY MS. DIBLASI:**  
 18 Q. Are you aware of the fact that FGIC and Syncora  
 19 insured the Series 2006-B COPs?  
 20 **A. Yes.**  
 21 Q. As insurers of those certificates, is there any  
 22 benefit to the payment obligations of the City with  
 23 respect to those certificates being hedged by the Swap  
 24 contracts?  
 25 **MR. CULLEN:** Objection. Foundation. Form.

1 document before?  
 2 **A. No.**  
 3 Q. Does it appear to you that this presentation was  
 4 prepared or given by the City?  
 5 **MR. CULLEN:** Objection. Foundation. Form.  
 6 **A. That's what it says.**  
 7 **BY MS. DIBLASI:**  
 8 Q. So, prior to today did you have any awareness of the  
 9 existence of this document?  
 10 **A. No.**  
 11 Q. Just going to shift gears and have one final question  
 12 for you, Mr. Buckfire. You testified previously that  
 13 Miller Buckfire distributed a request for proposal to  
 14 parties who may be interested in providing the City  
 15 with DIP financing, correct?  
 16 **A. Yes.**  
 17 Q. Is the City of Detroit in possession of a copy of that  
 18 request for proposal?  
 19 **A. Yes.**  
 20 **MS. DIBLASI:** I have nothing further.  
 21 (Discussion off the record at  
 22 2:39 p.m.)  
 23 (Back on the record at 2:39 p.m.)  
 24 **EXAMINATION**  
 25 **BY MS. ENGLISH:**

1 **A. Well, if there is, there is only the indirect benefit**  
 2 **that if you believe there was a risk at the time you**  
 3 **are entering into a Swap that floating rates might go**  
 4 **to 20 percent and that might bankrupt the City and,**  
 5 **therefore, could not pay the underlying debt, I**  
 6 **suppose it's a benefit.**  
 7 **BY MS. DIBLASI:**  
 8 Q. And are you aware of the fact that FGIC also insured  
 9 certain obligations to the Swap counterparties under  
 10 the Swap contracts?  
 11 **A. Yes.**  
 12 Q. Are you aware of the fact that when FGIC issued the  
 13 policies in 2006 insuring the Swap contracts, it did  
 14 not charge any additional premium for those policies?  
 15 **A. I'm not aware of that.**  
 16 **MS. DIBLASI:** I'd like to have this marked  
 17 as Exhibit 5, please.  
 18 **MARKED FOR IDENTIFICATION:**  
 19 DEPOSITION EXHIBIT 5  
 20 2:37 p.m.  
 21 **BY MS. DIBLASI:**  
 22 Q. So, the document that was just marked as Deposition  
 23 Exhibit 5 is entitled presentation to FGIC, City of  
 24 Detroit dated April 26th, 2005.  
 25 Mr. Buckfire, have you ever seen this

1 Q. Hi. I'm Caroline English. We met earlier. I'm from  
 2 Arent Fox. I represent Ambac.  
 3 I am going to ask you some questions based  
 4 on testimony you've already given, nothing new really,  
 5 I just want to back up and clarify a few things and  
 6 ask a couple of follow-ups. So, I apologize if it  
 7 seems like I'm bouncing around. I'm just going  
 8 through my notes of what you said earlier today.  
 9 Okay?  
 10 **A. Thank you.**  
 11 Q. I want to start by asking you whether you discussed  
 12 any legal arguments that the City might have had  
 13 against the Swap counterparties with Mr. Orr?  
 14 **MR. CULLEN:** That's a yes or no question.  
 15 **A. Would you remind repeating it?**  
 16 **BY MS. ENGLISH:**  
 17 **Q. Did you discuss any legal arguments that the City**  
 18 **might have had against the Swap counterparties with**  
 19 **Mr. Orr?**  
 20 **A. No.**  
 21 **Q. Did you discuss any legal arguments the City might**  
 22 **have had against the Swap counterparties with anyone**  
 23 **from Jones Day?**  
 24 **A. Yes.**  
 25 Q. Who would those conversations have been with?

1 **A. Corinne Ball, B A L L, Joel Telpner, T E L P N E R,**  
 2 **Benjamin Rosenblum.**  
 3 Q. Anyone else?  
 4 **A. Not that I can recall.**  
 5 Q. When would those discussions have taken place?  
 6 **A. Probably beginning in May.**  
 7 Q. May of 2013?  
 8 **A. Correct.**  
 9 Q. And Mr. Orr was not involved in those conversations?  
 10 **A. Not to my knowledge. These are conversations I had.**  
 11 Q. Was anyone else involved in those conversations other  
 12 than you and the attorneys from Jones Day?  
 13 **A. Some of my colleagues from Miller Buckfire from time**  
 14 **to time but primarily it was myself.**  
 15 Q. Other than Miller Buckfire representatives and Jones  
 16 Day representatives, was there anyone else on those  
 17 conversations?  
 18 **A. No.**  
 19 Q. Were they phone calls?  
 20 **A. Meetings and phone calls.**  
 21 Q. Meetings and phone calls? In-person meetings?  
 22 **A. Yes.**  
 23 Q. About how many meetings and phone calls were there?  
 24 **A. With Jones Day?**  
 25 Q. Uh-huh.

1 discuss that the City might be able to raise against  
 2 the Swap counterparties?  
 3 **MR. CULLEN: I'm going to object and direct**  
 4 **him not to answer.**  
 5 **A. I wouldn't have answered anyway, but thank you.**  
 6 **MR. CULLEN: Quite all right.**  
 7 **BY MS. ENGLISH:**  
 8 Q. Do you like that I gave you the warning --  
 9 **A. It was very polite.**  
 10 Q. Here it comes, right?  
 11 **A. Big flag, now --**  
 12 **MR. CULLEN: It's after lunch, anything**  
 13 **could happen.**  
 14 **MS. ENGLISH: Can I get you some to go in**  
 15 **that coffee?**  
 16 **BY MS. ENGLISH:**  
 17 **Q. All right. May I assume that any questions I ask you**  
 18 **about what legal arguments or issues you might have**  
 19 **discussed that the City would have had to assert**  
 20 **against the Swap counterparties, conversations you**  
 21 **would have had with Jones Day people your counsel is**  
 22 **going to object and instruct you not to answer?**  
 23 **MR. CULLEN: You can assume that.**  
 24 **BY MS. ENGLISH:**  
 25 **Q. Slightly different question. Did you have any**

1 **MR. CULLEN: Or about this subject matter?**  
 2 **BY MS. ENGLISH:**  
 3 Q. Yes, about legal arguments that the City could assert  
 4 against the Swap counterparties.  
 5 **A. We had many conversations about this topic among**  
 6 **others. I couldn't tell you with specificity which**  
 7 **ones we did on which call.**  
 8 Q. Well, right now I'm just asking how many conversations  
 9 do you think you had?  
 10 **A. Many.**  
 11 Q. Many? More than a dozen?  
 12 **A. No.**  
 13 Q. More than a half a dozen?  
 14 **A. Somewhere around there.**  
 15 Q. Somewhere around a half a dozen. And were they all in  
 16 May of 2013?  
 17 **A. As I recollect, yes.**  
 18 Q. As you began negotiating with the Swap counterparties  
 19 starting in, say -- starting with the June 4th  
 20 meeting, did you continue to have conversations with  
 21 Jones Day about legal arguments that the City could  
 22 raise?  
 23 **A. No.**  
 24 **Q. You want to give a minute here for your counsel maybe**  
 25 **to object, maybe not, what legal arguments did you**

1 discussions with Mr. Orr regarding the probability of  
 2 success on legal arguments the City could raise  
 3 against the Swap counterparties?  
 4 **A. Yes.**  
 5 Q. When did those discussions take place?  
 6 **A. During May.**  
 7 Q. Can you tell me about those discussions with Mr. Orr?  
 8 **MR. CULLEN: Direct him not to answer.**  
 9 **BY MS. ENGLISH:**  
 10 Q. Okay. Did you -- how many discussions would you have  
 11 had about the probability of success on the City's  
 12 legal arguments?  
 13 **A. A few.**  
 14 Q. A few? Are we talking now less than a half a dozen?  
 15 **A. A few.**  
 16 Q. A few. Were they all in May 2013 or did they continue  
 17 beyond that?  
 18 **A. It's possible they continued in June but I don't**  
 19 **recall.**  
 20 Q. Did you have any discussions with Jones Day about the  
 21 probability of success of the City's legal arguments?  
 22 **MR. CULLEN: Subject but --**  
 23 **A. Yes.**  
 24 **BY MS. ENGLISH:**  
 25 Q. When did those discussions take place?

1 **A. May.**  
 2 Q. How many of those discussions were there?  
 3 **A. Call it half a dozen.**  
 4 Q. Half a dozen.  
 5 **MS. ENGLISH:** And if I ask him to tell me  
 6 about those conversations, will you direct him not to  
 7 answer?  
 8 **MR. CULLEN:** I will indeed.  
 9 **BY MS. ENGLISH:**  
 10 Q. Did you discuss with anyone else the probability of  
 11 success that the City might have had on legal  
 12 arguments against the Swap counterparties?  
 13 **A. No.**  
 14 Q. Were there any written documents or memos that  
 15 evaluated the City's legal arguments against the Swap  
 16 counterparties?  
 17 **MR. CULLEN:** That he saw.  
 18 **BY MS. ENGLISH:**  
 19 Q. Yes, that you saw.  
 20 **A. No.**  
 21 Q. Are you aware of any written analyses that were done  
 22 about the legal arguments the City might assert?  
 23 **A. No.**  
 24 Q. Going into the June 4th -- starting on June 4th the  
 25 negotiations with the Swap counterparties, did you

1 **So, even though we considered it, we**  
 2 **realized it was impractical.**  
 3 Q. Okay. So, this novation and sort of redoing this Swap  
 4 contract with no collateral was an option you looked  
 5 at but was not feasible, is that correct?  
 6 **A. That was our judgment, it was not feasible.**  
 7 Q. All right. Now, you said you had reviewed all  
 8 possible alternatives. Is that the only alternative  
 9 you looked at or were there others?  
 10 **A. Well, there were other theoretical alternatives but**  
 11 **none of them were practical.**  
 12 Q. Can you tell me what the other alternatives were that  
 13 you considered?  
 14 **A. Well, we considered finding another lender to fund the**  
 15 **termination of the Swaps. This is back in May when we**  
 16 **knew the financial condition of the City was dire. We**  
 17 **did not think we could attract a lender to come in to**  
 18 **take out the Swap termination payment at a hundred**  
 19 **cents or even at a discount under the tight time frame**  
 20 **that we had to work with nor did we think we could do**  
 21 **that at a rate of interest that could ever be**  
 22 **acceptable to the City.**  
 23 Q. Let me stop you right there and ask did you try?  
 24 **A. No.**  
 25 Q. Were there any other alternatives that you considered

1 assume that the Swap counterparties' liens were valid?  
 2 **MR. CULLEN:** Objection. Foundation. Form.  
 3 **BY MS. ENGLISH:**  
 4 Q. I'm sorry, your answer?  
 5 **A. Can you repeat the question?**  
 6 Q. Going into the start of the negotiations with the Swap  
 7 counterparties on June 4th, did you assume that the  
 8 Swap counterparties' liens were valid?  
 9 **A. I did.**  
 10 Q. Earlier in your testimony you indicated that you had  
 11 reviewed all possible alternatives to doing a deal  
 12 with the Swap counterparties, and you gave two  
 13 examples, one was a novation and one was getting  
 14 another Swap counterparty involved with no collateral.  
 15 Do I have that right?  
 16 **A. No, a novation would be another Swap party coming in**  
 17 **to assume the position of the Swap party here and if**  
 18 **one could do that and get them to do it without**  
 19 **collateral, then that would be a benefit.**  
 20 Q. Okay.  
 21 **A. That would have to mean unsecured credit. However,**  
 22 **the last refinancings the City did were on a secured**  
 23 **basis as is public record and the City's ability to**  
 24 **access unsecured credit of any kind is effectively**  
 25 **zero and it was zero then as well.**

1 other than we've got now the novation idea and finding  
 2 another lender to fund the termination of the Swaps.  
 3 **A. Those are the two principal alternatives.**  
 4 Q. Principal alternatives. Were there other not  
 5 principal alternatives but still alternatives?  
 6 **A. We reviewed the noncore assets of the City to**  
 7 **determine whether there was any source of ready cash**  
 8 **that we could access to use to fund the termination**  
 9 **payment. We considered alternate source of funding,**  
 10 **for example, state and federal aid as I already**  
 11 **testified I'm not going to address. We considered**  
 12 **everything.**  
 13 Q. Prior to June 4th, did you submit a request to the  
 14 state for aid on behalf of the City?  
 15 **A. I'm not going to answer that question.**  
 16 Q. You will not answer even whether the City made a  
 17 request for state aid prior to June 4th?  
 18 **A. It's commercially sensitive information. I**  
 19 **respectfully cannot answer that question.**  
 20 Q. Was there a request for state aid that was rejected  
 21 prior to June 4th?  
 22 **A. I'm not going to answer that question.**  
 23 Q. On what basis won't you answer whether there was one  
 24 that was rejected?  
 25 **A. Commercially sensitive information.**

1 Q. How is it commercially sensitive? If there was a  
 2 state aid request that was rejected, how is that  
 3 sensitive now?  
 4 A. You're asking me to speculate.  
 5 Q. I'm asking you why you're not answering.  
 6 A. It's commercially sensitive information.  
 7 Q. Tell me why it's commercially sensitive in your view.  
 8 A. It would have an impact on our ability to prosecute a  
 9 successful DIP financing process for the City at this  
 10 point.  
 11 Q. It would jeopardize your DIP financing if the public  
 12 knew that a state aid request had been rejected prior  
 13 to June 4th?  
 14 A. You're saying that. I didn't say that.  
 15 Q. I'm trying to understand why you won't give us the  
 16 information.  
 17 A. It's commercially sensitive.  
 18 Q. How is it commercially sensitive?  
 19 MR. CULLEN: Asked and answered.  
 20 A. I'm not going to answer it.  
 21 BY MS. ENGLISH:  
 22 Q. Just for kicks let's do the same line of questioning  
 23 for federal aid, okay? Was there a request made by  
 24 the City for federal aid prior to June 4th?  
 25 A. I decline to answer that question.

1 A. Well, it was and what I said to the Swap  
 2 counterparties was in the concert of getting them to  
 3 the table to negotiate a discount, I told them on June  
 4 4th that the City would vigorously contest every  
 5 aspect of these transactions if they dared to  
 6 terminate our ability to gain access to the gaming  
 7 revenues, and I said even though I'm not a lawyer if I  
 8 were them, I would be worried about that, that's what  
 9 I meant by indirect.  
 10 Q. What was their response to that?  
 11 A. They told me they were very comfortable with their  
 12 lien and collateral position that I could not bring  
 13 this up again.  
 14 Q. And did you ever bring it up again?  
 15 A. Every time I talked to them.  
 16 Q. And was their response the same every time you brought  
 17 it up?  
 18 A. Yes, but then we were in the context of trying to  
 19 construct a compromise, that's where this went, but  
 20 they recognized that the City would vigorously defend  
 21 itself if they did not compromise with us. On that  
 22 basis --  
 23 Q. I didn't mean to interrupt you. Are you finished?  
 24 A. I'm done.  
 25 Q. Did you have any substantive conversations with the

1 Q. On what grounds do you decline to answer?  
 2 A. It's commercially sensitive information.  
 3 Q. And why do you feel it's commercially sensitive?  
 4 A. Because it would have an impact on our DIP financing  
 5 process.  
 6 Q. Was there a request for federal aid that was rejected  
 7 prior to June 4th?  
 8 A. I decline to answer that question.  
 9 Q. And do you decline on the exact same grounds you've  
 10 just given me?  
 11 A. Yes.  
 12 Q. Earlier in your testimony, and I think this was by  
 13 Mr. Summers, he asked you a question did you  
 14 articulate to the Swap counterparties why the liens  
 15 may or may not have been valid, and your answer that I  
 16 wrote down was not directly, no.  
 17 Was this articulated to the Swap  
 18 counterparties indirectly to your knowledge?  
 19 A. That was a complicated question. Do you mind  
 20 repeating it?  
 21 Q. Sure, sure. As I understand your earlier testimony,  
 22 you said that you did not directly articulate to the  
 23 Swap counterparties a belief that their liens were or  
 24 were not valid. Was that issue indirectly  
 25 communicated?

1 Swap counterparties about whether or not their liens  
 2 were valid other than, you know, we threaten to  
 3 litigate, we threaten to defend, did you actually get  
 4 into a discussion about the validity of their liens  
 5 with them?  
 6 A. No, I had no other cards to play so I just kept  
 7 reminding them we would be aggressive.  
 8 Q. Okay. You've talked about the importance of having --  
 9 getting the wager and tax revenues unencumbered was a  
 10 motivation for doing this deal, correct?  
 11 A. Correct.  
 12 Q. What other unencumbered revenue streams or assets does  
 13 the City have?  
 14 A. Well, we have income tax revenues, we have property  
 15 tax revenues. I'm speaking now in the Chapter 9  
 16 context. The state revenues are pledged to three  
 17 series of bonds that were issued historically by the  
 18 City. So, there really is no other source of revenue  
 19 that's available to the City that could be pledged or  
 20 used aside from these.  
 21 There are, of course, a list of noncore  
 22 assets we identified on June 14th that we are  
 23 evaluating for potential value but we have reached no  
 24 conclusion yet as to how much is available there.  
 25 Q. I just want to make sure. You were talking about

1 state shared revenues are pledged, right, did I get  
 2 that correct?  
 3 **A. They are securing three different series of bonds that**  
 4 **have a pledge of those revenues and that's already**  
 5 **been used.**  
 6 Q. So, the remaining unencumbered City assets or revenues  
 7 are the noncore assets that were listed?  
 8 **A. Right.**  
 9 Q. Income tax and property tax?  
 10 **A. Correct.**  
 11 Q. Is that all?  
 12 **A. Well, the gaming revenues if we can eliminate the**  
 13 **collateral agreement.**  
 14 Q. Is there any reason that the noncore assets, income  
 15 tax or property tax could not be pledged as collateral  
 16 to secure DIP financing?  
 17 **A. They could be.**  
 18 Q. You testified earlier that if the forbearance  
 19 agreement was not approved, it would have dire  
 20 consequences for the City, is that correct?  
 21 **A. Yes.**  
 22 Q. Does the City have a backup plan if the forbearance  
 23 agreement is not approved?  
 24 **A. Well, we're developing one now. We are proceeding on**  
 25 **the assumption the court will grant relief on this**

1 net share of the gaming revenues not being used to  
 2 fund the Swap, that would be useful.  
 3 I would hope that we could find some other  
 4 way of permanently resolving the collateral agreement  
 5 to free up gaming revenues for use as part of the plan  
 6 of adjustment, but you asked me what our contingency  
 7 plan is and our contingency plan does not assume  
 8 anything except we have no agreement with anybody and  
 9 we therefore have to plan for the worst case.  
 10 Q. You said one possible option here would be to go back  
 11 to the Swap counterparties if the forbearance  
 12 agreement was not approved, go back to the Swap  
 13 counterparties and try to renegotiate something with  
 14 them, right?  
 15 **A. Correct.**  
 16 Q. May I assume then that the Swap counterparties have  
 17 not told the City it's this deal or nothing, we won't  
 18 talk to you further if you don't get this?  
 19 **MR. CULLEN:** Objection. Foundation and  
 20 form but you can address the question.  
 21 **A. We have an agreement with the Swap counterparties**  
 22 **pending approval by the court. That's our current**  
 23 **agreement with the Swap counterparties.**  
 24 **BY MS. ENGLISH:**  
 25 Q. Small point of clarification. In the morning I wrote

1 transaction and let us proceed with it and if they  
 2 tell us they won't, we'll have a backup plan.  
 3 Q. What is the backup plan you're currently considering?  
 4 **A. It's being developed right now. It would be not the**  
 5 **plan currently proposed.**  
 6 Q. Are you refusing to answer my question?  
 7 **A. No, it's being developed. I mean I don't want to give**  
 8 **you the answer piecemeal because it's not a simple**  
 9 **answer. We don't have the cash resources we believe**  
 10 **we need to rehabilitate the City and we will have to**  
 11 **evaluate which elements of the reinvestment plan we'll**  
 12 **have to cancel or defer, we'll have to re-evaluate**  
 13 **whether the City can continue its current level of**  
 14 **service as inadequate as it is or have further cuts.**  
 15 **It requires a complete rethink of the**  
 16 **City's call it operating plan for the next few years.**  
 17 Q. Is it correct then that the City's backup plan if the  
 18 forbearance agreement doesn't go through is basically  
 19 to cut either the re -- cut all or a portion of the  
 20 reinvestment program or to cut essential services?  
 21 **A. Well, that's the worst case scenario. Are there**  
 22 **intermediate positions, of course.**  
 23 Q. What are those?  
 24 **A. Well, I would hope that we could renegotiate with the**  
 25 **Swap counterparties to continue having access to the**

1 down that you said you didn't think there was a June  
 2 11th meeting, you thought you just signed or agreed --  
 3 got the final deal on the economic terms and then in  
 4 the afternoon with Mr. Hackney you said you thought  
 5 there might have been a two-hour meeting on June 11th.  
 6 I just wanted to ask, see if you can rack  
 7 your brain a little bit and be sure whether there was  
 8 or was not a meeting on June 11th.  
 9 **A. I believe there was a meeting on the 11th but it was a**  
 10 **short meeting. It was not a long meeting.**  
 11 Q. Do you think it was a two-hour meeting?  
 12 **A. Two hours is fairly short.**  
 13 Q. Well, some people maybe, maybe not. You said you  
 14 considered all possibilities for a deal with the Swap  
 15 counterparties, is that correct?  
 16 **A. We did.**  
 17 Q. Were there any other deal structures with the Swap  
 18 counterparties that you considered other than the one  
 19 we've got before us in the forbearance agreement?  
 20 **A. None that would meet all of our requirements, no.**  
 21 Q. What were the other deal structures that were  
 22 considered?  
 23 **A. Well, they didn't meet our requirements so, therefore,**  
 24 **we didn't propose them. They weren't optimal for the**  
 25 **City.**

1 Q. So, this is the only real -- in your view and in the  
 2 City's view, this is the only realistic deal structure  
 3 there could be with the Swap counterparties?  
 4 **A. If you are solving for the three objectives that the**  
 5 **City had, this is the only transaction that achieves**  
 6 **all three objectives. If you want to eliminate**  
 7 **objectives, you could have a different deal structure.**  
 8 **That is not what our mission was.**  
 9 **MS. ENGLISH:** That's all I have. Thanks  
 10 very much.  
 11 **MS. FORDE:** Hello, Mr. Buckfire. My name  
 12 is Bianca Forde.  
 13 **THE WITNESS:** You're not wired up yet.  
 14 Now you've got to say it all again.  
 15 **MS. FORDE:** Good afternoon. My name is  
 16 Bianca Forde. I represent Assured Guaranty Municipal  
 17 Corporation. I'm an attorney at Winston & Strawn.  
 18 I just have a few questions for you today  
 19 mostly pertaining to the forbearance agreement and  
 20 your understanding of the termination provisions.  
 21 **EXAMINATION**  
 22 **BY MS. FORDE:**  
 23 Q. So, sitting here today do you have an understanding of  
 24 what would cause the forbearance period to end under  
 25 the forbearance agreement?

1 Q. Do you see a relationship between a release of claims  
 2 in certain instances and those provisions?  
 3 **MR. CULLEN:** Objection. Foundation. Form.  
 4 **A. I'm not sure I can answer that question.**  
 5 **BY MS. FORDE:**  
 6 Q. Okay. Would you agree that an agreement to release  
 7 claims would be a downside to the forbearance  
 8 agreement in relation to the City?  
 9 **A. No, it's part of the overall transaction. The City is**  
 10 **getting very real benefits from this transaction and**  
 11 **it's making certain concessions that were value to the**  
 12 **other side.**  
 13 Q. Sitting here today do you see there are people who  
 14 have arguments as to whether or not the liens in the  
 15 forbearance agreement are valid, is that right?  
 16 **A. I've heard people say that.**  
 17 Q. Okay. Would you agree that if those arguments are  
 18 valid and they are not made by the City, that  
 19 forfeiting those claims would be a down side under the  
 20 agreement whether or not there are up sides to the  
 21 agreement?  
 22 **MR. CULLEN:** Objection. Foundation and  
 23 form. If you can address the question.  
 24 **A. The City is getting the benefits it bargained for as**  
 25 **part of this agreement. I think that's the way you**

1 **A. Well, I have to go back and read it. I didn't pay**  
 2 **that much attention to it because I didn't draft it**  
 3 **but it would terminate obviously by June 30 or June 15**  
 4 **of 2014 if we hadn't otherwise executed our option,**  
 5 **that's one. And if you want to go to Page 4 of**  
 6 **Section 1.3 all of the forbearance period termination**  
 7 **events are listed.**  
 8 Q. Right. Do you have an understanding of the different  
 9 impact on the City's rights depending on how the  
 10 agreement is terminated?  
 11 **A. Not specifically, no.**  
 12 Q. Okay. You testified earlier you don't view the  
 13 agreement as being a release of claims by the City, is  
 14 that right?  
 15 **MR. CULLEN:** Objection. Foundation. Form.  
 16 **BY MS. FORDE:**  
 17 **Q. Okay. Do you understand that under certain**  
 18 **circumstances the agreement prohibits the City from**  
 19 **taking action that's inconsistent with the position of**  
 20 **the counterparties in litigation, for instance?**  
 21 **A. That's my understanding.**  
 22 Q. Do you also agree that the agreement requires the City  
 23 to file a motion to have the agreement assumed by the  
 24 court in bankruptcy?  
 25 **A. Yes.**

1 **have to look at it.**  
 2 **BY MS. FORDE:**  
 3 Q. You mentioned earlier that forfeiting any access to  
 4 revenues, casino revenues under any agreement would be  
 5 an unacceptable risk?  
 6 **A. Correct.**  
 7 Q. Is there any parallel between forfeiting an argument  
 8 that the liens are invalid?  
 9 **A. Well, forfeiting an argument is not a life-threatening**  
 10 **event for the City. Forfeiting cash is.**  
 11 Q. How are they not the same thing?  
 12 **A. As long as we have cash we're not dead. If we**  
 13 **forfeit an argument, we're still alive.**  
 14 Q. Are you aware that under the scheduling order the  
 15 City's plan of Chapter 9 plan is to be filed by March  
 16 1st, 2014?  
 17 **A. Yes.**  
 18 Q. Under this forbearance agreement do you understand  
 19 that the City can't take a position in that plan  
 20 that's inconsistent with that of the counterparties?  
 21 **MR. CULLEN:** Objection. Foundation. Form.  
 22 **A. I'm not generally aware of that, no.**  
 23 **BY MS. FORDE:**  
 24 Q. If that were the case, would that be a downside to the  
 25 forbearance agreement?



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1 **MR. CULLEN:** Do you have something to point  
 2 the witness at, Counselor?  
 3 **BY MS. FORDE:**  
 4 Q. Sure, if you could turn to Exhibit 2, the forbearance  
 5 agreement.  
 6 **A. Okay. What section, Counselor?**  
 7 Q. If you turn to Page 14, we can talk about the exercise  
 8 period ending.  
 9 **A. Uh-huh.**  
 10 Q. What in your understanding is the impact of not having  
 11 submitted a payment under this agreement by March  
 12 14th, 2014?  
 13 **A. We have the benefit of this agreement through June**  
 14 **15th, 2014.**  
 15 Q. What is your understanding of this provision, the  
 16 definition exercise period end date?  
 17 **MR. CULLEN:** I think I'm going to object.  
 18 It's a little hard to read him a defined term that  
 19 probably appears in a number of different places and  
 20 say what is his understanding of where else -- where  
 21 else it appears as a part of an active sentence.  
 22 I don't mean to restrict your latitude to  
 23 examine, Counsel, but it's a definition, it doesn't  
 24 have a verb attached to it yet.  
 25 **BY MS. FORDE:**

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1 Q. What's your -- what is the basis for your  
 2 understanding that you have the benefit of the  
 3 agreement until June 2014?  
 4 **A. Well, let's go back to Section 1.3. -- wrong section**  
 5 **to myself.**  
 6 Q. Are you by any chance looking for 1.3A on Page 4?  
 7 **A. Oh, thank you.**  
 8 Q. So, I'm going to direct your attention now to Section  
 9 1.4A on Page 6 which applies if there's a termination  
 10 event under 1.3A amongst other provisions, is that  
 11 right?  
 12 **A. Yes.**  
 13 Q. And if you go to the end of that section, the very  
 14 last sentence, and I'll just read it --  
 15 **MR. CULLEN:** Is the last sentence the same  
 16 as the first sentence?  
 17 **MS. FORDE:** No, it's not.  
 18 **BY MS. FORDE:**  
 19 Q. But if we start at the bottom of Page 6 at the end of  
 20 this paragraph says giving effect to Section 2 of this  
 21 agreement.  
 22 What is your understanding of that phrase,  
 23 giving effect to Section 2?  
 24 **MR. CULLEN:** I think you are asking a lay  
 25 witness to construe a legal document leading him back

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1 and forth through a number of sections. I don't know  
 2 whether he feels -- if he has an existing  
 3 understanding --  
 4 **MS. FORDE:** Well, that's not really a  
 5 legal question. The question is what does giving  
 6 effect to Section 2 mean.  
 7 **MR. CULLEN:** Well, that is a legal question  
 8 actually --  
 9 **MS. FORDE:** I'm not asking for the effect  
 10 of Section 2, I'm just asking for a meaning of the  
 11 phrase.  
 12 **MR. CULLEN:** You can ask him for his  
 13 understanding if he has one. You can't --  
 14 **MS. FORDE:** Which is what I said and he  
 15 hasn't answered it yet, so, I'm just going to ask him  
 16 if he has an understanding of it.  
 17 **MR. CULLEN:** Fine.  
 18 **A. I don't have an understanding.**  
 19 **BY MS. FORDE:**  
 20 Q. Okay. I'm going to see if I can go through this and  
 21 make it a little clear. So my understanding of  
 22 Section 2 is that if it applies there are certain  
 23 restrictions on the City's ability to take positions  
 24 inconsistent with that of the counterparties, and I'm  
 25 going to tell you why I think that. If you look at

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1 Section 2.1A, it basically says the City and the  
 2 service corporations cannot commence litigation,  
 3 assert any defense in litigation or essentially take  
 4 any action that sets aside, avoids, rejects, modifies  
 5 or otherwise renders invalid the forbearance  
 6 agreement.  
 7 Would you agree that if Section 2 is valid  
 8 and is given effect as per 1.3, then this restricts  
 9 the City's rights with respect to litigation and  
 10 taking positions inconsistent with the counterparties?  
 11 **MR. CULLEN:** Objection. Foundation. Form.  
 12 You may ask if you have any understanding -- answer if  
 13 you have any understanding.  
 14 **A. I don't.**  
 15 **BY MS. FORDE:**  
 16 Q. Okay. If you look at 1.4B at the very end of the  
 17 sentence without giving effect to Section 2, would you  
 18 agree with me then that that simply just means that  
 19 Section 2 does not apply, Section 2 would not be valid  
 20 if the agreement was terminated under Section 1.4B?  
 21 **MR. CULLEN:** Objection. Asking for a legal  
 22 conclusion.  
 23 **A. I don't have that understanding.**  
 24 **BY MS. FORDE:**  
 25 Q. Okay.

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1 **MR. CULLEN:** Just would note for the record  
 2 that I do think that A and B are each one horrendous  
 3 sentence.  
 4 **MS. FORDE:** I'd agree.  
 5 **THE WITNESS:** Who drafted this, I'd like to  
 6 know.  
 7 **MR. HACKNEY:** So stipulated.  
 8 **THE WITNESS:** They must have studied German  
 9 in a prior life.  
 10 **BY MS. FORDE:**  
 11 Q. If the City cannot challenge or take a position  
 12 inconsistent with the counterparties under this  
 13 agreement, and you say this agreement applies until  
 14 June 2014, we can say that for purposes of my question  
 15 --  
 16 **A. We did want a longer period of time and I encourage**  
 17 **you to speak with Cadwalader to get it from their**  
 18 **clients on our behalf.**  
 19 Q. Okay, but if the agreement is in effect we'll say at  
 20 least until that point and the City's Chapter 9 plan  
 21 is due March 2014, correct?  
 22 **A. Uh-huh.**  
 23 Q. Then under this agreement the City cannot take a  
 24 position inconsistent with the counterparties in their  
 25 Chapter 9 plan, is that right?

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1 **MR. CULLEN:** Objection. Foundation. Form.  
 2 **BY MS. FORDE:**  
 3 Q. Do you understand the question?  
 4 **MR. CULLEN:** Is the question with respect  
 5 to the subject matter of this agreement?  
 6 **MS. FORDE:** Yes.  
 7 **MR. CULLEN:** Okay. That's a little bit  
 8 different.  
 9 **A. Well, we have until March 15th to retire the Swaps**  
 10 **pursuant to this option.**  
 11 **BY MS. FORDE:**  
 12 Q. You have until March 15th to retire --  
 13 **A. Eighty-two is the price.**  
 14 Q. That's right. So, if we get to March 15th and the  
 15 Swaps have not been retired, what percentage is owed  
 16 under this agreement to the Swap?  
 17 **A. One hundred percent.**  
 18 Q. And that number I think we talked about a little  
 19 earlier is that number, the hundred percent that would  
 20 be owed, do you have a dollar figure?  
 21 **A. Today, what's today, the 29th of August, it's**  
 22 **somewhere between 275 and 300 million dollars would be**  
 23 **the termination value today.**  
 24 Q. So, if the City can't challenge any -- take any  
 25 position that's inconsistent with the counterparties,

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1 the City is then left with an obligation to pay --  
 2 **A. Only if they exercise their remedies and present us**  
 3 **with an event of default and assert a termination**  
 4 **payment. But this agreement is clear that if it**  
 5 **expires, everybody goes back to their original**  
 6 **positions.**  
 7 Q. That's right. And --  
 8 **A. You want to take a minute?**  
 9 Q. Yeah. Can I just have a couple minutes?  
 10 **MR. CULLEN:** Sure. Off the record.  
 11 **VIDEO TECHNICIAN:** The time is 3:13 p.m.  
 12 We are off the record.  
 13 (Discussion held off the record at  
 14 3:13 p.m.)  
 15 (Back on the record at 3:15 p.m.)  
 16 **VIDEO TECHNICIAN:** Back on the record at  
 17 3:15 p.m.  
 18 **BY MS. FORDE:**  
 19 Q. Mr. Buckfire, you just mentioned that if the agreement  
 20 terminates under certain circumstances, that the  
 21 parties go back to their original positions, is that  
 22 right?  
 23 **A. That's my understanding.**  
 24 Q. Okay. Now, if you turn with me -- I'm going to try to  
 25 be as simplistic as possible, but it's a complicated

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1 agreement. To Page 6 at Section 1.4 again. And it  
 2 lists a series of provision under which if the  
 3 forbearance period comes to an end under those  
 4 provisions, the parties are restored to their original  
 5 position and in one section the parties are restored  
 6 to their original position giving effect to Section 2  
 7 and in another situation the parties are restored  
 8 without giving effect to Section 2.  
 9 Can we agree on that?  
 10 **A. That's what it says.**  
 11 Q. Okay. Now, when Section 2 is in effect -- scratch  
 12 that.  
 13 You mentioned earlier it would be  
 14 irrational economically for the Swaps to walk away  
 15 from this agreement prior to June.  
 16 **A. No, I didn't say that. I said that prior to the**  
 17 **Chapter 9 filing in answer to the question why they**  
 18 **did not pursue their termination rights, recognizing**  
 19 **the City could not pay the termination payment that**  
 20 **allowing the City to continue to pay them their**  
 21 **quarterly payments when due was a rational decision**  
 22 **for them, they were not harmed by not pursuing their**  
 23 **rights economically. That's what I said.**  
 24 Q. If the City -- if the parties are restored to their  
 25 original position and Section 2 is given effect and

1 the City is precluded from taking any position  
 2 inconsistent with the Swap counterparties and this  
 3 applies through March 1st, 2014 when the Chapter 9  
 4 plan is filed --  
 5 **A. Yes.**  
 6 Q. Is there going to be another time where the City can  
 7 challenge the liens as invalid once the Chapter 9 plan  
 8 is filed?  
 9 **MR. CULLEN:** I object to the form of the  
 10 question but you can answer if you can --  
 11 **BY MS. FORDE:**  
 12 Q. Do you see that this agreement forfeits the City's  
 13 right to challenge any liens after the Chapter 9 plan  
 14 is filed?  
 15 **A. I don't see that.**  
 16 Q. Can you tell me why you don't see it that way?  
 17 **A. Well, I didn't write this agreement.**  
 18 Q. Is it your understanding that after March 1st the City  
 19 has another opportunity to challenge anything related  
 20 to this agreement?  
 21 **A. It's not my understanding.**  
 22 Q. Okay.  
 23 **A. I don't know.**  
 24 Q. Okay. Do you recognize there's a possibility then  
 25 that the City could be stuck with paying a very large

1 **agreement, I believe it was dated June 18th of 2009,**  
 2 **there is attached as an exhibit to that a letter from**  
 3 **the Michigan Gaming Control Board saying that they**  
 4 **were okay with the arrangements embodied in the**  
 5 **collateral agreement.**  
 6 Q. Do you know the date of the letter?  
 7 **A. I believe it was the same date as the agreement.**  
 8 Q. My next question I believe someone may have alluded to  
 9 but I don't know that we got this far. You said that  
 10 you assumed that the liens were valid in your  
 11 negotiations, correct?  
 12 **A. Yes.**  
 13 Q. Did you also understand that the lien arose solely  
 14 from the collateral agreement itself?  
 15 **A. That's my understanding.**  
 16 Q. Okay. And as far as the lien -- look at my last page  
 17 of notes here -- did you discuss with anyone whether  
 18 pledging the casino revenue was permissible under the  
 19 Michigan Gaming Act or was the letter the only thing  
 20 that was relied upon?  
 21 **MR. CULLEN:** Objection to the extent that  
 22 it calls for privileged conversations, where we have  
 23 directed no inquiry between himself and Jones Day.  
 24 **MS. GREEN:** And that is my question so is  
 25 he not going to answer that?

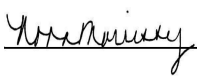
1 figure after the Chapter 9 plan and have no ability to  
 2 challenge it if -- at some certain stage regardless of  
 3 the validity of those liens?  
 4 **A. That's a possibility.**  
 5 Q. Okay.  
 6 **MS. FORDE:** Thank you. No further  
 7 questions.  
 8 **MS. GREEN:** Good afternoon, my name is  
 9 Jennifer Green. I just have a few questions.  
 10 **THE WITNESS:** May I ask who you represent,  
 11 Counsel?  
 12 **MS. GREEN:** Police and Fire Retirement  
 13 System and the General Retirement System.  
 14 **THE WITNESS:** And you are with what law  
 15 firm?  
 16 **MS. GREEN:** Clark Hill.  
 17 **EXAMINATION**  
 18 **BY MS. GREEN:**  
 19 Q. I had a hard time hearing down there. I may have  
 20 written this down wrong. I thought I heard you say  
 21 that you had received a letter from or the City had  
 22 received a letter from the Michigan Gaming Control  
 23 Board saying that it was okay to pledge the casino  
 24 funds.  
 25 **A. Well, if you look at the original collateral**

1 **MR. CULLEN:** If he can find in his memory a  
 2 nonprivileged conversation that affects --  
 3 **THE WITNESS:** With Jones Day, impossible.  
 4 **MR. CULLEN:** Not with Jones Day but with  
 5 somebody else, a nonprivileged conversation, you can  
 6 answer with respect to that.  
 7 **BY MS. GREEN:**  
 8 Q. Do you have a nonprivileged conversation that you can  
 9 recall regarding whether or not you discussed with  
 10 anyone whether pledging the casino revenue was  
 11 permissible under the Michigan Gaming Act?  
 12 **A. No.**  
 13 **MS. GREEN:** Thanks. That's my only  
 14 question. Thank you.  
 15 **MS. NEWBURY:** Good afternoon, Mr. Buckfire.  
 16 My name is Karen Newbury. I'm with Schiff Hardin, and  
 17 I represent DepfaBank as agent for DFS WertManagement.  
 18 **THE WITNESS:** Can you say that really fast  
 19 twice?  
 20 **MS. NEWBURY:** I said it really fast once.  
 21 So, that will be enough.  
 22 **THE WITNESS:** Thank you.  
 23 **EXAMINATION**  
 24 **BY MS. NEWBURY:**  
 25 Q. You've testified earlier today that you were the

1 individual largely responsible for the negotiation of  
 2 the business terms of the forbearance agreement,  
 3 correct?  
 4 **A. Yes.**  
 5 Q. So, you are familiar with and perhaps even designed  
 6 the optional termination provisions?  
 7 **A. Yes.**  
 8 Q. So, if I ask you to explain to me the way that the  
 9 termination amount will be calculated with all the  
 10 accompanying definitions such as optional termination  
 11 notice on Page 11 of the agreement, then mid-market  
 12 amount and optional termination amount on Page 14, you  
 13 could walk me through this in plain English without  
 14 any trouble, right?  
 15 **A. That's a bold statement. I'll do my best.**  
 16 Q. Would you please try?  
 17 **A. Okay. Well, the calculation of the termination amount**  
 18 **is not an easy quantitative exercise because pursuant**  
 19 **to the underlying agreement which is not in front of**  
 20 **me today so I can't refer you to it, you're supposed**  
 21 **to go and seek bids in the market from dealers to find**  
 22 **out what the value of the Swap is, and then you figure**  
 23 **out from that what the termination amount is.**  
 24 **So, it's not a simple calculation that you**  
 25 **can just do mathematically on Bloomberg. You could**

1 **get to a pretty good answer because everyone looks at**  
 2 **the same LIBOR curves but it is a matter of market**  
 3 **checking.**  
 4 Q. So, it's your understanding that the optional  
 5 termination amount is to be determined on the optional  
 6 termination date which is the date that the City gives  
 7 notice, is that correct?  
 8 **A. That's my understanding.**  
 9 **MS. NEWBURY:** Thank you, that's all.  
 10 (Discussion held off the record at  
 11 3:24 p.m.)  
 12 (Back on the record at 3:24 p.m.)  
 13 **MR. HACKNEY:** I think we are done.  
 14 **VIDEO TECHNICIAN:** This concludes today's  
 15 deposition. The time is 3:24 p.m. We are off the  
 16 record.  
 17 (The deposition was concluded at 3:24 p.m.  
 18 Signature of the witness was not requested by  
 19 counsel for the respective parties hereto.)  
 20  
 21  
 22  
 23  
 24  
 25

1 CERTIFICATE OF NOTARY  
 2 STATE OF MICHIGAN )  
 3 ) SS  
 4 COUNTY OF WAYNE)  
 5  
 6 I, NORA MORRISSY, certify that this  
 7 deposition was taken before me on the date  
 8 hereinbefore set forth; that the foregoing questions  
 9 and answers were recorded by me stenographically and  
 10 reduced to computer transcription; that this is a  
 11 true, full and correct transcript of my stenographic  
 12 notes so taken; and that I am not related to, nor of  
 13 counsel to, either party nor interested in the event  
 14 of this cause.  
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NORA MORRISSY, CSR-2642  
 Notary Public,  
 Wayne, County, Michigan.  
 My Commission expires: 9-13-13